OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Tuesday 12 May 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 12 May 2020

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COVID-19 COMMITTEE
4th Meeting 2020, Session 5

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Annabelle Ewing (Cowdenbeath) (SNP)
*Ross Greer (West Scotland) (Green)
*Shona Robison (Dundee City East) (SNP)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
*Adam Tomkins (Glasgow) (Con)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Clancy (Law Society of Scotland)
Gillian Mawdsley (Law Society of Scotland)
Luke McBratney (Scottish Government)
Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Tuesday 12 May 2020

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Murdo Fraser): Good morning, and welcome to the fourth meeting in 2020 of the COVID-19 Committee. We have one substantive item today, in which we will take evidence at stage 1 on the Coronavirus (Scotland) (No 2) Bill.

Before we come to that, I propose that we take item 3 in private. I hope that all members agree. If any member disagrees, will they indicate that now, please? I am not hearing any disagreement, so we agree to take item 3 in private.

Coronavirus (Scotland) (No 2) Bill: Stage 1

09:30

The Convener: Item 2 is evidence on the Coronavirus (Scotland) (No 2) Bill. I am pleased to say that we have been joined from the Law Society of Scotland by Michael Clancy, who is its director of law reform, and Gillian Mawdsley, who is a policy officer.

I remind members that my entry in the register of members' interests includes that I am a member of the Law Society of Scotland.

I welcome you both to the meeting. Members will direct their questions to Michael Clancy in the first instance. If you wish Gillian Mawdsley to contribute, Michael, you can confirm that at the relevant time. Before we turn to questions, I invite you to make brief opening comments.

Michael Clancy (Law Society of Scotland): Good morning, convener and committee members. It is a delight to be at this historic event—the first time that evidence has been given from our best parlour, here at home.

I am delighted that the committee saw fit to invite the Law Society to give evidence on such an important bill. My colleague Gillian Mawdsley is a policy officer at the Law Society, and I am the director of law reform. Consequently, a lot of the coronavirus legislation has crossed both our desks, and we have been very interested in that legislation from a number of perspectives.

The Law Society works to a number of principles when looking at legislation. The first is that it should end up as good law that is coherent and comprehensible, and which works in practice. In the current circumstances and on legislation relating to the Covid-19 crisis, we have also sought to ensure that people are kept safe in the justice system.

We have also been looking at maintenance of the rule of law and the interests of justice in the system, as well as at upholding human rights. In particular, when we are dealing with emergency legislation, or expedited legislation such as the bill, our objective is to ensure that there is proper scrutiny of the proposed measure, and that the Government is held to account.

Those are the introductory parameters that we have been working to; we can look at them in more detail as we go through questions on the bill.

It is worth recalling that the World Health Organization's director general, Tedros Adhanom Ghebreyesus, said that

"we are in this together, to do the right things with calm and protect the citizens of the world".

We picked up that quotation early in our scrutiny of the Coronavirus Act 2020 of the United Kingdom Parliament. That message still resonates today, when we have seen much more of the significant impact of Covid-19, with its tragedies and its devastating economic impact.

That is probably enough from me, at the moment. We would be delighted to take the committee's questions.

The Convener: Thank you for that introduction. The Law Society of Scotland gave evidence on the Coronavirus (Scotland) Bill. You highlighted, at that point, a number of concerns about whether the right balance had been struck between measures to tackle coronavirus and restrictions that might impinge on human rights. Does the bill that is before us strike the right balance, or are there areas of concern in which you think changes are needed?

Michael Clancy: The Coronavirus (Scotland) (No 2) Bill is much more technical and less wide-ranging than the Coronavirus (Scotland) Bill. Therefore, its impact on human rights is not of the order of some of the restrictions that were contained in the first bill.

Nevertheless, the European convention on human rights is engaged in relation to many areas of the bill. It is important for us to remember that human rights is not a discrete area of the law: it affects all aspects of the law in Scotland, and it affects the competence of Parliament to legislate and of ministers to make executive orders.

We welcome the way in which human rights are respected in the policy memorandum. We can highlight provisions in the bill that engage the convention. I am holding up the bill to show that I have a copy: compliance with ECHR and with convention rights flows through it. For example, part 1 of schedule 1, which relates to student residential tenancies, engages with article 14 of the convention, and with article 1 of protocol 1 of the convention, which deals with property rights in bankruptcy matters.

There is also engagement with article1, protocol 1 of the ECHR in the provisions that relate to criminal justice, with article 5, which is the right to liberty, and with article 6, which is the right to a fair trial.

As we go further through the bill, we also see that part 3 of schedule 2, which includes provision on paper notices on court walls, engages with article 8 of the convention, which deals with the right to a private life.

Some aspects of the bill have, as the policy memorandum correctly points out, no significant ECHR implications—for example, part 1 of schedule 3, which deals with reports under the Climate Change (Scotland) Act 2009. There are other elements of that provision in schedules 3 and 4.

It is fair to say that the bill has an impact on human rights. However, the rights that are impacted on are not absolute rights, but are conditional rights that are subject to lawful interference where there is a public health threat or a danger to health.

Those are our comments on the interaction between the bill and human rights.

The Convener: Thank you. I will move on to questions from members. Shona Robison has just joined us; I will let her catch her breath and come back to her later. I will go first to Beatrice Wishart—if she is there—who has questions about property transactions.

Beatrice Wishart (Shetland Islands) (LD): Good morning, Mr Clancy. My questions are about the land and buildings transaction tax. We know that Scotland's property market has frozen up, that transactions have stalled and that home owners are unable to move. That does not mean to say that no one should be contemplating a home move.

Even though some applications for registration are being processed, capacity is much reduced. The bill proposes that the timeframe for selling an old property before attracting the second-home tax should be extended from 18 to 27 months. What is your impression about the sector's mid-term to long-term outlook, from your members?

Michael Clancy: We have just finished conducting research on the impact of the coronavirus on the profession and our business, and we have certainly picked up from it that the conveyancing market is flat, as you said. The research has not yet been published—we are still analysing the results—but what you suggest clearly reflects everyone's experience in the current market.

In terms of the particular impact on the land and buildings transaction tax, it is difficult to say what point for deferral dates would be right. We are all in uncharted waters and do not know what the effects of the disease will be. We are aware that scientific evidence suggests that any loosening of restrictions might create a second spike, which might in turn require further restrictions. We have to be very cautious about picking a future date and saying, "That is it—that is when all the restrictions will be removed."

That is one reason why some aspects of the bill that allow ministers to make orders that they can put to sleep and revive are important. There needs

to be flexibility in the law making that applies in this case.

We welcome the provisions of part 4 of schedule 4, which concern amendments to the additional dwelling supplement, or ADS. They will allow people who bought a new house between 24 September 2018 and 24 March 2020, and paid ADS on the purchase, to reclaim the ADS if they sell their old house within 27 months. Ministers might have to look at that again, which is why there is provision for two-monthly reviews, because the situation is fluid. I hope that that answers your question.

Beatrice Wishart: Yes. That is very helpful. It will be interesting to see the research that you mentioned, when it is concluded.

I am conscious that, at the best of times, the market in rural, remote and island areas can operate at a very different pace from the market in the highly populated parts of Scotland. Are there areas where you would expect property markets to be slow? How can the bill best prevent people who have a genuine interest in selling their old home, and are making every effort to do so, from being caught out by the slow market through having to pay the additional dwelling supplement?

09:45

Michael Clancy: I think that we have to adhere to the Scottish Government guidelines on that. The restrictions on movement clearly have a significant impact on buying and selling of property, no matter where the property is located, and I am not sure that we have got to a point at which the Scottish Government is able to refine application of the guidelines specifically for rural, small town, suburban or urban areas. We have to be aware that the restrictions are in place and we must adhere to them. I wish that I could offer some fantastic solution, but I cannot.

Beatrice Wishart: Thank you. We all agree that we are in uncharted waters and unprecedented times. I have asked all my questions, and am conscious that members have plenty of other questions, so I will call it a day.

The Convener: Thank you. Next on the list is Shona Robison, who has questions on carers allowance and mental health issues.

Shona Robison (Dundee City East) (SNP): Good morning. Mr Clancy, schedule 1, part 4 is on mental health and, in particular, the nomination of named persons. As you will be aware, the bill temporarily removes the necessity to have a nominee's signature witnessed by a prescribed person, so it removes one of the safety checks against someone being coerced into nominating a particular named person.

Do you have any concerns about that? What assurances are there that a nominator has not been coerced into nominating as their named person a particular individual who might not have the best intentions? Without the presence of a prescribed person, who would explain to the nominee the role of the named person and the implications of nominating a named person?

Michael Clancy: The Law Society's mental health and disability committee looked at that provision, which amends the Mental Health (Care and Treatment) (Scotland) Act 2003 to ensure that a nominated person's signature will no longer be witnessed by a prescribed person. The committee said that the provision is a pragmatic solution to the potential difficulties of arranging for a prescribed person to witness a nominated person's signature during the outbreak. The committee thought that it was important that individuals remain able to nominate a named person, subject to appropriate safeguards, and that such a nomination is recognised.

The policy memorandum, at paragraph 82, confirms that, in the view of the Government, rights under the ECHR are not engaged. Broadly speaking, the Law Society was content with those provisions and did not see that much difficulty with them.

Shona Robison: That is helpful; thank you.

If you have any comments on the carers allowance supplement, that would also be helpful.

I also want to ask about the extension of time limits in criminal proceedings, which affects such things as appearances in court from police custody and undertakings to appear in court. Have you identified any human rights issues or other difficulties related to those extensions?

Michael Clancy: I am awfully sorry, but we do not have any comments on the carers allowance supplement.

My colleague Gillian Mawdsley is best placed to comment on criminal justice matters, so I will pass that question to her.

Gillian Mawdsley (Law Society of Scotland): The bill makes a number of changes to time limits, which, largely, follow the changes to time limits for court business that were in the Coronavirus (Scotland) Bill. Shona Robison asked whether we have concerns about the changes. Fundamentally, they are there to make it easier to reduce the number of court hearings and the number of people who have to come to court; to a large extent, they are pragmatic and non-objectionable.

However, as members are well aware, the whole purpose of time limits in criminal proceedings is to ensure that the human rights aspects—the article 6 right to a fair trial, which

Michael Clancy mentioned, and the rights of the accused not to have an uncertain future as a result of a long, drawn-out process—are respected.

Different time limits are being extended. The ones that are to do with procedural matters—such as cases that are continued without plea and sections 145 and 145A of the Criminal Procedure (Scotland) Act 1995—are fine; they relate to administrative, procedural hearings and do not cause concern. They do not affect someone who is in custody.

The other two extensions, which relate to medical reports and breaches of community payback orders and drug treatment and testing orders, allow for matters to be continued at the court's discretion. They are not per se objectionable, but we have concerns about their open-ended nature, in relation to people who are in custody. Although it is perfectly reasonable to look at the timeframes, they are there for a purpose and we suggest that a finite period might be put on the court's discretion.

We are perhaps two stages slightly further forward, and we have talked about being in uncharted territory and the need for flexibility. I totally respect that, but we are looking at something that is not going to be done and dusted in a short period. I therefore encourage members to consider putting a finite period on remand, to provide clarity and certainty—while respecting the need not to have repeated court appearances, the difficulty of getting doctors and psychiatrists to provide necessary reports, the pressures on social workers, the need for social distancing at work and so on. I hope that that helps your consideration.

Shona Robison: That is helpful, thank you.

The Convener: Annabelle Ewing has questions on the proceeds of crime process and court notices.

Michael Clancy: May I suggest that such questions be passed to Gillian Mawdsley? They are in her remit more than they are in mine.

Annabelle Ewing (Cowdenbeath) (SNP): Okay. I have several questions, but before I start, I do not want to forget to refer people to my entry in the register of members' interests: I am a member of the Law Society of Scotland and hold a current practising certificate, although I am not currently practising.

On proceeds of crime, the approach is to treat the coronavirus situation as an exceptional circumstance—as it blatantly is—for the purposes of the legislation, such that confiscation hearings may be postponed and the period in which individuals must pay may be extended. I am not suggesting that the approach is not reasonable; I understand that—[*Temporary loss of sound*.]—arrive at a confiscation hearing is rather complicated by the fact that court hearings are not taking place as they normally would, with Crown and defence agents requiring to be present and so on. I understand the reasoning behind providing for such extensions, but do you have thoughts on whether they might facilitate evasion?

Gillian Mawdsley: We looked at the provisions, which we thought were substantially sensible in all circumstances. You touched on clarity of the law by stating that the Covid-19 circumstances would be exceptional, which at least takes away from what would appear to be a technical issue. It would require to be looked at on a case-by-case basis, so that provides clarity and is certainly understandable.

It is important to stress that the proceeds of crime mechanism will still be in place. All that is being attributed is that delays will be afforded when people who are subject to it might suffer the adverse effects of Covid-19 in trying to pay or in relation to extended periods for payment. It must be stressed that the proceeds of crime mechanism is terribly important, particularly in the criminal justice context, because a lot of the penalty comes through that process rather than through actual conviction, and it is important that people pay their dues.

The provision will not go away; all that has happened is that people are being afforded a degree of leniency when they are, as was discussed earlier, perhaps inhibited in relation to selling property and realising assets in order to pay. It would seem somewhat unfair if they suffered the consequences, when we are fully aware of the full impact of Covid-19 on all economic and financial matters. However, I stress that the confiscation order will still apply and the money will still be required to be paid.

I am not sure whether that fully answers your question.

Annabelle Ewing: It does. I see the provisions as reasonable, and it is fair to say that, for as long as there are difficulties in the conveyancing market, those difficulties will apply to everybody, by and large. However, the matter should be looked at very carefully, because Scotland has had great success with proceeds of crime confiscations and, when we get to the new normal, whenever that might be, it would be a pity if there was any backtracking in that regard.

Gillian Mawdsley: I totally support that point. I was involved in aspects of the proceeds of crime provisions years ago, and they have been a major success, with some of those who have been convicted finding them much more onerous than a conviction such as a prison sentence, so I would not like to see anything taken away. I understand

that the Crown Office is totally in support of the provisions and, in fact, was involved in identifying the need for the changes. The legislation remains in place and will still be effective. As I said, only people who are affected by Covid-19-related circumstances will find themselves with extensions and postponed payments or interest payments.

Annabelle Ewing: Michael Clancy talked about the engagement of article 8 of the ECHR and intimation on the walls of court. In particular, there is a requirement to intimate that a petition for appointment as an executor dative has to be posted on the walls of court, and that can also be an option in other circumstances. The bill would instead require the intimation to be made by way of the Scottish Courts and Tribunals Service website. It would be helpful if Michael Clancy could give his initial thoughts on that provision.

Michael Clancy: Thank you very much for that interesting question. It is right that we move to a position in which the documents that are placed on the walls of court are instead placed on the virtual walls of court, as it were, on the Scottish Courts and Tribunals Service website.

10:00

There is, of course, an issue around the preservation of the right to a private life and the protection of data. The courts and the Scottish Courts and Tribunals Service are bound by the Human Rights Act 1998 and the general data protection regulation to protect data and adhere to and comply with article 8 of the ECHR. Currently, documents that relate to family life and which contain important and private matters are not put on the walls of court, but are retained as private documents. I would expect the same kind of approach to be taken by the courts just now.

The provisions of proposed new paragraph 1(A)(2) of schedule 4 to the Coronavirus (Scotland) Act 2020 allow that publication on the website does not apply to a document if it is of the type that the Lord President of the Court of Session or the Lord Justice General—same person; different offices—has directed that it should not apply to. That would mean that the document would not go on to the website or that some of the information on it would be redacted.

I think that sufficient safeguards for individual privacy are embedded in paragraph 9 of schedule 2 to the bill and that we can rely on Lord Carloway to exercise the direction power with those thoughts in mind.

Annabelle Ewing: I have a supplementary question. I very much take cognisance of the right to privacy issues that are engaged, but I want to look to the new normal of our lives, whenever that happens. On electronic registration, the register of inhibitions and the register of judgments, for example, putting some things on the SCTS website might be a better way to do things in the 21st century. Do you have any thoughts on that?

Michael Clancy: I am not sure that people would describe me as a moderniser, but I recognise the important role that the internet and all the other forms of media play in people's lives now. It is important that the courts and other public administration offices move along with that flow.

The change may become a permanent one for the future, but it is bound by the same limitations that the rest of the bill's provisions are bound by. It applies until 30 September this year, with potential extensions to 31 March and 30 September next year. We may see such changes being adopted once this period is over—it may be looked on as a trial period for how such things work. That is entirely in keeping with the modernisation of procedure and process that started with the Gill reviews a few years ago, which Lord Carloway has pushed forward with as the legislation has bedded down and changes have taken place. I predict that that will probably be the way of the future.

The Convener: We will move to Stewart Stevenson, who has mostly technical questions.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Given Michael Clancy's introductory remarks, I have the faint feeling that he might direct this question towards Gillian Mawdsley.

I will start with the electronic signature of forms provisions in the part of the bill on bankruptcy, which is all well and good. In particular, I want to focus on what the bill does in paragraph 10(2)(b) of schedule 1 by inserting a new provision into the Bankruptcy (Scotland) Regulations 2016 (SSI 2016/397). That provision states:

"'electronic signature' ... includes a version of an electronic signature which is reproduced on a paper document."

References are made to section 7 of the Electronic Communications Act 2000, which makes no reference to taking an electronic signature and putting it on to paper, and to the Bankruptcy (Scotland) Regulations 2016, regulation 2(2) of which talks about people being able to use electronic means in substitution for paper. The provision in paragraph 10 of schedule 1 appears to be the first legislative attempt to substitute the use of an electronic signature with a paper version. Does the Law Society have any concerns about that?

To provide context, I will explain my concern. Section 7 of the Electronic Communications Act 2000 refers to

"an electronic signature incorporated into or logically associated with a particular electronic communication or

particular electronic data, and ... the certification by any person of such a signature".

The certification of an electronic signature involves looking at every dot, comma, number and letter in the electronic document thus being signed, together with an electronic piece of information that is uniquely known by the signer and a computation that is in the public area. In other words, when the signature is put on paper, the electronic connection between the big number that is the electronic signature and what might be on that bit of paper is lost. A number could be changed without it being known that that has happened.

Has the Law Society thought about what seems to be a novel move—I use the word "novel" in a non-endorsing way—to allow electronic documents to be put on paper and to have the same validity?

Michael Clancy: I had an agreement with Gillian Mawdsley that I would pass questions that dealt with matters relating to bankruptcy to her, but as that question deals with a much more specific issue than the generality of the bankruptcy provisions, if Mr Stevenson does not mind being disappointed, I will attempt to answer his question.

The provision in question does not appear to have been considered by our information technology committee, but I will ask it to look at it. If we are talking about electronic signatures properly so called, I agree with Mr Stevenson that it seems to be a novel and perhaps even, in some respects, a retrograde step to recognise as an electronic signature

"a version of an electronic signature which is reproduced on a paper document."

That makes me question what the drafter thought when the phrase "electronic signature" was used. I am sure that Mr Stevenson and other members of the committee will be aware that some people advance the idea, which I believe to be erroneous, that an electronic signature is a person's wet signature that has been scanned into a letter, which is then put on the internet. That might be the

"version of an electronic signature"

that is referred to in paragraph 10 of schedule 1. Perhaps the cabinet secretary should be asked what he thinks that the phrase

"a version of an electronic signature"

means. The committee will have an early opportunity to do that.

Stewart Stevenson: I suspected that that might be the character of the answer that I would get. Like Michael Clancy, I think that the use of a reproduction of an image of a wet signature in this way is perfectly proper and reasonable, but that causes difficulty because section 7(1)(b) of the Electronic Communications Act 2000 requires

"certification by any person of such a signature".

By context, that makes it very clear that certification means electronic certification; the image of a signature on its own is not sufficient in the context of that act. That is an observation. I will not ask you to comment on this further because, as I suspected, I will have to ask the cabinet secretary about it. However, it would be helpful if the appropriate Law Society committee were to consider the matter. It is always difficult when we have to dive down into various bits of legislation and tie them together. Mere laypeople such as me are easily confused on these matters.

I have a question on a very technical drafting issue. Again, I might have to defer to the cabinet secretary on it. It is about schedule 1, which covers student residential tenancy. The bill is talking about the ways in which a tenancy may be terminated. Referring to part 1, paragraph 1(2) of schedule 1 says

"references in this Part to the landlord are to any of those persons"

and paragraph 1(3) says

"references in this Part to the tenant are to all of those persons".

I read that to mean that all the persons who are party to the tenancy have to provide notice, but any single person who might be part of the landlord's stake might be sufficient to give effect to it. Is that the meaning of what the drafting says?

Michael Clancy: I have to confess that I had not turned my attention specifically to subparagraphs (1), (2) or (3). However, you are correct that there is a distinction made between the notification in the case where two or more persons are the landlord, in which case references to the "landlord" are to any of those persons, and the notification in the case where two or more persons are the tenant, in which case references to the "tenant" are to all of those persons. The reason for spelling that out is probably that, as members will be aware, general provision 6(c) of the Interpretation Act 1978 says that

"words in the singular include the plural and words in the plural include the singular."

A reference to a single landlord might mean a company, partnership or joint venture of some description that has a corporate identity, particularly if the landlord is a partnership or limited company. In those cases, the landlord would be a single entity and therefore any of the components of that single entity who are operating as the landlord could be notified, whereas, in paragraph 1(3) of schedule 1 to the bill, if two or

more persons are tenants, one would expect that they are not working in a corporate environment and are instead operating as individuals. If one flatmate in a tenancy gave up the tenancy but the others did not, it would cause difficulties with the continuity of the agreement that they had, the responsibilities that adhere to that agreement and the individuals who are party to it.

That was a good question, and Stewart Stevenson was right to highlight that issue. It is not an error or a mistake; it is a deliberate approach to ensure that a tenancy comes to an end, full stop, for everyone.

10:15

Ross Greer (West Scotland) (Green): I am interested in the criminal justice aspects of the bill. They have been largely covered in answer to Shona Robison's questions, but I am interested in the specifics of the arrangements for custody of detained persons at police stations and whether there is enough clarity around the transition in the role of custodian between prison officers and police officers for the purposes of having those detained at police stations, for example, to take part in court appearances.

Michael Clancy: In accordance with our pact, I will pass that to Gillian Mawdsley.

Gillian Mawdsley: You have highlighted a very important aspect of the criminal justice system. Many of you will be familiar with the fact that the trial starts in the police station, so before you even consider all the provisions that the committee and the Parliament have been considering, it is essential that the processes at police stations are safe for everybody concerned.

You have picked out one aspect, which is the use of prisoner custody officers. We understand that that is entirely to facilitate the remote access of people who will no longer be required to be taken to court to appear, which is obviously very important. The largely technical revisions to the Criminal Justice and Public Order Act 1994 are to take account of prisoner custody officers undertaking those duties to, quite correctly, free up police officers to do other things. That aspect of the bill is fine.

I would highlight that there are on-going discussions with regard to facilitating the interviews of suspects and the safety of all persons involved. That matter is receiving the attention of the Scottish Government; indeed, only today, my president was asked to join a working group that is looking at it. I stress that that aspect is very important and it is not covered by the bill, because it is not necessarily required at this stage. The intention, we understand, is to facilitate remote access in due course, when that can be arranged, and that will be essential to avoid contact. It is essential that we also consider the safety of the appropriate adult—the adult attending with the child—the interpreter, the police officers, the legal professional and, indeed, the suspect themselves.

Those are on-going matters that are worthy of consideration at the appropriate juncture. That aspect is on-going, because clearly these facilities were not in place before, as everybody would attend in the close confines of a small room in a police station.

As far as the bill is concerned, prisoner custody officers are fine. There are obviously comments, if we are going to come to it, with regard to undertakings that relate a little bit to people who are appearing in custody.

Does that answer your question?

Ross Greer: Yes. That was a very useful update on those on-going discussions as well. When they are concluded and agreement has been reached on how to have those facilities in place, do you envisage that that will require any further change to primary legislation, or could that be achieved through secondary legislation?

Gillian Mawdsley: That question would be best directed towards the cabinet secretary and the appropriate people. There are obviously provisions in the Criminal Justice (Scotland) Act 2016, with which you will have been concerned a couple of years ago, that refer to a solicitor being present. That is a matter that perhaps you could seek clarification on. However, your question is best directed to the cabinet secretary to clarify whether any legislative fix would be required to facilitate the recommended route to afford access to solicitors and ensure the safety of everybody who is required in connection with cases.

Monica Lennon (Central Scotland) (Lab): The convener asked Michael Clancy a very helpful question about the balance between human rights considerations. He helpfully set out that the bill is largely technical, and the impact on human rights is not of the same order as for previous bills. I am largely satisfied with his answer to Shona Robison's question about the nomination of named persons with respect to the care and treatment of mental health patients.

To what extent did your team look at the cumulative impacts of other parts of legislation that are in force? Under part 4, the named person has considerable power over an individual and we know that people in closed institutions are completely reliant on others for their care and treatment. I am concerned that, in England, the Care Quality Commission has intervened because deaths in mental health hospitals have doubled since last year, but the data is not yet available for

Scotland. I will have questions for the cabinet secretary on that, but how satisfied are you that Scotland has enough data and is able to properly monitor the impact of the legislation and look at it in a cumulative fashion?

Michael Clancy: It is probably early days for enough data to have been gathered. I would be surprised if the Law Society's committee had data that it had not passed on to me in the notes for the purposes of today's discussion, unless the committee members thought that that question was not going to come up.

It is obviously a difficult situation as we are still getting to grips with the legislation. It has only been five weeks, or just over a month, since the Coronavirus (Scotland) Act 2020 was given royal assent on 6 April. One needs to have a critical mass of evidence from the operation of an act of Parliament before one can begin to tease out the research points and information that are needed. It may be the case that ministers have access to information that people like me do not have. That is probably more likely than not because, as Monica Lennon will know from her interest in such matters, health questions are constantly being looked at and data is being generated all the time so that clear policy directions can be given and clinical decisions can be made. I am awfully sorry, but I do not have that information to hand.

Monica Lennon: Thank you. Do not apologise—I just wondered whether we need to consult further with the human rights committee on that point.

I will turn to another matter that, again, might be a minor point. With reference to schedule 2, part 1 on criminal justice and schedule 2, part 2 on proceeds of crime, I note that the term "reason relating to coronavirus" is loosely defined. I imagine that that is to ensure sufficient flexibility. Is the term specifically defined enough, or does it need more clarity? A person could say that they have coronavirus, but has not been, or will not be, tested. What would the practical implications of that be?

Michael Clancy: I might ask Gillian Mawdsley to cover the criminal justice elements. Clearly, the phrase "reason relating to coronavirus" crops up in many places in the schedules; for example, in schedule 1, part 1 on student residential tenancy. What is a "reason relating to coronavirus"? We know what coronavirus is: one might take actions because of it, which are not limited to being a victim of, or having contracted or developed, the disease.

A knock-on effect might happen in the instance of student accommodation, for example, when a university is no longer offering a course, which is clearly a coronavirus-related reason. The same effect might apply in relation to bankruptcy: a coronavirus-related reason exists when people are not able to pay their debts because they have been made unemployed. There are other reasons: the person might not have been sick with the disease, but the entire structure, legal relationships and arrangements around their situation might have been impacted by coronavirus. Gillian Mawdsley might have further comments on criminal justice matters.

Gillian Mawdsley: The definition of "coronavirus-related reason" is very broad. From a criminal justice perspective, we took the definition's being broad to be in the genuine interests of the accused. As Michael Clancy has outlined, there are all sorts of reasons why one might not appear at court. Fundamentally, undertakings that would, for example, require one to get out to a police station or to appear in court on a specific date might suffer because of a Covid-related reason, such as the person having care responsibilities or thinking that they have Covid-19. The fact that the term is not defined with greater clarity affords discretion that allows for reasons that we might not have thought about, and it allows the courts not to define it too prescriptively.

A point was raised about whether the bill covers mental health conditions for individuals who suffer as a result of people around them having Covid-19, or as a result of natural anxiety. The definition is broad enough that, from a criminal justice point of view, the courts would not seek to grant warrants when a reason was put forward that they could accept was a result of Covid-19.

One might argue that the broad definition means that latitude will be shown in favour of the accused, which would not otherwise be shown. That is a slim possibility, because the day of reckoning will ultimately come, and the individual will be required to appear before the court. The bill's provisions allow the court to offer flexibility and fairness in order to avoid people travelling when they should not, if they are to respect the Government's health advice.

Monica Lennon: I do not have any more questions. I got a bit tongue-tied at the end of my questions to Michael Clancy. To correct the record, I note that I was, of course, referring to the Equality and Human Rights Commission, not to the committee.

The Convener: Thank you for that clarification.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Michael Clancy mentioned at the outset some principles that should underpin any legislation: he said that the law should be "coherent and comprehensible" and that it should work "in practice". Can you see those elements in

the bill, which has had to be introduced in a bit of a hurry in order to deal with an emergency situation? Where are the safeguards for the public in respect of application of such legislation, particularly with regard to unintended consequences?

Michael Clancy: That is an interesting question that goes to the heart of the job of MSPs in scrutiny of legislation. The bill contains many order-making powers, some of which are in the body of the bill and some of which are in its schedules.

10:30

It is important for us to remember that scrutiny that is done at speed might result in unintended or unforeseen consequences. The whole point about unforeseen consequences is that no one foresees them, which is a difficulty. A compressed timetable such as the one that the bill is subject to—the evidence session today, the stage 1 debate tomorrow, stage 2 on 19 May and stage 3 on 20 May—is better for scrutiny than the process for emergency legislation under Parliament's standing orders rule 9, in which all the stages of the bill take place in one day, as we had with the Coronavirus (Scotland) Bill on 1 April. This process is better than that, but it still means that we have to be on our guard, because there should be as much scrutiny as possible of the legislation and the subordinate legislation that comes from it.

Currently, the Delegated Powers and Law Reform Committee is considering eight orders that are labelled as Coronavirus (Scotland) Act 2020 orders—I found eight on the website last night. The UK Parliament is dealing with 70 coronavirus orders, and the Hansard Society has recently done a survey on the UK Parliament's approach. I will pass that work on to Jim Johnston, the clerk, for him to circulate; it is instructive work that I found interesting. Michael Russell wrote to the convener of the Delegated Powers and Law Reform Committee on subordinate legislation a few weeks ago, and said that the made affirmative procedure was being used. That is a kind of fast-track procedure for subordinate legislation, which needs to be watched very carefully. The House of Lords Constitution Committee, in its "Fast-track Legislation: Constitutional Implications and Safeguards" report, said:

"The made affirmative procedure is often used in Acts where the intention is to allow significant powers to be exercised quickly. It is a kind of 'fast-track' secondary legislation. In most cases the parent Act specifies which form of procedure should be applied to instruments made under it. In some cases however the Act may provide for either the draft affirmative or the made affirmative procedure to be used. If the made affirmative procedure is used then the instrument is effective immediately."

The report went on to say:

"Instruments laid as made instruments almost inevitably place a serious time pressure on those drafting them. The JCSI's 8th report of this session drew the special attention of both Houses to three statutory instruments which had been laid as made affirmatives"

because

"revisions were being made to the terms of the instruments down to the moment that they were made",

and there had been "serious time pressure" in the making of the instruments.

Does that mean that all legislation that is made in haste has to be reflected on at leisure and mistakes found? Clearly, it does not. The Scottish parliamentary counsel's office and the solicitors in the Scottish Government's legal department are clearly expert in drawing up instruments, but the speed at which they are produced and the speed of scrutiny are things that we must be careful about—although I am sure that the DPLR Committee has that on its radar.

What is to be done about that? There is provision for a two-month review period in the Coronavirus (Scotland) (No 2) Bill, at section 15. That is replicated in section 12 of the Coronavirus (Scotland) Act 2020 and in section 95 of the Coronavirus Act 2020. Automatic expiry is also a safeguard, and is a significant factor in section 9 of the Coronavirus (Scotland) (No 2) Bill, section 12 of the Coronavirus (Scotland) Act 2020 and section 89 of the Coronavirus Act 2020.

We have suggested in previous commentaries on coronavirus legislation that we should support not only the COVID-19 Committee—the formation of the committee is welcome—but other committees, including the Equalities and Human Rights Committee, that have an interest in inquiring into coronavirus legislation and the coronavirus crisis generally.

We also consider that a quadripartite interparliamentary group could be formed to bring together legislators in the UK, in much the same way as was the case for Brexit, to discuss common themes that affect the legislation.

I hope that that answers Mr Coffey's question about safeguards and the need for vigilance in examining the bill and the subordinate legislation that will flow from it.

Willie Coffey: Thank you for that detailed answer. That will do for me, convener, because I think that Adam Tomkins wants to cover a similar area.

The Convener: Adam Tomkins is shaking his head. Michael Clancy so comprehensively answered that question that Adam Tomkins has nothing to add. Annabelle Ewing has a follow-up question.

Annabelle Ewing: I return to the topic of mental health and the witnessing of the named person's signature, which is an important issue. I want to double-check that no change is proposed to the requirement that the patient will have to put in writing the nomination, and that it will be required that their signature be witnessed by a prescribed person, to deal with any possible worries about coercion. Is my understanding correct?

Michael Clancy: I believe so, but we will get that checked out by our mental health and disability committee and write to you.

The Convener: I thank Michael Clancy and Gillian Mawdsley for their time. I appreciate that it is a significant challenge to give the bill detailed consideration, given that it was published only yesterday morning, but you have done a very good job and helped us on a range of subjects.

Michael Clancy: We are very grateful to the committee for the invitation to give evidence. Of course, a vast team—including all our sub-committees and my colleagues in the policy departments—is working on the topic. Your tribute should really go to Andrew Alexander, the head of policy, and to Alison McNab, Jennifer Paton and Gillian Mawdsley. All those policy officers have done so much hard work in the past 12 hours with their committees to produce comments.

The Convener: Before we move on to the next evidence session, I will suspend for about five minutes.

10:39

Meeting suspended.

10:43

On resuming—

The Convener: Under our second agenda item, we are due to hear from Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, and Luke McBratney, the bill team leader from the Scottish Government. I welcome you to the meeting.

Cabinet secretary, because of the technology, I suggest that if you wish to invite Luke McBratney to speak, you can confirm that at the appropriate time and bring him in. I also remind you that, because of the technology delays, when you are asked a question you should stop and take a breath before you answer it. That would be helpful.

Before we move to questions, would you like to make a short opening statement to the committee?

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you, convener, and thank you for the invitation to give evidence this morning and to answer your questions.

The timetable that we are entering into for the Coronavirus (Scotland) (No 2) Bill is a little more relaxed than that for the first bill, but it is still pretty hectic. Before I remind members of where we are in the flurry of legislation and regulation that we have done since the start of the process, I want to thank Luke McBratney and his colleagues in the bill team. The team has been responsible for two complex bills in six weeks, and that is utterly remarkable.

Of course, those bills have involved a range of individuals and a range of ministers. From time to time, as the bill progresses, my colleagues will be coming to the chamber or to the committee. They will certainly be coming to the chamber tomorrow, when I expect to be joined by Kevin Stewart and Shirley-Anne Somerville. When it comes to amendments to the bill, other ministers will wish to take part at stages 2 and 3. That is unusual, but I hope that it will be helpful to the Parliament and the committee.

10:45

We passed the legislative consent motion for the UK bill on 24 March. The first bill—the Coronavirus (Scotland) Bill—was passed on 1 April, and we are now considering the Coronavirus (Scotland) (No 2) Bill. Inevitably, we have learned from those experiences.

We have also published a detailed series of regulations, starting on 25 March, when we published the business and social distancing guidelines. On 26 March, we made and brought into force the health protection regulations—the so-called lockdown regulations. The physical distancing guidelines were published on 27 March. Small amendments were made on 1 April. The regulations were reviewed on 16 April. On 21 April, we made more substantive changes, which I discussed previously with the committee. We reviewed the regulations on 7 May, and on 11 May we updated those with one change, which the committee is familiar with. That is all a flurry of activity.

I anticipate that we will have more regulations to consider as we go forward. We also have the reporting process to put into place; that will start at the end of this month, when we bring forward the first set of reporting, not just on the first bill but on the second bill and the LCM.

The second bill, which is simpler than the first bill, contains a number of provisions that we regard as urgent. I heard the tail end of Michael Clancy's evidence and I entirely agree with him. Urgency in both primary and secondary legislation

is a difficult issue. We must be sparing with such legislation, and we must apply judgment that such legislation is urgently required. We must ensure that such legislation can be used only when it is needed and that it will pass out of use as soon as possible.

The bill covers four broad topics: individual protections; the operation of the justice system; adjustments to deadlines for reports and accounts; and some miscellaneous measures.

The reporting on this bill is exactly the same as it was for the previous bill. It will be coterminous with the bill. The bill will be set for expiry on 30 September 2020 and can be renewed only twice. That means that the timetable for review and reporting is essentially a simpler one. As I said, we will start that process at the end of this month.

I will not go into much detail on the substance of the bill, because I am sure that I will be asked questions about it. However, I will pick up one or two headlines. The issue of student residential tenancies was raised by a number of members, including Green Party members, during the passage of the first bill. We have been able to find what we think is a solution to that, which is in the bill.

Tomorrow, Shirley-Anne Somerville will be able to talk about social security and, in particular, the coronavirus carers allowance, which we hope to be able to pay in June.

There are key issues on bankruptcy, because debt will, regrettably, be an issue during this crisis.

I heard Annabelle Ewing's question about mental health and the requirement to relax the need to witness a named person nomination. That is a very sensitive issue, which I am happy to discuss.

There are some criminal justice issues, including those relating to proceeds of crime and intimation of documents.

There is a range of other matters, including the fact that the UEFA championships will be postponed for a year; we will need to alter the legislation that we passed on that only recently.

The bill also deals with the land and buildings transaction tax, so that people are not put under undue burden if they are due to have money refunded once they have sold a property. There is a power on non-domestic rates relief, which is as yet unspecified but might be a useful tool in the armoury as we go forward.

I am grateful to the Opposition parties for making suggestions about what is in the bill and, from some, what they would like to see included in the bill. As I have consistently said, during every bill that I have been involved with, bills improve as they age. We have a period in which we can improve the bill. It will not be possible to take on every issue, but we will give issues serious consideration and discussion.

Finally, the timetable for the bill is clear. There will be a stage 1 parliamentary debate tomorrow afternoon. The committee's stage 2 consideration will take place next Tuesday morning. That could take us some time, if that is what members choose to do, because the standing order that prevents committees from meeting while Parliament meets has been suspended. We hope to have stage 3 in the Parliament on the afternoon of Wednesday 20 May.

I have already written to the Advocate General for Scotland, the Attorney General and the Secretary of State for Scotland requesting expedited royal assent if the bill is passed on Wednesday 20 May, so that the provisions in the bill that make it through will be available by Thursday 28 May.

With that, I am happy to answer questions, and I am sure that Luke McBratney will be happy to do so, too.

The Convener: Thank you, cabinet secretary. That was a very helpful summary of where we are. Committee members have some questions on what is in the bill and some questions on matters that are not covered by the bill but which they are interested in pursuing through amendments at later stages.

I will start with a general point that I suspect will be in the minds of some people who are watching this meeting at home. They will have seen the First Minister's announcement at the weekend about some relaxation of the restrictions in the current lockdown, and we all hope that the direction of travel is towards a loosening of the restrictions. If that is the case and we are potentially through the worst of this, or perhaps the worst of the first phase of it, people might be wondering why we need a new bill at this point, with more restrictions and more measures being brought in.

Michael Russell: We need to apply proportionality. Clearly, it will be in our minds that the regulations may change over the coming weeks and months. I think that the First Minister used the phrase "baby steps", and it will be a lengthy process. That has been made clear by everybody. We made only a very small change in the regulations this weekend.

The powers in the bill will be required for some time, and we have said that of the powers in the act, too. While there is still major disruption, some things cannot be done—or, if they are to be done, will be disproportionately burdensome, given the work that will continue to be done to protect

Scotland and take Scotland forward with the threat of the virus.

I do not think that even the most optimistic of us would believe that a switch is going to be flicked and we will be back into the old world. That is not going to happen. It is going to take us a considerable time, and in those circumstances what is in the bill is what we believe is required.

I hope that this will be the last such bill, so there is that small glimmer of legislative light at the end of the parliamentary tunnel. With the bill, I think that we will have dealt with the vast majority of items that we feel we need to deal with. There are still issues such as the jury trial issue, and I understand that there is an announcement today that Lady Dorrian will take forward a judicially led group to look at how that should be dealt with. It has been a difficulty and it is not yet resolved.

Other issues might come forward. As Michael Clancy rightly pointed out, the thing about unforeseen issues is that we cannot foresee them. However, to the best of our ability, we are trying to deal with what we need now and what we will need in the next period.

The judgment about the next period can be made in terms of the legislation, either when we switch powers on and then off, or at the end of September. The staging posts to the end of September are the end of May and then the end of July, when we and the Parliament will be able to say whether the measures are still required or whether they should be phased out. There will then be a decision about the whole bill and whether it should be renewed at the end of September.

I think that we have safeguards in place, but the answer is that we need these powers.

The Convener: Okay. Thank you for that clarity.

Some aspects of the bill, including those that relate to the UEFA European Championship (Scotland) Act 2020, are not directly related to the coronavirus emergency. The aspects relating to UEFA would have to be made whenever the championship was held. That has also been the case with some other secondary legislation, where most of the provisions relate to the coronavirus pandemic but some provide for other, unrelated policy changes.

Can you explain why you have included in the bill changes that are not pandemic related, such as those on the UEFA championship? More generally, what is the Government's approach to including non-pandemic policy changes in coronavirus bills and Scottish statutory instruments?

Michael Russell: It is not our intention to do that as a matter of course or with anything major. The change that you refer to is a small one in the 2020 act. It was decided that as that would require an additional piece of secondary legislation, it might be best to save everyone's time by rolling it up within what was required.

The overwhelming majority of the powers refer to the coronavirus. The 2020 act is connected to the coronavirus, because the championship has been postponed for a year, as a result of which the legislation that we have cannot be imposed. We must move it on. The small change that is in the bill is designed to save time. If there was an objection to that, we would have to use time outwith the bill, which would not be in anybody's interests.

The judgment that we applied was to ask whether items are essential at this stage. In the vast majority of cases, the answer was yes. Anything else is tangential and is just to save us a little time, but there are very few of those things.

Willie Coffey: Cabinet secretary, you have introduced new provisions that relate to students who terminate tenancies. Those provisions also protect students from being forced to pay for accommodation if the restrictions continue into the new term. Will you outline the provisions that you are introducing and explain the issues that they will resolve for Scotland's students?

Michael Russell: There was great sympathy when the Green Party raised that issue during the progress of the first coronavirus bill. We would have liked to take that forward at that stage.

There were considerable concerns about how that should be done and there was a lot of consideration as to whether it was possible to do it. We have decided that it is possible, and we have brought in something pretty simple. The bill will introduce a seven-day notice period for students who are currently tied into tenancies and a 28-day notice period for agreements that are entered into while the act is in force.

Those provisions are simple to understand, but they deal with something that has been a problem. Most students are not at university as the universities are not functioning normally. In those circumstances, tying students into rental arrangements is unfair and detrimental. We feel that it is right to take this step.

Some accommodation providers will be concerned about that, but we think that it is natural justice. Kevin Stewart will talk in greater detail about the provision, and about how he has found a way to resolve the issue. However, the right outcome has been reached at this stage. It is fair that we are doing that.

Willie Coffey: Some students have not been allowed to end their contracts, particularly if they

rent purpose-built accommodation. Will the provision that we are introducing allow claims for a rebate? Will students be able to seek a rebate of payments they have made?

Michael Russell: The regulations do not permit that at present and it would also be difficult to do legally. The issue is worth discussing. I know that Ross Greer was very concerned by that during the first bill and he may wish to pursue the issue.

It is hard enough to legislate promptly and effectively in this area. If a further burden was added to that—most desirable—outcome, it would be even harder to do so. The provision is simple, focused and does the job that we must do now: we cannot do every job.

Willie Coffey: My other question is about the UEFA championship, which the convener mentioned. We know that the championship has been delayed by a year. Why have we introduced a two-year extension to the sunset clause?

Michael Russell: UEFA is determined that the championship will go ahead. We are creating the context in which that can happen. There is no dubiety about that, as far as I am aware.

Adam Tomkins (Glasgow) (Con): I broadly welcome the way in which you have engaged the other political parties in the Parliament in the construction of the bill, as you did earlier in the construction of the bill that we passed on 1 April. I want to raise with you some concerns and questions about not what is in the bill, but what has been left, as it were, on the cutting-room floor.

11:00

In particular, I know that I am very far from being the only MSP who is receiving an increasing volume of increasingly anxious emails from constituents about getting married. We all understand the reasons why we cannot yet permit large wedding ceremonies, parties and receptions, but there is a world of difference between that and making it really very difficult for people to get married at all. As I understand it—although please correct me if I am wrong—in Scots law, only five people are required to be present for a lawful wedding: the registrar, the two parties, and two witnesses. There are many rooms available in which we could have social distancing with only five people present.

Correct me if I have misunderstood or misinterpreted anything, but why did you decide not to include in the bill provisions to enable people who need to, to get married—for example, people who are at or nearing the end of their lives—as was proposed by the parties represented in the Parliament?

Michael Russell: I can answer that; I will get the exact detail from my papers. It is possible for those in the circumstances that Adam Tomkins mentioned to get married. To take two sets of circumstances in particular, it is still possible for marriage to happen when someone is at the end of their life, and when somebody requires to leave the country for work or whatever.

The technical situation presently is that licences are not being issued, but that could happen in those circumstances. The registrar general has the right not only to approve that, but to waive the notice period. It is possible to do that, and I am happy to provide the committee with a written account of how that can be done. Marriage is possible in those exceptional circumstances.

The question whether marriages more generally should be permitted is to do with capacity and safety, and also with seeing whether there are alternatives. I know, for example, that a number of people have coalesced around the idea of having marriages by videolink, which is apparently being introduced in New York. However, there is a very great fear of abuse in those circumstances, and that would be entered into only with a great deal of thought and preparation about how we could verify things. Forced marriage, for example, would be easier if there were no physical presence and no possibility of assessing, as a registrar will often do, what the circumstances are. As such, I think that the videolink alternative was written off.

There was also a view that, given that we are maintaining the lockdown as it is and—with one small exception—not moving it this week, it would be the wrong time to introduce arrangements that would loosen the lockdown in one place. We would then also have to loosen it in a number of other places. For example, the very difficult issue of funerals would require to be dealt with; Adam Tomkins and I will both have had representations about that. It is difficult to deal with weddings unless you deal with all those things too, and, if you deal with all those things, it becomes almost impossible to contain.

Registrars are also dealing with issues of capacity and are finding themselves under a great deal of pressure, particularly in relation to the registration of deaths, to which there have been big changes. We are saying—without any pleasure in doing so—that it will be difficult to make arrangements for weddings. We understand the problem and it is an area that will have to be factored into the loosening of lockdown regulations when that happens, although I stress that we are not at that stage. However, it is possible to deal with the emergency circumstances that have been raised, and they have been dealt with.

Adam Tomkins: I am grateful for that response, and I am sure that the committee, as well as the

wider Parliament, would welcome clarity on the law with regard to the registrar general being able to waive ordinary notice periods and registrars being able to license marriages within the lockdown rules. That is contrary to what my constituents who are writing to me seem to believe. As I understand it, registrars in Scotland are not licensing marriages.

If it is possible for a registrar to license a marriage within the existing rules, and if there are exceptional circumstances in which it is in people's interests that the registrar does so—because someone's life is ending or someone needs to travel overseas and so on—why are registrars not licensing marriages and what should the Parliament be saying to encourage them to do so?

If what you say is accurate—I have no reason to dispute it—there is an unfortunate mismatch between what is happening on the ground, which is nothing, and what could happen on the ground, which is that, in exceptional circumstances, registrars could license marriages, albeit that we cannot sanction large wedding parties or receptions, for understandable reasons.

Michael Russell: I would be happy to provide the committee with the information that I have and to expand on how applications can be made in a very limited set of circumstances. As I understand it, those circumstances are if one of the people who are involved is dying, or if somebody is about to leave for or be posted overseas, particularly if they are in the armed forces. I am happy to get that information and provide it to the committee and the Parliament. My sense is that these things are happening, but if they are not happening, we can look at how they can be made to happen.

For the rest of it, the decision was based on the issues that I have outlined. The decision was that we felt that it was not possible to go any further at this stage. Of course, if and when the lockdown is eased, people will wish there to be a return to some form of public affirmation, even if it is with a limited number of people, which it will have to be.

The Convener: Thank you, cabinet secretary. We move on to questions from Monica Lennon and then I will bring in Annabelle Ewing.

Monica Lennon: Cabinet secretary, in your opening remarks, you acknowledged that debt will, regrettably, be a consequence of the pandemic. The provisions in the bill that provide greater support for people who are in debt are therefore welcome. In schedule 1, part 3, on bankruptcy, you propose a reduction in the level of fees and set out the amount that a debtor must owe a creditor before bankruptcy can be declared. How did you decide on the amounts for fees and for what debtors owe? I think that the latter figure has gone from £3,000 to more than £10,000.

You might be aware that my colleague Jackie Baillie has proposed amendments that would give people greater breathing space around fees and other interest charges accruing. Is the Government willing to consider that?

Michael Russell: Of course, and you have put your finger on the key issue within that proposal, which is not whether the proposal should be made but how far it should go. I know that Jackie Baillie has views on that and I welcome them; we can have a debate and a conversation.

There are a number of issues in your question, one of which is fees for bankruptcy. They have been difficult for some people to meet and we are trying to address that in the bill, while recognising that debt will continue to be a real issue for people beyond the end of the pandemic, whenever that is. There will be people who will have consequences to face.

There has been limited, and what I would call informal, consultation with a range of bodies. Jackie Baillie is aware of that because a number of members of the Scottish Parliament and other bodies have been thinking about it. There will be different views about the level of fees and what the limits should be under both parts of the proposal.

There is always a compromise, and we think that this is the right compromise. We think that it broadly gets support from money advisers and others. Creditors are wary of the proposals, because they are wary of people who are running up debt and will not be able to pay it; regrettably, some people are irresponsible in that regard and some will do it deliberately. However, debt advice bodies want it to go further, so those two views are pulling in opposite directions. We think that we have probably ended up with the right compromise but, of course, there should be a conversation about it.

If there is to be a change, it can move only against the creditors and in favour of the debtors, or move the other way. We would move further in favour of either those who are owed money or those who owe money. Perhaps we should try to strike a balance. Our position is not on tablets of stone; there can be a debate and discussion about it, and there should be.

Monica Lennon: Thank you. That is a helpful starting point, and I am sure that members will engage in wider discussion on that matter.

I do not know whether you heard my earlier question to the Law Society relating to the Mental Health (Care and Treatment) (Scotland) Act 2003 and part 4 of schedule 1 to the bill, which affects the nomination of named persons and the issues that that raised regarding signatures. On its own, the change is relatively modest, but, as you mentioned that the bill is cross-cutting and that

other ministers are involved, can you say what the cumulative sense so far is of the impact on human rights of the other acts and regulations that have been passed? Has there been consultation with the Equality and Human Rights Commission and the Scottish Human Rights Commission on particular parts of the bill?

You might be aware that concern has been expressed in England about the doubling since last year of the deaths of people who have been detained under mental health legislation there. I have not seen the data for Scotland. Can you provide any reassurance around that?

Michael Russell: I heard Annabelle Ewing's last question, but I did not hear your earlier question in full; I came in from Cabinet just as Michael Clancy was answering it.

There has been consultation with a range of bodies on that, and all of us would be very cautious here. There is agreement that it is needed, but it cannot be a power that does not have checks as well as balances. The checks are, as Annabelle Ewing indicated, the continuation of the witnessing. That refers simply to the detail of the requirement for the docket to be attached and signed by the named person and for a specific type of person to witness that and sign the docket. It is the availability of that type of person on every occasion that is the issue.

It might be one of those things that is never used, or used only on a very few occasions, because it is possible to use a default position. However, if it is not possible to use a default position, there will be a problem that becomes a complication in, to be blunt, the lives of people who do not need complications. We need to keep the process as seamless, smooth and untroubled as we can.

I think that it is a proportionate power and that it should be considered very carefully. Of course, it will be reported on, and I want to stress that feature. Michael Clancy's detailed answer about rushing to legislation and the difficulties of these circumstances missed out a key element, which is reporting. We have made a very strong commitment to reporting, every two months, on all the aspects of the first and second coronavirus bills and of the powers that we were granted under the LCM. There will be an opportunity every two months to see whether there is any tendency for this to get out of control.

I have been working on the issues of reporting, and I hope to make some suggestions shortly that will give the committee as well as the chamber a role in reporting, so that there is an additional check on what is happening. We are right to look at the issue very carefully and, through the reporting process, we will need to look back and see whether parallel powers in other areas have been used and to learn from that. I know that Monica Lennon is aware of that, because she has asked me about it previously.

11:15

Monica Lennon: Part 2 of schedule 1 to the bill, on the carers allowance supplement, is welcome as a starting point. The cabinet secretary will be aware that young carers are not entitled to carers allowance, so they will not be entitled to the carers allowance supplement. Like Adam Tomkins, who has had casework inquiries about marriage, I have had inquiries about whether the young carers grant will be increased and whether there are plans to increase funeral support payments. The cabinet secretary mentioned that his colleague Shirley-Anne Somerville will make some remarks in the Parliament tomorrow. Will he discuss those issues with her?

Michael Russell: Of course. Shirley-Anne Somerville will talk about her proposals tomorrow, and I am quite sure that points can be made to her. It would be nice to do everything that we want to do, but that is very tough in circumstances in which resources are very tight. To be blunt, the Scottish Parliament does not have the borrowing powers and some of the tools that we need to do such things, so there are always compromises to be made.

The carers coronavirus grant is a big step forward. It is up to Shirley-Anne Somerville to have a conversation about what else can be done. We are absolutely aware of the enormously strong role of young carers, and there are other ways in which we can continue to recognise and build on that. It is always best to leave some areas to somebody else's portfolio, and I am sure that she will want to discuss those matters tomorrow.

The Convener: I was hoping to bring in Annabelle Ewing, but she seems to have dropped off, so we will move on to Ross Greer.

Ross Greer: I am interested in the timescale for the expiration of the bill's provisions, which you mentioned in your opening statement and in answer to a couple of questions. I do not know whether you caught this in our previous session, but Annabelle Ewing highlighted that we might want to keep some of the practical changes that are being made, such as displaying court documents on websites rather than physically on the walls of court. As you said, bankruptcy will be an issue as a result of the crisis, but it will be an issue long after the public health aspect of the crisis is over. What are the Government's thoughts on—and how amenable would you be to—more variation in the timescales by which the bill's provisions expire?

Michael Russell: It is really important that we differentiate between what we need to do now and what we would like to do in the future, but I entirely agree that they are not unconnected. We have been running very fast to get to this position, and we have put in place provisions that have not been able to have the detailed scrutiny that you and I, and the committee and others, would like to see. If we are to make some of the provisions longer lasting, we need to consider two things: the further scrutiny that we should give to them, because they might be able to be improved, and whether they are working as we intended them to work, because, if not, they might need to be improved.

The short and clear answer is that all the powers under the coronavirus legislation expire on 30 September, but they can be renewed twice. During the reporting process, it might well be that you, me or others say, "Gosh, that's worked rather well." For example, I mean no disrespect, but displaying documents on the walls of court does not seem quite as relevant as having them on a website, so maybe we should do both. We can say to ourselves that we should take forward certain things but, if a member or the Parliament says that they want to do that, we need to find a way to do so. However, I do not want to say that anything that we are doing now will last beyond the cut-off date, because that would be to do something greater than we have said we will do.

Bankruptcy is an example of an issue in relation to which the legacy of this situation will last for a long time. We might well want to consider what we can do to help with the process beyond the cut-off date. Those are conversations that we will need to have, but they are not conversations for today: the conversations for today are about getting the powers that we need now.

Ross Greer: Thank you.

You said that you hope that this will be the last of the emergency bills. There is further work to be done on solemn trials and the role of juries. In discussion with the Law Society of Scotland this morning, we picked up that the society's president has been asked to be involved in a working group on the facilitation of virtual court appearances from police stations, for example. What approaches would require further changes to primary legislation? If you are not envisaging the need for further emergency bills, do you have an idea of what will be included in a justice bill? Should we expect a number of smaller bills to be introduced?

Michael Russell: I certainly do not want to cut off the route of legislating when we need to do so. As I made clear, and as Michael Clancy made clear, unforeseen means unforeseen. It might well be that something will be introduced.

As I said, a judicially led group has been set up, under the lead of Lady Dorrian, to consider jury issues. The group might recommend primary legislation—I do not know whether it will do so, but if it does, its recommendation would have to be expedited and might require emergency legislation.

Other things might come along to which we will have to react in that way. I talked about the portfolio bills that I have been co-ordinating, of which this is the second. I am not immediately going to say to the bill team that a third bill is coming along; I think that we have done the trawls that were needed and talked to the Opposition parties about what they want. However, if we find ourselves in a situation in which we need to do something urgently, we will of course do it.

Ross Greer: Thank you.

The Convener: Shona Robison has questions about mental welfare and carers allowance.

Shona Robison: Mental welfare has been covered, so I will ask just about the carers allowance supplement. I welcome the £19.2 million investment in recognition of the added pressures on carers at this time. Cabinet secretary, you said that Shirley-Anne Somerville will set out a bit more detail, but, given that the cut-off in the bill is the end of September, I assume that we are talking about a one-off payment. Is it the Government's intention to keep that under review, in case unpaid carers have to deal with Covid and bear additional pressures and caring responsibilities over a very prolonged period? Will you keep under review the potential for a further payment to be needed at a later date?

Michael Russell: I cannot commit my colleague or the Government to additional expenditure. All I can say is that the intention is to make the additional one-off payment of coronavirus carers allowance supplement in June.

The timescale to which we are working will be extended and we might well have to return to consideration of a range of financial help. What happens will be dictated by the resources that are available to us.

You should treat the investment as a one-off—it would be unfair to people to say anything else. However, you are entitled to make your point, and I am sure that the Cabinet Secretary for Social Security and Older People will want to consider it and return to the issue, within the limits of her abilities, financially. You have been in such circumstances yourself, financially, and you know that that is always tough.

Shona Robison: That is helpful. It is right and fair to be clear with people. Is it also fair to say that other support that has been made available, such

as the additional funding for the Scottish welfare fund, could be used to support carers who are not in receipt of carers allowance? I know that local authorities have been given additional discretion. It would be helpful to have that confirmed.

Michael Russell: Absolutely. There are a number of other routes for unpaid carers who are not in receipt of the carers allowance. You are right to say that the Scottish welfare fund is one of those routes. People have been applying for crisis grants and community care grants. We urge people to apply for what they are entitled to, and we want them to have that.

It is essential that we help people as much as possible, but there will be people who fall outside the scheme and do not qualify for assistance from it, as there are in every scheme that we currently operate. I am quite sure that you, in the work that you are doing in your constituency, are, as I am in my constituency, trying to find ways in which individuals can qualify even if they have failed to get the grant that they first went for. I say that doubly in relation to carers. We should do everything that we can to help people to get the resources that they need. There are other routes for those who are not paid the carers allowance.

Shona Robison: That is very helpful, and I certainly agree with it.

You will be aware that the Cabinet Secretary for Health and Sport has written to the committee about a stage 2 amendment that puts beyond doubt that health boards and other bodies have the powers to purchase a care home or care-at-home service if the service is unable to continue. Has the Government brought forward that proposal in light of challenges with the pandemic, or is it a belt-and-braces proposal in case we end up in a situation in which our care service has particularly sharp difficulties, given the pressures of the pandemic? It would be helpful to hear a little more about the Government's thinking and where that power might end up being used, if at all.

Michael Russell: I am still discussing the details of that with Jeane Freeman. However, I am glad that the committee has been notified of the thinking that is going on, as it should be.

I think that it is a matter of both things that you have suggested. The proposal is to make absolutely certain that the existing powers can be used when they are required. It is a matter of polishing them down and ensuring that they are there, but also of sharpening them so that they can come into use quickly if they are required. There is a feeling that circumstances might arise in which they could be required, so there should be no question of delay. We should be able to move as quickly as possible. It is a belt-and-braces approach and a reaction to some things that we see around us, which we want to ensure that we are able to take action on.

Beatrice Wishart: Good morning, cabinet secretary. I am interested in the thinking behind the part of the bill to do with the land and buildings transaction tax, which extends the time that people have to sell their old homes without attracting the second home tax. I am led to believe that, in England, even before coronavirus, people had three years to sell up. The bill proposes an extension, which will, obviously, be welcome news to many people, but it still does not allow quite as much breathing space as is allowed in England. Many people will, through no fault of their own, be unable to sell their old home, especially in areas in which property markets are slower, such as the islands. That can cause real anxiety. What was the thinking in choosing the specific timeframe? Did the Government consider taking it to the same level that England has?

Michael Russell: The decision was made on the basis of what appeared from discussion with stakeholders to be a reasonable period of extension. We cannot extend perpetually. There is an issue around a tax that is due to be paid, and that cannot be avoided for ever.

Monica Lennon asked about bankruptcy. The issue in question is another one in respect of which a judgment is made on whether there should be expansion. The Scottish property market is different from the property market south of the border. By and large, the sums involved in Scotland are smaller than they are south of the border. We may concur on decisions about those matters. It is clear that, if members wished to suggest different figures, they would be part of the debate.

However, it is a compromise between not having the income that is required and the rights and difficulties that those who are selling properties would have. We have to make a choice. We have put in the bill what we think is the right choice, and that is for debate and discussion. That is what a bill is about.

11:30

Beatrice Wishart: That is helpful. That was all my questioning; thank you.

The Convener: I will bring in Stewart Stevenson.

Stewart Stevenson: Cabinet secretary, I have a single issue to raise. Essentially, it is about drafting, but it also touches on policy. It is quite complex, so do forgive me.

I am looking at the electronic signature of forms in relation to the bank, and in particular, at paragraph 10(2)(b) of schedule 1, which will

amend section 7 of the Electronic Communications Act 2000, on electronic signatures and related certificates, by including

"a version of an electronic signature which is reproduced on a paper document."

I am, of course, a lay person but as far as I can determine, and the Law Society did not suggest that I was wrong when I put this to its witnesses this morning, this is a novel provision. There are provisions in, for example, regulation 2(2) of the Bankruptcy (Scotland) Regulations 2016, which says that anything that can be done on paper can be done electronically. However, the primary reference that this part of the bill makes is to section 7 of the Electronic Communications Act 2000, which makes no reference of any kind to paper. In particular, it requires that there be certification of any such electronic signature.

I am just going to get techie for a brief second here. My understanding is that that certification is where you have an electronic signature that is essentially a number computed from the contents, including every dot and comma, and the layout of the document, combined with a secret piece of information provided by the signer and a published algorithm. It is checkable, and that is the certification.

In introducing that this may transfer and be put on paper, you lose that link between the representation of the document and the associated signature in so far as you are verifying whether a change has not been made to the body of the document, whereas electronic signatures are designed to prevent that from happening.

Did the drafter intend to cover a pictorial representation of what the Law Society has described as a wet signature, which is in an electronic system and is then removed and put on paper, or was it meant to be that wider expression of a signature that I have just described?

I recognise that this issue is quite complex, minister, and you might not wish to give me an answer just now, but it would certainly be useful to have one before the closing date for lodging amendments to stage 2.

Michael Russell: I would dearly love to give you an answer now but I have not got a clue what you are talking about. In those circumstances, it would be best if I did not give you an answer just now. I will refer the question to my officials and give you an answer in writing. I have no idea whether it will have a wet signature or a pictogram, but I will get you an answer.

The Convener: Thank you, Mr Stevenson, and thank you Mr Russell for your refreshingly honest answer to that last question.

We seem to have lost Annabelle Ewing for the time being; I hope that we can get her back. In the meantime, I want to ask about an issue that has not been raised so far and is not covered in the bill: relaxing the licensing laws. I have raised the issue in debate and in correspondence with the cabinet secretary. At the moment, it is not possible to purchase off-sales alcohol in supermarkets before 10 o'clock in the morning.

There are very good reasons why we have those licensing laws, but they put an unreasonable restriction on individuals who can do their shopping only in the early hours of the day. I am talking about people who might be in vulnerable groups, or indeed, national health service workers. The large supermarket chains and smaller convenience stores have set aside specific shopping times before 9 o'clock in the morning for many of those people, so that they do not come into contact with others. That is a very reasonable and responsible thing to do, but it puts people at a disadvantage, because it means that they cannot purchase alcohol with their weekly shop. If they want to purchase alcohol, they have to come back into the shop at another time, when it is busier. It seems rather unfair to those individuals to be disadvantaged in that way. Has the Scottish Government considered that? Will amendments to the bill on the issue be looked at a later stage?

Michael Russell: You have referred to that issue in the chamber and you have spoken to me about it. I asked for advice on and considered the issue, as did the relevant health ministers, and the balance of opinion was that, although the issue was a concern when dedicated shopping hours started—I think that that is what you are referring to—the level of concern seems to have fallen away quite substantially. I have not received anything on the issue for some weeks.

There was also a view that, given Scotland's relationship with alcohol, extending licensing hours was not something that we wanted to do. Some of the stakeholder groups made that pretty clear the last time that you raised the issue in the chamber, although I indicated that the issue could, of course, be discussed.

All I can say is that an extension to licensing hours is not in the bill as drafted, as you know, and the Scottish Government does not intend to bring forward such provisions. If someone lodged an amendment, the Parliament would have to discuss it. Any such proposal would have to be incredibly tightly drawn: it would have to be sunsetted very clearly, as all proposals are; it would have to focus on those who simply could not go to a shop at any other time; and the range of shops involved would have to be pretty tightly controlled, given the potential for abuse. There are some difficult technical, legal issues as well as a practical issue.

As I have consistently said, the process of legislation is about change, discussion and debate. You have raised the issue several times, and we will wait to see whether anyone else raises it and whether your proposed approach is supported.

The Convener: Thank you. Stewart Stevenson wants to come back in, I presume on that point.

Stewart Stevenson: I recall that the licensing provision that we are talking about was advocated by Frank McAveety. The arguments that he deployed at the time are ones that I continue to adhere to, having seen how things happened. That we are in lockdown really does not change the argument in relation to alcohol licensing at all. I know that, as a nation, Scotland is an important manufacturer of alcohol, but our consumption continues to be a matter of some concern. I would be reluctant to see the proposal to extend licensing hours brought back, especially as such an approach would create longer-term confusion about the rules. I would like to stick to the position that Frank McAveety took in the amendment that he lodged to a previous bill.

The Convener: Thank you, Stewart. I am not sure that that was a question for the cabinet secretary, but if the cabinet secretary wants to respond, he is welcome to do so.

Michael Russell: No, I am okay.

The Convener: We can discuss the issue at stage 2, if it comes to that.

I am delighted that Annabelle Ewing has rejoined us.

Annabelle Ewing: Thank you, convener, and good morning, cabinet secretary. Can you hear me?

Michael Russell: Yes.

Annabelle Ewing: I am at a slight disadvantage, because there was a connection problem, so I am not entirely sure what has been covered. If I am going over old ground, please let me know.

My first question is about referrals between local authorities on applications for accommodation by the homeless on the ground of local connection. The bill has a provision to put back to May 2021 the ministerial statement that was due in November 2020, which, in turn, was to be proceeded by a statutory consultation. What are the reasons for that? Am I correct in reading the provision as making an additional extension to November 2021 possible? Given the obvious importance of the issue, what would be the reasons for such a long delay?

Michael Russell: I know that Kevin Stewart will be talking about that complex issue tomorrow. However, Luke McBratney, the bill team leader, can speak to the detail.

Luke McBratney (Scottish Government): Extending the deadline for making the ministerial statement and therefore giving [*Temporary loss of sound*] via consultation, plenty of people in the private and third sector front-line services much-needed time and space to [*Temporary loss of sound*]. Essentially, six months is intended to find space in order to deal with the uncertainties.

An important point [*Temporary loss of sound*] is that that is the backstop deadline for the publication of the statement—

The Convener: I am sorry to interrupt, but I think that we are all having difficulty hearing you. I do not know whether there is a problem with your microphone. I see that you have made an adjustment. Try talking, and we will see how it works.

Luke McBratney: Sure; my apologies. An important point is that the initial extension of six months is a backstop date by which time the statement must be made. The statement can still be published at any time up until that deadline. The Government's intention is to [*Temporary loss of sound*] as pressure on the third sector allows. In the meantime, [*Temporary loss of sound*] continue to have power under section 33 of the Housing (Scotland) Act 1987 to require an applicant [*Temporary loss of sound*], if the applicant does not have a local connection with that authority.

The Convener: Annabelle Ewing, did you catch enough of that response to make sense of it? If not, maybe we could ask Luke McBratney to provide details in writing following the meeting. I had difficulty hearing the response.

Annabelle Ewing: [*Temporary loss of sound*] to explain the situation on the ground in the interim. People will be concerned about what is happening now and what will happen between now and then.

I turn to my second question. There is a provision on the possibility of introducing a retrospective non-domestic rates relief during this financial year—I do not know whether that issue has been raised. I do not know whether I will get a direct answer to my question today, but is that a signal that the Scottish Government intends to introduce such a proposal in the near future? I am sure that business would very much welcome that.

Michael Russell: I have to say that I am not prepared—not even for Annabelle Ewing—to go to the lengths of saying what the Government's intentions were, not that I know. I think that we have all thought that that power requires to be there, because it must be in the armoury of powers that we need to support businesses. However, I have no information whatever as to

what its usage would be. I am sure that that can be asked of Kate Forbes.

Annabelle Ewing: Because I have not really been able to participate in a lot of this debate, I will leave my questions there, convener.

The Convener: Thank you, Annabelle. I am sorry that we missed you earlier and that you dropped out of the conversation.

As there are no further questions, I thank the cabinet secretary and Luke McBratney for their evidence. It has been a very helpful session. We now move into private, to consider the evidence heard and the terms of our response to the wider Parliament.

11:44

Meeting continued in private until 12:10.

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