



HOUSE OF LORDS

Select Committee on the Constitution

3rd Report of Session 2021–22

COVID-19 and the use and scrutiny of emergency powers

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Select Committee on the Constitution

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Evidence is published online at <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The COVID-19 pandemic poses an urgent threat to life and public health in the UK. It is clear that exceptional measures have been necessary to limit the spread of the virus and keep communities safe. The Government has introduced a large volume of new legislation, much of it transforming everyday life and introducing unprecedented restrictions on ordinary activities. Yet parliamentary oversight of these significant policy decisions has been extremely limited.

Parliamentary scrutiny during the pandemic

Parliament holds the Government to account by questioning ministers, debating and conducting investigative and scrutiny work, increasingly through its committees. In response the Government is required to report, explain and defend its policies. The scrutiny process allows members of the public and interest groups to have their say, through representations to members of both Houses, thus increasing the legitimacy of, and respect for, legislation in wider society.

When scrutiny is limited through the fast-tracking of legislation, or the extensive use of secondary legislation, essential checks on executive power are lost, and the quality of the law could suffer. Governments should not fear meaningful legislative scrutiny. While the Government is responsible for initiating most legislation, Parliament's responsibility for the legislative process promotes better laws, governance and, most importantly, better policy.

All governments should recognise that, however great or sudden an emergency may be, powers are lent, not granted, by the legislature to the executive, and such powers should be returned as swiftly and completely as possible, avoiding any spill over into permanence. Emergency legislation is never an acceptable alternative to effective government planning for periods of crisis.

When parliamentary democracy is operating as it should, significant policy decisions should be enacted in primary legislation and subject to full parliamentary scrutiny. The Government has introduced a range of new measures to tackle the COVID-19 pandemic. The vast majority of new laws, including the most significant and wide-reaching, have come into effect as secondary legislation, often without prior approval from Parliament.

The Government chose not to make use of the Civil Contingencies Act 2004 to introduce these new laws. Nor did it include a COVID-specific lockdown power in the Coronavirus Act 2020. Instead, it relied upon powers in the Public Health (Control of Disease) Act 1984 to introduce the lockdowns in England. Although there were circumstances where the urgency of the situation required the use of urgent procedures, their use was not always justified, and this must not become the norm.

In response to future national emergencies, we recommend there should be a presumption in favour of using sunset provisions in fast-tracked regulations. We also recommend the Government seek Parliament's approval of all affirmative instruments before they enter into force wherever possible. In the exceptional circumstances where this is not possible, the Government should explain this and secure Parliament's approval as soon as possible after the regulations have entered into force.

Coordination across the UK

The UK Government determines the lockdown rules that apply in England, while the Scottish Government, the Welsh Government, and the Northern Ireland Executive are responsible for introducing and lifting restrictions in their respective parts of the UK. This is the result of devolution arrangements that have been in place for over 20 years, and which have been particularly visible during the COVID-19 pandemic.

We welcome the collaborative approach adopted by the UK Government and the devolved administrations in the early stages of the pandemic. However, we are concerned that, since May 2020, intergovernmental communication and cooperation appears to have decreased significantly. Legal divergence between the four parts of the UK has also increased, occasionally accidentally. This has created practical difficulties for members of the public, particularly those living and working close to internal UK borders, as well as those seeking to travel abroad.

Intergovernmental relations are integral to the UK's system of government. We regret that relations between the UK Government and the devolved administrations have been strained during the response to the shared challenges of the pandemic. We will consider this matter further in our inquiry on the future governance of the UK.

Legal clarity and accessibility

Legal changes introduced in response to the pandemic were often set out in guidance, or announced in media conferences, before Parliament had an opportunity to scrutinise them. On a number of occasions, the law was misrepresented in these public-facing forums. The consequence has been a lack of clarity around which rules are legally enforceable, posing challenges for the police and local government, leading to wrongful criminal charges, and potentially undermining public compliance.

It is incumbent upon the Government to make the law clear. When enacting new COVID-19 restrictions, the Government should be guided by the principles of certainty, clarity and transparency, and seek to avoid rapid and last-minute changes to the law as far as possible.

We recommend that all future ministerial statements and Government guidance on changes to COVID-19 restrictions clearly distinguish information about the law from public health advice.

Future use of emergency powers

There is an opportunity to learn lessons from the response to COVID-19 to inform contingency planning for any future emergency. We therefore welcome the Prime Minister's announcement of an independent public inquiry into the Government's handling of the COVID-19 pandemic but note that it may take a number of years to conclude.

As a result, we recommend that a review of the use of emergency powers by the Government, and the scrutiny of those powers by Parliament, should be completed in time to inform the public inquiry and planning for any future emergencies.

The approach adopted in response to the pandemic must not be used to justify weakened parliamentary scrutiny of Government action in response to any future emergencies.

COVID-19 and the use and scrutiny of emergency powers

CHAPTER 1: INTRODUCTION

1. The COVID-19 pandemic challenges every area of British society. Its health and economic implications, in particular, are profound. The constitutional impact of the pandemic has also been significant. Soon after the start of the pandemic we began an inquiry into the constitutional implications of COVID-19 in three areas:
 - the effect on the courts;
 - the impact on Parliament; and
 - the use and scrutiny of emergency powers.¹
2. Our first report, on the effect on the courts, was published on 30 March 2021, followed by our second report, on the impact on Parliament, on 13 May 2021.²
3. In this third and final report on our inquiry, we consider the use and scrutiny of emergency powers during the COVID-19 pandemic. Given the devolution arrangements, the report focuses on the measures used to tackle the pandemic in England, but we also consider the response in the rest of the UK where appropriate.
4. The Government has used a wide range of emergency powers to respond to the pandemic, including regulations under the Public Health (Control of Disease) Act 1984 and the Coronavirus Act 2020. Many of these regulations introduced significant curbs on civil liberties, including lockdowns, the scope of which had not been seen since the Second World War. Scrutiny of these regulations by Parliament was significantly restricted, due to the procedures in the 1984 and 2020 Acts and changes to parliamentary proceedings introduced in response to the pandemic.³
5. In Chapter 2 we consider the legislative options available to the Government at the outset of the pandemic; the approach that the Government took; and the degree of parliamentary scrutiny this approach afforded.
6. In Chapter 3 we consider coordination between the UK Government, the devolved administrations and local government in England in response to the pandemic.
7. In Chapter 4 we explore the challenges that rapid changes to the law posed for members of the public and public authorities tasked with enforcing the new rules.

1 Constitution Committee, ‘Constitutional implications of COVID-19 Inquiry’: <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/>. See Appendix 3 for the call for evidence for the emergency powers strand of the inquiry.

2 Constitution Committee, *COVID-19 and the Courts* (22nd Report, Session 2019–21, HL Paper 257), and Constitution Committee, *COVID-19 and Parliament* (1st Report, Session 2021–22, HL Paper 4)

3 Which we considered in our second report: *COVID-19 and Parliament*

8. In Chapter 5 we consider lessons learned for the future use and scrutiny of emergency powers.
9. We are grateful to all who assisted our work by providing oral or written evidence. The written evidence and transcripts of oral evidence are on our webpages.⁴ We received a significant volume of written evidence from individual members of the public, which is testament to the significant impact the subject of this inquiry has had on people across the UK.

⁴ See Appendix 2 for details.

CHAPTER 2: PARLIAMENTARY SCRUTINY DURING THE PANDEMIC

10. A range of new laws have been introduced to tackle the COVID-19 pandemic. Since March 2020, the law has been changed to implement national lockdowns, limit social contact, and reduce the burden on frontline healthcare staff.
11. The vast majority of these laws, including the most significant and wide-reaching, have come into effect as secondary legislation and without prior approval from Parliament. In this chapter we examine the way public health regulations have been made in England, and the level of parliamentary scrutiny they have received.

What is parliamentary scrutiny and why does it matter?

12. The UK is a parliamentary democracy. Parliament's core constitutional functions are to hold the Government to account and to legislate.
13. Parliamentary scrutiny is the close examination, investigation and challenge of Government policies, actions and spending that is conducted by both Houses of Parliament.
14. Parliament holds the Government to account by questioning ministers, debating and conducting investigative and scrutiny work, increasingly through its committees. In response the Government is required to report, explain and defend its policies. This should ensure individuals are protected from the arbitrary exercise of executive power.
15. The requirement for legislation to be considered by both Houses of Parliament ensures that Government policies and actions are examined and tested. This process allows members of the public and interest groups to have their say, through representations to members of both Houses, thus increasing the legitimacy of, and respect for, legislation in wider society. The scrutiny of legislation should also ensure that any legal or policy issues, including drafting errors, can be identified and rectified in advance of the new law taking effect.
16. When scrutiny is limited through the fast-tracking of legislation, or the extensive use of secondary legislation—which is subject to limited scrutiny when compared with primary legislation—essential checks on executive power are lost, and the quality of the law could suffer.
17. Governments should not fear meaningful legislative scrutiny. While the Government is responsible for initiating most legislation, Parliament's responsibility for the legislative process promotes better laws, governance and, most importantly, better policy.

What is emergency legislation?

18. Emergency legislation is legislation which has an expedited passage through Parliament. It typically takes weeks or months for primary legislation to be debated and complete the various legislative stages in the House of Commons and the House of Lords. By contrast, emergency legislation may be debated and approved by both Houses in only a matter of days.

19. The need for emergency legislation may arise when a serious and urgent crisis occurs, requiring the Government to enact legislation at an accelerated pace. In recent history, emergency primary legislation has been fast-tracked through Parliament in response to such serious issues as terrorist attacks,⁵ the threat of economic collapse,⁶ closing legal loopholes,⁷ and the Northern Ireland peace process.⁸ The Government also has special powers under primary legislation to make secondary legislation (subject to fast-tracked parliamentary scrutiny) in an emergency.⁹
20. Emergency legislation may be necessary in exceptional circumstances, but its use should be limited given its significant constitutional consequences. Fast-tracking legislation in effect results in a transfer of power from the legislature to the executive, enabling governments to take significant policy decisions with limited parliamentary input. Limiting the time available for parliamentary scrutiny also gives rise to an increased risk of legal errors and unintended consequences in legislation. For these reasons, fast-tracking legislation is never a desirable alternative to effective government planning for periods of crisis.
21. **All governments should recognise that, however great or sudden an emergency may be, exceptional powers are lent, not granted, by the legislature to the executive, and such powers should be returned as swiftly and completely as possible, avoiding any spill over into permanence. When a government decides to fast-track legislation, it should do so for legitimate and urgent reasons only, limiting parliamentary scrutiny to the extent strictly necessary.**

Coronavirus legislation: an overview

22. Some legal changes have been enacted through primary legislation, including the Coronavirus Act 2020, which contains temporary measures designed to increase the available health and social care workforce and to support frontline staff. But the majority of legal changes introduced in response to the pandemic—including the most significant restrictions on everyday life—have been set out in secondary, rather than primary, legislation.
23. Most of the coronavirus-related legal changes have been made through regulations, which is a form of statutory instrument. Regulations are legal rules made by ministers under powers conferred to them by an Act of Parliament. Laws introducing the national lockdowns, limiting the size and location of certain social gatherings, and closing places of work, education and recreation have all been made in the form of public health regulations.
24. The vast majority of these regulations became law before being laid before Parliament; in other words, before members of either House of Parliament have seen them.
25. Box 1 sets out the key legislative provisions that have so far formed the legal basis of the Government's response to COVID-19. See Box 2, at the end of this chapter, for an overview of the different types of secondary legislation.

5 For example see the [Anti-terrorism, Crime and Security Act 2001](#).

6 For example see the [Banking \(Special Provisions\) Bill 2009](#).

7 For example see the [Video Recordings Act 2010](#).

8 For example see the [Northern Ireland \(Executive Formation etc\) Act 2009](#).

9 For example see the [Civil Contingencies Act 2004](#) and the [Public Health \(Control of Disease\) Act 1984](#).

Box 1: COVID-19 legislation: an overview

Primary legislation

Two Acts of Parliament have been used by the Government to make regulations in response to the COVID-19 pandemic:

- The Public Health (Control of Disease) Act 1984 (the 1984 Act);¹⁰ and
- The Coronavirus Act 2020 (the 2020 Act).¹¹

The 1984 Act was originally enacted to consolidate various pieces of legislation for controlling the spread of infectious disease. The 2002–2004 SARS outbreak prompted Parliament to amend the 1984 Act in 2008 to introduce new measures to impose restrictions on persons in response to a threat to public health.¹²

The 2020 Act was enacted with the specific circumstances of COVID-19 in mind. It was introduced in the House of Commons on 19 March 2020 and completed its passage through both Houses in three sitting days.

Secondary legislation

By the end of the 2019–21 session, a total of 425 COVID-19 regulations had been laid before Parliament as part of the Government’s response to the COVID-19 pandemic in England.¹³

The most significant changes to the law in England, including the various national lockdowns, have been made using powers set out in the 1984 Act. Over 100 such regulations have been made since March 2020.

Regulations made under the 1984 Act are normally subject to the made negative procedure, with two exceptions. Regulations made under section 45C are generally subject to the draft affirmative procedure, and regulations made using the “urgency procedure” under section 45R enter into force immediately, as made affirmative instruments.¹⁴ 86 instruments have been made using the urgency procedure.¹⁵

Regulations have also been made under the 2020 Act, but these have been much more targeted and technical in nature, dealing with matters such as business tenancy forfeiture and local government elections.

We consider the use and scrutiny of powers under the 1984 and 2020 Acts in greater detail in the remainder of this chapter.

10 [Public Health \(Control of Disease\) Act 1984](#)

11 [Coronavirus Act 2020](#)

12 [Health and Social Care Act 2008; Explanatory Notes to the Health and Social Care Act 2008](#), Part 3

13 Legislation.gov.uk, [Coronavirus Legislation](#) (undated); Hansard Society, *Coronavirus Statutory Instruments Dashboard* (5 May 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard/#list-of-coronavirus-sis> [accessed 6 May 2021]. For the purposes of this report, we follow the approach adopted by the Hansard Society of counting as a COVID-19 regulation any Statutory Instrument (SI) which has among its purposes the addressing of Coronavirus-related issues. If this is not self-evident from the SI’s title, the information is included in its Explanatory Memorandum. We are only counting SI which are laid before Parliament (so excluding those which are not laid, and those laid before the devolved legislatures and assemblies). A full list of those SIs is available in the *Coronavirus Statutory Instruments Dashboard*.

14 For example, the [Health Protection \(Coronavirus, Business Closure\) \(England\) Regulations 2020](#) were made using the urgent procedure under section 45R of the Public Health (Control of Disease) Act 1984. They came into force on 21 March 2020 but were not laid before Parliament until 23 March 2020.

15 Hansard Society, [Coronavirus Statutory Instruments Dashboard](#)

Legislative options available to the Government

26. When the pandemic began, the Government introduced the Coronavirus Act 2020 as bespoke legislation. The 2020 Act did not include a lockdown power. In the days and months following its enactment, the most significant legal changes—including the regulations introducing the various lockdowns in England—were made by way of regulations, primarily using powers under the Public Health (Control of Disease) Act 1984.¹⁶
27. This approach was not the only legal route available to the Government. Witnesses suggested two alternative legislative approaches which they said could have resulted in greater parliamentary scrutiny and legal clarity:
 - (a) Use of the Civil Contingencies Act 2004—or alternative legislation with equivalent scrutiny safeguards—as the basis for the most significant and far-reaching regulations;¹⁷ and
 - (b) Greater parliamentary scrutiny of the Coronavirus Act 2020 and incorporating a COVID-specific lockdown power in that Act.¹⁸
28. We consider the potential constitutional benefits and practical implications of these alternatives below.

The Civil Contingencies Act 2004

29. The Civil Contingencies Act 2004 allows the Government to make emergency regulations if it is satisfied that:
 - (a) An emergency has occurred, is occurring, or is about to occur;
 - (b) It is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency; and
 - (c) the need for the provision is urgent.¹⁹
30. The power to make emergency regulations under the 2004 Act is a broad one. It allows the minister making the regulations to include any provision which is “appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency”.²⁰ Regulations may also amend an existing Act of Parliament (a Henry VIII power). There is no requirement to obtain Parliament’s approval before emergency regulations are made or come into effect.
31. In recognition of the breadth of these emergency powers, Parliament included a number of strict scrutiny safeguards in the 2004 Act. The Government is under a statutory duty to lay regulations before Parliament as soon as possible after they are made, and regulations will lapse after seven days unless each House has approved them during that time.²¹ Even after they

16 Different public health legislation was relied on by the Scottish Government and Northern Ireland Executive. See Chapter 3.

17 [Q 169](#), [Q 174](#) (Raphael Hogarth), [Q 174](#) (Dr Ruth Fox), [Q 177](#) (David Allen Green), [Q 184](#) (Lord Sandhurst QC), [Q 184](#) (Professor Tom Hickman QC), [Q 184](#) (Kirsty Brimelow QC), [Q 197](#) (Professor Alison Young), [Q 212](#) (Lord Sumption), [Q 212](#) (Baroness Hale of Richmond) and [Q 262](#) (Professor Aileen McHarg)

18 [Q 184](#) (Professor Tom Hickman QC), [Q 193](#) (Professor Alison Young), [Q 213](#) (Lord Sumption) and [Q 213](#) (Baroness Hale of Richmond)

19 Civil Contingencies Act 2004, [section 20](#)

20 *Ibid.*, [section 22\(1\)](#)

21 *Ibid.*, [section 27\(1\)](#)

have been approved, the emergency regulations must lapse after 30 days.²² At any time while emergency regulations have effect Parliament can bring them to an end by a resolution of the two Houses, or amend them.²³ We note that these safeguards exist in the 2004 Act, in part, because it was subject to pre-legislative scrutiny by a joint committee.²⁴

32. The parliamentary scrutiny safeguards under the Public Health (Control of Diseases) Act 1984 are inferior to the 2004 Act. Regulations made under the 1984 Act are not time-limited, and may remain in force for whatever period is specified by the minister in the regulations. Parliament also does not have the power to amend regulations made under the 1984 Act, as it would under the 2004 Act.
33. Many witnesses argued that using the 1984 Act allowed the Government to avoid the level of parliamentary scrutiny that would have been required by the 2004 Act.²⁵
34. Lord Sumption, a former justice of the Supreme Court of the United Kingdom, was clear that “parliamentary scrutiny on the level provided for in the [2004 Act] is extremely desirable ... it would have been constitutionally appropriate for the Government to replicate the effect of the [2004] Act, whatever the statutory origin of their powers.”²⁶ Baroness Hale of Richmond, the former President of the Supreme Court, agreed that “the constitutional protections in the [2004] Act are more appropriate than the lack of protection in the [1984] Act”.²⁷
35. On 25 March 2021 Lord Bethell, Parliamentary Under-Secretary in the Department of Health and Social Care, justified the Government’s use of the 1984 Act instead of the 2004 Act in the following terms:

“we looked very closely at the [2004] Act, and I know many noble Lords feel we missed an opportunity there, not least because it might have meant that we engaged more fully with Parliament, but also because it would have taken us down an all-UK approach that would have perhaps somehow have spared the pressure on the union. However, the truth is that, that choice was never possible. The [2004] Act is a provision of the last resort and its use is subject to very strict triple-lock criteria. A change to the CCA would have been necessary for it to have been usable. Instead, we used the [1984] Act to enact most of our public health legislative responses to the virus. It is an unloved Act, and many suggest we stretched it beyond its intended purpose. That is not true. We used it for what it was designed to do: to protect the population from communicable diseases of pandemic proportions.”²⁸

22 *Ibid.*, [section 26\(1\)](#)

23 *Ibid.*, [section 27\(2\)](#) and [section 27\(3\)](#)

24 Joint Committee on the Draft Civil Contingencies Bill, *Draft Civil Contingencies Bill* (Report of Session 2002–03, HC 1074, HL Paper 184), paras 197–99

25 [Q 212](#) (Baroness Hale of Richmond, Lord Sumption), [Q 184](#) (Lord Sandhurst QC), [Q 184](#) (Professor Tom Hickman QC), [Q 184](#) (Kirsty Brimelow QC), [Q 169](#), [Q 170](#) (Raphael Hogarth) and [Q 170](#) (Dr Ruth Fox)

26 [Q 212](#) (Lord Sumption)

27 [Q 212](#) (Baroness Hale of Richmond)

28 HL Deb, 25 March 2021, [col 984](#); The House of Lords took note of the UK Government’s *One Year Report on the status on the non-devolved provisions of the Coronavirus Act 2020* (22 March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971529/coronavirus-act-one-year-status-report-final.pdf [accessed 2 June 2021]

36. The Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, the Rt Hon Michael Gove MP, has also said that the circumstances of the pandemic were not appropriate for using the 2004 Act, which was designed to address sudden, unanticipated events rather than the gradual onset of a pandemic.²⁹ Lord Bethell provided a similar explanation to us. He said that advance knowledge of the pandemic meant that if the Government sought to use the 2004 Act it “faced severe risk of the launch of legal action and successful legal action ... so we had no option but to go down the conventional statute route.”³⁰
37. Some witnesses were unconvinced by this justification. Dr Ruth Fox, Director of the Hansard Society, told us: “I do not think that stacks up for either the provisions of the [2004] Act or the subsequent non-statutory guidance on the [2004] Act that has been published.”³¹
38. Baroness Hale, Lord Sumption and Professor Tom Hickman, public law barrister and a Professor of Law at University College London, pointed to section 21(5) of the 2004 Act as one potential barrier to use of the Act.³² This provides that the emergency powers in the 2004 Act cannot be used if equivalent powers are available to the Government in existing legislation which can be relied on without the risk of serious delay. This section appears to present a practical limitation on the use of the 2004 Act, as there is likely always to be some doubt as to the speed at which alternative legislative solutions might be available, and governments will always want to avoid legal uncertainty.
39. Respecting the UK’s devolution arrangements may have been an additional reason for not relying upon the 2004 Act. The 2004 Act empowers the UK Government to make emergency regulations affecting the whole of the UK.³³ Although section 29 of the Act requires a minister to consult the devolved administrations, their consent to make emergency regulations is not required. Professor Aileen McHarg, Professor of Public Law and Human Rights at Durham University, has said the 2020 Act “was perhaps thought to be more consistent with devolution ... rather than the very UK Government-centred approach under the [2004 Act]”. The UK Government might also have faced a number of practical and operational difficulties had it attempted to legislate for all parts of the UK using the emergency powers in the 2004 Act.³⁴
40. **The potential use of the Civil Contingencies Act 2004 in response to the pandemic would not have been a panacea. The Act grants extremely broad delegated powers—much broader than those provided for in the Public Health (Control of Disease) Act 1984. Use of the emergency**

29 Michael Gove MP told the Public Administration and Constitutional Affairs Committee in April 2020 that “the powers that [the Civil Contingencies Act] confers upon Government are sweeping and it is specifically designed—and this was the clear advice—to be used when you have an unexpected bolt from the blue rather than when you have something that is, as we saw, a developing threat”. See: Oral evidence taken before the Public Administration and Constitutional Affairs Committee, inquiry on the Work of the Cabinet Office, 29 April 2020 (Session 2019–21), [Q 216](#).

30 [Q 271](#) (Lord Bethell)

31 [Q 174](#) (Dr Ruth Fox), [Q 212](#) (Lord Sumption), [Q 184](#) (Lord Sandhurst QC), [Q 184](#) (Kirsty Brimelow QC), [Q 169](#) (David Allen Green) and written evidence from Professor Emeritus Clive Walker, Rebecca Moosavian and Dr Andrew Blick ([CIC0367](#))

32 [Q 212](#) (Baroness Hale of Richmond, Lord Sumption) and [Q 184](#) (Professor Tom Hickman QC)

33 Civil Contingencies Act 2004, [section 20](#)

34 Oral evidence taken before the Public Administration and Constitutional Affairs Committee, inquiry on Responding to Covid-19 and the Coronavirus Act 2020, 16 June 2020 (Session 2019–20), [Q 40](#) and [Q 49](#)

powers under the 2004 Act would have required the re-making of regulations every 30 days, meaning that regulations would, in practice, likely have needed to be scrutinised in rapid succession or in large quantities. Nonetheless, Parliament would have been more involved in the legislative process, including the ability to amend regulations.

41. **If the Government had used the Civil Contingencies Act 2004 at the outset of the pandemic, even if only as a temporary measure while alternative primary legislation was passed, parliamentary oversight could have been improved. The 2004 Act shows that Parliament can have, and expects to have, a central role in legal changes during periods of national crisis.**
42. **If use of the Civil Contingencies 2004 was not considered politically or practically desirable, the Government should have voluntarily subjected itself to comparable parliamentary scrutiny safeguards in all pandemic-related legislation.** We recommend comparable safeguards in the remainder of this Chapter.

The Coronavirus Act 2020

43. The Coronavirus Act 2020 is a wide-ranging piece of legislation. The Government has summarised the 2020 Act's provisions as encompassing five key areas:³⁵
 - (a) **increasing the available health and social care workforce:** for example, removing barriers to allow recently retired NHS staff and social workers to return to work;
 - (b) **easing the burden on frontline staff:** for example, by enabling local authorities to prioritise care for people with the most pressing needs;
 - (c) **containing and slowing the virus:** for example, by strengthening the quarantine powers of police and powers to reduce or limit social contact;
 - (d) **managing the deceased with respect and dignity:** by enabling the death management system to deal with increased demand for its services; and
 - (e) **supporting people during the pandemic:** for example, by allowing individuals to claim Statutory Sick Pay.
44. The 2020 Act is subject to a two-year sunset clause³⁶, and its continuation is subject to a number of parliamentary controls:
 - The Act obliges the Government to publish a report every two months on the status of its non-devolved provisions.

³⁵ Coronavirus Act 2020, [Explanatory Notes](#)

³⁶ A sunset clause sets a time limit on legislation, requiring that the legislation will expire at a specified point in the future. This has the same effect as repealing or revoking the legislation – it is no longer law, but anything done under it while it was law remains valid. The Coronavirus Act 2020 is subject to a two year sunset clause which can be extended for six months: Coronavirus Act 2020, [section 89](#) and [section 90](#)

- Every six months a minister must, “as far as practicable” make arrangements for the House of Commons to vote to keep the provisions of the Act in force.³⁷ If the House of Commons votes not to renew some or all of the provisions, the UK Government has 21 days to make regulations to terminate their use.
 - Both Houses are required to debate a one-year status report, including consideration of the continued application of the Act.³⁸
45. There were considerable benefits, at least in principle, to enacting bespoke primary legislation at the outset of the pandemic. A far greater degree of parliamentary scrutiny is afforded to primary than secondary legislation. The passage of the 2020 Act was, however, fast-tracked. It completed its passage through both Houses of Parliament in just three sitting days.³⁹ Accordingly, parliamentary scrutiny was limited. Lord Bethell told us “things moved very quickly and very suddenly ... and a process that was moving at conventional speed suddenly had to be moved much more quickly. It was not our strategy to rush the [Coronavirus] Bill through Parliament; it was a requirement of the situation”.⁴⁰
46. We concluded in our report on *The Legislative Process: The Passage of Bills through Parliament* that fast-tracking was acceptable “only in exceptional circumstances and with the agreement of the usual channels.”⁴¹ In our report on the Coronavirus Bill we concluded that the fast-tracking criteria was fulfilled.⁴²
47. **The uncertainty at the onset of the COVID-19 pandemic, including Parliament’s ability to continue meeting in some form, led the Government to fast-track the passage of the Coronavirus Act 2020. While the use of the fast-tracking procedure may have been justified in those circumstances, it seriously curtailed parliamentary scrutiny of important and wide-ranging legislation.**
48. Lord True, Minister of State at the Cabinet Office, told the Committee that the 2020 Act was prepared on the basis of draft legislation formulated following Exercise Cygnus.⁴³ It is not clear what form this draft legislation took—for example, whether it was a rough draft of miscellaneous clauses to be selected from as appropriate, or a complete draft bill which closely resembled the Coronavirus Bill as introduced. Either way, Parliament was not consulted on this draft legislation. ***We recommend that Parliament be consulted on any future draft legislation prepared on a contingency basis to address a potential emergency, ensuring that it provides for sufficient parliamentary scrutiny. The pre-legislative scrutiny of what became the Civil Contingencies Act 2004 provides a clear model for such an approach.***

37 Coronavirus Act 2020, [section 98](#). The first and second six-month renewal debates took place in the House of Commons on 30 September 2020 and 25 March 2021 respectively. In both instances the House of Commons decided that the Act should continue.

38 Coronavirus Act 2020, [section 99](#). The one-year debate took place in both Houses on 25 March 2021.

39 The Coronavirus Bill spent one day in the House of Commons and two days in the House of Lords.

40 [Q 272](#) (Lord Bethell)

41 See Constitution Committee, *Coronavirus Bill* (4th Report, Session 2019–21, HL Paper 44)

42 See Constitution Committee, *Fast-Track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116)

43 [Q 280](#) (Lord True). Exercise Cygnus was a simulation of a flu outbreak conducted by the Government in 2016.

49. The Government did not include a COVID-specific lockdown power in the 2020 Act. Instead, it used the Public Health (Control of Disease) Act 1984 as the legal basis for the various national lockdowns in England. Some have argued that the Government ought to have included a new lockdown power specific to the circumstances of the pandemic in the 2020 Act.⁴⁴
50. It is clear that a national lockdown was anticipated by the Government at the time that Parliament was considering the Coronavirus Bill. The very first national lockdown was announced on 23 March 2020, at the same time that the Coronavirus Bill was being considered by Parliament. The 2020 Act also grants the Scottish Government and Northern Ireland Executive equivalent powers to those in the 1984 Act used to implement the national lockdowns in England and Wales.⁴⁵ It therefore appears to have been practically possible for the Government to include a COVID-specific lockdown power in the Coronavirus Bill.
51. One advantage of doing so would have been greater parliamentary scrutiny. At the time the Coronavirus Bill was being debated in Parliament, parliamentarians had the specific circumstances of the COVID-19 pandemic in mind. Both Houses were in a strong position to consider the appropriate nature and use of such a power. By contrast, the powers in the 1984 Act that have been used to implement the national lockdowns were last considered by Parliament in 2008. At that stage Parliament may not have anticipated the need to confine healthy people to their homes in response to a global pandemic.
52. Although the legality of the 1984 Act as the basis for the national lockdowns in England is no longer in doubt,⁴⁶ it has been argued that the inclusion of a COVID-specific lockdown power in the 2020 Act would have enhanced parliamentary scrutiny, legal clarity and public awareness of the law.⁴⁷
53. In response it might be said that there was simply not enough time for Parliament to meaningfully debate such a power. Including a COVID-

44 Lord Sumption, 'Government by decree: Covid-19 and the Constitution' (27 October 2020): https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf [accessed 7 May 2021]

45 Equivalent powers in Scotland are set out in paragraph 1(1) of [Schedule 19](#) of the Coronavirus Act 2020. Equivalent powers in Northern Ireland are set out in sections [25C](#)(1), (3)(c), (4)(d) and [25F](#)(2) of the Public Health Act (Northern Ireland) 1967, as set out in [Schedule 18](#) to the Coronavirus Act 2020.

46 Lockdown regulations made under the 1984 Act have been subject to a judicial review. Complainants argued that the regulations were unnecessary, overbroad, disproportionate. The core challenge was that the [Public Health \(Control of Disease\) Act 1984](#) did not plainly authorise, as it must, a measure as sweeping as a national stay at home order. The High Court judge rejected the application and was upheld by the Court of Appeal. Both held that the 1984 Act was indeed concerned with general measures of just that sort, that it contemplated a pandemic of this sort, and that judgments about urgency and proportionality were for the minister. The case was refused leave to appeal to the Supreme Court: *Dolan & Ors v Secretary of State for Health And Social Care & Anor* [[2020](#)] [EWHC 1786](#) (Admin) (06 July 2020); *Dolan & Ors v Secretary of State for Health And Social Care & Anor* [[2020](#)] [EWCA Civ 1605](#) (1 December 2020); Supreme Court, 'Permission to Appeal Results: December 2020' (December 2020): <https://www.supremecourt.uk/docs/permission-to-appeal-2020-12.pdf> [accessed 2 June 2021]

47 Lord Sumption, 'Government by decree: Covid-19 and the Constitution' (27 October 2020): https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf [accessed 7 May 2021]; written evidence from the Institute for Government taken before the Public Administration and Constitutional Affairs Committee, inquiry on Responding to Covid-19 and the Coronavirus Act 2020, 30 June 2020 (Session 2019–20), ([RCC 12](#))

specific lockdown power in the Coronavirus Bill might have delayed the passage of the Act; wasting crucial time at the outset of a national crisis.

54. The Institute for Government has cast doubt on such a claim. At the time, parliamentary scrutiny did in fact result in a number of substantive amendments to that Act, “including 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”.⁴⁸ This suggests that it would have been possible for parliamentarians to consider and debate the inclusion of a COVID-specific lockdown power in the 2020 Act.
55. **When parliamentary democracy is operating as it should, significant policy decisions should be enacted in primary legislation subject to full scrutiny by Parliament. The Government chose not to include a general lockdown power in the Coronavirus Act 2020. Had it done so, parliamentary oversight of the use of lockdowns in England in response to the COVID-19 pandemic would have been improved. A COVID-specific lockdown power might also have enhanced legal clarity and public awareness of the law.**
56. **The Government instead relied upon the Public Health (Control of Disease) 1984 Act, as amended in 2008, to introduce lockdowns in England. This has underlined the importance of affording Parliament adequate opportunities to scrutinise and debate regulations introduced under the 1984 Act.** We recommend additional safeguards regarding the use of the 1984 Act in the following section.

The Public Health (Control of Disease) Act 1984

57. The principal regulations implementing the response to the pandemic in England, including those introducing the various restrictions on mobility, gatherings, trading and travel, were made under the Public Health (Control of Disease) Act 1984.
58. Many of these regulations have been made using the urgent power conferred on ministers in the 1984 Act and made without prior scrutiny.⁴⁹ The problem is that the notion of “urgency” under section 45R of the 1984 Act is not objective. The urgent procedure can be used if the instrument contains a declaration that the minister is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being laid before, or approved by, Parliament.⁵⁰
59. The use of the urgent procedure was not always justified. For example, the regulations requiring the public to wear face coverings on public transport arguably did not need to be subject to the urgent procedure. The Government first advised the public to wear face masks on 11 May 2020. Face coverings then became mandatory in different public places under various sets of

48 *Ibid.*

49 At the end of the 2019–21 session, a total of 99 instruments had been made in this way; see Hansard Society, *Coronavirus Statutory Instruments Dashboard* (5 May 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#list-of-coronavirus-sis> [accessed 6 May 2021]

50 Public Health (Control of Disease) Act 1984, [section 45R \(2\)](#)

regulations made on 15 June,⁵¹ 24 July,⁵² 8⁵³ and 22 August.⁵⁴ In each case, the use of the urgent procedure meant that the regulations were made before being laid before Parliament.

60. On 30 September 2020 the Speaker of the House of Commons said that “the way in which the Government has exercised their powers to make secondary legislation” under the 1984 Act has been “totally unsatisfactory” and showed a “total disregard for the House [of Commons]”.⁵⁵
61. Dr Ruth Fox told us that the use of the urgent procedure was a “big concern ... because there is no constraint on it at all. All the minister has to do is say that, in his or her opinion, it is urgent. One can foresee a scenario in which, depending upon how the pandemic and potential future waves of the virus develop, ministers can constantly utilise that power over quite an extended period of time”.⁵⁶
62. On 30 September 2020, the Secretary of State for Health and Social Care, Rt Hon Matt Hancock MP, provided an undertaking in the House of Commons that “for significant national measures with effect in the whole of England or UK-wide”, the Government would consult Parliament and hold votes “wherever possible” before they entered into force.⁵⁷
63. **Relying upon Part 2A of the Public Health (Control of Disease) Act 1984 as the primary basis for England’s response to the COVID-19 pandemic has restricted the Government’s accountability to Parliament for the significant policy decisions and extraordinary restrictions on civil liberties made since March 2020. The use of the urgent procedure has significantly constrained parliamentary scrutiny, and its use has not always been justified. We acknowledge the unprecedented nature of the COVID-19 pandemic. However, in many cases the Government’s need to rely upon the urgency procedure has been exacerbated by poor planning, including drafting delays and a failure to adequately take account of established scrutiny processes and timeframes.**
64. *We recommend that the Government sets out the rationale for using the urgent procedure under the Public Health (Control of Disease) Act 1984 in the explanatory memorandum accompanying an instrument made using that procedure. This should explain why the*

51 Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 ([SI 202/592](#)): made on 14 June 2020, laid before Parliament the next day.

52 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 ([SI 2020/791](#)): made at 9am on 23 July 2020; laid before Parliament 4 hours later.

53 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) (Amendment) Regulations 2020 ([SI 2020/839](#)): made on 6 August 2020, laid before Parliament the next day.

54 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) (Amendment) (No. 2) Regulations 2020 ([SI 2020/882](#)): made on 20 August 2020, laid before Parliament the next day.

55 HC Deb, 30 September 2020, [col 331](#). The statement was prompted by an amendment proposed by Sir Graham Brady MP to the six-month motion for the continuation of the Coronavirus Act 2020 which had sought to require the government to allow debates and votes on delegated legislation applying to the entire country before it comes into effect. The Speaker did not select the amendment. See Institute for Government, ‘Coronavirus rules must be published before they come into force’ (2 October 2020): <https://www.instituteforgovernment.org.uk/blog/coronavirus-rules-must-be-published> [accessed 2 June 2021]

56 [Q 178](#) (Dr Ruth Fox)

57 HC Deb, 30 September 2020, [col 388](#)

particular measures in the instrument need to be made urgently. Poor government planning does not justify use of the urgent procedure under the 1984 Act.

65. Regulations made under the 1984 Act remain in force for whatever period a minister decides. Although the Government has voluntarily included sunset clauses⁵⁸—typically of six to twelve months—in many of the regulations made under the 1984 Act, doing so is not a statutory requirement.⁵⁹
66. Some of the regulations passed using under the 1984 Act also require the Secretary of State to periodically review and terminate them as soon as they are no longer considered necessary.⁶⁰ The inclusion of this duty in the regulations is not a statutory requirement of the 1984 Act and regulations have been made under the 1984 Act which do not oblige the Secretary of State to revoke them in this way.⁶¹ Even where regulations are subject to this revocation duty, Parliament is not involved in the periodic review of the regulations, or the assessment of necessity. It is for the Secretary of State alone to determine whether restrictions remain necessary.
67. Since Parliament cannot amend or revoke regulations made under the 1984 Act once they have been made (unless it passes primary legislation doing so), it is particularly important that regulations made under the 1984 Act be limited in duration. Sunset clauses enable Parliament to reassess the regulations made at a later point in time, once it is clearer how they are being used in practice and how suitable they are to the circumstances at hand.
68. ***We recommend that there should be a presumption in favour of using sunset provisions in all regulations made under the Public Health (Control of Disease) Act 1984. They should expire after three months unless renewed by a resolution of both Houses.***

Use of delegated legislation

69. As we noted in our report into the impact of COVID-19 on Parliament, the high volume of statutory instruments laid in response to the pandemic, and the use of fast-track procedures, have limited Parliament's ability to scrutinise significant powers.⁶²
70. At the end of the 2019–21 session, 425 coronavirus-related statutory instruments had been laid before Parliament since January 2020. These have

58 A sunset clause sets a time limit on regulations. It provides that the legislation will expire at a specified point in the future. This has the same effect as repealing or revoking the legislation – it is no longer law, but anything done under it while it was law remains valid. If the Government wishes to extend the legislation beyond that date it must enact new legislation.

59 See, for example, Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)), regulation 12

60 See, for example, regulations 2(2) and (3) of the Health Protection (Coronavirus, Restrictions) (North East of England) Regulations 2020 ([SI 2020/1010](#)) and regulations 3(2) and (3) of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ([SI 2020/350](#))

61 Although the 1984 Act does oblige specified persons to review restrictions in some circumstances (see e.g. section 45F of that Act), the Act does not require regulations made under it to be reviewed in all cases, nor does it positively oblige the Secretary of State to revoke all regulations no longer deemed necessary for controlling the threat to public health. In some cases the Secretary State is merely required to review the need for the restrictions within six months, without also being obliged to revoke those restrictions as soon as they are considered no longer necessary: see, for example regulation 9 of the Health Protection Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 ([SI 2020/791](#)).

62 Constitution Committee, *COVID-19 and Parliament*, paras 46–50

involved using delegated powers derived from 120 Acts of Parliament, five orders and five EU regulations (which are now retained EU law in the UK).⁶³

71. The challenges for parliamentary scrutiny caused by the volume of statutory instruments were compounded by the use of fast-track legislative procedures. Only a small proportion of coronavirus-related draft statutory instruments (25 of 425) required parliamentary approval before being made. The vast majority (398 of 425) were subject to the made negative or made affirmative procedures, whereby statutory instruments become law before being laid before Parliament. Box 2 provides an overview of the different types of secondary legislation, including the respective procedures that apply.

Box 2: Secondary legislation: an overview

Negative instruments

Under the made negative procedure a statutory instrument is laid before Parliament after it has been made law. It may be annulled if a motion to do so is passed by either House within (normally) 40 days of it being laid before Parliament. This is the most common type of negative instrument.

Under the draft negative procedure a statutory instrument is laid before Parliament in draft and cannot be made into law if the draft is stopped by either House within 40 sitting days. Draft negative instruments are rarely laid.

Affirmative instruments

Under the draft affirmative procedure a statutory instrument is laid in draft, but cannot be made into law unless the draft is approved by both Houses following a debate. This is the most common type of affirmative instrument.

Under the made affirmative procedure a statutory instrument is laid before Parliament after it has been made law. It cannot remain law unless it is approved by the House of Commons and in most cases the House of Lords within a set period—usually 28 or 40 days. Made affirmatives are less common than draft affirmatives. They are usually used when the Government requires an urgent change to the law.

72. Dr Ruth Fox told us that it had been “very difficult” for Parliament to scrutinise effectively secondary legislation introduced in response to the pandemic. A particular challenge was the “repeated and rapid amendment” of regulations and the use of the made negative and made affirmative procedures.⁶⁴
73. Notwithstanding these scrutiny challenges, we note the important work conducted by the House of Lords Secondary Legislation Scrutiny Committee throughout the pandemic. Sir David Natzler, former Clerk of the House of Commons, said: “right from day one it has put on its website a list of all the coronavirus regulations, with explanations ... It is a really good resource for other people ... but hopefully it also reminds the Government that, even if other people are not looking at all the 100-plus instruments, that Committee, week in and week out, seems to be doing so.”⁶⁵
74. There were times during the pandemic when the urgency of the situation necessitated a prompt legislative response. The made negative and made

63 Hansard Society, [Coronavirus Statutory Instruments Dashboard](#)

64 [Q 175](#) (Dr Ruth Fox)

65 [Q 81](#) (Sir David Natzler)

affirmative procedures were important tools available to the Government in the circumstances. However, their use was not always justified.

75. In many cases, only a short time elapsed between laws being published and enacted. The “rule of six” regulations,⁶⁶ for example, were published 30 minutes before they came into force, making it a criminal offence in England for groups of more than six to gather indoors or outdoors.⁶⁷
76. The pace at which legislation was enacted led to some odd outcomes. By the time that the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020 were debated, the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 were already in force. This places Parliament in a difficult position, limiting scrutiny. As Professor Hickman has said:
- “nobody appears to have known, and the government certainly did not explain, what the consequences would have been if one of the Houses of Parliament had rejected one of the amendment regulations given that they had already taken effect and often themselves been subject of amendment. Since there is clearly no prospect of Parliament rejecting regulations where the consequences of it doing so are unforeseeable and may cause administrative and legal chaos, this contributed to the reasons why parliamentary accountability in this period was more apparent than real.”⁶⁸
77. This situation was partly a result of a lack of adequate safeguards in the 1984 Act but also due to the Government’s reluctance to vary its legislative approach as circumstances changed. Professor Hickman told us: “Once the true emergency abated ... proper legislation should have been put in place. Parliament could and should have insisted on protections such as the ability to amend regulations”.⁶⁹
78. We have previously noted the constitutional difficulties associated with delegated legislation. In our 2018 report on *The Legislative Process: The Delegation of Powers* we expressed concerns about using statutory instruments to give effect to significant policy decisions: “Without a genuine risk of defeat, and no amendment possible, Parliament is doing little more than rubber-stamping the Government’s secondary legislation. This is constitutionally unacceptable.”⁷⁰
79. In our 2016 report *Delegated Legislation and Parliament* we noted a trend whereby delegated legislation has increasingly been used by successive governments to address issues of policy and principle, rather than to manage administrative and technical changes: “Delegated powers in primary legislation have increasingly been drafted in broad and poorly-defined language that has permitted successive governments to use delegated

66 Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020 ([SI 2020/986](#))

67 ‘Rule of 6’ confusion shows scrutiny must work both ways’, *Financial Times* (17 September 2020): <https://www.ft.com/content/3faddaad-3588-484c-ba53-8b05765a86fd>

68 Study of Parliament Group, ‘Abracadabra law-making and accountability to Parliament for the coronavirus regulation’ (January 2021): <https://studyofparliamentgroup.org/wp-content/uploads/2021/01/Parliaments-and-the-Pandemic.pdf> [accessed 2 June 2021]

69 [Q 184](#) (Professor Tom Hickman QC)

70 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225)

legislation to address issues of policy and principle, rather than points of an administrative or technical nature”.⁷¹

80. **The Government’s extensive use of delegated legislation in response to the pandemic has undermined parliamentary scrutiny. Although there were circumstances where the urgency of the situation required the use of made affirmative procedures, their use was not always justified.**
81. **While we understand that urgent action may be required in response to a public health crisis, parliamentary scrutiny is an important constitutional check on the exercise of arbitrary power by the executive. The increase in the use of made affirmative instruments by the Government in response to the COVID-19 pandemic must not become the norm.**
82. *We recommend that there should be a presumption in favour of using sunset provisions in all regulations introduced during a national emergency. They should expire after three months unless renewed by a resolution of both Houses.*
83. *We recommend the Government adopt, at a minimum, the following safeguards in respect of all affirmative instruments introduced during a national emergency:*
 - (a) *The Government should commit to holding a debate and vote on regulations before coming into force wherever possible.*
 - (b) *Where this is not possible:*
 - (i) *The Government should set out in the explanatory memorandum accompanying an instrument why it considers it necessary for the regulations to come into force before a parliamentary debate; and*
 - (ii) *The Government should commit to holding a debate and vote on regulations within 21 days of regulations coming into force.*

71 Constitution Committee, *Delegated Legislation and Parliament: A response to the Strathclyde Review* (9th Report, Session 2015–16, HL Paper 116)

CHAPTER 3: COORDINATION ACROSS THE UK

84. The COVID-19 pandemic has had an impact on all parts of the UK. A wide range of measures to contain the virus, support the economy and ease the burden on frontline staff have been implemented at pace. The UK Government has been responsible for key aspects of the response, including most economic support measures, but many policy areas essential to tackling the virus, including health and education, are devolved to Scotland, Wales and Northern Ireland.
85. As a result, each of the four administrations can make different decisions in these policy areas. The UK Government determines the lockdown rules that apply in England, while the Scottish Government, the Welsh Government, and the Northern Ireland Executive are responsible for introducing and lifting restrictions in their respective parts of the UK. This is the result of devolution arrangements that have been in place for over 20 years, and which have been particularly visible during the COVID-19 pandemic.
86. Devolution empowers local decision-making while preserving the UK's ability to act collectively. These arrangements have enabled each administration to respond to the specific challenges posed by the virus in their part of the UK. The arrangements also ensure that democratically elected administrations are free to make key policy decisions within their competence, even if doing so means that the rules across the UK diverge.
87. Joint action has also been necessary to adequately respond to a UK-wide crisis that has no respect for national borders. There have been clear benefits to intergovernmental collaboration and coordination during the pandemic. Although the four administrations in the UK have demonstrated that they are capable of working together, the pandemic has created political tensions.

Emergency powers in England, Scotland, Wales and Northern Ireland

88. Emergency powers to deal with the spread of infection are in different pieces of legislation for the four parts of the UK. The UK and Welsh governments have made and amended COVID-19 restrictions using powers in the Public Health (Control of Disease) Act 1984.⁷² This Act allows both the UK and Welsh governments to make their own regulations in response to the spread of an infectious disease (see paragraphs 57–68 above).⁷³
89. The Scottish Government and Northern Ireland Executive have equivalent powers under Schedules 18 and 19 of the Coronavirus Act 2020,⁷⁴ which supplement the Public Health etc. (Scotland) Act 2008⁷⁵ and the Public Health Act (Northern Ireland) 1967 respectively.⁷⁶

72 In response to the SARS crisis, the [Health and Social Care Act 2008](#) amended the Public Health (Control of Disease) Act 1984 to introduce powers for Welsh Ministers to make regulations under the 1984 Act.

73 Public Health (Control of Disease) Act 1984, [section 45C \(1\)](#)

74 Equivalent powers in Scotland are set out in paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. Equivalent power in Northern Ireland are set out in sections 25C(1), (3)(c), (4)(d) and 25F(2) of the [Public Health Act \(Northern Ireland\) 1967](#), as inserted by s.48 of, and Schedule 18 to, the Coronavirus Act 2020.

75 [Public Health etc. \(Scotland\) Act 2008](#). The Scottish Parliament also enacted the [Coronavirus \(Scotland\) Act 2020](#) and the [Coronavirus \(Scotland\) \(No.2\) Act 2020](#), which made similar provision as the Coronavirus Act 2020 in the Scottish context.

76 [Public Health Act \(Northern Ireland\) 1967](#)

90. As a result of these arrangements, different coronavirus restrictions are currently in place across the UK.⁷⁷
- (a) **England:** The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021;
 - (b) **Scotland:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020;
 - (c) **Wales:** The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020; and
 - (d) **Northern Ireland:** The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021.
91. Decisions on reserved matters are taken by the UK Government which have effect across the UK. As macroeconomic and fiscal policies are (with certain exceptions) reserved matters, the UK Government has been responsible for the furlough scheme⁷⁸ and other economic measures adopted in response to the pandemic.⁷⁹ Despite health ordinarily being a devolved matter, the UK Government has also been leading on vaccine development and procurement.

Intergovernmental relations

92. The UK Government and the devolved administrations have needed to work together constructively to respond to the COVID-19 pandemic. A core principle underpinning the UK's devolution arrangements is the respect that the UK Government and the devolved administrations must show for each other's areas of competence.⁸⁰
93. There have been occasions during the pandemic when intergovernmental cooperation, communication and coordination has been close and effective. At other times, UK-wide coordination has been less evident. There is much to learn from this period to improve intergovernmental working in the UK.

The early stages of the pandemic (January 2020 to May 2020)

94. In the early stages of the pandemic there was close and effective coordination between the UK Government and the devolved administrations. Existing intergovernmental machinery, including the Joint Ministerial Committee, was not utilised. Instead, the first ministers of Scotland and Wales and the first minister and deputy first minister of Northern Ireland were invited to attend meetings of the Civil Contingencies Committee (COBRA). The relevant ministers from the devolved administrations also attended meetings of five new ministerial implementation groups (MIGs), which were established to look at specific aspects of the coronavirus response.

77 At the time of writing: 1 June 2021.

78 Officially known as the Coronavirus Job Retention Scheme.

79 For example, the Self-Employed Income Support Scheme, Bounce Back Loans and the Coronavirus Business Interruption Loan Scheme.

80 Cabinet Office, *Devolution: memorandum of understanding and supplementary agreement* (1 October 2012): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf [accessed 2 June 2021]

95. Some examples of effective intergovernmental relations during this period include:
- On 20 January 2020, meetings between the four administrations, facilitated by the UK Department of Health and Social Care, began. A few days later the Government's Civil Contingencies Committee (COBRA) held its first meeting with the leaders of the devolved administrations in attendance.⁸¹
 - On 3 March 2020, a UK-wide joint COVID-19 action plan was published.⁸² It set out what action the UK had already taken, and planned to take, in response to the pandemic. The action plan received input from the devolved administrations and represented a collaborative approach to limiting the spread of the virus and mitigating its impact.
 - On 23 March 2020, the Prime Minister announced UK-wide lockdown restrictions.⁸³ This was followed by respective announcements by the devolved administrations.⁸⁴ The lockdown came into force in England, Scotland and Wales on 26 March and Northern Ireland on 28 March.⁸⁵
 - On 25 March 2020, the Coronavirus Act 2020 received Royal Assent.⁸⁶ The Act was the product of close intergovernmental collaboration and was passed with the consent of all three devolved legislatures. It gives additional powers to the devolved administrations to deal with the pandemic. Officials from each of the devolved administrations worked together from mid-February to ensure the legislation was drafted to meet their needs.⁸⁷
96. Scientific advice has also been closely coordinated between the four administrations. Each administration has a chief medical officer (CMO) and a chief scientific adviser, who all meet regularly and share information. In April 2021, the CMOs of the four administrations told the House of Commons Science and Technology Committee that they ensured discussions took place

81 Oral evidence taken before the Public Administration and Constitutional Affairs Committee, inquiry on Responding to Covid-19 and the Coronavirus Act 2020, 23 June 2020 (Session 2019–21), [Q 62](#) (Michael Russell MSP, then Scottish Government Cabinet Secretary for the Constitution, Europe and External Affairs)

82 Department for Health and Social Care, *Coronavirus (COVID-19) action plan* (3 March 2020): <https://www.gov.uk/government/publications/coronavirus-action-plan> [accessed 2 June 2021]

83 Prime Minister Boris Johnson, Speech on coronavirus (COVID-19), 23 March 2020: <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020> [accessed 2 June 2021]

84 First Minister Nicola Sturgeon, Speech on Coronavirus (COVID-19) update, 24 March 2020: <https://www.gov.scot/publications/first-ministers-update-covid-19/> [accessed 2 June 2021]; The Northern Ireland Executive Office, 'COVID-19 press conference' (23 March 2020): <https://www.executiveoffice-ni.gov.uk/news/covid-19-press-conference-23-march-2020> [accessed 2 June 2021]; Welsh Government, 'First Minister of Wales' statement on new coronavirus measures' (23 March 2020): <https://gov.wales/first-minister-of-wales-statement-on-new-coronavirus-measures> [accessed 2 June 2021]

85 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ([SI 2020/350](#)); The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 ([SI 2020/353](#)); The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ([SI 2020/103](#)); The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 ([SI 2020/55](#))

86 [Coronavirus Act 2020](#)

87 Institute for Government, 'A four-nation exit strategy' (May 2020), p 4: <https://www.institutefor.gov.uk/publications/four-nation-exit-strategy-coronavirus> [accessed 6 May 2021]

at least three times a week.⁸⁸ Expert scientific advice groups are convened at a UK level through the Scientific Advisory Group for Emergencies (SAGE) structure, which advises COBRA and the devolved administrations directly.⁸⁹

97. The Scottish and Welsh governments have also established their own advisory groups to interpret SAGE outputs in their respective national contexts.⁹⁰ The chairs of both groups are also participants in SAGE, “which means there is a significant level of information interchange between the groups. As a result, the scientific advice about coronavirus and the types of intervention that might prevent its spread has been broadly consistent”.⁹¹
98. **We welcome the collaborative approach adopted by the UK Government and the devolved administrations in the early stages of the pandemic. This period demonstrates that all parts of the UK are capable of working together effectively in a crisis, saving lives and sharing information.**
99. **We welcome the close coordination which took place between the UK Government and the devolved administrations in developing and agreeing the Coronavirus Act 2020. While the Civil Contingencies Act 2004 would have allowed the UK Government to adopt a more centralised response to COVID-19, Schedules 18 and 19 to the 2020 Act instead enabled the Scottish Government and the Northern Ireland Executive to determine their own response to the pandemic. This approach respected the devolution arrangements.**

May 2020 to December 2020

100. As the UK started to move out of the first lockdown, the UK Government and the devolved administrations each started to take their own approach to lifting the restrictions. The four administrations continued to coordinate their response in some devolved areas, including in responding to scientific advice, procuring medical and protective equipment, and virus testing.⁹² However, from May 2020, each administration started to take independent decisions about easing lockdown restrictions.
101. On 10 May 2020 the Prime Minister announced a change from the “Stay at Home” to the “Stay Alert” message.⁹³ This change was apparently made

88 Oral evidence taken before the House of Commons Science and Technology Committee, inquiry on UK Science, Research and Technology Capability and Influence in Global Disease Outbreaks, 24 April 2020 (Session 2019–21), [Q 29](#) (Dr Gregor Smith, interim Chief Medical Officer for Scotland)

89 See Cabinet Office, *Enhanced SAGE Guidance* (October 2012), p 20: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/80087/sage-guidance.pdf [accessed 2 June 2021]; Scottish Government, ‘Scottish Government COVID-19 Advisory Group’: <https://www.gov.scot/groups/scottish-government-covid-19-advisory-group/> [accessed 2 June 2021]

90 See Scottish Government, ‘Scottish Government COVID-19 Advisory Group’: <https://www.gov.scot/groups/scottish-government-covid-19-advisory-group/> [accessed 2 June 2021]; Welsh Government, ‘Technology Advisory Cell: what we do’ (8 July 2020): <https://gov.wales/technical-advisory-cell/what-we-do> [accessed 2 June 2021]

91 Institute for Government, ‘Co-ordination and divergence: Devolution and coronavirus’ (October 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/coordination-divergence-devolution-coronavirus.pdf> [accessed 2 June 2021]

92 *Ibid.*

93 Prime Minister Boris Johnson, Speech on coronavirus (COVID-19), 10 May 2020: <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-10-may-2020> [accessed 2 June 2021]

without consulting or informing the devolved administrations.⁹⁴ The Prime Minister also announced changes to lockdown restrictions but did not make it clear that those changes, and the new “Stay Alert” message, applied to England only.

102. Research from the Cardiff School of Journalism, Media and Culture found that “only 11 in 20 respondents correctly identified the guidance as applying to England only, and almost a third thought it was UK-wide government guidance”.⁹⁵ The First Ministers of Scotland, Wales and Northern Ireland subsequently stated that they did not accept the change in messaging, emphasising that the “Stay at Home” slogan should continue to guide public behaviour in their respective parts of the UK.⁹⁶
103. In mid-May 2020, the UK Government set out three phases for easing lockdown restrictions in England.⁹⁷ The Northern Ireland Executive set out five phases, while the Scottish Government set out four, and the Welsh Government opted for a traffic light system.⁹⁸ Ministers have not explained why each administration adopted these different approaches to easing lockdown restrictions.
104. By early June 2020, both the COBRA meetings and the MIGs had ceased to meet. In place of these the UK Government established two new cabinet committees⁹⁹ to coordinate its response to COVID-19, neither of which included representatives from the devolved administrations.¹⁰⁰ Professor McHarg told us that there had been “effective cooperation via COBRA in the early stages of the pandemic, but once COBRA ceased to meet the whole system fell away and there was nothing to replace it.”¹⁰¹ The Cabinet Manual makes it clear that the devolved administrations may be invited to participate in cabinet committees on an exceptional basis, including during committee

94 ‘Nicola Sturgeon leads chorus of disapproval over Johnson’s “stay alert” message’, *The Guardian* (10 May 2020): <https://www.theguardian.com/world/2020/may/10/nicola-sturgeon-leads-criticism-of-uks-new-stay-alert-coronavirus-lockdown-advice> [accessed 2 June 2021]

95 Ofcom, *Media Nations 2020: Wales report* (5 August 2020), pp 9–10: https://www.ofcom.org.uk/data/assets/pdf_file/0011/200504/media-nations-2020-wales-report.pdf [accessed 2 June 2021]; Institute for Government, ‘Co-ordination and divergence: Devolution and coronavirus’ (October 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/coordination-divergence-devolution-coronavirus.pdf> [accessed 2 June 2021]

96 BBC News, ‘Coronavirus: Wales’ stay home advice “has not changed”’ (10 May 2020): <https://www.bbc.co.uk/news/uk-wales-politics-52605939>; BBC News, ‘Coronavirus in Scotland: stay at home message remains as exercise rules ease’ (10 May 2020) <https://www.bbc.co.uk/news/uk-scotland-52605959>; BBC News, ‘Coronavirus: Ministers issue statement on recovery plan’ (10 May 2020): <https://www.bbc.co.uk/news/uk-northern-ireland-52610087> [accessed 2 June 2021]

97 Cabinet Office, *Our Plan to Rebuild: The UK government’s Covid-19 recovery strategy* (11 May 2020): <https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy> [accessed 2 June 2021]

98 Northern Ireland Executive Office, *Coronavirus – Executive Approach to Decision-Making* (12 May 2020): <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/executiveour-approach-to-decision-making.pdf> [accessed 2 June 2021]; Scottish Government, *Coronavirus (Covid-19): Scotland’s route map through and out of the crisis* (21 May 2020): <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/pages/4/> [accessed 2 June 2021]; Welsh Government, *Unlocking our Society and Economy: Continuing the conversation* (May 2020): <https://gov.wales/sites/default/files/publications/2020-05/unlocking-our-society-and-economy-continuing-the-conversation.pdf> [accessed 2 June 2021]

99 The COVID-19 Operations Committee and the COVID-19 Strategy Committee.

100 Cabinet Office, *List of Cabinet Committees* (19 November 2020): <https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees> [accessed 2 June 2021]

101 [Q 262](#) (Professor Aileen McHarg)

meetings that “deal with an emergency response requiring input from both the Government and one or more of the Devolved Administrations.”¹⁰²

105. In its report on intergovernmental working in response to COVID-19, the House of Commons Scottish Affairs Committee noted that the lack of cooperation between the administrations “coincided with the main mechanisms for cooperation, COBRA and the MIGs, ceasing to operate”.¹⁰³
106. This decline in intergovernmental cooperation led to disagreement in July 2020 between the UK Government and the devolved administrations about the countries that would be exempt from quarantine restrictions. Air transport and foreign policy are reserved matters that require implementation through public health legislation in each part of the UK.¹⁰⁴
107. The Secretary of State for Transport, Rt Hon Grant Shapps MP, said in July 2020 that the UK Government had sought UK-wide agreement on the list of countries exempt from quarantine restrictions, but Scottish ministers said the list was frequently changed and that they were given only 30 minutes’ notice of the final version.¹⁰⁵ The First Minister of Wales, Rt Hon Mark Drakeford MS, said that dealing with the UK Government on this issue had been “shambolic”.¹⁰⁶ This resulted in England announcing the introduction of “travel corridors” days before the devolved administrations made equivalent announcements. Differences in international travel restrictions subsequently arose in each part of the UK, creating confusion for the public, and potential health risks.¹⁰⁷
108. The breakdown in intergovernmental cooperation and UK-wide coordination during this period contributed to a lack of clarity about what rules applied where, an issue we consider in greater detail in Chapter 4.¹⁰⁸ Divergence also exacerbated existing political tensions.
109. In November 2020 the four administrations reached agreement on a joint approach to how restrictions should operate across the UK during the Christmas period, including travel and household mixing.¹⁰⁹ However, these arrangements were overtaken by events, as the different parts of the UK entered new lockdowns in response to rising rates of infection during

102 Cabinet Office, *The Cabinet Manual: A guide to the laws, conventions and rules on the operation of government* (1st edition, October 2011), para 4.49: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf [accessed 2 June 2021]

103 Scottish Affairs Committee, *Coronavirus and Scotland: Interim report on intergovernmental working* (First Report, Session 2019–21, HC 314)

104 Institute for Government, ‘Co-ordination and divergence: Devolution and coronavirus’ (October 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/coordination-divergence-devolution-coronavirus.pdf> [accessed 2 June 2021]

105 ‘Scottish Government not given “adequate consultation” over air bridges’, *The Herald* (3 July 2020): <https://www.heraldscotland.com/news/18558699.humza-yousaf---scottish-government-not-given-adequate-consultation-air-bridges/> [accessed 2 June 2021]

106 ITV News, ‘Mark Drakeford blasts UK government for “utterly shambolic” decisions over quarantine rules’ (3 July 2020): <https://www.itv.com/news/wales/2020-07-03/mark-drakeford-blasts-uk-government-for-utterly-shambolic-decisions-over-quarantine-rules>

107 BBC News, ‘Coronavirus quarantine rules: differences across UK “confusing”, Grant Shapps says’ (4 September 2020): www.bbc.co.uk/news/uk-54022411 [accessed 2 June 2021]

108 Ofcom, *Media Nations 2020: Wales report* (5 August 2020), pp 9–10

109 Cabinet Office, *Joint statement on UK-wide Christmas arrangements from the UK Government and Devolved Administrations* (24 November 2020): <https://www.gov.uk/government/news/joint-statement-on-uk-wide-christmas-arrangements-from-the-uk-government-and-devolved-administrations> [accessed 2 June 2021]

December. This included a divergence in the level of restrictions and guidance that applied in the different parts of the UK.¹¹⁰

110. At other times, the differences in restrictions between the four parts of the UK has caused practical difficulties for their enforcement and compliance. As Jess Sargeant, Senior Researcher on Devolution, Institute for Government, has reported:

“the implications of having different restrictions in different parts of the UK for people living and working across borders do not always appear to have been fully considered. For example, in May, the UK government encouraged people in England to return to work where possible. This posed a dilemma for people who commuted to work in England from another part of the UK, who were unsure which government’s advice to follow, particularly those living in Wales where a five-mile travel limit was still in place.”¹¹¹

111. The UK Government’s decision to make face coverings on public transport mandatory in England before other parts of the UK also created problems for cross-border travel, particularly on routes that travelled between England and Wales. The devolved administrations had not been consulted on the UK’s Government’s decision, and Mark Drakeford MS said that he wished his government “had a chance to explore this with the UK Government before they made the announcements ... Trains and roads between north and south Wales weave in and out of the border all the time”.¹¹²
112. In July 2020 the House of Commons Scottish Affairs Committee expressed concern that “as time has gone on, divergence [between the four parts of the UK] has increased significantly, sometimes accidentally, leading to public confusion and questions about how decisions are made.”¹¹³ The Scottish Affairs Committee has recommended that “a timetable of regular intergovernmental meetings should be set up”, emphasising that “regular, formal, planned meetings of key decision makers” enhance communication and cooperation.¹¹⁴
113. The UK Government did not accept this recommendation. While it acknowledged that there are a range of official forums for the UK Government to engage with the devolved administrations, most of these appear to be organised on an ad-hoc basis.¹¹⁵

110 BBC News, ‘Christmas rules 2020: What are the new rules on mixing?’ (23 December 2020): <https://www.bbc.co.uk/news/explainers-55056375> [accessed 2 June 2021]

111 Institute for Government, ‘Co-ordination and divergence: Devolution and coronavirus’ (October 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/coordination-divergence-devolution-coronavirus.pdf> [accessed 2 June 2021]

112 ‘Coronavirus news – live: WHO says everyone must wear face masks in public as Matt Hancock urges people not to attend George Floyd protests’, *The Independent* (5 June 2020): <https://www.independent.co.uk/news/health/coronavirus-news-live-uk-updates-quarantine-test-trace-cases-covid-19-vaccine-a9550141.html?page=5> [accessed 2 June 2021]

113 Scottish Affairs Committee, *Coronavirus and Scotland: Interim Report on Intergovernmental Working* (First Report, Session 2019–21, HC 314)

114 House of Commons Scottish Affairs Committee, *Coronavirus and Scotland* (Second Report, Session 2019–21, HC 895)

115 With the exception of monthly meetings taking place between the Permanent Secretary at the Department for Health and Social Care and his counterparts in the devolved administrations; see Scottish Affairs Committee, *Coronavirus and Scotland: Government Response to the Committee’s First and Second Report* (Second Special Report, Session 2019–21, HC 1118)

Public perceptions of the governance of the UK

114. Michael Gove MP has described the pandemic as “a learning process for everyone”, raising broader questions about “making sure the whole devolution settlement works”. He said the UK Government intended to address this through reforms to intergovernmental mechanisms, which will put relations on a “firmer basis”.¹¹⁶ The Government provided an update on progress on 24 March 2021, stating there were some outstanding areas where agreement had not been reached after three years of discussions.¹¹⁷
115. Witnesses suggested that the pandemic, and the legal variance throughout the UK, had raised awareness of the UK’s devolution arrangements. Professor Daniel Wincott, Blackwell Professor of Law and Society at Cardiff University, told us that a “major impact” of the pandemic in Wales had been “a dramatic increase in awareness of devolution”.¹¹⁸ Akash Paun, Senior Fellow of the Institute for Government, thought the increase in support for independence “certainly seems to be in part about the perceived stronger performance of the devolved administrations in dealing with COVID”.¹¹⁹
116. Akash Paun also considered this period had emphasised existing political tensions, telling us: “unionists will point to the role the UK Government has played [as] evidence of the strength of the Union, and the need for strong UK-wide action led from Westminster ... On the other hand, the crisis has enabled the devolved administrations to demonstrate their own capacity to coordinate much of the coronavirus response within their territories”.¹²⁰
117. **A cooperative UK-wide approach is essential to tackle the spread of COVID-19. We are concerned that, since May 2020, intergovernmental communication and cooperation appears to have decreased significantly. Legal divergence between the four parts of the UK has also increased, occasionally accidentally. This has created practical difficulties for members of the public, particularly those living and working close to internal UK borders, as well as those seeking to travel abroad.**
118. **Intergovernmental relations are integral to the UK’s system of government. We regret that relations between the UK Government and the devolved administrations have been strained during the response to the shared challenges of the pandemic. We will consider this matter further in our inquiry on the future governance of the UK.**

Relations between central and local government

119. Relations also became strained between the UK Government and certain local government leaders within England during the pandemic. The most prominent instance was the 10-day stand-off in October 2020 between the Government and the Mayor of the Greater Manchester Combined Authority, Rt Hon Andy Burnham, over the imposition of local restrictions on the city

116 ‘Will Coronavirus break the UK?’, *Financial Times* (20 October 2020): <https://www.ft.com/content/05bcdeed-ce2d-4009-a3bc-cf9bb71c43d5> [accessed 2 June 2021]

117 See Written Statement, 24 March 2021, [HLWS885](https://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/written-statements/written-statement-24-march-2021/)

118 [Q 268](#) (Professor Daniel Wincott)

119 [Q 268](#) (Akash Paun)

120 Constitution Unit, ‘Five key questions about coronavirus and devolution’ (31 May 2020): <https://constitution-unit.com/2020/05/31/five-key-questions-about-coronavirus-and-devolution/> [accessed 2 June 2021]

and the size of the associated financial support package for local businesses and employees.¹²¹

120. Councillor James Jamieson, Chairman of the Local Government Association, told us that during the early stages of the pandemic there was limited cooperation between central and local government. However, by December 2020, engagement and collaboration had improved. He said that the Local Government Association had been making “a lot of representations to government, [the Ministry of Housing, Communities and Local Government] has been engaging with us, and we have come to what I would say is a more balanced position in the powers that we have [in local government]”.¹²²
121. Councillor Susan Hinchcliffe, Chair, West Yorkshire Combined Authority, agreed that there had been improvements in the power-sharing arrangements between central and local government: “there was some confusion about national versus local decision-making and how that worked at local level ... That has gone and it is not quite at that level now”.¹²³ Both agreed, however, that closer engagement between central and local government was needed: “[i]f you give us the powers and the flexibility, we will deliver, but that requires early engagement”.¹²⁴
122. **We regret that relations between the UK Government and parts of local government in England have not been stronger in the response to COVID-19. We will consider this matter further in our inquiry on the future governance of the UK.**

121 See ‘Chaos and fury as Boris Johnson forces curbs on Greater Manchester’ *The Guardian* (20 October 2020): <https://www.theguardian.com/world/2020/oct/20/burnham-says-government-playing-with-peoples-lives-as-tier-3-covid-rules-imposed> [accessed 2 June 2021]

122 [Q 230](#) (Councillor James Jamieson)

123 [Q 230](#) (Councillor Susan Hinchcliffe)

124 [Q 239](#) (Councillor James Jamieson and Councillor Susan Hinchcliffe)

CHAPTER 4: LEGAL CLARITY AND ACCESSIBILITY

123. Legislation is not the only means by which the Government has sought to influence public behaviour during the COVID-19 pandemic. The Government has also prepared guidance, or made statements to the media, summarising the new requirements.
124. Throughout the pandemic there have been instances of the Government misstating the law in these forums, creating confusion for members of the public seeking to comply with the new requirements, and for public authorities tasked with educating the public and enforcing the new rules.
125. Legal certainty is an essential component of the rule of law. In order for people to understand what the law requires them to do, or refrain from doing, the law should be free from ambiguity and uncertainty. Ordinary people must be able to predict with reasonable confidence when and how legal powers can be used against them, on the basis of clear and accessible information.
126. The repeated amendment and revocation of secondary legislation has made it difficult for members of the public to understand and identify the law. This made it all the more important that guidance and media statements accurately reflect the true legal position, yet there was no guarantee they would do so. The consequence has been a lack of clarity on which rules are legally enforceable, posing challenges for the police and local government, leading to wrongful criminal charges, and potentially undermining public compliance.

Conflict between guidance and law

127. Guidance and media statements have the potential to enhance legal clarity by explaining the law in non-technical language, thus improving its accessibility. However, witnesses identified several instances where Government guidance and ministerial statements failed to set out the law clearly, misstated the law or laid claim to legal requirements that did not exist.¹²⁵
128. On a number of occasions throughout the pandemic:
- (a) Government publications and statements did not distinguish between public health advice and legal requirements;¹²⁶
 - (b) rules were identified by the Government as having legal effect without any law having been made;¹²⁷

125 [Q 179](#) (David Allen Green), [Q 180](#) (Raphael Hogarth), [Q 183](#) (Kirsty Brimelow QC), [Q 218](#) (Lord Sumption), [Q 244](#) (Paddy Tipping) and [Q 244](#) (John Apter). See also written evidence from Big Brother Watch ([CIC0227](#)), written evidence Mr Charles Holland ([CIC0178](#)), written evidence from T Eccles ([CIC0311](#)), written evidence from Michael Gardner ([CIC0476](#)), and written evidence from Professor Emeritus Clive Walker, Rebecca Moosavian and Dr Andrew Blick ([CIC0367](#))

126 See, for example, Prime Minister Boris Johnson, Speech on coronavirus (COVID-19), 23 March 2020: <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>. Public health advice, including to shop “as little as possible” and to undertake only “one form of exercise per day”, were set out by the Prime Minister in the same statement as legal requirements, such as leaving home only for specified purposes.

127 See, for example, Matt Hancock (@MattHancock), tweet on 30 July 2020: <https://twitter.com/MattHancock/status/1288931858856710150> [accessed 16 April 2021]. Requirements not yet made in legislation were described by the Secretary of State for Health and Social Care as having immediate legal effect several days before coming into force.

- (c) ministers assumed a right to issue guidance or legal directions without any delegation of power from Parliament;¹²⁸
- (d) public health advice was incorrectly enforced by the police as though it were law;¹²⁹ and
- (e) public authorities tasked with enforcing the COVID-19 restrictions misstated, or incorrectly suggested, that guidance had the force of law.¹³⁰

129. We draw attention to five examples below.

Example 1: announcing the first lockdown (March 2020)

130. On 23 March 2020 the Prime Minister announced the first England-wide lockdown in a televised address, stating that “the British people ... must stay at home” and that the Government would “immediately ... close all shops selling non-essential goods [and] stop all gatherings of more than two people in public”.¹³¹ The following day, the Secretary of State for Health and Social Care, Matt Hancock MP, stated “[t]hese measures are not advice; they are rules. They will be enforced, including by the police”.¹³² No such requirements became law until 26 March 2020.¹³³
131. The announcement caused confusion about the meaning of the new requirements, with one police force threatening to search individual shopping baskets in supermarkets to check for non-essential items.¹³⁴ This was not something the police ever had the legal authority to do.
132. Following the Prime Minister’s announcement, the UK Government’s website was changed to include the following headline rules:

“Stay at home

- Only go outside for food, health reasons or work (but only if you cannot work from home)
- If you go out, stay 2 metres (6ft) away from other people at all times

128 Health and Social Care Secretary Matt Hancock, Speech on coronavirus (COVID-19): 3 April 2020 (30 April 2020): <https://www.gov.uk/government/speeches/health-and-social-care-secretarys-statement-on-coronavirus-covid-19-3-april-2020> [accessed 16 April 2021]. Assertion by the Secretary of State for Health and Social Care that he was issuing “an instruction” related to social distancing that did not have the force of law.

129 *Q 244* (Paddy Tipping, John Apter) some police officers incorrectly understood social distancing requirements to be legally enforceable). See further: Big Brother Watch, *Emergency Powers and Civil Liberties* (April 2020), p.18: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Reportapril-2020.pdf> [accessed 2 June 2021]

130 See, for example, National Police Chiefs’ Council, *Statistical update on number of lockdown fines given by police* (26 June 2020): <https://news.npcc.police.uk/releases/statistical-update-on-number-of-lockdown-fines-given-by-police-2> [accessed 2 June 2021]. National Police Chiefs’ Council incorrectly suggested that social distancing measures were legally enforceable. See also written evidence from Big Brother Watch (*CIC0227*)

131 Prime Minister Boris Johnson, Speech on coronavirus (COVID-19), 23 March 2020: <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020> [accessed 2 June 2021]

132 HC Deb, 24 March 2020, *col 241*

133 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (*SI 2020/350*), regulations 6 and 9(1)(b)

134 ‘Police threaten to search shopping trolleys to check you’re only buying essentials’, *Metro* (9 April 2020): <https://metro.co.uk/2020/04/09/police-threaten-search-shopping-trolleys-check-buying-essentials-12532339/> [accessed 2 June 2021]

- Wash your hands as soon as you get home”¹³⁵
133. The first instruction was a simplified explanation of a legal obligation, the breach of which was a criminal offence.¹³⁶ The second and third instructions were public health advice and not legal obligations.¹³⁷ Listing these instructions together, without distinguishing between them, created legal ambiguity and misled members of the public as to what the law required. As Professor Hickman has explained:
- “by setting the instructions side by side without distinction, the fundamentally different nature of the instructions was obscured. People well understood that the lockdown was enforced by law ... From the perspective of the ordinary citizen, there was no reason to think that the 2-metre guidance was not a rule of law.”¹³⁸
134. Empirical evidence indicates that many people were unaware of the legal status of the Government’s public health advice to keep a 2-metre distance. Researchers at the University of York and the Nuffield Foundation¹³⁹ found that 94% of those surveyed thought that intentionally coming within 2 metres of others was prohibited by law.¹⁴⁰
135. The police may also have been confused as to the status of this advice, prompting Martin Hewitt, Chair of the National Police Chiefs’ Council, to clarify in May 2020 that the 2-metre rule was not a legal requirement capable of enforcement by the police.¹⁴¹

Example 2: exercising once a day (March and May 2020)

136. The first lockdown restrictions made it an offence for a person in England to leave their home without a reasonable excuse, which included the “need ... to take exercise”.¹⁴² No limit on the nature or duration of that exercise was

135 The original guidance is no longer available, but it is referred to in various sources including: SquareSpace, a screengrab of the original guidance (26 March 2020): <https://static1.squarespace.com/static/5b246331e2ccd13fa76cf4bf/t/5e81abdbb4d2702165aef573/1585556447229/covid-19-guidance-for-employees.pdf> [accessed 22 April 2021]; Birmingham City Council, ‘Your wellbeing during COVID’: https://www.birmingham.gov.uk/info/50238/wellbeing_during_the_coronavirus_covid-19/2064/looking_after_yourself_and_others [accessed 2 June 2021]; Mayor of Greater Manchester (@MayorofGM), tweet on 4 April 2020: <https://twitter.com/mayorofgm/status/1246473352543211525> [accessed 22 April 2021], Professor Tom Hickman QC, ‘The use and misuse of guidance during the UK’s coronavirus lockdown’ (15 June 2020): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686857 [accessed 16 April 2021]

136 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350)

137 Professor Tom Hickman QC, ‘The use and misuse of guidance during the UK’s coronavirus lockdown’ (15 June 2020): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686857 [accessed 16 April 2021]

138 *Ibid.*

139 An independent research foundation specialising in education, justice and welfare.

140 Simon Halliday, Jed Meers and Joe Tomlinson, ‘Public Attitudes on Compliance with COVID-19 Lockdown Restrictions’, Interim Report 1 - Law and Compliance during COVID-19 (4 May 2020): <https://drive.google.com/file/d/1bIWWNbnQvaAVA4ncJ7PrZehTyrqghmbCt/view> [accessed 16 April 2021]

141 ‘Police have no powers to enforce two-metre social distancing, says new official guidance’, *The Telegraph* (13 May 2020): <https://www.telegraph.co.uk/news/2020/05/13/police-have-no-powers-enforce-two-metre-social-distancing-says/> [accessed 2 June 2021]

142 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350), regulation 6(2)(b)

prescribed in the legislation, yet Government guidance stated that people could engage in only “one form of exercise a day”.¹⁴³

137. These restrictions were amended on 12 May 2020 to ease certain lockdown rules in England.¹⁴⁴ The Prime Minister stated that individuals were now permitted to “exercise outdoors as often as you wish”,¹⁴⁵ suggesting there had been a change in the law, when there had never been a legal prohibition in England on exercising more than once per day. This led at least one police force erroneously to characterise the ability to exercise outdoors more than once a day as a change in the law.¹⁴⁶

Example 3: northern England lockdown (July and August 2020)

138. In late July 2020, after an initial period of relaxation, new restrictions were announced in parts of northern England.¹⁴⁷ On 30 July 2020 the Health Secretary tweeted “from midnight tonight, people from different households will not be allowed to meet each other indoors in [named areas in northern England]”.¹⁴⁸
139. The following day, the Derbyshire Constabulary announced that new restrictions had been introduced and stated:
- “You must not: Meet people you do not live with inside a private home or garden, except where you have formed a support bubble (or for other limited exemptions to be specified in law); Visit someone else’s home or garden even if they live outside of the affected areas; socialise with people you do not live with in other indoor public venues – such as pubs, restaurants, cafes, shops, places of worship, community centres, leisure and entertainment venues, or visitor attractions.”¹⁴⁹
140. Despite this use of obligatory language, these requirements did not become law until five days later, when the relevant regulations came into force on 5 August 2020.¹⁵⁰

143 Cabinet Office, *Guidance: Staying at home and away from others (social distancing)* (1 May 2020, withdrawn 11 May 2020): <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others> [accessed 2 June 2021]

144 Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/500)

145 Prime Minister’s Office, *Prime Minister’s article in the Mail on Sunday* (17 May 2020): <https://www.gov.uk/government/speeches/prime-ministers-article-in-the-mail-on-sunday-17-may-2020> [accessed 2 June 2021]

146 Hertfordshire Constabulary, *Changes in Government guidance* (14 May 2020): <https://www.herts.police.uk/news-and-appeals/changes-in-government-guidance-covid19> [accessed 2 June 2021]

147 BBC News, ‘Coronavirus: Visiting people at home banned in parts of northern England’ (31 July 2020): <https://www.bbc.co.uk/news/uk-53602362> [accessed 2 June 2021]

148 Matt Hancock (@MattHancock), tweet on 30 July 2020: <https://twitter.com/MattHancock/status/1288931858856710150> [accessed 16 April 2021]. See also Daniel Greenberg, ‘COVID in Context – Emergency Measures as a Chapter in The Development of the Rule of Law, Are emergency measures in response to COVID-19 a threat to democracy? Fact and Fiction’ IALS/WFD Digital Conference, 10 Sep 2020: <https://www.wfd.org/2020/06/26/10-september-2020-ials-wfd-digital-conference-are-emergency-measures-in-response-to-covid-19-a-threat-to-democracy-fact-and-fiction/> [accessed 23 April 2021]

149 Derbyshire Constabulary, *New restrictions introduced for parts of northern England bordering Derbyshire* (31 July 2020): <https://www.derbyshire.police.uk/news/derbyshire/news/news/fornewwide/2020/july/new-restrictions-introduced-for-parts-of-northern-england-bordering-derbyshire/> [accessed 2 June 2021]

150 Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020 (SI 2020/828)

Example 4: school closures (March 2020)

141. On 18 March 2020 the Government announced the closure of schools in England for all except “children of key workers and vulnerable children.”¹⁵¹ Schools remained closed from 23 March until 1 June 2020, when some primary and secondary school children returned to school.
142. The Coronavirus Act 2020 empowers the Government to direct the closure of schools in certain circumstances. Instead of exercising this power, in March 2020 the Government announced school closures through a series of public communications and press announcements, encouraging schools to prevent pupils from attending (with limited exceptions) and encouraging parents not to send their children to school.
143. The only accompanying law was a series of Notices issued under section 38(1) of, and paragraph 5 of Schedule 17 to, the 2020 Act, disapplying section 444(1) and (1A) of the Education Act 1996,¹⁵² which create offences relating to the failure of parents to secure regular attendance at school of a registered pupil.¹⁵³ The effect of these Notices was to decriminalise non-attendance at school, rather than to compel closures or non-attendance.
144. Professor Alison Young, the Sir David Williams Professor of Public Law at the University of Cambridge, told us that such informal, non-legalistic decision-making undermined legal certainty and impeded legal scrutiny, as Government advice was not amenable to judicial review (unlike secondary legislation). In this respect, she considered that legal ambiguity had the perverse effect of shielding Government decisions from legal challenge and judicial oversight.¹⁵⁴

Example 5: localised guidance in response to new COVID-19 variant (May 2021)

145. In May 2021 the gov.uk webpage summarising the coronavirus restrictions was updated to include new guidance in response to the spread of the new COVID-19 variant (sometimes referred to as the Indian variant) in parts of England. The webpage stated that “wherever possible, you should try to ... avoid travelling in and out of affected areas unless it is essential”.¹⁵⁵
146. The advice was first changed on 14 May 2021, naming Bolton Metropolitan Borough Council and Blackburn with Darwen Borough Council as the areas affected. On 21 May 2021 this was updated to include Bedford Borough Council, Burnley Borough Council, Kirklees Council, Leicester City Council, London Borough of Hounslow, and North Tyneside Council.¹⁵⁶

151 Department for Education, *Schools, colleges and early years settings to close* (18 March 2020: <https://www.gov.uk/government/news/schools-colleges-and-early-years-settings-to-close> [accessed 2 June 2021])

152 *Education Act 1996*

153 Notices were issued on 30 April, 1 June and 30 June and 30 July 2020.

154 *Q 202* (Professor Alison Young)

155 Cabinet Office, *(COVID-19) Coronavirus restrictions: what you can and cannot do* (21 May 2021): <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do> [accessed 2 June 2021]

156 BBC News, ‘Covid: Eight Indian variant areas should avoid indoor gatherings’ (25 May 2021): <https://www.bbc.co.uk/news/uk-england-57232728>. A screengrab of the 21 May 2021 version of the guidance is available at: Helen Pidd (@helenpidd), tweet on 24 May 2021: <https://twitter.com/helenpidd/status/1396922834925068288?s=20>

147. This change in the guidance reportedly led to confusion about whether the areas worst hit by the new variant were subject to new legal restrictions.¹⁵⁷
148. In response, Bedford Borough Council sought to clarify the situation: “Following the national coverage of recently-revised guidance we have met with national officials and confirmed there are no restrictions on travel in or out of Bedford Borough: There are no local lockdowns.”¹⁵⁸ David Greenhalgh, Conservative leader of Bolton Council, also sought to distinguish the new guidance from law, saying that he had been assured there were “no added restrictions coming to Bolton” and “no local lockdown”.¹⁵⁹
149. Layla Moran MP, Chair of the All-Party Parliamentary Group on Coronavirus, said that:
- “Simply updating the government website without an official announcement is a recipe for confusion and uncertainty. Local people and public health leaders in these areas need urgent clarity from the government. It seems crucial lessons have still not been learnt about the importance of clear messaging during a pandemic.”¹⁶⁰
150. Andy Burnham, Mayor of Greater Manchester, said the Government should issue further clarification on the legal status of the new guidance.¹⁶¹
151. On 25 May 2021 the Department of Health and Social Care said that the guidance would be updated to “make it clearer we are not imposing local restrictions”.¹⁶² Instead, under the revised guidance, people were advised to “minimise travel”.¹⁶³
152. The Secondary Legislation Scrutiny Committee has expressed concern that the distinction between legislation and guidance has been unclear throughout the pandemic, citing further examples where Government guidance incorrectly identified rules as having legal effect.¹⁶⁴
153. **Legal changes introduced in response to the pandemic were often set out in guidance, or announced in media conferences, before Parliament had an opportunity to scrutinise them. On occasion, the law was misrepresented in these forums.**
154. **When people are unable to understand what the rules are, they cannot hope to follow them. Members of the public are entitled to know, and**

157 ‘Lockdown by stealth: Hounslow and other Indian variant hotspots say there are no local lockdowns or extra restrictions after Government guidance confusion’, *Evening Standard* (25 May 2021): <https://www.standard.co.uk/news/uk/indian-covid-variant-travel-guidance-government-confusion-b937009.html>

158 BBC News, ‘Covid-19: Travel guidance for Bedford creates confusion’ (26 May 2021): <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-57239258>

159 BBC News, ‘Covid: Eight Indian variant areas should avoid indoor gatherings’ (25 May 2021): <https://www.bbc.co.uk/news/uk-england-57232728> [accessed 2 June 2021]

160 *Ibid.*

161 BBC News, ‘Burnham: ‘Major communications error’ over Covid guidance’ (25 May 2021): <https://www.bbc.co.uk/news/av/uk-57239059> 8 [accessed 2 June 2021]

162 ‘Ministers back down over limiting travel to English Covid hotspots’, *The Guardian* (25 May 2021): <https://www.theguardian.com/world/2021/may/25/ministers-back-down-over-limiting-travel-to-english-covid-hotspots> [accessed 2 June 2021]

163 Cabinet Office, *(COVID-19) Coronavirus restrictions: what you can and cannot do*

164 Secondary Legislation Scrutiny Committee, *Interim report on the Work of the Committee in Session 2019–21* (39th Report, Session 2019–21, HL Paper 200), para 21; Secondary Legislation Scrutiny Committee, *35th Report of Session 2019–21* (Session 2019–21, HL Paper 177), para 22

to be correctly advised on, what is legally required of them and what, in the Government’s view, it is socially responsible for them to do.

155. **The Government’s use of guidance and statements to the media have in some instances undermined legal certainty by laying claim to legal requirements that do not exist. The Government does not have, and must not assume, authority to mandate public behaviour other than as required by law.**
156. **The consequence has been a lack of clarity on which rules are legally enforceable, posing challenges for the police and local government, leading to wrongful criminal charges, and potentially undermining public compliance and confidence.**

Proper use of guidance

157. Notwithstanding the issues considered above, accurate guidance has an important role to play in informing members of the public and those tasked with enforcing the rules.
158. Dr Joe Tomlinson, Senior Lecturer in Public Law at the University of York, said that Government guidance, if used properly, could enhance legal clarity because it:
- (a) made new legal requirements easier to understand,
 - (b) was capable of being updated regularly with ease, and
 - (c) had “helped people to figure out [the rules in] their local area”.¹⁶⁵
159. Professor Hickman agreed: “the Government have communicated quite effectively through guidance. Individuals cannot be expected to read the regulations and laws in their native form. They need to have them translated into an accessible form”. The real problem was “the way the laws have been presented; they have been entirely commingled with advice”.¹⁶⁶
160. Baroness Hale echoed this sentiment: “the Government must always make a clear distinction between what is law and what is merely advice about how people should be behaving. That is almost the clearest moral to come from this sorry state of affairs”.¹⁶⁷
161. The essential distinguishing feature between law and guidance is their legal status. As Lord Sumption explained, guidance “has no legal force, save in so far as it coincides with what is in the regulations”; its purpose is “to convey balanced information”.¹⁶⁸ Baroness Hale characterised the distinction in similar terms:

“It ought to be clear to everybody that [Government guidance] is just advice that the Government are giving to all of us. In fact, that advice covers some of the most important things. Of the mantra ‘hands, face, space’, in England, hands and space are not the law but are just very

165 [Q 204](#) (Dr Joe Tomlinson)

166 [Q 186](#) (Professor Tom Hickman QC)

167 [Q 217](#) (Baroness Hale of Richmond)

168 [Q 218](#) (Lord Sumption)

sensible guidance. Face coverings are the law in certain circumstances and people should understand the status of that”.¹⁶⁹

162. To elucidate that distinction, multiple witnesses proposed straightforward textual amendments to the Government guidance. Dr Joelle Grogan, a Senior Lecturer in law at Middlesex University London, told us that “even simple language changes could significantly help such as, “You must do this as a matter of law”, or “You should do this as a matter of guidance”.”¹⁷⁰ Dr Stephen Thomson, Associate Professor at the School of Law, City University of Hong Kong, said that the guidance has made use of the terms “advice”, “guidance”, “guidelines”, “rules” and “restrictions” interchangeably, in reference to both legal requirements and public health advice, further undermining legal clarity.¹⁷¹
163. As at 1 June 2021, the gov.uk webpage for summarising the coronavirus restrictions uses the term “restrictions” to refer to both legally enforceable obligations and public health advice, without making this distinction explicit. For example, the very first paragraph on the webpage refers to the following obligations as “restrictions”: first, that “up to 6 people or 2 households can meet outside” and, second, to “work from home if you can and minimise travel”. The first is required as a matter of law.¹⁷² The latter is a recommendation made as public health advice. Later on the same webpage, “rules” appear as a subset of COVID-19 “guidance and support”.¹⁷³
164. Professor Hickman has argued that Government guidance on coronavirus-related regulations should, at a minimum:
- (1) “clearly distinguish information about the law from public health advice”;
 - (2) clearly and accurately identify “all underlying or associated legal instruments”, including “an accurate link to a copy of the up-to-date law”;
 - (3) include “information about the law [which is] accurate and complete”;
 - (4) where the law is too complex to be set out in full, make clear that the account is partial;
 - (5) “make clear when opinions are offered about the interpretation of the law and the status of such opinions”; and
 - (6) “should not suggest that instructions are based on law when they are not”.¹⁷⁴

169 [Q 218](#) (Baroness Hale of Richmond)

170 [Q 202](#) (Dr Joelle Grogan)

171 Written evidence from Dr Stephen Thomson ([CIC0443](#))

172 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 ([SI 2021/364](#)), Schedule 1, paragraphs 2 and 6

173 HM Government, *Coronavirus (COVID-19)* (12 May 2021): <https://www.gov.uk/coronavirus> [accessed 16 April 2021]. We note that other guidance available on gov.uk does make the distinction between public health advice and the law clear. See for example: Cabinet Office, *Coronavirus (COVID-19): Wedding and civil partnership ceremonies, receptions and celebrations* (13 May 2021): <https://www.gov.uk/guidance/coronavirus-covid-19-wedding-and-civil-partnership-ceremonies-receptions-and-celebrations> [accessed 2 June 2021]

174 Professor Tom Hickman QC, ‘The use and misuse of guidance during the UK’s coronavirus lockdown’ (15 June 2020): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686857 [accessed 16 April 2021]

165. **Guidance and media statements are not legislation and should not be presented or treated as such. When used appropriately, however, communication through such methods can enhance access to the law by simplifying legal complexity in a format that is easy for people to digest.**
166. *We strongly recommend that all Government guidance during a public health emergency conform to the following essential conditions to enable people accurately to understand the law:*
- (a) *Guidance should clearly distinguish information about the law from public health advice. It should not suggest that instructions are based on law when they are not.*
 - (b) *Where guidance provides information about the law, this should be accurate and complete. Where the law is too complex to be set out in full, guidance should make clear that the account is partial.*
 - (c) *All relevant legal instruments should be identified wherever legal requirements are referred to in guidance, accompanied by up-to-date hyperlinks to the underlying regulations on [legislation.gov.uk](https://www.legislation.gov.uk).*
 - (d) *Guidance should make clear when opinions are being offered about the interpretation of the law, including a clear statement of the source and status of such opinions.*
 - (e) *A consistent approach to use of the terms “advice”, “guidance”, “recommendation”, “rules” and “restrictions” should be adopted in all Government publications and public statements, in each case making clear whether the term is referring to obligations required by law, or to public health advice.*
167. *We recommend that the Government ensures that every statement of Government guidance (including every amendment and replacement text) is separately published (and later archived) in a publicly accessible format. This will make it possible to identify the guidance that applied at any given time and enable each statement of guidance to be compared to the legislation in force at the relevant time.*

Publication of legal changes at short notice

168. Significant legal changes that affected peoples’ lives, including law that criminalised everyday activity, have occasionally been announced shortly before coming into force. It is clear that there have been occasions during the pandemic when urgent legislation was necessary. New strains of the virus and spikes in the infection rate have made urgent legislative changes a necessary means of restricting the spread of COVID-19.
169. However, there were a number of occasions when apparently non-urgent measures were introduced at short notice. For example, on 3 July 2020, new regulations easing most of the original lockdown restrictions in England came into force. Although these regulations also introduced new restrictions, such as prohibiting certain large gatherings of more than 30 people, they

were predominantly a relaxation of existing requirements.¹⁷⁵ They were nonetheless published at short notice, the day before coming into force. Given that the Government was likely to have been considering the necessity of easing restrictions for some time, such regulations could—and should—have been made available to Parliament and the public with more than a day’s notice.

170. In other cases, significant restrictions on civil liberties were introduced at extremely short notice. Examples include:

- On 14 September 2020, a limit on gatherings of six persons inside and outside domestic dwellings in England came into force.¹⁷⁶ The regulations were published 29 minutes before they came into effect.¹⁷⁷
- On 26 September 2020, local lockdowns were introduced in certain parts of northern England. The regulations were laid before Parliament after coming into force.¹⁷⁸
- On 20 December 2020, London and parts of the south and east of England were placed under ‘Tier 4’ restrictions. The regulations were made, and published, one hour before coming into force. They were laid before Parliament the following day.¹⁷⁹
- On 6 January 2021, a national lockdown in England came into effect. The regulations were laid before Parliament the evening before coming into force.¹⁸⁰

171. Dr Tomlinson said that last-minute changes to the law had undermined public compliance with the new measures. He thought that there had been “a great deal of confusion particularly in relation to local lockdowns or tiered lockdowns”, given the rapid changes to the rules, and said that “more notice [was] important to allow messages to filter through to the public”.¹⁸¹ The publication of legal changes at short notice would also have had an impact on some businesses’ ability to adjust how to deploy their workers and maintain continuity.

172. Baroness Hale acknowledged the need for urgent Government action but considered the last-minute changes to lockdown rules problematic. She told us:

“It is quite obvious that [lockdown easing] could easily have been planned in advance. The Government had all those months of the first lockdown in which to decide what they were going to do afterwards. If they had had a fully worked-out framework, much closer to the one that

175 Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 ([SI 2020/684](#))

176 Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No 4) Regulations ([SI 2020/986](#))

177 Study of Parliament Group, ‘Abracadabra law-making and accountability to Parliament for the coronavirus regulation’ (January 2021): <https://studyofparliamentgroup.org/wp-content/uploads/2021/01/Parliaments-and-the-Pandemic.pdf> [accessed 2 June 2021]

178 Health Protection (Coronavirus, Restrictions) (Protected Areas and Restriction on Businesses) (Amendment) Regulations 2020 ([SI 2020/1041](#))

179 Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 ([SI 2020/1611](#))

180 Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 ([SI 2021/8](#))

181 [Q 201](#) (Dr Joe Tomlinson)

we have now but not necessarily the same in substance, it would have been completely unnecessary to introduce things at such short notice.”¹⁸²

173. Lord Sumption said:

“It is never acceptable for regulations of this complexity, in any circumstance, to be introduced at 20 minutes’ notice ... It is a basic characteristic of law that it should be available to the public, and that they should be capable of informing themselves, if necessary, with the assistance of legal advice, as to what obligations are imposed upon them. There is no emergency that justifies the publication of regulations, which cannot be regarded as law in that sense, at that short notice.”¹⁸³

174. The process of laying statutory instruments before Parliament may seem a formality, but it leads in practice to the publication of such legislation and is therefore an official method of giving publicity to it.¹⁸⁴ There have been a number of instances during the pandemic when secondary legislation has not been laid before Parliament until after it has come into force.¹⁸⁵

175. **A lack of advance notice of legislation has undermined parliamentary scrutiny, transparency and accessibility of the law.**

176. **We acknowledge that there have been a number of occasions throughout the COVID-19 pandemic where legislative measures have been urgently required to limit the spread of infection. That does not, however, justify the publication of significant measures hours—and in some case minutes—before taking effect.**

177. **There have been a number of occasions where apparently non-urgent measures have been published at the very last minute. On other occasions measures that have introduced significant restrictions on civil liberties, including criminalising everyday activity, have been announced minutes before coming into force. We note, in particular:**

- **The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 eased lockdown measures. To the extent that new public health measures were introduced, they were less restrictive than pre-existing restrictions. The regulations were nonetheless published less than 24 hours before taking effect.**
- **The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020, which introduced Tier 4 restrictions in London and the south east of England shortly before Christmas 2020, were almost identical to the regulations giving effect to the March and November 2020 lockdowns.**

182 [Q 217](#) (Baroness Hale of Richmond)

183 [Q 217](#) (Lord Sumption)

184 It is the process of laying before Parliament which ensures the appearance of regulations on legislation.gov.uk, the only official open-access repository of current legislation; see *Statutory Instrument Practice* (5th edition, 2017) p 3, p 135 and p 137. On occasion, publication on legislation.gov.uk occurs shortly before legislation is laid in Parliament.

185 Hansard Society, *Coronavirus Statutory Instruments Dashboard* (1 June 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#list-of-coronavirus-sis> [accessed 1 June 2021]

178. **In other cases, the urgency appears to have resulted from a lack of planning and preparedness by the Government. For example, the Government first advised the public to wear face masks on 11 May 2020. Face coverings then became mandatory in different public places under various sets of regulations made on 15 June, 24 July, 8 and 22 August. In each case, the regulations came into force shortly after publication. Poor Government planning does not justify the publication of regulations at the very last minute.**

Rapid amendment and repeal

179. The repeated repeal and amendment of COVID-19 regulations has further undermined legal clarity. Many statutory instruments introduced in response to the pandemic have been amended, and re-amended by further such instruments, sometimes very rapidly. For example:
- On 2–3 September 2020, the ‘protected area’ covered by the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 was amended twice in 12 hours.¹⁸⁶
 - The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 were amended by three different statutory instruments made on 22–23 September 2020.¹⁸⁷
 - The third national lockdown in England was implemented through regulations¹⁸⁸ which amended the ‘All Tiers’ regulations (technically by placing all of England in Tier 4).¹⁸⁹
 - In addition to the national lockdown regulations noted above, the ‘All Tiers’ regulations were amended by eight further statutory instruments between December 2020 and March 2021, including to start a new easing process in early March.¹⁹⁰
180. Legislation is often unavoidably difficult for the public to understand. This rapid amendment and re-amendment will have compounded this difficulty. By way of illustration, key parts of the regulations implementing the third England-wide lockdown in January 2021 read as follows in Box 3:

186 *Ibid.*

187 *Ibid.*

188 Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 ([SI 2021/8](#))

189 Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ([SI 2020/1374](#))

190 (1) Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 ([SI 2020/1533](#)); (2) Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020 ([SI 2020/1572](#)); (3) Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 ([SI 2020/1611](#)); (4) Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020 ([SI 2020/1646](#)); (5) Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 ([2020/1654](#)); (6) Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2021 ([SI 2021/53](#)); (7) Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 ([SI 2021/97](#)); (8) Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021 ([SI 2021/247](#))

Box 3: The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

3.—(1) The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 are amended as follows.

(2) In regulation 15(1), for “2nd February 2021” substitute “31st March 2021”.

(3) Schedule 3A is amended in accordance with paragraphs (4) to (12).

(4) In paragraph 2—

(a) in sub-paragraph (2), omit paragraphs (d) and (da);

(b) in sub-paragraph (3)—

(i) in paragraph (a), omit “and (d)(ii)”;

(ii) in paragraph (b), omit “and (d)(iii)”;

(c) in sub-paragraph (4)(b), omit sub-paragraph (i);

(d) in sub-paragraph (13)(e)—

(i) for sub-paragraph (i), substitute—

“(i) later years provision, within the meaning of section 96(6) of the Childcare Act 2006(a), or”;

(e) for sub-paragraph (14), substitute—

Source: Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 (SI 2021/8)

181. Amending legislation in this way is common practice, but is ill-suited to the unique circumstances of the COVID-19 pandemic. The restrictions introduced during the pandemic have intruded significantly into peoples’ lives, frequently altering the legality of everyday activity. Where the impact of amending regulations has such a significant impact on ordinary life, legal clarity and certainty are essential legislative goals.

182. One consequence of repeat amendment and revocation has been confusion about what COVID-19 restrictions apply at any given time. One study (conducted when the Tier regulations were in force) found:¹⁹¹

- 1 in 5 adults did not know what Tier their area was in;
- only 12% knew the correct amount of time a person is required to self-isolate if they receive a positive coronavirus test result;
- 53% said they did not know whether they were allowed to visit other parts of the UK; and
- 20% said they did not know whether they were currently allowed to visit their local pub.

183. Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services has reported that: “communication about restrictions and regulations was often at short notice and subject to change. Policing faced an extremely difficult

¹⁹¹ ‘Most British adults clueless when it comes to coronavirus restrictions, poll finds’, *Independent*, (19 October 2020): <https://www.independent.co.uk/news/uk/home-news/coronavirusrestrictions-lockdown-tiers-borisjohnson-covid-b1153523.html> [accessed 2 June 2021]

situation of fast-paced announcements. At times, the introduction of, and variation to, new legislation and guidance affected the police service’s ability to produce guidance and to brief staff. This inevitably led to some errors or inconsistencies in approach.”¹⁹²

184. The Secondary Legislation Scrutiny Committee has recommended that “an evaluation of the emergency legislation should include consideration of how information about which instruments were superseded or had lapsed could have been provided more effectively”.¹⁹³
185. **The National Archives have ensured that all coronavirus amendments are shown in the principal regulations on legislation.gov within 24 hours of laying. We welcome these efforts to enhance access to the law.**
186. **It is incumbent upon the Government to make the law clear. When enacting new COVID-19 restrictions, the Government should be guided by the principles of certainty, clarity and transparency, and seek to avoid rapid and last-minute changes to the law as far as possible.**
187. *We recommend that the Government adopts alternative drafting practices to make the mass of COVID-19 regulations more accessible for members of the public and lawyers alike. For every set of amending regulations made, the Government should set out in the explanatory memorandum: (i) the regulations that are being amended; (ii) the substance of the amendments being made; and (iii) the reason for those amendments.*
188. *We recommend that, whenever amending regulations are made, the Government publishes an accompanying Keeling Schedule¹⁹⁴ setting out the new legislation in full and indicating all the amendments that have been made. This would not have the status of legislation but should be published on legislation.gov.uk alongside the original instrument to facilitate public access and understanding of the changes that have been made to the underlying legislation. This approach would enable members of the public and lawyers to identify present and past law with greater ease.*

Challenges for public authorities

189. The issues raised in this chapter have all made it difficult for public authorities tasked with enforcing the new rules to understand the law.

192 Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, *Policing in the pandemic: The police response to the coronavirus pandemic during 2020* (April 2021), p 2: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/policing-in-the-pandemic-police-response-to-coronavirus-pandemic-during-2020.pdf> [accessed 2 June 2021]

193 Secondary Legislation Scrutiny Committee, *Interim report on the Work of the Committee in Session 2019–21* (39th Report, Session 2019–21, HL Paper 200), para 16

194 Keeling Schedules show the changes that have been made to a document, indicating text that has been deleted and added between two different versions, similar to “track changes” in a Word document. For an example, see: HM Government, *General Data Protection Regulation: Keeling Schedule* (14 October 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969514/20201102 - GDPR - MASTER Keeling Schedule with changes highlighted V4.pdf [accessed 2 June 2021]

190. John Apter, National Chair of the Police Federation of England and Wales, has called on the Government to improve public information on the new restrictions, saying in September 2020:

“constant changes to legislation are becoming the norm. The pressures on policing have increased significantly over recent months ... The Government needs to play its part. With so many changes in legislation, an effective public information campaign must be a priority – as there’s been so much confusion for the public and many people don’t know exactly what the law says.”¹⁹⁵

191. Kirsty Brimelow QC, a barrister at Doughty Street Chambers, told us that inconsistencies between law and guidance were leading the police to misapply the law: “The police should not be acting on the messaging of ministers. We started to see the police acting on announcements from the Prime Minister or the Secretary of State, and again I have seen this in cases. That is a dangerous path to be on constitutionally.”¹⁹⁶

192. The Crown Prosecution Service reviews every case brought under the 2020 Act. The numbers show that all of the charges for an offence under the Act were wrongly charged in the period between March 2020 and February 2021 (a total of 252 incorrect charges). Charges under the regulations¹⁹⁷ have been less error-prone, with approximately 16% of cases having been incorrectly charged up to February 2021 (a total of 62 incorrect charges).¹⁹⁸

193. The Joint Committee on Human Rights has concluded that:

“It is astonishing that the Coronavirus Act is still being misunderstood and wrongly applied by police to such an extent that every single criminal charge brought under the act has been brought incorrectly. While the coronavirus regulations have changed frequently, the [Coronavirus Act 2020] has not; and there is no reason for such mistakes to continue.”¹⁹⁹

194. Councillor Susan Hinchcliffe told the Committee:

“the short notice of the new guidance [and] legislation ... has been really hard for us as councillors to grapple with. Often when new information has been announced on the news it has been the first time I have seen it ... The rules have changed rapidly and frequently. If you are somewhere like West Yorkshire, which has been under local restrictions and national restrictions to varying degrees since the beginning of March, you will have sometimes had changes in rules every week.”²⁰⁰

195. One example of apparent miscommunication between central and local government occurred in May 2021, when the gov.uk webpage summarising the coronavirus restrictions was updated to include new guidance in response to the spread of the Indian variant in parts of England. The webpage stated

195 Police Federation, *New COVID Laws Increase Pressure on Police*, (11 September 2020): <https://www.polfed.org/essex/news/2020-articles/new-covid-laws-increase-pressure-on-police/> [accessed 2 June 2021]

196 [Q 186](#) (Kirsty Brimelow QC)

197 Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 ([SI 2021/364](#))

198 Crown Prosecution Service, *December’s coronavirus review findings* (21 January 2021): <https://www.cps.gov.uk/cps/news/decembers-coronavirus-review-findings> [accessed 2 June 2021]

199 Joint Committee on Human Rights, *The Government response to covid-19: fixed penalty notice* (Fourteenth Report, Session 2019–21, HC 1364, HL Paper 272), para 57

200 [Q 229](#) (Councillor Susan Hinchcliffe)

that “wherever possible, you should try to ... avoid travelling in and out of affected areas²⁰¹ unless it is essential”.²⁰² The update was not accompanied by an official announcement and local leaders and public health directors were reportedly unaware of it.²⁰³

196. The Secretary of State for Work and Pensions, the Rt Hon Therese Coffey MP, said the Government had been “working in close contact” with affected areas and she was “surprised to hear that people think this has come out of the blue – it hasn’t”.²⁰⁴ However, Dominic Harrison, Director of Public Health for Blackburn with Darwen Borough Council, said the affected areas “were not consulted with, warned of, notified about, or alerted to this guidance”.²⁰⁵ Andy Burnham said that issuing the advice without warning was a “major communications error” which had a “major effect on people’s lives”.²⁰⁶
197. **A lack of notice of new measures, combined with repeated amendment and revocation of secondary legislation, has made it difficult for public authorities to prepare for, and advise their residents about, changes to the law. This has made it all the more important for guidance and ministerial statements to reflect accurately the true legal position, yet this has regrettably not always been so.**

Devolution and geographic variation

198. During the COVID-19 pandemic different rules have applied in different parts of the UK. Some degree of divergence in the laws applying across the UK was inevitable, given the geographic impact of localised transmission—to which the response at times was the use of different tiers in different areas—and the fact that health is devolved in Scotland, Wales and Northern Ireland. Witnesses told us that this divergence has, however, undermined legal clarity.
199. Dr Tomlinson said:

“as we saw more and more tiers and zones being brought in, in different nations but also within those nations, the rules became increasingly more complex ... it became increasingly difficult to communicate what the rules were. That is a very good example of why, in developing a policy response to these kind of issues, you need public health experts

201 Bedford Borough Council, Blackburn with Darwen Borough Council, Bolton Metropolitan Borough Council, Burnley Borough Council, Kirklees Council, Leicester City Council, London Borough of Hounslow, and North Tyneside Council

202 Cabinet Office, (*COVID-19 Coronavirus restrictions: what you can and cannot do*); BBC News, ‘Covid: Eight Indian variant areas should avoid indoor gatherings’ (25 May 2021): <https://www.bbc.co.uk/news/uk-england-57232728> [accessed 13 May 2021]; A screengrab of the 21 May 2021 version of the guidance is available at: Helen Pidd (@helenpidd), tweet on 24 May 2021: <https://twitter.com/helenpidd/status/1396922834925068288> [accessed 13 May 2021]

203 BBC News, ‘Covid: Eight Indian variant areas should avoid indoor gatherings’ (25 May 2021): <https://www.bbc.co.uk/news/uk-england-57232728> [accessed 13 May 2021]; ‘Ministers urged to clarify travel advice for England’s Covid hotspots’, *The Guardian* (24 May 2021): <https://www.theguardian.com/world/2021/may/24/ministers-urged-to-clarify-covid-advice-against-travel-in-and-out-of-bolton> [accessed 13 May 2021]

204 Sky News, ‘COVID-19: People told to avoid travelling into or leaving Indian coronavirus variant hotspots’ (25 May 2021): <https://news.sky.com/story/covid-19-people-told-to-avoid-travelling-into-or-leaving-indian-coronavirus-variant-hotspots-12316266> [accessed 13 May 2021]

205 LancsLive, ‘Blackburn, Darwen and Burnley health officials ‘not consulted or warned’ over travel advice’ (25 May 2021): <https://www.lancs.live/news/lancashire-news/blackburn-darwen-burnley-health-officials-20670274> [accessed 13 May 2021]

206 BBC News, ‘Burnham: ‘Major communications error’ over Covid guidance’ (25 May 2021): <https://www.bbc.co.uk/news/av/uk-57239059> [accessed 13 May 2021]

and policy experts such as economists, but you also need people who are expert in developing rules that are clear, simple and manageable for the general public and are easy to comply with.”²⁰⁷

200. Professor McHarg said that the Government has, on occasion, failed to distinguish between COVID-19 requirements applying in England and those applying throughout the UK. She noted, for example, “the shift from the “stay at home” message to the “stay alert” message [which] caused big problems because it was not made clear that this applied to England only rather than to the other nations”.²⁰⁸ Dr Grogan said the Government needed to distinguish “consistently, clearly and with transparency between Scotland, England, Wales and Northern Ireland for anyone listening to the news”.²⁰⁹
201. The UK Government has also announced significant legal changes in England during press conferences broadcast throughout the UK. For example, the third national lockdown in England, which placed all of England in Tier 4, was announced on a BBC news segment broadcast throughout the UK, featuring the Prime Minister standing in front of a Union Jack.²¹⁰ This may have created the impression that the legal changes applied throughout the UK when they extended only to England.
202. **The UK Government has failed to make it clear when announcements only extend to England. This has caused unacceptable and unnecessary confusion for members of the public throughout the UK.**
203. *We recommend that all future ministerial statements and Government guidance on changes to COVID-19 restrictions clearly state the geographic extent of the new requirements.*
204. We recognise that most members of the public have been adhering to the law despite the various difficulties identified in this Chapter. Professor Susan Michie, Professor of Health Psychology and Director of the Centre for Behaviour Change at University College London and member of a SAGE sub-committee, said in January 2021 that “[w]hen you look at the data, it shows that almost 90% of people are overwhelmingly adhering to the rules”.²¹¹

207 [Q 208](#) (Dr Joe Tomlinson)

208 [Q 263](#) (Professor Aileen McHarg)

209 [Q 200](#) (Dr Joelle Grogan)

210 Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ([SI 2020/1374](#)); BBC News, YouTube video (19 December 2020): <https://www.youtube.com/watch?v=bRpgYvznSyQ> [accessed 13 May 2021]

211 BBC News, ‘Covid-19: Act like you’ve got the virus, government urges’ (9 January 2021): <https://www.bbc.co.uk/news/uk-55598918> [accessed 13 May 2021]

CHAPTER 5: FUTURE USE OF EMERGENCY POWERS

Lessons learned

205. There is an opportunity to learn lessons about the use of emergency powers by the Government, and the scrutiny of those powers by Parliament, to inform contingency planning for any future emergency. Witnesses told us that much could be done differently the next time there is need for substantial emergency legislation.
206. On 12 May 2021 the Prime Minister announced that a public inquiry into the Government’s handling of the COVID-19 pandemic would commence in spring 2022. He said it was “vital” that “we should learn the lessons” of tackling COVID-19 and promised a chair would be appointed and terms of reference agreed following consultation with the devolved administrations. Starting in spring 2022 would, the Prime Minister said, ensure the inquiry would be “able to look at the events of the last year in the cold light of day” and would be free to “hear from all the key players” and “analyse and learn from the breadth of our response”.²¹²
207. **We welcome the Prime Minister’s announcement of an independent public inquiry into the Government’s handling of the COVID-19 pandemic. We also welcome the Government’s commitment to consulting the devolved administrations before finalising the terms of reference for this inquiry. It is essential that the UK Government and the devolved administrations work together to learn from this pandemic and prepare for any future emergencies.**
208. **The public inquiry is currently due to commence in spring 2022 and may take a number of years to issue its final report. An examination of the use and scrutiny of emergency powers during the pandemic should not await this timescale.**
209. *We recommend that a review of the use of emergency powers by the Government, and the scrutiny of those powers by Parliament, should take place in advance of the public inquiry. We believe this review could be completed in time to inform the public inquiry and planning for any future emergencies.*
210. **The approach adopted in response to the pandemic must not be used to justify weakened parliamentary scrutiny of Government action in response to any future emergencies.**

Review of emergency legislation

211. Dr Grogan and Professor Young told us that emergency powers should be reviewed, including how sector specific emergency legislation interacts with the Civil Contingencies Act 2004.²¹³ Dr Tomlinson told us that there was “clearly a need for a review of the appropriate legislative framework to be used in a context such as emergencies, and particularly pandemics.”²¹⁴
212. As set out in Chapter 2, the 2004 Act includes robust provisions for parliamentary scrutiny of emergency regulations made under the Act. The

212 HC Deb, 12 May 2021, [cols 137–138](#)

213 [Q 209](#) (Dr Joelle Grogan, Professor Alison Young)

214 [Q 209](#) (Dr Joe Tomlinson)

Act also contains strict tests (referred to as the “triple lock”) which must be met before emergency regulations under it can be made.²¹⁵ The Government has said that the difficulty of satisfying these tests was one reason why the 2004 Act was not used in responding to the COVID-19 pandemic.²¹⁶

213. One such test is that it must be “necessary” to make regulations to respond to the emergency in question.²¹⁷ Section 21(5) provides that this test is not met if equivalent legislative powers are already available to the Government in existing legislation which can be relied on without the risk of serious delay.²¹⁸
214. As we also considered in Chapter 2, Baroness Hale, Lord Sumption and Professor Hickman all told us that section 21(5) may have been a significant barrier to use of the 2004 Act.²¹⁹ This is because there will always be some doubt as to whether alternative legislative solutions might be available, and governments will always want to avoid legal uncertainty.
215. ***Section 21(5) of the Civil Contingencies Act 2004 appears to present a legal and practical barrier to use of that Act during an emergency. We recommend that section 21(5) of the Civil Contingencies Act 2004 be reconsidered as part of the review of emergency powers.***
216. ***We recommend that the review of emergency legislation consider the use of the Coronavirus Act 2020 and Part 2A of the Public Health (Control of Disease) Act 1984, including whether the correct balance was struck between the restrictions on civil liberties and parliamentary scrutiny, and the Government’s ability to respond adequately to the COVID-19 pandemic.***
217. ***The review should inform the development of any future bespoke emergency powers, including any amendments to the Public Health (Control of Disease) Act 1984 and Civil Contingencies Act 2004 that may be considered necessary. This could include amendments to the urgent procedure in the 1984 Act and requiring the use of sunset clauses in the regulations made under that Act.***

Delegation of powers and use of delegated legislation

218. A number of witnesses advocated a broader review of the delegation of powers and use of delegated legislation, pointing to flaws which had existed before, and had been exacerbated by, the approach during the COVID-19 pandemic.²²⁰
219. We considered the delegation of powers and use of delegated legislation in our report *The Legislative Process: The Delegation of Powers* and, alongside the Delegated Powers and Regulatory Reform Committee, continue to keep this area under review.²²¹

215 Civil Contingencies Act 2004, [section 20\(1\)](#), [section 21\(2\)](#), [section 21\(3\)](#) and [section 21\(4\)](#)

216 HL Deb, 25 March 2021, [col 984](#); The House of Lords took note of the UK Government’s *One Year Report on the status on the non-devolved provisions of the Coronavirus Act 2020*

217 Civil Contingencies Act 2004, [section 21\(3\)](#)

218 *Ibid.*, [section 21\(5\)](#)

219 [Q 212](#) (Baroness Hale of Richmond, Lord Sumption) and [Q 184](#) (Professor Tom Hickman QC)

220 [Q 198](#), [Q 209](#) (Dr Joe Tomlinson), [Q 191](#) (Professor Tom Hickman QC) and [Q 198](#) (Dr Joelle Grogan)

221 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225)

220. **The delegation of powers and use of delegated legislation during the COVID-19 pandemic has exacerbated long-standing issues. We will continue to keep this area under review.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Below is a list of all of the Committee's conclusions and recommendations (recommendations appear in italics)

Parliamentary scrutiny during the pandemic

1. All governments should recognise that, however great or sudden an emergency may be, exceptional powers are lent, not granted, by the legislature to the executive, and such powers should be returned as swiftly and completely as possible, avoiding any spill over into permanence. When a government decides to fast-track legislation, it should do so for legitimate and urgent reasons only, limiting parliamentary scrutiny to the extent strictly necessary. (Paragraph 21)
2. The potential use of the Civil Contingencies Act 2004 in response to the pandemic would not have been a panacea. The Act grants extremely broad delegated powers—much broader than those provided for in the Public Health (Control of Disease) Act 1984. Use of the emergency powers under the 2004 Act would have required the re-making of regulations every 30 days, meaning that regulations would, in practice, likely have needed to be scrutinised in rapid succession or in large quantities. Nonetheless, Parliament would have been more involved in the legislative process, including the ability to amend regulations. (Paragraph 40)
3. If the Government had used the Civil Contingencies Act 2004 at the outset of the pandemic, even if only as a temporary measure while alternative primary legislation was passed, parliamentary oversight could have been improved. The 2004 Act shows that Parliament can have, and expects to have, a central role in legal changes during periods of national crisis. (Paragraph 41)
4. If use of the Civil Contingencies 2004 was not considered politically or practically desirable, the Government should have voluntarily subjected itself to comparable parliamentary scrutiny safeguards in all pandemic-related legislation. (Paragraph 42)
5. The uncertainty at the onset of the COVID-19 pandemic, including Parliament's ability to continue meeting in some form, led the Government to fast-track the passage of the Coronavirus Act 2020. While the use of the fast-tracking procedure may have been justified in those circumstances, it seriously curtailed parliamentary scrutiny of important and wide-ranging legislation. (Paragraph 47)
6. *We recommend that Parliament be consulted on any future draft legislation prepared on a contingency basis to address a potential emergency, ensuring that it provides for sufficient parliamentary scrutiny. The pre-legislative scrutiny of what became the Civil Contingencies Act 2004 provides a clear model for such an approach.* (Paragraph 48)
7. When parliamentary democracy is operating as it should, significant policy decisions should be enacted in primary legislation subject to full scrutiny by Parliament. The Government chose not to include a general lockdown power in the Coronavirus Act 2020. Had it done so, parliamentary oversight of the use of lockdowns in England in response to the COVID-19 pandemic would have been improved. A COVID-specific lockdown power might also have enhanced legal clarity and public awareness of the law. (Paragraph 55)

8. The Government instead relied upon the Public Health (Control of Disease) 1984 Act, as amended in 2008, to introduce lockdowns in England. This has underlined the importance of affording Parliament adequate opportunities to scrutinise and debate regulations introduced under the 1984 Act. (Paragraph 56)
9. Relying upon Part 2A of the Public Health (Control of Disease) Act 1984 as the primary basis for England's response to the COVID-19 pandemic has restricted the Government's accountability to Parliament for the significant policy decisions and extraordinary restrictions on civil liberties made since March 2020. The use of the urgent procedure has significantly constrained parliamentary scrutiny, and its use has not always been justified. We acknowledge the unprecedented nature of the COVID-19 pandemic. However, in many cases the Government's need to rely upon the urgency procedure has been exacerbated by poor planning, including drafting delays and a failure to adequately take account of established scrutiny processes and timeframes. (Paragraph 63)
10. *We recommend that the Government sets out the rationale for using the urgent procedure under the Public Health (Control of Disease) Act 1984 in the explanatory memorandum accompanying an instrument made using that procedure. This should explain why the particular measures in the instrument need to be made urgently. Poor government planning does not justify use of the urgent procedure under the 1984 Act.* (Paragraph 64)
11. *We recommend that there should be a presumption in favour of using sunset provisions in all regulations made under the Public Health (Control of Disease) Act 1984. They should expire after three months unless renewed by a resolution of both Houses.* (Paragraph 68)
12. The Government's extensive use of delegated legislation in response to the pandemic has undermined parliamentary scrutiny. Although there were circumstances where the urgency of the situation required the use of made affirmative procedures, their use was not always justified. (Paragraph 80)
13. While we understand that urgent action may be required in response to a public health crisis, parliamentary scrutiny is an important constitutional check on the exercise of arbitrary power by the executive. The increase in the use of made affirmative instruments by the Government in response to the COVID-19 pandemic must not become the norm. (Paragraph 81)
14. *We recommend that there should be a presumption in favour of using sunset provisions in all regulations introduced during a national emergency. They should expire after three months unless renewed by a resolution of both Houses.* (Paragraph 82)
15. *We recommend the Government adopt, at a minimum, the following safeguards in respect of all affirmative instruments introduced during a national emergency:*
 - (a) *The Government should commit to holding a debate and vote on regulations before coming into force wherever possible.*
 - (b) *Where this is not possible:*
 - (i) *The Government should set out in the explanatory memorandum accompanying an instrument why it considers it necessary for the regulations to come into force before a parliamentary debate; and*

- (ii) *The Government should commit to holding a debate and vote on regulations within 21 days of regulations coming into force.* (Paragraph 83)

Coordination across the UK

16. We welcome the collaborative approach adopted by the UK Government and the devolved administrations in the early stages of the pandemic. This period demonstrates that all parts of the UK are capable of working together effectively in a crisis, saving lives and sharing information. (Paragraph 98)
17. We welcome the close coordination which took place between the UK Government and the devolved administrations in developing and agreeing the Coronavirus Act 2020. While the Civil Contingencies Act 2004 would have allowed the UK Government to adopt a more centralised response to COVID-19, Schedules 18 and 19 to the 2020 Act instead enabled the Scottish Government and the Northern Ireland Executive to determine their own response to the pandemic. This approach respected the devolution arrangements. (Paragraph 99)
18. A cooperative UK-wide approach is essential to tackle the spread of COVID-19. We are concerned that, since May 2020, intergovernmental communication and cooperation appears to have decreased significantly. Legal divergence between the four parts of the UK has also increased, occasionally accidentally. This has created practical difficulties for members of the public, particularly those living and working close to internal UK borders, as well as those seeking to travel abroad. (Paragraph 117)
19. Intergovernmental relations are integral to the UK's system of government. We regret that relations between the UK Government and the devolved administrations have been strained during the response to the shared challenges of the pandemic. We will consider this matter further in our inquiry on the future governance of the UK. (Paragraph 118)
20. We regret that relations between the UK Government and parts of local government in England have not been stronger in the response to COVID-19. We will consider this matter further in our inquiry on the future governance of the UK. (Paragraph 122)

Legal clarity and accessibility

21. Legal changes introduced in response to the pandemic were often set out in guidance, or announced in media conferences, before Parliament had an opportunity to scrutinise them. On occasion, the law was misrepresented in these forums. (Paragraph 153)
22. When people are unable to understand what the rules are, they cannot hope to follow them. Members of the public are entitled to know, and to be correctly advised on, what is legally required of them and what, in the Government's view, it is socially responsible for them to do. (Paragraph 154)
23. The Government's use of guidance and statements to the media have in some instances undermined legal certainty by laying claim to legal requirements that do not exist. The Government does not have, and must not assume, authority to mandate public behaviour other than as required by law. (Paragraph 155)

24. The consequence has been a lack of clarity on which rules are legally enforceable, posing challenges for the police and local government, leading to wrongful criminal charges, and potentially undermining public compliance and confidence. (Paragraph 156)
25. Guidance and media statements are not legislation and should not be presented or treated as such. When used appropriately, however, communication through such methods can enhance access to the law by simplifying legal complexity in a format that is easy for people to digest. (Paragraph 165)
26. *We strongly recommend that all Government guidance during a public health emergency conform to the following essential conditions to enable people accurately to understand the law:*
- (a) *Guidance should clearly distinguish information about the law from public health advice. It should not suggest that instructions are based on law when they are not.*
 - (b) *Where guidance provides information about the law, this should be accurate and complete. Where the law is too complex to be set out in full, guidance should make clear that the account is partial.*
 - (c) *All relevant legal instruments should be identified wherever legal requirements are referred to in guidance, accompanied by up-to-date hyperlinks to the underlying regulations on [legislation.gov.uk](https://www.legislation.gov.uk).*
 - (d) *Guidance should make clear when opinions are being offered about the interpretation of the law, including a clear statement of the source and status of such opinions.*
 - (e) *A consistent approach to use of the terms “advice”, “guidance”, “recommendation”, “rules” and “restrictions” should be adopted in all Government publications and public statements, in each case making clear whether the term is referring to obligations required by law, or to public health advice. (Paragraph 166)*
27. *We recommend that the Government ensures that every statement of Government guidance (including every amendment and replacement text) is separately published (and later archived) in a publicly accessible format. This will make it possible to identify the guidance that applied at any given time and enable each statement of guidance to be compared to the legislation in force at the relevant time. (Paragraph 167)*
28. A lack of advance notice of legislation has undermined parliamentary scrutiny, transparency and accessibility of the law. (Paragraph 175)
29. We acknowledge that there have been a number of occasions throughout the COVID-19 pandemic where legislative measures have been urgently required to limit the spread of infection. That does not, however, justify the publication of significant measures hours—and in some case minutes—before taking effect. (Paragraph 176)
30. There have been a number of occasions where apparently non-urgent measures have been published at the very last minute. On other occasions measures that have introduced significant restrictions on civil liberties, including criminalising everyday activity, have been announced minutes before coming into force. We note, in particular:

- The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 eased lockdown measures. To the extent that new public health measures were introduced, they were less restrictive than pre-existing restrictions. The regulations were nonetheless published less than 24 hours before taking effect.
 - The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020, which introduced Tier 4 restrictions in London and the south east of England shortly before Christmas 2020, were almost identical to the regulations giving effect to the March and November 2020 lockdowns. (Paragraph 177)
31. In other cases, the urgency appears to have resulted from a lack of planning and preparedness by the Government. For example, the Government first advised the public to wear face masks on 11 May 2020. Face coverings then became mandatory in different public places under various sets of regulations made on 15 June, 24 July, 8 and 22 August. In each case, the regulations came into force shortly after publication. Poor Government planning does not justify the publication of regulations at the very last minute. (Paragraph 178)
 32. The National Archives have ensured that all coronavirus amendments are shown in the principal regulations on legislation.gov within 24 hours of laying. We welcome these efforts to enhance access to the law. (Paragraph 185)
 33. It is incumbent upon the Government to make the law clear. When enacting new COVID-19 restrictions, the Government should be guided by the principles of certainty, clarity and transparency, and seek to avoid rapid and last-minute changes to the law as far as possible. (Paragraph 186)
 34. *We recommend that the Government adopts alternative drafting practices to make the mass of COVID-19 regulations more accessible for members of the public and lawyers alike. For every set of amending regulations made, the Government should set out in the explanatory memorandum: (i) the regulations that are being amended; (ii) the substance of the amendments being made; and (iii) the reason for those amendments.* (Paragraph 187)
 35. *We recommend that, whenever amending regulations are made, the Government publishes an accompanying Keeling Schedule setting out the new legislation in full and indicating all the amendments that have been made. This would not have the status of legislation but should be published on legislation.gov.uk alongside the original instrument to facilitate public access and understanding of the changes that have been made to the underlying legislation. This approach would enable members of the public and lawyers to identify present and past law with greater ease.* (Paragraph 188)
 36. A lack of notice of new measures, combined with repeated amendment and revocation of secondary legislation, has made it difficult for public authorities to prepare for, and advise their residents about, changes to the law. This has made it all the more important for guidance and ministerial statements to reflect accurately the true legal position, yet this has regrettably not always been so. (Paragraph 197)
 37. The UK Government has failed to make it clear when announcements only extend to England. This has caused unacceptable and unnecessary confusion for members of the public throughout the UK. (Paragraph 202)

38. *We recommend that all future ministerial statements and Government guidance on changes to COVID-19 restrictions clearly state the geographic extent of the new requirements.* (Paragraph 203)

The future use of emergency powers

39. We welcome the Prime Minister's announcement of an independent public inquiry into the Government's handling of the COVID-19 pandemic. We also welcome the Government's commitment to consulting the devolved administrations before finalising the terms of reference for this inquiry. It is essential that the UK Government and the devolved administrations work together to learn from this pandemic and prepare for any future emergencies. (Paragraph 207)
40. The public inquiry is currently due to commence in spring 2022 and may take a number of years to issue its final report. An examination of the use and scrutiny of emergency powers during the pandemic should not await this timescale. (Paragraph 208)
41. *We recommend that a review of the use of emergency powers by the Government, and the scrutiny of those powers by Parliament, should take place in advance of the public inquiry. We believe this review could be completed in time to inform the public inquiry and planning for any future emergencies.* (Paragraph 209)
42. The approach adopted in response to the pandemic must not be used to justify weakened parliamentary scrutiny of Government action in response to any future emergencies. (Paragraph 210)
43. *Section 21(5) of the Civil Contingencies Act 2004 appears to present a legal and practical barrier to use of that Act during an emergency. We recommend that section 21(5) of the Civil Contingencies Act 2004 be reconsidered as part of the review of emergency powers.* (Paragraph 215)
44. *We recommend that the review of emergency legislation consider the use of the Coronavirus Act 2020 and Part 2A of the Public Health (Control of Disease) Act 1984, including whether the correct balance was struck between the restrictions on civil liberties and parliamentary scrutiny, and the Government's ability to respond adequately to the COVID-19 pandemic.* (Paragraph 216)
45. *The review should inform the development of any future bespoke emergency powers, including any amendments to the Public Health (Control of Disease) Act 1984 and Civil Contingencies Act 2004 that may be considered necessary. This could include amendments to the urgent procedure in the 1984 Act and requiring the use of sunset clauses in the regulations made under that Act.* (Paragraph 217)
46. The delegation of powers and use of delegated legislation during the COVID-19 pandemic has exacerbated long-standing issues. We will continue to keep this area under review. (Paragraph 220)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith (until 28 January 2021)
 Baroness Corston
 Baroness Doocey (from 28 January 2021)
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Hope of Craighead (from 28 January 2021)
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Pannick (until 28 January 2021)
 Lord Sherbourne of Didsbury
 Baroness Suttie (from 28 January 2021)
 Baroness Taylor of Bolton (Chair)
 Lord Wallace of Tankerness (until 29 April 2021)

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple
 Baroness Corston
No relevant interests
 Baroness Doocey
No relevant interests
 Baroness Drake
No relevant interests
 Lord Dunlop
Independent Reviewer, Review of UK Government Union Capability; Trustee, Hansard Society
 Lord Faulks
Chair of the Independent Review of Administrative Law and practising barrister
 Baroness Fookes
No relevant interests
 Lord Hennessy of Nympsfield
Member, Advisory Council, These Islands
 Lord Hope of Craighead
No relevant interests
 Lord Howarth of Newport
No relevant interests
 Lord Howell of Guildford
No relevant interests
 Lord Pannick
Practising barrister
 Lord Sherbourne of Didsbury
No relevant interests

Baroness Suttie

No relevant interests

Baroness Taylor of Bolton (Chair)

Chair, Hansard Society

Lord Wallace of Tankerness

No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those witnesses marked ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

- | | | |
|----|--|----------------------------|
| ** | Sir David Natzler, former Clerk of the House of Commons | QQ 79–90 |
| ** | Dr Ruth Fox, Director and Head of Research, Hansard Society, Raphael Hogarth, Associate, Institute for Government and David Allen Green, Financial Times | QQ 169–182 |
| ** | Kirsty Brimelow QC, Barrister, Doughty Street Chambers, Professor Tom Hickman QC, Barrister, Blackstone Chambers, and Lord Sandhurst QC, former Barrister, 1 Crown Office Row | QQ 183–192 |
| ** | Dr Joelle Grogan, Senior Lecturer in Law, Middlesex University, Dr Joe Tomlinson, Research Director, Public Law Project and Senior Lecturer in Public Law, University of York, and Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge | QQ 193–210 |
| ** | Baroness Hale of Richmond, former President of the Supreme Court of the United Kingdom and Lord Sumption, former Justice of the Supreme Court of the United Kingdom | QQ 211–228 |
| ** | Councillor James Jamieson, Chairman, Local Government Association and Councillor Susan Hinchliffe, Chair, West Yorkshire Combined Authority | QQ 229–242 |
| ** | Paddy Tipping, Chair, Association of Police and Crime Commissioners and John Apter, National Chair, Police Federation | QQ 243–255 |
| ** | Professor Aileen McHarg, Professor of Public Law and Human Rights, Durham University, Akash Paun, Devolution Lead, Institute for Government, and Professor Daniel Wincott, Blackwell Professor of Law and Society, Cardiff University | QQ 256–269 |
| ** | Lord True, Minister of State, Cabinet Office, and Lord Bethell, Parliamentary Under-Secretary, Department of Health and Social Care | QQ 270–289 |

Alphabetical list of all witnesses

	Junade Ali	CIC0050
**	John Apter, National Chair, Police Federation (QQ 243–255)	
	Mr Nathan Batten	CIC0081
**	Lord Bethell, Parliamentary Under-Secretary, Department of Health and Social Care (QQ 270–289)	
	Big Brother Watch	CIC0227
	Dominic Bryan	CIC0424
	John Bingham	CIC0117
**	Kirsty Brimelow QC, Barrister, Doughty Street Chambers (QQ 183–192)	
	The Cabinet Office	CIC0480
	The Christian Institute	CIC0288
	Mr Robert Craig, Lecturer in Law, Bristol University	CIC0423
	Crown Prosecution Service	CIC0483
	Miss Annette Currie	CIC0145
	Mr Stephen Dougherty	CIC0466
	T Eccles	CIC0311
	Mr Peter Ellis	CIC0278
**	Dr Ruth Fox, Director and Head of Research, Hansard Society (QQ 169–182)	
	Michael Gardner	CIC0476
	Mr Tony Gaskell	CIC0062
**	David Allen Green, Financial Times (QQ 169–182)	
	Mr Paul Charles Gregory	CIC0093
**	Dr Joelle Grogan, Senior Lecturer in Law, Middlesex University (QQ 193–210)	
	Group submission	CIC0481
	Group submission 2	CIC0482
**	Baroness Hale of Richmond, former President of the Supreme Court of the United Kingdom (QQ 211–228)	
	Dr Zoe Harcombe	CIC0058
	Miss Kat Harper and Ms Rosie Harper	CIC0436
**	Tom Hickman QC, Barrister, Blackstone Chambers (QQ 183–192)	
**	Councillor Susan Hinchcliffe, Chair, West Yorkshire Combined Authority (QQ 229–242)	
	Francis Hoar, Barrister, Field Court Chambers	CIC0451

	Charles Holland, Barrister, Trinity Chambers	CIC0178
	Mr John Hurst	CIC0342
**	Raphael Hogarth, Associate, Institute for Government	
	Immanuel Presbyterian Church (QQ 169–182)	CIC0114
	JABS (Justice, Awareness & Basic Support)	CIC0226
**	Councillor James Jamieson, Chairman, Local Government Association (QQ 229–242)	
	Ms Maryon Jeane	CIC0098
	Mr J Kingston	CIC0088
	Law or Fiction Ltd	CIC0473
	Ms Ruth Learner	CICI0177
	Lewis	CIC0253
	Mr Luke Magee	CIC0052
	Mr Main	CIC0431
	Michelle McDines	CIC0133
**	Professor Aileen McHarg, Professor of Public Law and Human Rights, Durham University (QQ 256–269)	
	National Police Chiefs Council	CIC0486
	Sir David Natzler, former Clerk of the House of Commons (QQ 79–90)	
	Mr W O’Gorman	CIC0064
	Osborne	CIC0132
	Mr Harry Pakenham	CIC0070
**	Akash Paun, Devolution Lead, Institute for Government (QQ 256–269)	
	Lijeh Perez	CIC0170
	Protestant Truth Society	CIC0403
	ResistUK	CIC0059
	Mr Steven Ring	CIC0172
	Waheed Saleem, Deputy West Midlands Police and Crime Commissioner	CIC0484
**	Lord Sandhurst QC, former Barrister, 1 Crown Office Row (QQ 183–192)	
	Mr Simpson	CIC0155
	Sabrina Sullivan	CIC0368
**	Lord Sumption, former Justice of the Supreme Court of the United Kingdom (QQ 211–228)	
	Think.me.UK	CIC0129

- Dr Stephen Thomson, Associate Professor, City University of Hong Kong [CIC0443](#)
- ** Paddy Tipping, Chair, Association of Police and Crime Commissioners ([QQ 342–255](#))
- ** Dr Joe Tomlinson, Research Director, Public Law Project and Senior Lecturer in Public Law, University of York ([QQ 193–210](#))
- ** Lord True, Minister of State, Cabinet Office ([QQ 270–289](#))
- Various Eateries PLC [CIC0075](#)
- Professor Emeritus Clive Walker, Professor Emeritus, University of Leeds, Rebecca Moosavian, Lecturer in Law, University of Leeds and Dr Andrew Blick, Head of Department of Political Economy, King’s College London [CICI0367](#)
- ** Professor Daniel Wincott, Blackwell Professor of Law and Society, Cardiff University ([QQ 256–269](#))
- Sue Woollcott [CIC0380](#)
- Mr Michael Wynne [CIC0067](#)
- ** Professor Alison Young, Sir David Williams Professor of Public Law, University of Cambridge ([QQ 193–210](#))

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Constitution Committee is undertaking an inquiry into the constitutional implications of COVID-19.

It is exploring the impact of the pandemic, and the Government's response to it, in relation to the operation of the courts, the ability of Parliament to function effectively and hold the Government to account, and the use and scrutiny of emergency powers.

The Committee now calls for evidence on the use and scrutiny of emergency powers during the COVID-19 pandemic.

The Committee welcomes written submissions on any aspect of this topic, and particularly on the issues and questions set out below. You need not address all the questions in your submission. We welcome contributions from all interested individuals and organisations. The deadline for submissions is Wednesday 18 November at 11.59pm.

Questions

The use of emergency powers during the COVID-19 pandemic

1. Does the Coronavirus Act 2020 strike the right balance between powers for the Executive and parliamentary oversight and approval?
2. What existing powers (other than those in the Coronavirus Act 2020) might have been used to deliver the Government's response to the COVID-19 pandemic? Was the Coronavirus Act 2020 necessary to implement the Government's response to the pandemic?
3. How have the measures taken by the Government to address the pandemic been implemented, i.e. which aspects of the lockdown were set out in legislation, regulations and guidance? What effect has this had on the clarity of the measures?
4. Has the use of emergency powers by the Government to address the pandemic been proportionate?

Criminalisation

5. What new criminal offences have been introduced as part of the Government's response to the pandemic? Is criminalisation a proportionate, justified and appropriate response?
6. Have the new criminal offences introduced in response to the pandemic been sufficiently clear to: (a) members of the public and (b) the public authorities responsible for their interpretation and enforcement (including the police and the Crown Prosecution Service)?
7. What factors led to wrongful arrests and convictions under the emergency powers and how might these have been avoided?

Promulgation

8. To what extent have the legal requirements imposed on people during lockdown been clear and accessible to members of the public? How should the new measures introduced in response to the pandemic be

communicated and explained to authorities (e.g. local government, police, border force, regulators), businesses and members of the public?

Devolved and local government

9. What have been the consequences of legal divergence between the constituent parts of the United Kingdom in responding to the pandemic?
10. Have local authorities been granted adequate powers to respond to the pandemic in their local area? Have the emergency measures taken by the Government struck the right balance of power between national and local governments?
11. How well have intergovernmental relations worked during the crisis through established mechanisms and through the Civil Contingencies Committee (COBR)?
12. Are there examples from other countries that are instructive as to the management of the virus between national and regional/state legislatures and executives?

Parliamentary scrutiny

13. To what extent has Parliament been able effectively to scrutinise the statutory instruments related to the pandemic measures? What additional steps ought to be taken to ensure effective scrutiny of emergency statutory instruments in future?
14. To what extent are safeguards on emergency powers (such as provisions for 21-day reviews) undermined when Parliament is not sitting, or when sittings are restricted? How might the law and/or parliamentary procedure need to adapt to such circumstances?
15. What processes are there for securing renewed Parliamentary oversight and control of the legislative agenda once the urgency of a given emergency has diminished? Are the sunset provisions and other safeguards provided for in the Coronavirus Act 2020 and associated regulations sufficient for this purpose?
16. What lessons can be learned from the (1) Government's preparation, and (2) Parliament's constrained scrutiny of the fast-tracked Coronavirus Bill? What should be done differently the next time there's a need for substantial emergency legislation?
17. How does and should the Sewel/Legislative Consent convention operate in relation to emergency legislation?
18. Is there a case for reworking or consolidating emergency powers legislation? Should safeguards and scrutiny processes be standardised and, if so, how should they be designed to operate during a crisis?