INSTITUTE FOR GOVERNMENT

Parliament's role in the coronavirus crisis

Ensuring the government's response is effective, legitimate and lawful

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Summary

At the beginning of the coronavirus crisis, the government had to make decisions fast. Involving parliament in those decisions was difficult, both because of the pace required and because assembling MPs in one place was incompatible with the government's own guidance on 'social distancing'.

This short paper argues that as parliament gears up to perform many of its functions remotely, it is increasingly important that key decisions are made in, and scrutinised by, parliament. That will help to ensure that the UK's coronavirus response is effective, legitimate and lawful. In particular:

1. The government should engage with ordinary forms of parliamentary scrutiny, working with parliament to adapt these as necessary to allow for social distancing.
2. If the government decides to keep current 'lockdown' restrictions in force, it should seek a parliamentary resolution approving those restrictions as soon as possible.
3. Ministers should address the legal issues that have been identified with the lockdown regulations, and bear in mind the legal risk of using secondary legislation.

4. The government should make statements to parliament explaining the basis of any decisions taken in the mandatory 'reviews' of the lockdown, and should make provision for regular parliamentary renewal of the regulations. If further regulations are required, the government should seek parliament's approval for these prospectively, rather than using the emergency procedure and seeking parliament's approval retrospectively.
5. The government should ensure measures taken under the Coronavirus Act 2020 are subject to scrutiny and safeguards equivalent to those provided for in the Civil Contingencies Act 2004.
6. If the government needs to take further powers to respond to the crisis, it should ensure those powers are subject to scrutiny and safeguards equivalent to those provided for in the Civil Contingencies Act 2004.

Introduction

When parliamentary democracy is operating as normal, big decisions on changing the law are made by parliament using primary legislation. Smaller ones can be made by the government using secondary legislation, but even then, they are at least explained and justified to parliament, and parliament's agreement in principle is often sought. This improves the quality of decision making by ensuring that policies are subject to scrutiny and challenge. It ensures that the government's programme has democratic legitimacy, as it has been debated and voted on by MPs who have been directly elected by their constituents. It also ensures that the government acts with lawful authority, exercising only the powers that the legislature has given it.

In times of emergency, decision making is inevitably concentrated in the executive more than normal.[1] The paradigm case of emergency decision making is a war or national security crisis, during which there is a need for **speed** and **secrecy** that parliament, with its formal processes and open proceedings, finds difficult to meet. Decision making in such an emergency is normally underpinned by **shared objectives** across political and party divides: everyone agrees that the goal is to keep people safe, so there is less need than normal for the kind of political argument and wrangling that takes place in parliament.

The prime minister has said that, during the coronavirus crisis, his ministers must act like a "wartime government", and the early days of the crisis did have some features in common with a national security emergency. Decisions on lockdown had to be taken fast, as every day of delay would have been a day during which social contact caused further infections. There was some need for secrecy when a lockdown was being considered, to ensure that people did not engage in risky behaviour in anticipation of it (for instance, travelling out of cities, as occurred in other countries).[2] There was also considerable consensus across party divides that a lockdown was required.

However, as the crisis evolves, 'wartime' decision making will be less appropriate. As citizens and businesses increasingly feel the financial consequences of the pandemic, the economic crisis looms as large for the government as does the public health crisis. Decision making about how to respond to an economic crisis is not, except in the broadest terms of 'saving the economy', underpinned by shared objectives across political and party divides.

Decisions about how to lift the lockdown are also likely to be highly controversial. There will be different views about which groups or areas of the country ought to have restrictions eased first; how the government should be balancing the policy objectives of public health and economic recovery where they pull in different directions; how to balance the interests of coronavirus patients and other NHS users; how to balance the privacy of sufferers with the safety of others; and the possible role of 'immunity certificates' and contact-tracing technology in enforcing the new regime.[3]

Moreover, while decisions about imposing the lockdown had to be made at pace and (to some extent) in secret, decisions about lifting it do not need to be made as rapidly, and can be made more transparently.

The ordinary operating model of parliamentary democracy – in which parliament's consent is sought for controversial measures – therefore needs to return as the government's response develops. This is particularly important during the prime minister's recuperation from his own illness: while the government's actions are not legitimised by his personal mandate, it is all the more important that they are legitimised by a mandate from parliament.

The government should engage with ordinary forms of parliamentary scrutiny

Involving parliament in decision making on the coronavirus response will help the government to make better decisions and, as the Institute for Government has long argued, can therefore improve outcomes.[4]

Already, there have been clear benefits to scrutiny. Parliamentarians can raise issues with ministers that they might be missing. During the passage of the Coronavirus Bill, Matt Hancock, the health secretary, said explicitly that measures on statutory sick pay were "an example of why accountability helps to get the response right", noting that his shadow, Jonathan Ashworth, was "the first person to raise the issue of statutory sick pay across these dispatch boxes, and it will now be in the Bill because the point that he raised was the correct one, and we therefore took action".[5] The government also brought forward substantive amendments to that legislation in response to concerns raised by parliamentarians, for example, bringing forward an amendment in response to concerns about religious burials raised by Labour MP Naz Shah and backed by 100 MPs, to ensure that local authorities have regard to a person's religious beliefs when using their powers to dispose of dead bodies under the Act.[6]

Parliament was also one forum in which concerns were raised about lenders requiring small business owners to offer their personal assets as security in order to access the government's Coronavirus Business Interruption Loan Scheme; the terms of the scheme were subsequently updated to ensure that people's homes could not be taken as security under the scheme.[7] Parliamentarians also pressed the government on the need for support for renters and the self-employed, both of which were subsequently delivered at pace.[8]

Committees have done valuable work too. For example, Rachel Reeves, the then chair of the Business, Energy and Industrial Strategy Committee, wrote to business secretary Alok Sharma on 25 March to convey the concerns of workers who had contacted the committee to say that government guidance on social distancing at work was unclear.[9] She urged the government to clarify which businesses should send employees home and how employers should give effect to social distancing. The government subsequently updated its guidance for employers to include principles on social distancing in the workplace, along with shift-working and staggering processes.[10] The government also published sector-by-sector guidance on how employers in different industries could achieve social distancing while continuing to operate.[11]

Parliament is not, of course, the government's only scrutineer. The media, along with departments' normal stakeholders such as businesses, benefit claimants and the NHS, also play a role. Parliamentary scrutiny is different, though, insofar as MPs can convey to government the most urgent concerns of their constituents, have more diverse expertise and interests than the political journalists who attend the government's daily coronavirus press conferences, and can use their office and mandate to give profile to the issues they raise.

In addition, parliamentarians can scrutinise the evidence on which government decisions are based. There are likely to be some circumstances in which the government cannot, or should not, share evidence publicly. However, where evidence can be shared, parliament can play a role in testing the government's assumptions, ascertaining what the evidence shows and how robust it is.

Furthermore, parliamentary involvement gives select committees the opportunity, where there is time, to add to that evidence base. The scientific community has already flagged the value of improving the evidence base: the Royal Society, for instance, has now launched an initiative to get a wider pool of scientists working on the crisis response, after some public health experts expressed concern that those advising the government were too narrowly drawn from a few institutions.[12]

The government should therefore be engaging with ordinary forms of parliamentary scrutiny as much as possible, assisting parliament to adapt these as necessary to allow for social distancing. Ministerial appearances before select committees, answers to parliamentary questions, statements to parliament and thorough scrutiny of the government's legislative programme should be the norm, insofar as parliament's adapted procedures make this possible and ministers are not prevented, by truly urgent demands for their time in government, from engaging with parliament.

If the government decides to keep current lockdown restrictions in force, it should seek a parliamentary resolution approving those restrictions as soon as possible

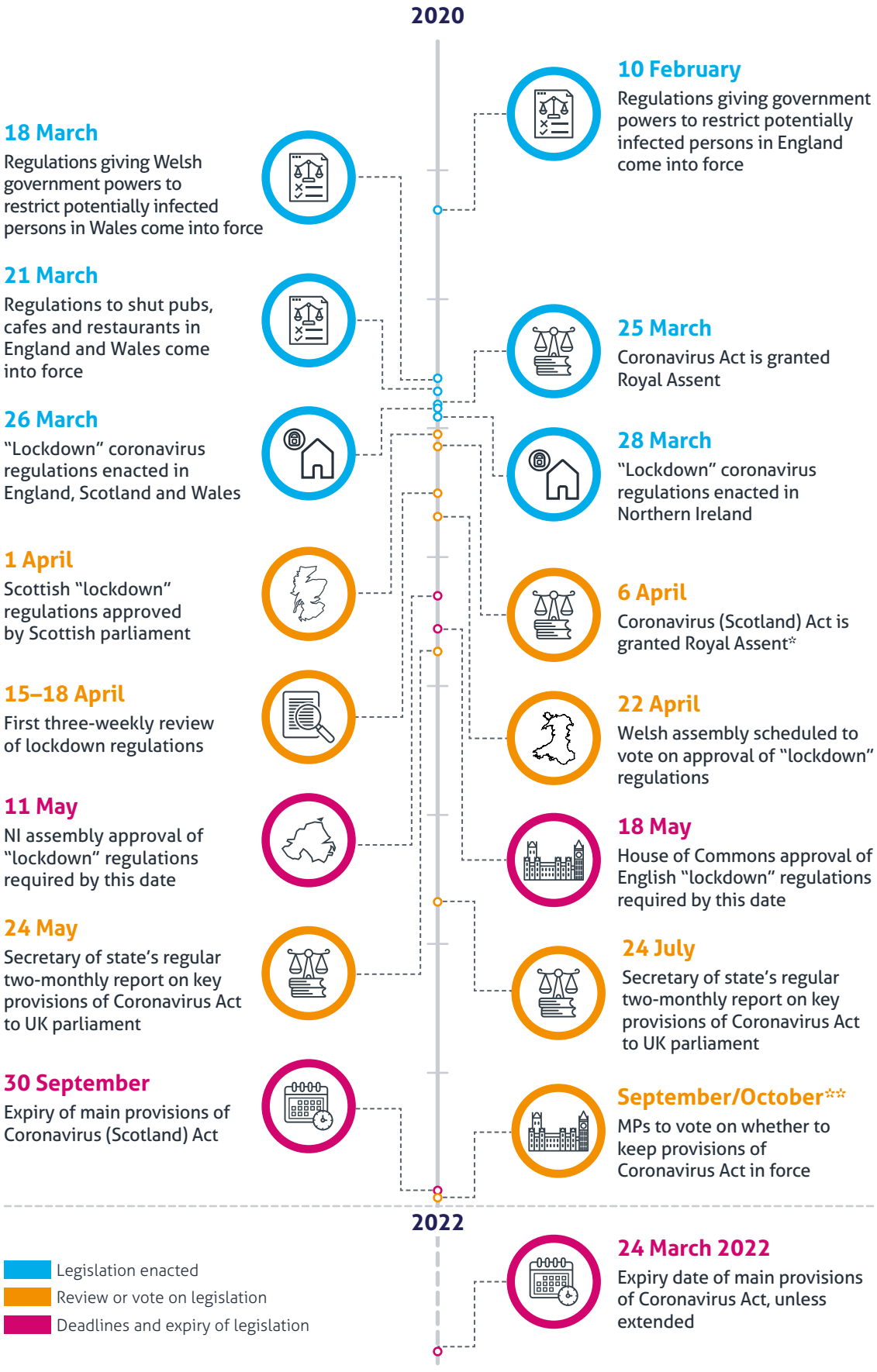
On 26 March 2020, the UK, Welsh and Scottish governments enacted regulations that made it a criminal offence to leave home without reasonable excuse, and restricted gatherings of more than two people from different households.[13] The Northern Ireland executive enacted similar regulations two days later.[14] Together, these regulations form the backbone of the UK's current lockdown. All the regulations were made without having been laid before, or approved by, parliament or the devolved legislatures. As of 15 April, only the Scottish regulations have received retrospective parliamentary approval.[15]

When parliament returns from recess on 21 April, the government's most immediate task in Westminster should be to secure approval for any lockdown measures that remain in force; the Wales and Northern Ireland administrations should do the same in the devolved legislatures.

If the lockdown restrictions are to stay for several more weeks from the Houses' return, then the government will have to get parliamentary approval for them by resolution – a simple 'up-or-down' vote – in any case. The English regulations, for instance, will lapse on 18 May unless parliament has approved them by then.[16]

However, parliamentary approval should be sought sooner if the regulations are to stay in force unamended. The lockdown measures currently in force amount to the most draconian restrictions imposed on the UK population in living memory, and possibly ever. It is a mark of how extraordinary the situation is that such restrictions were imposed by ministers under secondary legislation. Endowing them with the legitimacy of parliamentary approval, at the earliest possible opportunity, is vital.

Figure 1: **Timeline of coronavirus legislation**



*Enacted measures in Scotland concerning justice, planning, licensing, renters, early release of prisoners
** Deadline depends on length of recess and parliamentary sitting days

Source: Institute for Government analysis.

Ministers should address the legal issues with the lockdown regulations, and bear in mind the legal risk of using secondary legislation

Primary legislation, passed by parliament, cannot be struck down by the courts. Secondary legislation, made by ministers, can. This means that, when there is any uncertainty as to what ministers have the power to do by secondary legislation, proceeding without the involvement of parliament creates legal risk and legal uncertainty.

The current lockdown regulations were made by ministers using powers in the Public Health (Control of Disease) Act 1984, as amended by the Health and Social Care Act 2008. Several eminent lawyers have now argued that the regulations are unlawful (though they do not suggest that the rules should therefore be disobeyed).[17]

The legal issue, in summary, is that it is not clear that the powers in the 1984 Act, as amended, truly permit the government to introduce such wide-ranging restrictions of people's liberty. The government (along with the devolved administrations) has powers to provide that a group of persons who "may be infected" is subject to restrictions on where they go or with whom they have contact, and to "make provision of a general nature". The government has no power to order that anyone be "kept in isolation or quarantine".[18]

Lawyers have questioned whether the entire population really constitutes a "group of persons"; whether it can really be said that the entire population "may be infected"; and whether such an extensive lockdown really constitutes a mere "restriction" on where people go or with whom they have contact.[19] The courts have said previously that legislation can only authorise interference with fundamental rights, and can only authorise physical confinement, with clear words: ambiguous provisions are not enough. [20]

The legal case is not cut and dried; there have been defences of the regulations too.[21] However, given the legal risk to these measures and the importance of the policy they seek to implement, it is surprising that the government did not either enact the measures using primary legislation, or take clear powers to enact the measures in primary legislation, which MPs would have had the opportunity to scrutinise and approve. It is particularly surprising that the government used secondary legislation given that, just three days earlier – the same day the prime minister announced the lockdown in his televised address to the nation – MPs debated the Coronavirus Bill, now the Coronavirus Act, a piece of primary legislation which could have included the lockdown measures or powers that clearly authorised them.[22]

Approval in an up-or-down vote, as discussed earlier, may be taken into account if there is any legal challenge, but would not settle the legal issue in the way that primary legislation – or less restrictive measures that were more obviously within the scope of the parent powers – would. There is now a risk that, even if the restrictions regulations are approved by parliament and the other UK legislatures, a legal challenge could be brought. Although a court would be extremely unlikely to quash the measures and so deprive them of

effect, it may nevertheless make a 'declaration' that the regulations are unlawful, which would put the ball in the government's court.

The government might take the view that no one is likely to bring a challenge and that, if they did, it would seek to test the law and defend the legality of the regulations. But this approach carries considerable risk, as a declaratory judgment holding the restrictions to be unlawful would inevitably undermine the government's social distancing policy and make it harder to enforce compliance. The government has two other options for how to address legal concerns.

First, it could modify the regulations with a view to making the restrictions less draconian, and so more readily caught by the government's powers under existing legislation. For instance, David Allen Green has suggested that instead of making it a crime to leave home without reasonable excuse, the regulations should only make it a crime to do so in circumstances where one causes unreasonable risk to others, or to breach a reasonable direction by a police officer to return to where one lives.[23] Tom Hickman QC has also suggested limiting the directions that can be given by police officers.[24]

Second, if the government wanted to keep the existing restrictions or to make them even tougher, it could now introduce primary legislation authorising it to do so. In particular, Hickman has suggested putting the police power to confine someone to their home on an express statutory basis.[25]

The government should explain its decision to parliament at each mandatory 'review' of the lockdown, and arrange for regular parliamentary renewal of the regulations

The government is legally obliged to undertake a formal review of the measures, and consider whether they all remain necessary, at least every 21 days. The minister leading on the measures* must terminate any restrictions as soon as they consider that they are "no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus".[26] There are equivalent obligations on the devolved administrations.[27] There is no formal obligation for any minister to make a statement to parliament explaining this decision. In our view, the government should amend the regulations to place itself under such an obligation or, at the very least, make reports to parliament on a voluntary basis. The devolved administrations should do the same. Such statements should explain the evidence on which the decision is based.

In addition, the government should make provision for parliament to renew these regulations at regular intervals. This could be at every mandatory review or, alternatively, the regulations could provide that they cease to have effect unless renewed by parliament at slightly longer intervals, such as every 30 days. This would be a safeguard equivalent to the provisions of the Civil Contingencies Act, and may give the government

* This is most likely to be the prime minister, but under the legislation it could be another secretary of state.

more procedural flexibility. Making provision for regular parliamentary renewal would ensure that the restrictions continued for as long as democratic consent for them did, and no longer. It would also reinforce the government's obligation to account for its view on when restrictions should be lifted, with evidence, in parliament and to the public.

If the restrictions are terminated in a piecemeal way – for instance, lifted at different times for some groups, or some parts of the country – then further regulations are likely to be required. The government should seek parliament's approval for these prospectively, rather than using the emergency procedure as it did before and seeking parliament's approval retrospectively.

The government should ensure measures taken under the Coronavirus Act are subject to scrutiny and safeguards equivalent to those provided for in the Civil Contingencies Act

Before parliament adjourned for Easter recess, it passed the Coronavirus Act 2020. This legislation includes an extraordinary range of new powers for the government and local authorities. In addition to new powers to deal directly with the pandemic, the Act makes changes to the legal regimes for many other public services, such as social care and education, seeking to lighten the loads of those delivering services so they can cope with demand even with a depleted workforce.[28]

The government decided to use new primary legislation to make these changes, rather than using the pre-existing framework for emergency legislation: making regulations under the Civil Contingencies Act 2004. That decision had two considerable benefits. First, the bill was subject to some degree of ordinary parliamentary scrutiny, which allowed for some substantive amendments. Second, the Coronavirus Act (unlike any regulations the government might have passed under the Civil Contingencies Act) is not subject to judicial review, which increases legal certainty.

However, the government's choice to opt for primary legislation did allow it to evade some of the safeguards and scrutiny provided for in the Civil Contingencies Act. The Coronavirus Act provides for parliamentary reviews of its operation every six months, whereas regulations under the Civil Contingencies Act must be reviewed every 30 days.[29] The Coronavirus Act can only be amended by further primary legislation, whereas any regulations passed under the Civil Contingencies Act could have been amended by simple resolution at any time.[30] Further, the flipside of the legal certainty that comes with primary legislation is that a safeguard is lost: whereas regulations passed under the Civil Contingencies Act can be struck down for incompatibility with the Human Rights Act 1998, the Coronavirus Act cannot.[31]

Since the Coronavirus Act was not passed with all the safeguards that would have existed under the Civil Contingencies Act, the government must try as far as possible to replicate the effect of those safeguards in its implementation of the new Act. There are four areas in which this is particularly important.

The government must take its two-monthly reports seriously

The Coronavirus Act provides that the government must make a report to parliament every two months on whether the status of its key provisions – that is, whether they have been switched on or off, or suspended or extended – is 'appropriate'.[32] The government should not be tempted to exploit the vagueness of that obligation. These reports should include:

- **up-to-date commencement information** on which provisions of the Act have been switched on and off by ministers since the last update
- **reasons** for any decisions taken under powers in the Act including commencement decisions, and, insofar as possible
- **evidence** about how the Act is working on the ground – for instance, any data collected by the Department of Health and Social Care on the extent to which local authorities are using social care 'easements' under the Act, and so providing services that fall short of the pre-crisis regime under the Care Act 2014.

The government should be prepared to hold parliamentary debates well before the six-month mark

The Coronavirus Act provides that the government must give parliament an opportunity to review the operation of the Act, and confirm that the emergency powers are still required, every six months.[33] If problems emerge with the operation of the Act, the government should be prepared to give parliamentarians the opportunity to suggest changes well before then, and should be prepared to use its powers to switch provisions on and off accordingly.

The government and the devolved administrations should work together to fill existing gaps in the scrutiny of the latter's new powers

The UK government's two-monthly reports to parliament must state which provisions it has switched on and off, but the devolved administrations have no equivalent reporting obligations, despite having many equivalent powers under the Act.

Likewise, although there is provision for the UK parliament to vote after six months on whether provisions of the Act should be switched off, this only covers provisions that the UK government can switch off without the consent of the devolved administrations. The Act makes no provision for the devolved legislatures to have an equivalent vote at this time. If a devolved administration has decided that it wants to turn a provision of the Act off then the devolved legislature does need to approve that decision, but there is nothing in the Act that allows the devolved legislatures to direct that a provision be switched off before the devolved administration has made that decision.[34]

The governments of the UK should work together to fill those gaps, whether through an Act of Parliament, legislation at devolved level, or voluntary commitments on the part of the devolved administrations to make themselves subject to the same scrutiny at devolved level as the UK government is in Westminster in the exercise of new powers, building on the general undertakings already given by the devolved administrations to their legislatures.[35]

The government should have particular regard to its human rights obligations when taking decisions under the Coronavirus Act and adopt a constructive approach to any human rights challenges

The government has made a commitment that all decisions ministers take under powers in the Coronavirus Act will be compliant with the Human Rights Act. That commitment goes no further than the government's existing obligations, but it is particularly important given the speed at which this legislation was passed and evasion of extra human rights protection provided by the Civil Contingencies Act. When the government is challenged on the human rights implications of decisions on the Coronavirus Act, it should take a constructive approach, asking what it could do to improve its compliance before asking how to defend itself against allegations of unlawful conduct.

If the government needs to take further powers to respond to the crisis, it should also ensure those powers are subject to equivalent scrutiny and safeguards as are provided for in the Civil Contingencies Act

As the crisis evolves, and as the government begins drawing up measures to lift the lockdown, the government should take care to avoid any legal uncertainty that might arise if there is any ambiguity as to the adequacy of existing powers. It should also ensure that, if new powers do need to be taken in primary legislation, that primary legislation contains safeguards equivalent to those of the Civil Contingencies Act, as discussed above. Selective lifting of the lockdown measures, in particular, is likely to have very serious implications for civil liberties and could be highly controversial. The government cannot assume that, the less lockdown there is, the less scrutiny the lockdown needs. If lockdown is applied differently to different groups, more scrutiny, not less, will be needed.

Involving parliament in decision making will enhance the quality, democratic legitimacy and legal authority of the government's response. The government's mantra for dealing with the pandemic should be: transparency and parliamentary consent where possible; reliance on executive authority where necessary.

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Raphael is an associate of the Institute for Government, working on the constitution, the law and Brexit. He is also a writer for *The Times* and a visiting lecturer in public law at City Law School.

References

1 BBC News, 'Coronavirus: "We must act like any wartime government"', 17 March 2020, www.bbc.co.uk/news/av/uk-51936760/coronavirus-we-must-act-like-any-wartime-government. For analysis of the features of national security crisis and economic crisis, see Alan Greene, 'Questioning executive supremacy in an economic state of emergency', *Legal Studies*, Vol. 35, No. 4, 2015, pp. 594–620

2 Angela Giuffrida and Lorenzo Tondo, 'Leaked coronavirus plan to quarantine 16m sparks chaos in Italy: Thousands tried to flee south after decree to confine people until 3 April was revealed', *The Guardian*, 8 March 2020, www.theguardian.com/world/2020/mar/08/leaked-coronavirus-plan-to-quarantine-16m-sparks-chaos-in-italy

3 Leo Kelion, 'Coronavirus: UK confirms plan for its own contact tracing app', BBC News, 12 April 2020, www.bbc.co.uk/news/technology-52263244. On immunity certificates, see the health secretary's comments on 2 April 2020 (Amy Jones, 'Government is "looking at" introducing immunity passports, Matt Hancock confirms', *The Telegraph*, 2 April 2020), www.telegraph.co.uk/politics/2020/04/02/government-looking-introducing-immunity-passports-matt-hancock

4 Hannah White, 'Parliamentary Scrutiny of Government', Institute for Government, 2015, www.instituteforgovernment.org.uk/publications/parliamentary-scrutiny-government

5 HC Deb 11 March 2020, Vol 673, Col 380, https://hansard.parliament.uk/Commons/2020-03-11/debates/E9C77FF3-6EB8-4A29-8877-33359AB8C414/Coronavirus#contribution-053BE162-D45B-4C7A-B1E6-8FA89F37CE8E

6 Geraldine Scott, 'Government agrees to Bradford MP Naz Shah's changes to coronavirus emergency powers', *The Yorkshire Post*, 23 March 2020, www.yorkshirepost.co.uk/health/coronavirus/government-agrees-bradford-mp-naz-shahs-changes-coronavirus-emergency-powers-2506231; Schedule 28, Part 4, Para 13, Coronavirus Act 2020

7 See the Chief Secretary to the Treasury's commitment to come back to the House on the issue of personal guarantees in response to a question from Kevin Hollindrake in HC Deb 24 March 2020, Vol. 674, Col. 218. See also *Coronavirus Business Interruption Loan Scheme: Written question HL2898*, asked 24 March 2020, www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-03-24/HL2898/

8 See for instance, among many others, the questions of Karen Buck, Jason McCartney, Helen Hayes, Richard Graham, John McDonnell, Chi Onwurah, Tim Louhgton, Beth Winter and Sam Tarry on support for private renter constituents in HC Deb 17 March 2020, Vol. 673, Col. 945, https://hansard.parliament.uk/Commons/2020-03-17/debates/B98846CC-107B-4FD5-8B16-5B90B09793F5/EconomicUpdate?highlight=interruption%20loan#contribution-9174DC8F-375A-4353-8501-4B7D40D44511, and the measures announced to protect renters from eviction the following day, Ministry of Housing, Communities and Local Government, 'Complete ban on evictions and additional protection for renters', 18 March 2020, www.gov.uk/government/news/complete-ban-on-evictions-and-additional-protection-for-renters

9 Business, Energy and Industrial Strategy Committee, 'Coronavirus - workers need clear guidance, Chair says', 25 March 2020, www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/news-parliament-2017/chair-writes-to-beis-sos-chairs-comments-19-21/

10 Department for Business, Energy and Industrial Strategy, 'Guidance for employers and businesses on coronavirus (COVID-19)', updated 7 April 2020. The version online on 5 April 2020 did not include this guidance, web.archive.org/web/20200405075053/www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19#limiting-spread-of-coronavirus-covid-19-in-business-and-workplaces

11 Department for Business, Energy and Industrial Strategy, 'Social distancing in the workplace during coronavirus (COVID-19): sector guidance', 7 April 2020, www.gov.uk/guidance/social-distancing-in-the-workplace-during-coronavirus-covid-19-sector-guidance

12 See quotes in Stephen Grey, Andrew MacAskill, 'Special Report: Johnson listened to his scientists about coronavirus - but they were slow to sound the alarm', Reuters, 8 April 2020, www.reuters.com/article/us-health-coronavirus-britain-path-speci/special-report-johnson-listened-to-his-scientists-about-coronavirus-but-they-were-slow-to-sound-the-alarm-idUSKBN21P1VF and the Royal Society, 'Urgent call for modellers to support epidemic modelling, 29 March 2020, https://royalsociety.org/news/2020/03/urgent-call-epidemic-modelling

13 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 No. 350; The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 No. 103; The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 No. 353 (W. 80)

14 The Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020 No. 55

15 www.parliament.scot/S5_BusinessTeam/Chamber_Minutes_20200401.pdf. In Wales, a vote of the assembly is scheduled for April 22: www.assembly.wales/en/bus-home/pages/plenaryitem.aspx?category=Business%20Statement&itemid=665

16 S45R(4) of the 1984 Act, as amended, provides that the regulations cease to have effect at the end of the period of 28 days, beginning on the day on which the instrument is made, unless approved. S45R(6) provides that the 28-day clock does not run for periods in which both Houses are adjourned for more than 4 days.

17 David Anderson QC, 'Can we be forced to stay at home?', 26 March 2020, www.daqc.co.uk/2020/03/26/can-we-be-forced-to-stay-at-home; Tom Hickman QC, Emma Dixon and Rachel Jones, 'Coronavirus and Civil Liberties in the UK', Blackstone Chambers, 6 April 2020, https://coronavirus.blackstonechambers.com/coronavirus-and-civil-liberties-uk; Robert Craig, 'Lockdown: A Response to Professor King', *UK Human Rights Blog*, 6 April 2020, https://ukhumanrightsblog.com/2020/04/06/lockdown-a-response-to-professor-king-robert-craig

18 For England and Wales, the relevant power is in S45C(1) Public Health (Control of Disease) Act 1984, read with the "general nature" provision in S45G(1)(b), the special restriction categories at S45G(2)(d) and (j), and the bar on certain special restrictions in health regulations at S45D(3). Near-identical provisions in respect of Northern Ireland and Scotland can be found in Schedules 18 and 19, respectively, of the Coronavirus Act.

19 On the first two issues, see Robert Craig, 'Lockdown: A Response to Professor King', *UK Human Rights Blog*, 6 April 2020, https://ukhumanrightsblog.com/2020/04/06/lockdown-a-response-to-professor-king-robert-craig; on the final one, also see David Anderson QC, 'Can we be forced to stay at home?', 26 March 2020, www.daqc.co.uk/2020/03/26/can-we-be-forced-to-stay-at-home.

20 On fundamental rights, see Craig's (Ibid.) discussion of R (Simms) v SS for the Home Department [1999] UKHL 33. On authorisation of otherwise tortious conduct, including false imprisonment and trespass to the person, see Tom Hickman QC, Emma Dixon and Rachel Jones, 'Coronavirus and Civil Liberties in the UK', Blackstone Chambers, 6 April 2020, https://coronavirus.blackstonechambers.com/coronavirus-and-civil-liberties-uk/

21 Jeff King, 'The Lockdown is Lawful', *UK Constitutional Law Blog*, 1 April 2020, https://ukconstitutionallaw.org/2020/04/01/jeff-king-the-lockdown-is-lawful/

22 Prime Minister's Office, 10 Downing Street, 'PM address to the nation on coronavirus: 23 March 2020', 23 March 2020, www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020; HC Deb (23 March 2020) Vol. 674, Col. 35, available at: https://hansard.parliament.uk/commons/2020-03-23/debates/F4D06B4F-56CD-4B60-8306-BAB6D78AC7CF/CoronavirusBill

23 David Allen Green, 'How to improve the Coronavirus Regulations – some practical suggestions', *The Law and Policy Blog*, 6 April 2020, https://davidallengreen.com/2020/04/how-to-improve-the-coronavirus-regulations-some-practical-suggestions

24 Tom Hickman QC, Tweet, 11 April 2020, https://twitter.com/TomRHickman/status/1248899893864824834

25 Tom Hickman QC, Tweet, 11 April 2020, https://twitter.com/TomRHickman/status/1248899891545477123

26 Regulation 3(2)-(3) in the English regulations

27 Regulation 3(2)-(3) in the Welsh regulations, Regulation 2(2)-(3) in the Scottish and Northern Irish regulations

28 See Raphael Hogarth, 'The Coronavirus Bill: Extraordinary legislation for extraordinary times', Institute for Government, 23 March 2020, www.instituteforgovernment.org.uk/blog/coronavirus-bill

29 S98 Coronavirus Act, read with S89 and S26 Civil Contingencies Act

30 S27 Civil Contingencies Act

31 S30 Civil Contingencies Act

32 S97 Coronavirus Act

33 S98 Coronavirus Act, read with S89

34 On the UK government's two-monthly reports, see S97 Coronavirus Act 2020. On the UK parliament's vote at six months, see S98. On the need for the devolved legislatures to approve decisions of the devolved administrations to switch provisions off, see SS94–6.

35 Vaughan Gething AM, cabinet secretary for health and social services, told the National Assembly for Wales at 13:34:19 on 24 March 2020: "I'm happy to give an undertaking on the record about the Welsh government reporting to this Assembly on the use of powers on a regular basis", https://record.assembly.wales/Plenary/6266. Michael Russell, cabinet secretary for government business and constitutional relations, told the Scottish Parliament during a debate on the motion of legislative consent to the Coronavirus Act 2020 on 24 March 2020: "I am in favour of a two-month reporting period, and I commit myself to that and will put it in the bill", www.parliament.scot/parliamentarybusiness/report.aspx?r=12598; by "the bill" meant the Coronavirus (Scotland) Act 2020, a piece of Scottish legislation, which makes provision at S15 for two-monthly reporting, www.legislation.gov.uk/asp/2020/7/section/15. Robin Swann, the minister of health, told the Northern Ireland Assembly on 24 March 2020: "As health minister, for the parts of the Bill that are within my remit and within the function and action of my department, I will come back here and give regular updates", http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/03/24&docID=299356.

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