

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

HEALTH PROTECTION (CORONAVIRUS,
RESTRICTIONS) (GREENCORE) REGULATIONS 2020

Tuesday 22 September 2020

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The Committee consisted of the following Members:

Chair: DAVID MUNDELL

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Bell, Aaron (*Newcastle-under-Lyme*) (Con)

Brennan, Kevin (*Cardiff West*) (Lab)

† Bruce, Fiona (*Congleton*) (Con)

† Caulfield, Maria (*Lewes*) (Con)

† Churchill, Jo (*Parliamentary Under-Secretary of
State for Health and Social Care*)

Coyle, Neil (*Bermondsey and Old Southwark*) (Lab)

† Crosbie, Virginia (*Ynys Môn*) (Con)

† Fell, Simon (*Barrow and Furness*) (Con)

† Howell, Paul (*Sedgefield*) (Con)

† Madders, Justin (*Ellesmere Port and Neston*) (Lab)

† Mayhew, Jerome (*Broadland*) (Con)

† Osborne, Kate (*Jarrow*) (Lab)

† Richards, Nicola (*West Bromwich East*) (Con)

† Stringer, Graham (*Blackley and Broughton*) (Lab)

† Twist, Liz (*Blaydon*) (Lab)

† Wheeler, Mrs Heather (*South Derbyshire*) (Con)

Jack Dent, *Committee Clerk*

† **attended the Committee**

Seventh Delegated Legislation Committee

Tuesday 22 September 2020

[DAVID MUNDELL *in the Chair*]

Health Protection (Coronavirus, Restrictions) (Greencore) Regulations 2020

9.25 am

The Parliamentary Under-Secretary of State for Health and Social Care (Jo Churchill): I beg to move,

That the Committee has considered the Health Protection (Coronavirus, Restrictions) (Greencore) Regulations 2020 (S.I. 2020, No. 921).

It is a pleasure to serve under your chairmanship, Mr Mundell. The regulations came into force on 29 August. On 21 August, my right hon. Friend the Secretary of State for Health and Social Care announced that, due to a significant covid-19 outbreak at Greencore Food to Go Ltd, regulations would be laid requiring the workforce and their households to self-isolate for a period of 14 days, to contain the outbreak and avoid the need to impose restrictions on the wider community.

The concern about the risk of transmission across the workforce at Greencore and out into the wider community of Northampton was significant. Engagement with local leaders and company directors was extensive, repeated and productive. To that end, I would like to thank Greencore, Public Health England, the joint biosecurity centre, the Department for Environment, Food and Rural Affairs, the Department of Health and Social Care, Northampton Borough Council, Northamptonshire County Council and, in particular, Lucy Wightman, the latter council's director of public health, for their constructive engagement with one another.

The decision to act was not driven by numbers only; it was a judgment about the overall situation. It was necessary to make this change as quickly as practicable in recognition of the immediate risk of a continued increase in the incidence of covid-19 among the workforce at Greencore as the main cause of wider community transmission. During the period from 9 to 15 August, Northampton saw a sharp spike in its weekly incidence rate to 116.4 per 100,000 of population. NHS test and trace data showed that most of the covid-19 transmission appeared to occur within the household and community settings that were then traced back to the staff who were employed or had worked at the local Greencore site.

Action had already been taken to protect Greencore employees. The whole workforce were tested. The factory layout was amended to make it more covid-secure than before, and deep cleaning was carried out. We had hoped that those interventions and the work of local public health teams would drive the infection rate down without our having to take further action. However, a large percentage of the workforce continued to test positive for the virus. It was likely that that was due to

people socialising together outside work, for example by sharing accommodation or by car sharing to get to and from work.

At the local action gold committee meeting on 20 August, a decision was taken to require Greencore to close its food manufacturing site in Northampton and to require the workforce and their direct household contacts to self-isolate for 14 days. Those actions were supported by Greencore's leaders. Current Government guidance advises that anyone who tests positive for the virus should self-isolate for 10 days from the date of the test. Anyone who has been in close contact with them is advised to self-isolate for 14 days. Requiring household members of Greencore workers to self-isolate went further than current Government guidance. However, that measure was necessary due to the scale of the outbreak and the risk posed to the wider community if further transmission was not prevented.

I now turn to the data provided that informed the decisions to which I have referred. Mass testing at Greencore started on 10 August. Following that first round of testing, nearly 300 members of staff tested positive for coronavirus. On 19 August, Greencore commenced retesting all staff who had previously tested negative, detecting further positive cases. In total, some 317 staff tested positive, giving a final positivity rate of over 20%. The weekly incidence rate for Northampton peaked at 125 per 100,000 people, and positivity rose to 9.2%. By comparison, the background incidence rate for Northampton, excluding positive tests from the Greencore workforce, was 38 per 100,000 for the same period.

The regulations required Greencore staff who have worked at the company's designated production site since 7 August 2020 and members of their household to self-isolate for 14 days from 21 August, or for a shorter period in certain specified circumstances. Those dates were calculated to reflect the incubation period of covid-19. Although the regulations only came into force on 26 August, the workforce and their households were able to start their isolation from 21 August, when the site had closed temporarily.

The regulations specified exactly who was required to self-isolate and for how long, recognising that some workers had already started to self-isolate following their earlier positive tests. The regulations made provision to exclude household members if the Greencore worker had chosen to isolate separately. Provisions were also included to enable those self-isolating to access or provide emergency care and support, or to obtain basic necessities such as food and medical supplies.

Given the urgency of the Greencore situation, we used the emergency procedure provided for by the Public Health (Control of Disease) Act 1984 to make the present regulations as soon as possible. The regulations will expire this Friday, 25 September, 28 days after they came into force.

Regulations 7 to 11 set out how the provisions will be enforced. It is a criminal offence to breach the requirement to self-isolate. As with the national regulations, there is the possibility of a fixed penalty notice or a fine following conviction. We also published guidance on the gov.uk website for Greencore workers and their households, to help them understand what they can and cannot do under the regulations.

We always knew that the path out of lockdown would not be entirely smooth, that it was likely that infections would rise and that, in particular areas or workplaces, we would need to be able to respond quickly and flexibly to outbreaks. Greencore should be commended for acting so promptly and choosing voluntarily to go above and beyond its role as an employer to support the wider community in Northampton. Local rates have reduced to a weekly incident rate of 38 per 100,000 from 7 to 13 September.

The Greencore regulations have demonstrated our willingness and ability to act quickly, where we need to, to control specific outbreaks. We will of course use the experience of the Greencore restrictions to inform and develop our responses to future local outbreaks.

Finally, I thank those Greencore employees and members of their households who completed the required periods of self-isolation and who responded so positively and well to the measures put in place. It is thanks to their continued effort that we were able to contain the outbreak and avoid the need to impose restrictions on the wider community. I commend the regulations to the Committee.

9.33 am

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Mr Mundell. I thank the Minister for her introduction. As we know, coronavirus has not gone away; it remains an ongoing threat, which means that we still require regulations of this nature. We will no doubt hear some more in the Prime Minister's statement later today.

The desire to avoid another national lockdown has meant that over the past few months we have seen the introduction of regulations to allow local restrictions to be introduced where they are needed to curb the spread of the virus, although I think this is the first statutory instrument to specify a workplace, rather than a geographical location. As we heard, the instrument imposed restrictions on Greencore workers and members of their households to reduce the likelihood of further transmissions of the virus to workers, their families and the wider community following an outbreak of cases at the company's premises in Northampton.

Between 9 and 15 August, Northampton saw an increase of 8% in the number of individuals testing positive for coronavirus, raising the weekly incident rate from 38.6 per 100,000 of population the previous week to 116.4. Based on test and trace data, most of the covid-19 transmission appeared to have occurred within households and community settings that could be traced back to staff who were employed at the Greencore factories in Northampton. Following that, Greencore arranged for mass testing their workforce of 1,140 workers, of which 214 tested positive—a positivity rate of about 19% or 20%. A further 79 cases were identified through test and trace.

As the Minister outlined, these regulations, which came into force on 29 August, set out which workers were required to self-isolate, which members of their household were also required to self-isolate, and which workers were exempted from that requirement. They required those identified to self-isolate until 5 September, either in their home, the home of a friend or family member, a hotel, a hostel, or another suitable place. The regulations also set out the conditions required by self-

isolation, including who the person in self-isolation does not need to isolate from, and the reasons for which the person can leave or be outside of the place where they are self-isolating. They further set out the requirement for anyone who joins the household of a person who is self-isolating to self-isolate for a further 14 days from when they joined that household.

The regulations also provide powers for an authorised person, such as a police officer, to enforce compliance with self-isolation, and create summary-only criminal offences for contravening requirements to self-isolate or, without reasonable excuse, contravening a requirement imposed under the enforcement powers. They create a further offence of wilful obstruction without reasonable excuse of any person carrying out a function under the regulations. Finally, the regulations authorise the issuing of fixed penalty notices to anyone who an authorised person has reasonable grounds to believe committed an offence under these regulations, designates persons who may prosecute the offences, and officers who may collect the fixed penalties. Again, these are similar powers to those we have seen in other regulations, although I have a little issue with the powers in this one, which I will come back to later.

As with all the restriction regulations that we have debated in Committee, we are debating these regulations late. The Greencore workers have self-isolated as per the regulations and have returned to work, so although the regulations are still in place, they are no longer relevant—as we heard, they are due to expire shortly anyway. However, it is important that we understand whether they have been effective and whether we can learn anything from this situation, because they represented the single most serious action taken to deal with an outbreak in an individual institution. This hopefully puts us in a better position to learn from the outbreak, so we are best placed to prevent similar future outbreaks and respond swiftly and effectively in future. I say that because, from the information I have received, it appears that there were opportunities that were missed, which related to three things: a failure to listen to concerns raised by those working at Greencore, a failure to provide adequate financial support for workers to self-isolate, and a failure to communicate with workers.

As far back as March, Greencore workers were challenging the adequacy of covid-19 protections, including concerns about staff access to risk assessments, social distancing, the availability of personal protective equipment, and temperature checks. In May, they also raised concerns about the effectiveness of the company's contact tracing process after it had taken it 48 hours, following a member of staff notifying the company that they had tested positive, to inform six other staff members that they needed to self-isolate. In the same month, concerns were also raised about the lack of a written covid-19 procedure and a lack of company sick pay for most workers during self-isolation because of their flexible contracts.

When 287 cases of covid-19 were identified between 10 August and 12 August, those who tested positive and their households were told to self-isolate and did so, but the factory remained open. It was not until 21 August, following pressure from the Bakers, Food and Allied Food Workers Union, that Greencore announced that it would immediately cease production at its Northampton site in order to allow staff to self-isolate for 14 days. Of

[Justin Madders]

course, we will never know whether that delay had any impact on the spread of the virus, and clearly the account I have is somewhat different from the Minister's. However, I suggest that, following the review of this regulation, we ought to consider whether any delay could have been avoided, and to what extent that had an impact on the spread of the virus.

We do know for certain that the financial impact of a complete shutdown of production was felt most harshly by the lowest paid workers. I will come back to that point momentarily, but I just want to say a word about the unions. Although not all of their concerns were listened to or acted upon swiftly, and they were not able to play their part in preventing a serious outbreak, there is no doubt that their interventions led to great improvements to protect workers and, in turn, the wider public. I pay tribute to the Bakers, Food and Allied Food Workers Union for its work, as well as the many other bodies the Minister mentioned in her opening speech.

We know that for many others in other workplaces, airing concerns can be difficult or even impossible at the moment: no space is made for it. The Office for National Statistics' figures for May of this year found that people in low-paid manual jobs faced a much greater risk of dying from coronavirus than higher-paid, white-collar workers, with men in low-skilled jobs four times more likely to die from the virus than men in professional occupations. Raising health and safety concerns at work has never been an easy thing, and those who put their head above the parapet often face consequences for doing so. Yes, they may have legal protection in theory, but that protection is full of loopholes and having a theoretical chance of justice in an employment tribunal months down the line is far from satisfactory.

It is little wonder that workers do not always feel confident in raising their concerns. In the current climate, it is not just about individual justice, but also about making sure everyone can do their bit to stop the spread of the virus. I ask the Minister, in the light of those experiences, whether any consideration has been given to increasing protection for workers who raise concerns in relation to coronavirus.

Greencore has said, as has the Minister, that it works closely with the Department of Health and Social Care. When responding, can the Minister advise whether there has been any assessment of the effectiveness of the instrument, or any formal assessment of health and safety arrangements at Greencore following its re-opening? I mention that in particular because I believe that on 1 September the BFAWU submitted a formal grievance stating that some health and safety procedures were still not being followed. That is of concern because we do not want a repeat of the situation we had in August.

Coming back to the pay situation, the workforce at Greencore is about 2,100, with approximately 1,800 production staff, about 800 of whom are on minimum-wage, flexible contracts. Greencore also makes heavy use of agency staff, with a lot of Greencore workers also working at other factories and warehouses nearby, which is one of the concerns people had about the spread of the virus. When the 292 workers who initially tested positive in the middle of August were sent home, they were on statutory sick pay. Then, when

the factory was shut down on 21 August, workers were furloughed on 80% of their wage, although it is reported that the management received full pay.

When workers were furloughed in March, they too received 80% of their wage, which for many was the minimum wage, so there was no company top-up. I assume it was the same level again here, which according to the BFAWU meant that 60% of Greencore workers received less than the minimum wage during the period of isolation. As one would expect, that would potentially make it harder for them to comply with subsequent self-isolation requirements if some felt compelled to work to make ends meet. The impact was particularly felt by those workers living in households where everyone worked for Greencore. In some cases, the families work and live in the same house and travel together to work, which, again, is another reason the virus was spreading so much.

As Members will know, the Opposition have long called for those who are self-isolating to get proper financial support. The scientific advisory group for emergencies has said that the value of SSP appears to be having a negative impact on people's ability to self-isolate. It really should not have taken until this weekend for the Government to realise that people on low incomes need more help. It suggests a lack of basic understanding about people's lives, which is undermining the effort to stop the spread of the virus.

The belated announcement of additional financial support for those who have to self-isolate is of little comfort to the Greencore workers who found themselves in the terrible position of having to choose between complying with regulations and putting food on the table. Did the Government consider whether the payments being made would be sufficient in that situation to encourage self-isolation? Can the Minister advise what discussions, if any, were undertaken with the company about that?

Finally, I want to say a few words about communication. The instrument was published part way through the self-isolation period over a bank holiday weekend. That is despite the placing of significant responsibilities on the workforce and, indeed, significant consequences for breaching the regulations. I am told that no effort was made to disseminate the regulations to the workforce, either in English or in any of the languages spoken by the workforce. The majority of staff who work there come from minority groups—their first language might be Romanian, Russian, Polish, Hindi or Portuguese. Clearly, the interpretation of complex regulations such as these ought to have been considered. I am sure that all of us who can read the regulations can appreciate that they are not that straightforward to understand.

I have also been informed that there was no official notification of the beginning or end of the self-isolation period. Instead, members of the workforce started to be called back to work by text message from 4 September. We have said from the start that communication and clear messaging matter; they are crucial in our fight against the virus. If we want public support for what we are doing—none of these measures will work without it—people need to understand what is happening and why. Unless we are clear, the public will not respond. We cannot expect them to follow instructions if they have not been communicated to them. I believe that, in this instance, more consideration could and should have been given to ensuring that the regulations were both

clear and accessible to the workforce affected. Will the Government take additional steps to ensure that any future restrictions of this nature reach the entire desired audience in a clear and accessible format?

I will make one final point. Although I will not seek to divide the Committee on the regulations, I will make my customary reference to the fact that they are being debated after the event. I remind the Minister that the Opposition's view is that parliamentary accountability remains an essential part of democracy and that decision making is improved as a result of debate. I will not repeat my entire repertoire of all the reasons why the regulations should be debated before they become law, as the Minister has no doubt heard it many times before. On this occasion, I absolutely accept that it was not possible to do that, because of the urgency of the situation and the fact that the problems emerged when the House was in recess.

Can the Minister say anything about the fact that the regulations came into force eight days after the period of self-isolation set out in the regulations began? I am sure that she can see that there might have been problems if someone had really wanted to challenge their self-isolation before 28 August. In fact, they might well have been able to do so. It cannot legally be correct to impose a power on someone before the relevant regulations came into force. There was no power for people to be required to self-isolate with the criminal offences attached before 28 August. Can the Minister say whether fixed penalty notices could have been issued if someone had failed to comply with the regulations before 28 August, and whether retrospectivity would have applied in that situation?

We will not seek to divide the Committee, but I hope the Minister can address some of the points that I have raised and tell us whether any lessons that can be learned from the impact of the regulations can be used to good effect in future.

9.48 am

Jo Churchill: I thank hon. Members for this important debate, and I thank the hon. Member for Ellesmere Port and Neston for his comments. If it has highlighted anything, it is that the regulations are of a timely nature and use the 1984 Act in a way that is defined and applicable. I am glad that the hon. Member sees that the Act has use for controlling the virus. We have often traded words: he would like more notice before, and I have often said, "Actually, we need to act at speed. We need this to be agile, which is why we are proceeding in this way."

The Greencore sites were deep cleaned and inspected by the relevant agencies—the Health and Safety Executive and the Environmental Agency—before reopening. There are currently ongoing reviews, and I am sure that the hon. Member appreciates that we are very much in the time zone. The regulations do not expire until Friday, but reviews of the effectiveness of the regulations are happening now.

It is my understanding that guidance was given in different languages and made available by the local authority and employers in multiple languages. Greencore

used the furlough scheme to support workers who were self-isolating, and it voluntarily paid up to 80% of salaries to staff who could not be furloughed.

The restrictions that we have debated are necessary and important for three reasons. First, and most importantly, they have helped to protect the Greencore workforce and the people of Northampton and the surrounding area from the transmission of this terrible virus. The restrictions we had to impose were difficult for those affected, but I hope the Greencore employees and their households recognise that letting the virus spread unchecked would have been worse. I once again place on the record my thanks for the way they approached the matter.

Justin Madders: I am grateful for the Minister's answers. She is right that on this occasion we have no difficulty with the speed with which the regulations were introduced. However, there is the outstanding question of retrospective power to hand out fixed penalty notices for a period before the regulations came into force. Is that legally possible?

Jo Churchill: The regulations were unenforceable before coming into force, and therefore they do not operate retrospectively, which I think answers the hon. Gentleman's question.

Justin Madders: Yes, thank you.

Jo Churchill: Secondly, the restrictions are important because they protect those of us who do not live in Northampton. As a result of the restrictions, the risk of transmission beyond Northampton was reduced, and high infection rates in the city did not spread elsewhere. We should recognise the restrictions and the difficulties faced by Greencore employees and their households. The sacrifices they made will have benefited the whole country.

Finally, the restrictions show our absolute determination to respond to outbreaks of the virus in a focused, locally effective way. We are learning from what has happened in Greencore as we work with local authorities, directors of public health and other businesses to respond to future localised outbreaks, one of which recently happened in Norfolk. I am pleased that as of 25 August Greencore was able to restart food production and that those affected were able to return to work once they completed the required period of self-isolation.

I am grateful to the hon. Gentleman for his contribution today, and want to conclude by recording, on behalf of the Government, my thanks to the people of Greencore in Northampton, and particularly to NHS and care workers, and all the key workers in the city, for their ongoing hard work to keep vital services running and save lives through the crisis.

Question put and agreed to.

9.52 am

Committee rose.

