



Law Society
of Scotland

The Law Society Scotland Response

Scottish Affairs Select Committee Inquiry:
Coronavirus and Scotland

June 2020



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Constitutional Law sub-committee welcomes the opportunity to consider and respond to the Scottish Affairs Select Committee Inquiry into Coronavirus and Scotland. The sub-committee has the following comments to put forward for consideration.

General Comments

1. How effective has the four-nations' approach been in tackling the coronavirus pandemic? What improvements could be made to formal intergovernmental structures, such as the Joint-Ministerial Committee, in light of the pandemic?

Cooperation between the four nations had predated the Coronavirus action plan with legislation passed under the Public Health (Control of Disease) Act 1984

<http://www.legislation.gov.uk/ukpga/1984/22/contents> to enable the quarantine and detention of individuals found to be infectious.

In February the Secretary of State for Health and Social Care made the Health Protection (Coronavirus) Regulations 2020

<https://www.legislation.gov.uk/uksi/2020/129/made/data.pdf> which applied in England and Wales. The Regulations (now revoked) applied to two categories:

1. Cases involving people whom the Secretary of State or a registered public health consultant have reasonable grounds to believe are or may be contaminated with coronavirus provided they also consider that there is a risk that these people might infect or contaminate others (domestic cases);
2. Cases concerning people who have arrived in England on an aircraft, ship or train from outside the UK and who the Secretary of State or a registered public health consultant have reasonable grounds to believe left an infected area within 14 days immediately preceding their arrival in England (overseas cases). The Regulations provided for the detention by the Secretary of State or a consultant of members of the public "for screening, assessment and imposition of any restrictions" (on travel,

activities and contact) for up to 48 hours or alternatively if screening has been undertaken, and restrictions are applied, the end of those restrictions.

Regulations were made in Scotland and Northern Ireland making COVID-19 a notifiable disease under the Public Health (Scotland) Act 2008 and the Public Health Act (Northern Ireland) 1967 which provided detention and quarantine powers.

The Coronavirus: Action Plan (AP) was published on 3 March 2020 by the UK Department of Health and Social Care, the Scottish Government, the Department of Health for Northern Ireland and the Welsh Government. The AP recognised the respective roles and responsibilities of the UK Government and Devolved Administrations and set out:

- a. what was known about the virus and the disease it causes
- b. how the Administrations had planned for an infectious disease outbreak, such as the coronavirus outbreak
- c. the actions the Administrations had taken so far in response to the current coronavirus outbreak
- d. what the Administrations were planning to do, depending upon the course the outbreak took.
- e. the role of the public in supporting the Administrations' response.

The AP set out four phases to respond to COVID-19:

- i. Contain: detect early cases, follow up close contacts, and prevent the disease taking hold in this country for as long as is reasonably possible
- ii. Delay: slow the spread in this country, if it does take hold, lowering the peak impact and pushing it away from the winter season
- iii. Research: better understand the virus and the actions that will lessen its effect on the UK population; innovate responses including diagnostics, drugs and vaccines; use the evidence to inform the development of the most effective models of care
- iv. Mitigate: provide the best care possible for people who become ill, support hospitals to maintain essential services and ensure ongoing support for people ill in the community to minimise the overall impact of the disease on society, public services and on the economy.

The AP was clearly a document which indicated a high level of cooperation and coordination between the four nations in respect of the initial phase of the crisis. The Cabinet Office guidance on responding to emergencies assumed that this would be the approach to be followed:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192425/CONOPs_incl_revised_chapter_24_Apr-13.pdf

Between 26 and 28 March, UK governments responded to medical evidence and advice that lockdowns must be imposed and enforced in order to save lives, prevent the National Health Service from being overwhelmed and constrain the spread of Coronavirus and began a legislative effort which continues to this day.

Acting under powers contained in the Public Health (Control of Disease) Act 1984, the UK Health Secretary made the [Health Protection \(Coronavirus Restrictions\) \(England\) Regulations 2020](#).

This was followed by the Welsh Government, which enacted the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#).

In Northern Ireland, the Executive Department of Health, using powers under the Public Health Act (Northern Ireland) 1967 as amended by the Coronavirus Act 2020 enacted the [Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\)](#).

In Scotland the position was similar, the Scottish Government, acting under powers in the Coronavirus Act 2020, enacted the [Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#).

Divergence can however be seen in the way in which the regulations (which were similar but not identical) and Guidance published by all four Governments evolved: <https://www.gov.uk/coronavirus>; <https://www.gov.scot/coronavirus-covid-19/>; <https://gov.wales/coronavirus> ; <https://www.nidirect.gov.uk/campaigns/coronavirus-covid-19>. The Guidance contained information on how to protect one another from the virus (including vulnerable people and those who are shielded), maintain health and deal with employment, financial and work issues. The Guidance also covered topics such as business matters, education, schooling, housing, transport, travel and immigration, healthcare workers, volunteering and support when there is a death.

However, the Guidance evolved as the effect and understanding of the virus developed, and as Government priorities changed among the Four Nations and the Guidance each Government had issued diverged. The controversy between “staying alert” in England and “staying at home” in Scotland, Wales and Northern Ireland is an example of this divergence.

Consequently, we have reached the position where the Guidance and the law are not the same in each part of the UK (indeed divergences in guidance may not be reflected in amendments to regulations). Examples of how confusing the situation is occurs when considering how many people can meet up, in England, and Northern Ireland it is 6, in Scotland up to 8 from 3 households. Furthermore, sometimes there is a time lag between changes in Guidance and changes in Regulations which can add to confusion for those following Guidelines and those enforcing Regulations. This is understandable, given that the virus may have spread in each jurisdiction at different times and rates, with each nation having its own institutions and capacities to address the problems as they arise. Care must therefore be taken to ensure that the regulations applicable to whichever part of the UK are being followed, as a breach may result in legally enforceable penalties. To assist the public in following the relevant law and guidance it would seem particularly relevant, when broadcasting, for UK Government Ministers and officials to emphasise the jurisdiction to which their statements apply which could be the UK as a whole but often apply only to

England. Otherwise citizens in other parts of the UK might easily assume that the statements are being made in respect of the whole of the UK. Moreover, effective communication regarding what is law and what is guidance in each jurisdiction must be seen as essential for the proper operation of the rule of law.

Primary Legislation

The principal relevant UK primary legislation is the [Coronavirus Act 2020 \(2020 c. 7\)](#). This Act contains 102 sections and 29 schedules and was considered at pace in Parliament. It had all its stages – Second Reading (debate of the principle of the bill), Committee (amending stage) and Third Reading – in the House of Commons on 23 March, all its stages in the House of Lords over 24 and 25 March and became law on 25 March. In other circumstances the Law Society of Scotland would have highlighted the need to scrutinise the legislation carefully and not to sacrifice that scrutiny for speed. However, the nature of Covid-19 and the serious and imminent threat it poses to the community at large are potentially so devastating that it was right that Parliament’s response matched the level of threat.

The Coronavirus Act 2020 makes provision for Parliamentary scrutiny

Section 97 of the UK Coronavirus Act 2020 provides for a report to be made by the Secretary of State every two months on the status of non-devolved provisions of the Act. The first reporting period ended on 25 May:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889948/two-monthly-report-may-2020.pdf.

The report covers the status of certain non-devolved provisions continue to be appropriate relates to whether the provisions have been brought into force, have been suspended or revived or if an expiry date has been fixed.

Section 99 applies where the Act substantively operates for more than a year from 25 March. Under this section, a Minister of the Crown must make arrangements for a motion in neutral terms to be moved in the House of Commons to the effect that the House has considered the one-year status report, to be moved in that House. A motion to take note of the report should also be moved in the House of Lords.

Recommendations for further Scrutiny Proposals

We have suggested a Joint Coronavirus Committee of both Houses to coordinate detailed scrutiny of Government through the pandemic in much the same way as the Joint Committee on Human Rights deals with human rights issues and the Covid-19 Committee in the Scottish Parliament deals with Coronavirus issues. The Covid-19 Committee’s remit and responsibilities are ‘to consider and report on the Scottish Government’s response to COVID-19 including the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19 and any secondary legislation arising from the Coronavirus (Scotland) Act and any other legislation in relation to the response to COVID-19’:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/114997.aspx>

We also suggested a quadripartite parliamentary group, bringing together all the UK legislatures to share experience, best practice and knowledge about legislating in the pandemic, using as a model the Interparliamentary Forum formed to consider Brexit:

<https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2017/sixth-interparliamentary-forum-statement/> .

Scottish Legislation

The [Coronavirus \(Scotland\) Act 2020 \(asp 7\)](#), which is the principal relevant Scottish legislation, has many provisions of importance to life in Scotland, including law relating to children and vulnerable adults, justice matters, public bodies and a number of other areas. That Act contains provisions requiring Scottish Ministers to report on the necessity of such legislation rather than, as in England and Wales, the appropriateness of the status of the legislation.

The Scottish Parliament also passed the Coronavirus (Scotland) (No2) Act 2020 <https://www.legislation.gov.uk/asp/2020/10/contents/enacted>. The Act will help public services operate during the coronavirus pandemic and support businesses and individuals. The Act includes provisions to ensure business and public services can operate, change public service duties, provide protections for student tenants and support for carers and make changes to criminal procedure. It also allows Scottish notaries public to execute documents by video technology.

The Act contains a number of safeguards, including expiry of the legislation on 30 September 2020. The legislation can be extended until 30 September 2021. Scottish Ministers must review and report on the measures every 2 months:

<https://www.gov.scot/publications/coronavirus-acts-two-monthly-report-scottish-parliament/>.

Scottish Ministers must also review all coronavirus related Scottish Statutory Instruments under section 14 of the (No2) Act.

Subordinate Legislation

There is a considerable amount of Coronavirus subordinate legislation across the UK: 91 UK statutory instruments (regulations), 25 Scottish Statutory Instruments, 39 Northern Ireland Statutory Rules and 25 Wales Statutory Instruments at the time of writing. With so much subordinate legislation (and the potential for more) covering so many areas of the law, how can Parliament ensure a co-ordinated approach to scrutiny and, more importantly, that there are no gaps in legislation that may be needed to deal with the consequences of this illness?

In a significant number of those statutory instruments made affirmative procedure was being used. That is a kind of fast-track procedure for subordinate legislation, which needs to be carefully scrutinised.

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 ... ‘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”.

The parliamentary counsels’ offices and the solicitors in the Governments’ legal departments are clearly expert in drawing up instruments and rarely make mistakes but the policies and the challenging conditions which prevail require speed of scrutiny so those carrying out that scrutiny need to be additionally careful about the legislation they are considering.

Safeguards

Safeguards are built into the Coronavirus Acts applicable across the UK and in Scotland.

There is provision for a two-month review period in section 95 of the Coronavirus Act 2020. That is replicated in section 12 of the Coronavirus (Scotland) Act 2020 and sections 12 and 14 of the Coronavirus (Scotland) (No 2) Act 2020.

Automatic expiry is also a safeguard and is a significant factor in section 89 of the Coronavirus Act 2020, section 12 of the Coronavirus (Scotland) Act 2020 and section 9 of the Coronavirus (Scotland) (No 2) Act 2020.

One other feature which is relevant to the consideration of legislation at this time is the need for Government to resist conflating coronavirus legislation with that which is not necessarily coronavirus related.

In its *Report on the Corporate Insolvency and Governance Bill* (HL Paper 76), the Constitution Committee of the House of Lords stated in Paragraph 11, in recommending a sunset clause for permanent measures which had been included in this coronavirus fast-tracked bill:

“While temporary measures to respond to the COVID-19 pandemic may meet the threshold of urgency and exceptional circumstances to warrant fast-tracking, long-planned and permanent changes to the law do not. It is inappropriate for such permanent changes to be fast-tracked through Parliament and so subject to less debate and scrutiny.”

It is important that such an approach to legislation does not become a regular occurrence.

EU Coronavirus Legislation

The EU Institutions have also been active on the law-making front as a result of the Coronavirus.

There have been 16 Regulations originating from the EU which deal with Coronavirus issues. These include Regulations on [temporary support to mitigate employment risks \(Council Regulation EU 2020/672\)](#), [addressing market disturbance in the fruit, vegetable and wine sectors \(Commission Implementing regulation EU 2020/600\)](#), on the [fishery and aquaculture sector \(Regulation EU 2020/560\)](#) and on [flexibility for the use of European Structure and Investment funds \(Regulation EU 2020/558\)](#).

There are also 10 Decisions including the [mobilisation of the Contingency Margin to provide emergency assistance to Member States \(Decision EU 2020/547\)](#) and to finance immediate budgetary measures ([Decision EU 2020/546](#) and [Decision EU 2020/545](#)). An important Commission Decision relates to the [relief from import duties and VAT exemption on importation of goods needed to combat the effects of Covid-19 \(Commission Decision EU 2020/491\)](#).

Additional Comments concerning Coronavirus legislation

We considered a number of broad themes which set the context for our comments on the Act. They are Parliamentary scrutiny and the rule of law, respect for human rights, devolution and other public health legislation.

A. Parliamentary Scrutiny and Rule of Law

Common provisions of Coronavirus legislation fall within two broad categories.

(i) Broad regulation making powers to suspend, modify or grant indemnity from existing statutory laws or common law and powers to suspend or revive other provisions of the legislation including to amend provisions of the Acts themselves (eg section 88 in the Coronavirus Act 2020 and section 11 in the Coronavirus (Scotland) Act 2020.

(ii) Those which confer new powers (eg the powers in Schedule 21, Part 3) in order to deal with the coronavirus pandemic.

Parliamentary scrutiny of the Coronavirus Bill was very limited. The short timetable for scrutiny of the UK Act has already been mentioned. Similarly, the Coronavirus (Scotland) Act 2020 passed all its stages in the Scottish Parliament on 1 April. In other circumstances many of the provisions in these bills would have been regarded as unacceptable, but the Society took the view that this approach was justified by reference to the emergency.

In our view the ordinary rules of judicial review will apply to regulations made under the Coronavirus legislation. We note that there have been some challenges in England:

<https://adminlawblog.org/2020/05/28/joe-tomlinson-jo-hynes-jack-maxwell-and-emma-marshall-judicial-review-during-the-covid-19-pandemic-part-ii/>

B. Respect for Human Rights

We welcomed the publication along with the UK bill of the Human Rights Memorandum from the Department for Health and Social Care which dealt comprehensively with European Convention on Human Rights (ECHR) compliance. Similar respect for human rights was shown in the Explanatory Memorandum which accompanied the Scottish bill. Where the legislation engages the ECHR the rights engaged are qualified, not absolute and that their exercise in current circumstances is to be balanced with the wider interests of public safety and the protection of individual and community health.

The Human Rights Act 1998 applies to the acts of public authorities under the Bill and we encourage public authorities which undertake coronavirus functions to ensure compliance with Convention rights. We expect that human rights and the rule of law will be fully respected when applying the provisions of the Coronavirus legislation.

C. Devolution

The Coronavirus Act 2020 also respected the devolution arrangements. There is a convention, recognised in the Scotland Act 1998 Section 28(8), that the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament without the consent of the Parliament. Many of matters to which the Coronavirus Act 2020 relates are within the legislative competence of the Scottish Parliament or affect the executive competence of the Scottish Ministers.

The Scottish Parliament agreed the Legislative Consent Motion on Tuesday, 24 March.

There is recognition that provisions in the Act“ can be commenced from area to area and time to time, so as to ensure that the need to protect the public’s health can be aligned with the need to safeguard individuals’ rights.” Such measures can subsequently be suspended and then later reactivated, where circumstances permit, over the lifetime of the legislation (Paragraph 7 of the Explanatory Notes).

D. Civil Contingencies Act 2004 and other Public Health legislation

Legislation already exists to deal with circumstances related to pandemic disease.

The Civil Contingencies Act 2004 can apply to emergencies and creates a framework for civil protection in the UK. The Act provides for local arrangements for civil protection and the employment of emergency powers under Orders in Council.

The emergency powers in the Act allow for temporary regulations to deal with serious emergencies. Emergency powers under the Act are subject to rigorous safeguards and can only be used in exceptional circumstances.

The Public Health (Control of Disease) Act 1984 (amended by the Health and Social Care Act 2008) as respects England and Wales and the Public Health (Scotland) Act 2008 include quarantine, detention and medical examination, and other powers, for local authorities and Health Boards.

The preference of Government to employ either the Coronavirus specific legislation or Public Health Acts rather than Civil Contingencies legislation raises questions about the legislative framework which applies across the UK and it's fitness to deal with future Public Health crises.

Once there is sufficient scope for a parliamentary inquiry into the fitness of the legislative (and policy) framework we can envisage this being a priority for all the UK Administrations and Legislatures.

Impact of recent reforms

Maintaining Public health and keeping people safe in the Scottish Justice system are core principles which have guided us through the coronavirus crisis.

Technology has played a key role in the changes that have been introduced in recent weeks, alongside an immense amount of hard work and a collegiate approach in reforming how the Justice system works. Three months ago it would have been unimaginable that a trial could be conducted remotely by video link and yet this is now a reality. The Lord President takes the view that some of these recent changes will become permanent features of our justice system. And we were grateful that the Coronavirus (Scotland) (No2) Act 2020 schedule 4 part 7 on Execution of Documents amends the law on personal presence of Notaries Public to enable documents to be executed by video link.

A number of new procedures have been introduced, such as written guilty pleas, and several virtual summary (non-jury) trials have now been conducted successfully. The Jury Trials Working Group led by the Lord Justice Clerk, Lady Dorrian, has brought forward innovative proposals to allow jury trials to restart next month, and make sure all those involved, including jury members, can participate in a safe and socially distanced manner. We look forward to seeing the outcomes of the two jury trials scheduled to take place in July in Edinburgh and Glasgow. The two models used will help with future decisions on how High Court trials can be progressed: <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2020/05/12/jury-trials-working-group> .

There is more work to be done, and there will need to be adequate resources and training to continue to deal with the backlog of cases from the early days of lockdown. However, we would reiterate that we do not believe that this is the time to make fundamental changes to the Scottish criminal justice system, such as instituting judge-only trials.

2. To what extent has the Four Nations' Action Plan (published 3 March) been fit for purpose? How was it designed, and did it reflect the right balance of expert advice?

We have no comment to make.

3. How will the UK Government's 'stay alert' message, announced on 10 May, impact Scotland? How effective was the coordination between UK and Scottish Governments, and their respective advisory groups, in relation to the 'stay alert' message?

We have no comment to make.

4. What implications are there for divergence in UK and Scottish Government policy in tackling the pandemic? Should there be further divergence between nations in easing lockdown restrictions?

Further divergence in policy between the UK and Scottish Governments may result in more primary legislation, further subordinate regulations and divergent suspension or repeal of emergency measures. This is a natural consequence of devolution and is anticipated in the Coronavirus Acts. It is important that where more law is contemplated that there is adequate pre-legislative consultation, proper Parliamentary scrutiny and effective post legislative review in line with existing Coronavirus legislation. It is also essential that any legislation and subsequent guidance is explained to the public in clear, unambiguous terms so as to avoid confusion about their effect.

5. Have the UK's funding package and support schemes been sufficient in supporting Scottish businesses, employees and self-employed people in Scotland? Have they been able to reach all sectors in Scotland?

The Scottish legal services sector contributed almost £1.3bn to the UK economy and supported around 22,000 full time employees in 2019. It is of crucial importance to the interests of justice, the rule of law and the economy that the legal services sector can continue to function effectively, to support commercial transactions, to provide legal advice and guidance to business through this period, and to allow people to access justice.

As the professional body for Scottish solicitors we have been actively representing the voice of the profession since the start of this outbreak. We have sought clarity on the options made available through government business support funding and joined together with other leading business sectors in Scotland to make the case for additional targeted support for those in the profession who are not benefiting from any of the business packages put in place. We have also worked to influence legislation and policies which directly impact on our members, trying to ensure that legal business can continue in a way which is in keeping with public health guidance and allows Scottish solicitors to work and generate income.

We carried out research among our members to have an evidence-based understanding of COVID-19's economic impact on the private practice sector of the solicitor profession in Scotland. We recently published the result of the first stage of that evidence gathering which can be accessed here:

<https://www.lawscot.org.uk/media/368868/covid-19-financial-impact-survey-private-practice-preliminary-analysis.pdf>.

This research shows that the vast majority of the private practice sector of the Scottish solicitor profession has, like most sectors of the business community, been adversely affected by the economic downturn.

For example over 80% of firms overall reporting reduced turnover. In terms of reduced cashflow, this had not impacted as much on remote firms as it had on urban and rural firms. There had been limited impact by rurality on all firms in respect of late or non-payment by clients. Many respondents cited both payments made in advance of work being carried out and clients keen to pay off creditors during the crisis as reasons for there being less impact. A fall in new business was a much-cited impact regardless of location with an

impact on 90% of overall respondents. In terms of other impacts, there was a higher response from urban firms than from others. They cited both court closures and the closure of the Land Register as the main impacts on business. The only business area not to see a significant downturn has been employment law - a sign of how vital the rights of workers and employers are during this time.

We welcomed the launch of the Coronavirus Job Retention Scheme. Staff costs are typically the largest cost for firms. In relation to staff furlough by firm size the number of furloughed solicitor staff increased from 32% among sole practitioners, 36% in respect of 2-4 partners to a peak of just over 40% in respect of 5-9 partner firms. Larger firms of 10-29 partners and over 30 partners had 28% and 27% of furloughed staff respectively. These slight variances may be a result of smaller firms having fewer solicitors eligible and larger firms carrying out the type of work where there has been slightly less of an impact on business.

Staffing strategies were relatively constant by location, although remote firms tended to have been more likely to have introduced both a recruitment freeze and were working fewer hours and less likely to have introduced a promotion freeze. Very few firms had introduced a salary reduction, making the choice of reducing partner drawings at the expense of ensuring non-furloughed staff were still being paid their full wage.

The position on staffing strategies by firm size did not appear to differ greatly, although 30 plus partner firms were more likely to have introduced a recruitment freeze and a salary reduction. Both 10-29 partner firms and 30 plus partner firms were less likely to have introduced an hour's reduction.

In terms of other strategies, many of those who responded cited home or remote working.

In relation to practice support strategies offered by the UK or Scottish Government or local authorities rural firms were more likely to have taken advantage of the £10,000 grant administered by local authorities, the furlough scheme and deferral of VAT. Those respondents who did not take advantage of VAT deferral stated that it was simply a deferral rather than any form of abatement or reduction and it was better to meet this liability sooner rather than later. Similar response was made in relation to the very small take up in respect of the Coronavirus Business Interruption Loan Scheme in that it was a loan which would of course require to be repaid. Once more, the relatively low take up of furlough in respect of remote firms can perhaps be attributed to those firms being mainly smaller firms and having fewer or no staff eligible for furlough.

There was little take up of the Self-Employment Income Support Scheme possibly because of the eligibility conditions. For example, the scheme contained a restriction that prevented a person from qualifying if that person had earned over £50k profits for the preceding years. There is no guarantee that someone who earned £51k profit in the preceding year would be able to cope without any income at all for some months. In addition, the scheme did not consider household income, i.e. where self-employed person earns £51k profit a year, they will be ineligible for support, but two self-employed individuals in the same household earning £49k profit each year will both be eligible for support.

In April, we joined the Law Society of England and Wales and Law Society of Northern Ireland in writing to the HM Treasury about these issues. We also raised the fact that some business owners are paid

predominantly through dividend payments, with a smaller salary through the PAYE system. The dependence of the Self-Employed Income Support Scheme on PAYE meant many self-employed owners of legal firms, including those running small businesses, missed out on much needed financial support. We know this issue affected other sectors and was raised on several occasions on the floor of the House of Commons. We were disappointed that the UK Government did not expand its scheme to cover these individuals.

In late April we announced a £2.2 million package of financial support for the solicitor profession in response to the coronavirus. The support package for the 2020/21 practice year comprised:

- a. a reduction of 20% in the practising certificate (PC) fee for every solicitor;
- b. a reduction of 20% in the accounts fee paid by law firm partners; and
- c. a 100% reduction on the client protection fund contribution for law firm partners. Taken together, the package saves the solicitor profession over £2.2 million. It follows a series of other changes at the Law Society, including the furloughing of 20% of our staff, a recruitment freeze and other savings for the current operating year. Depending on a solicitor's role and area of work, the support package delivers a saving of up to £380 this year.

6. Has UK and Scottish Government policy around key workers been effective? What further policy changes are required to support: a) seasonal workers; b) social care workers; and c) other key workers?

We have no comment to make.

7. What more could the UK and Scottish Government do to ensure that Scottish key workers have been able to gain access to personal protective equipment (PPE)?

We have no comment to make.

8. How has the Coronavirus pandemic impacted a) the oil and gas industry in Scotland; b) the Scottish food and drinks industry; and c) the rural economy? What support ought to be provided by the UK and Scottish Governments?

Evidence from our Energy law Sub-Committee indicates that Coronavirus pandemic has had a major impact on the oil and gas industry in Scotland. The impact can be identified in two main areas:

- measures which are being taken to protect the safety and well-being of the workforce; and
 - the economic consequences of the pandemic.
1. The principal concern of the oil and gas industry is the health and safety of its workforce. Those who can work remotely are being required to do so. Remote working is, however, impossible in respect of the 100 or so platforms which require workers to be on board to operate.

The oil and gas industry has taken measures to limit the chances of spread of Covid-19 where remote working is not possible. For example many companies are requiring staff to undergo a test for Covid-19 and then to isolate in a hotel near the heliport until the test results are available. The worker is then only transported offshore if the test is negative.

Industry organisations such as Oil and Gas UK (OGUK) have published guidance on measures to be taken to ensure safety of workers whether working in the production or logistics sectors of the oil and gas industry: <https://oilandgasuk.co.uk/wp-content/uploads/2020/05/OGUK-MEMBER-UPDATE-11-MAY-2020.pdf>

2. The economic impacts of the pandemic will be severe in the medium and long term. Suppressed global demand for oil and gas as a result of the policies required to tackle the pandemic have led to a dramatic reduction in product prices and this has led to businesses having to cut most discretionary costs, to re-assess the viability of projects and to consider whether reductions in staffing levels are required. It should be noted that there has been a partial bounce back of oil prices recently to over \$40 per barrel but prices are still well below pre-pandemic levels and at a level which is uneconomic for some producers.

OGUK estimates that up to 30,000 jobs could be lost in the sector. On 8th June BP announced that up to 15% of its workforce (approximately 10,000 people) will be made redundant by the end of 2020.

Evidence from our licensing Sub-Committee indicates that the Hospitality sector (and also the Tourism sector) of the Food and Drinks Industry in Scotland has been badly affected by the Coronavirus crisis.

The industry was not included in the Phase 2 relaxations to the *Coronavirus (COVID-19): Framework for Decision Making: Scotland's Route Map through and out of the crisis* announced on 18 June by the First Minister in a statement in the Scottish Parliament (OR, 18 June col 8);

“One other change that was envisaged in the route map for phase 2 was the reopening of outdoor hospitality, such as beer gardens. Unfortunately, I am not able to give a date for that just yet. We might be able to set a date later that is within phase 2, but I have commissioned further advice from our scientific advisory group to inform that decision.

There is emerging evidence that places such as pubs, restaurants and gyms can be hot spots for transmission. It is important that we better understand that evidence and what further mitigation might be necessary to protect people in such spaces, before we permit them to reopen. I appreciate that that will be hard for the hospitality industry. I want to give assurance to businesses in that sector that we will continue to support preparations for reopening, for example by encouraging local authorities to facilitate the use of open, outdoor spaces that pubs and restaurants can use for additional space.

I expect to have that further scientific advice in two weeks. I will set out then, hopefully on or around 2 July, whether outdoor hospitality can reopen during phase 2—I hope that that will be the case—or whether further mitigations are required ahead of phase 3.”

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12702&mode=pdf>

The indications from clients who operate in the hospitality area are that commercial viability may be difficult to maintain in the medium term.

Evidence from our Rural Affairs committee is contained in our submission to the Scottish Parliament's Rural Economy and Connectivity Committee on Covid-19 and can be found here:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/95981.aspx>



For further information, please contact:

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