

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

HEALTH PROTECTION (CORONAVIRUS,
RESTRICTIONS) (ALL TIERS) (ENGLAND)
(AMENDMENT) (NO. 4) REGULATIONS 2020

Monday 25 January 2021

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The Committee consisted of the following Members:

Chair: MARK PRITCHARD

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

† Argar, Edward (*Minister for Health*)

Davison, Dehenna (*Bishop Auckland*) (Con)

Double, Steve (*St Austell and Newquay*) (Con)

Duguid, David (*Parliamentary Under-Secretary of State for Scotland*)

† Fletcher, Colleen (*Coventry North East*) (Lab)

Freer, Mike (*Comptroller of Her Majesty's Household*)

† Harris, Rebecca (*Lord Commissioner of Her Majesty's Treasury*)

Johnston, David (*Wantage*) (Con)

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

Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

Osamor, Kate (*Edmonton*) (Lab/Co-op)

Rees, Christina (*Neath*) (Lab/Co-op)

Sharma, Mr Virendra (*Ealing, Southall*) (Lab)

Sheerman, Mr Barry (*Huddersfield*) (Lab/Co-op)

† Throup, Maggie (*Lord Commissioner of Her Majesty's Treasury*)

Trickett, Jon (*Hemsworth*) (Lab)

Liam Laurence Smyth, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 25 January 2021

[MARK PRITCHARD *in the Chair*]

Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020

4 pm

The Minister for Health (Edward Argar): I beg to move,

That the Committee has considered the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 (S.I. 2020, No. 1654).

It is a pleasure, Mr Pritchard, to serve under your chairmanship on one of these Committees—for, I think, the first time. At the outset, I pay tribute once again—as the shadow Minister does each time we have these debates—to the work of our health and social care staff and key workers in this country, who continue, day in, day out, to keep people safe, and to keep this country working. They are clearly, for these reasons, the pride of our nation. I also put on the record my thanks to the population of this country for continuing to follow the lockdown rules. We all know that is incredibly difficult and entails huge sacrifice, but the actions everyone is taking are protecting our NHS, buying time for the roll-out of the vaccine, and saving lives.

While our focus remains on vaccine roll-out and the necessary national lockdown, to keep down infection and hospitalisation levels, it is nonetheless important that we bring forward these regulations, even though they make by and large only minor technical amendments to the “All Tiers” regulations, necessary for legal coherence. Those regulations give effect to the 29 December tiering decisions, which of course have been superseded by the national lockdown restrictions, but it is still right that they be debated in this place. To briefly run through the effects of this statutory instrument, it amends regulation 8(4)(b) of the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, substituting

“the Tier 2 area and the Tier 3 area”

with

“the Tier 2 area, the Tier 3 area and the Tier 4 area”,

to ensure that the addition of tier 4 is captured. That essentially makes it clear that tier 1 covers every area of England other than those areas in tiers 2, 3 and 4, and therefore that tier 4 restrictions apply only in a tier 4 area. That, of course, is now the whole of England, following the Prime Minister’s announcement of a national lockdown on 4 January. This might seem like nit-picking or a minor clarification, but we feel it is important to remove any scope for misinterpretation from the instrument.

The instrument also makes a further technical amendment to the “All Tiers” regulations, correcting a cross-reference in paragraph 8 of schedule 3A to the “All Tiers” regulations. The larger change in this instrument is the amendment of schedule 4 to the Health Protection

(Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 to move some local authority areas from tiers 2 and 3 to tiers 3 and 4, although those changes have been superseded by the national move to tier 4.

Given the rapid rise in covid cases in several areas at the time these decisions were made, and the likely progression of the new variant, it was agreed on 29 December 2020 to move these local authority areas between the tiers. Decisions on which tier would apply to each area were initially announced on 2 December, and were based on five key indicators: case detection rates in all age groups; case detection rates in the over-60s; the rate at which cases were rising or falling; the positivity rates—the number of positive cases detected as a percentage of tests taken—and, of course, pressure on the NHS in a particular area, including current and projected occupancy.

Before concluding, I put on the record our regret that the regulations could not be debated until now; obviously, the House did not sit until 11 January. Two weeks after the House came back, we have brought them forward. That is swift, but still, I apologise to the House and to my shadow, the hon. Member for Ellesmere Port and Neston, for the fact that we did not have the opportunity to bring them forward for debate in a more timely fashion. None the less, we feel it is important—indeed, it is required—that we bring them forward at this point for the House to scrutinise and challenge them if it wishes.

Furthermore, we may decide to step areas down through the tiers when it is possible to revert to that approach. Therefore, for consistency in the law and confidence in the tiering system, it is right that these technical amendments and tier allocations be considered.

We should remain cautious about the timetable ahead. If our understanding of the virus does not change dramatically, roll-out of the vaccine continues to be successful, deaths start to fall as the vaccine takes effect, the covid situation in our hospitals improves and everyone plays their part by following the rules, we hope—at the right time, when it is safe to do so—to be able to move out of the national restrictions.

I finish by paying tribute once again to our amazing health and social care staff, who are working tirelessly throughout this pandemic. As always, I remind everyone of the importance of following the rules, which are in place for very good reason, and I commend the regulations to the Committee.

4.6 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mr Pritchard—for, I think, the first time, as the Minister said. I declare an interest, in that my wife is a member of Cheshire West and Chester Council, one of the local authorities mentioned in the regulations; I do not think that requires any further expansion, but it needs to be stated for the record.

I thank the Minister for his introduction, and his acknowledgment of the issue to do with the timing of these regulations—a matter that we have debated on many occasions over the past 12 months. I echo his tribute to NHS and social care staff, and indeed all key workers, who continue to do this country proud and see us through this incredibly difficult time.

As we debate these regulations, we must recognise the scale of the challenge we still face. The situation is as serious as it has ever been. We have lost 98,000 people so far to the virus; as we know, the Office for National Statistics shows more than 110,000 excess deaths; and as of yesterday, there were 38,000 people in hospital, some 4,000 of them on ventilation. Those figures are significantly higher than those in the height of the first wave of the pandemic. The climbing, record death rate is a tragic reminder of how devastating the virus is, and behind every statistic is a grieving family. We must therefore leave no stone unturned in our efforts to prevent further loss.

We have come together to discuss these regulations, following their introduction on 30 December, even though, as the Minister says, they have largely been superseded by the national lockdown. As I have said many times, retrospectively approving legislation—in particular, regulations that have a dramatic impact on individual liberty, as well as an economic impact, which we have discussed many times—is no way to go about things.

I will not labour the point, because it has been made many times, but it is worth noting that on the day these regulations were introduced, the House was already debating a number of previous instruments, most of which were also significantly out of date. I know this is a rapidly changing situation, and in December things perhaps changed more quickly than at most other times, but is there any particular reason why these regulations could not have been dealt with at the same time as those others debated on 30 December?

As we heard, today's instrument amends the "All Tiers" regulations for the fourth time—quite a record, given the latest tier system was in place for one month. Even though we are again in lockdown, as the Minister has said, we will be moving back to a tiered system as restrictions are eased, so it is important that we review the effectiveness of the tiered system when looking at this instrument. Given that the past two attempts at a tiered system ended in lockdowns within a matter of weeks, we need to be confident, and to hear from the Minister about his confidence, that the situation will not repeat itself.

Although whether the tiers proved effective is of fundamental concern, there is little evidence to date to suggest that, on the whole, most of them were working. Another problem with the regulations, and all the regulations that we have dealt with on this matter, is that we are presented with a list of places, which tells us who can do what and where they can do it, but does not tell us why. Of course, at a macro level, we know why, but what we are missing is why one area is in one tier and another area is in another.

We know what the Secretary of State told us about the criteria, which the Minister repeated today, and they are set out in the explanatory memorandum, but they have never been explicitly spelled out in the regulations. Nor, crucially, is there any detail on the point at which those criteria take us from one tier to another. No doubt the Minister will say that it is not as black and white as that, and I am sure that there is some merit in that answer, but there has to be some yardstick and some analysis of the data that matters; otherwise, the process would be entirely random, which it clearly is not.

Although most of that information is publicly available, it is disparate and often not released at the same time. What would make debates such as today's rather more

meaningful is if there were full disclosure of all the information at the time the decisions were made, and the debates took place at the time of those decisions, so that Members on both sides of the room could say to their constituents that there was clarity, and could say that the reason why one area was in one tier and another was in another was debated when the regulations were introduced.

That is particularly relevant to today's regulations, as it seems that the primary reason for areas moving up tiers this time probably relates to only one of the criteria: NHS occupancy and projected occupancy. That is apparent to us all now, given the figures that we have alluded to, but it probably was not as clear to everyone at the time the regulations were introduced. Moving forward, I ask the Government to, as far as possible, set out in the regulations the data applicable to each area, so that we can objectively judge, when the regulations are introduced and debated, whether the Government have got it right. I think that is what all Members want.

I understand that the measures are presented on a "take it or leave it" basis, and that sometimes events mean that scrutiny lags behind the original decisions, but that should be a reason for more transparency and more debate—not for simply providing us with a list of councils that are moving tiers. The regulations are all concerned with moving areas up to higher tiers, rather than down, albeit for a matter of days before the next lockdown came in. We therefore need to ask, irrespective of whether there is a new variant, whether the tiers have ever been, or will be, effective.

We have asked time and again for the Government to provide us with evidence of what measures work. Some areas have been in a form of lockdown since last summer, as the Minister is well aware from his constituency. There has been plenty of time to gather data on the subject, even if it is to conclude that local restrictions are insufficient. As the Minister will know, last year the Secondary Legislation Scrutiny Committee also highlighted a need for that information to be public, reminding the Government that it is customary, when a scheme is changed after it has been operating for a while, to explain what has worked well and what has been amended because the performance has not always achieved the desired effect.

The Liverpool city region is often cited as an example of an area in the then highest tier—tier 3—where there was a successful attempt to reduce transmission. That was largely attributed to the mass testing regime undertaken there, but infection levels were dropping before that scheme was introduced, and it relied on significant input from the Army that I do not think it would be physically possible to replicate elsewhere. Is that the plan, moving forward, for the highest tiers? We need realistic and resourced plans for such areas because, the tier system having effectively collapsed over Christmas and the new year, people need confidence that any new tier system will work, and that infection rates will not spiral out of control again.

I am sure that the Minister agrees that this lockdown needs to be the last. The Government need to demonstrate that they finally have a grip on localised restrictions that not only enables areas to reduce transmission, but gives areas with low transmission rates the tools to keep them low. To date, that has palpably not been the case. We will not oppose today's regulations, but we need assurances

[Justin Madders]

that when we return to another system of tiers once we exit the national lockdown, they will finally work. We must see, in real time and in full, the advice that the Secretary of State and the Government receive from the Scientific Advisory Group for Emergencies on the restrictions needed before we are asked to make judgments on those decisions.

Thus far, we have seen a tragic failure by the Government to learn from mistakes. That must now change. We must not repeat that with the roll-out of the vaccine. It is widely acknowledged that that is our only way out of this situation. The task is clear. The Government must deliver the vaccine quickly and as safely as possible. We want to see round-the-clock vaccine programmes, 24 hours a day, seven days a week, in every village, town, high street, GP surgery and pharmacy—everywhere possible that we can use to roll out the vaccine.

That goes hand in hand with measures to suppress the virus. Not everyone can work at home or comfortably isolate themselves. The system still expects families to go hungry to stop spreading the infection. Again, I urge the Government to fix sick pay and ensure everyone is supported to self-isolate. The Health Secretary, as was mentioned many times, has admitted that he could not live on statutory sick pay, but that is what we still expect hundreds of thousands of people to do each week.

The Government have known for many months that rates of self-isolation compliance are low. That is the gaping hole in the system. I was disappointed that rumours at the end of last week that the Government were due to extend the scope of the £500 self-isolation payment were just that: rumours. I urge the Government to consider extending the payment to all low-income parents self-isolating with children, and to ensure that councils can give discretionary payments to all who need them. When even Baroness Harding recognises that this is a big flaw in the Government's approach, we need to act.

We know how difficult this lockdown is for millions of families. We are being asked to stay at home for a third time, to help get the virus under control. In return, the Government must not only deliver the vaccine, but ensure that people can self-isolate when required to. The decisions made will be significantly influenced by how quickly people can be vaccinated. Of course, we want roll-out to proceed as soon as possible. Being the first country to approve the vaccine, we should be the first country to roll it out successfully.

I hope that in his closing remarks, the Minister will update us on how the Government plan to reach those communities that are hard to reach. We know that the crisis has had a disproportionate impact on black, Asian and ethnic minority communities, so it is important that the vaccine roll-out does not leave those communities behind. We need to understand how the roll-out relates to the implementation and continuation of the tier system. The Secretary of State has said of easing lockdown measures that there will need to be no more major new variants of covid-19, that hospitalisations must fall, that the daily death rates must fall, and that the vaccination programme should work.

On new variants, the need to secure our borders is clear. I suspect decisions of that nature are above the Minister's pay grade, though maybe not for long; who

knows? Perhaps one day. I hope he will convey our concerns about the daily scenes at our airports, and about the clear need for more robust systems. Lockdown, with the incredible sacrifice that it involves, is a decision that I know weighs heavily on every Member, but to ask our citizens to submit to that while, because of holes in our defences, people enter the country and potentially spread new, dangerous variants is unforgivable. That must be addressed as a matter of urgency.

Two of the criteria are the same as those in the tier system. I want to raise a few points about the vaccination process and how that will relate to the tier system. It seems, as a matter of logic, that if these criteria apply to the lockdown, they will also apply to the tier system. This is the one thing that the Government can control and direct, so it is important that we have transparency about how this will happen.

We know how many people daily, by region, receive their first and second dose of vaccine. Those figures are now further broken down to those for each sustainability and transformation partnership footprint, but that does not give us the data that we need to identify whether progress is even, or how that will impact tier systems. For example, the latest data, up to 17 January 2021, tells us that 114,000 people over 80 have received the first dose of the vaccine in Cumbria and the north-east. That is undoubtedly good news, but we do not know the proportion of over-80s, or how those people are spread across the region. Are some parts of the region doing better than others?

I hope the Minister accepts that the public are getting only a partial picture. Moving forward, as we look to adjust the tiers, I suggest that that information needs to be disseminated at local authority level, consistent with the tiers contained within these regulations. For example, Cumbria County Council is described in the regulations as being in the north-west, but in terms of the vaccination process it is in the north-east. We also need to know what percentage of each vulnerable category has been vaccinated and, crucially, how much vaccine has been supplied to each local authority area, ideally expressed as a proportion of the total vulnerable categories.

To date, despite questioning on the subject, we have no specific information about how much vaccine has been supplied to each area. We are only getting information about when it has reached the arm of the patient. That is the most important data, but if one of the criteria used to allocate tiers is progress with the roll-out, we will need to know if there is equity in supply as well. I am sure the Minister will not want to end up in arguments about whether tiers are being decided on the basis of whether the vaccine has been fairly distributed. In the spirit of being helpful, I suggest to him that the best way to avoid getting into those arguments is through total transparency on the numbers and proportions distributed to each area.

Finally, there has been a lot of debate today about schools and the continuing uncertainty about when they may be able to reopen. I am sure we all share the same aim and we want them fully reopened as soon as possible. That begs the question about the possibility that education settings could be treated differently, depending on which tier they are in. Is that being looked at on an area by area basis? There was a spike in September when schools and universities returned. Can that be better contained by more localised decision making in the new tier system?

In conclusion, we believe that there is an awful lot more to be done to demonstrate that tiers are effective, that areas are placed in tiers on a transparent basis, that areas are given sufficient support to reduce transmission of the virus or to prevent it from increasing, and that there is sufficient support for business, recognising that each tier brings with it a different set of challenges, both trading within the tier or having to close the business altogether.

4.22 pm

Edward Argar: I will endeavour to address the various points raised by the shadow Minister, the hon. Member for Ellesmere Port and Neston. It is a pleasure to serve opposite him in these Committees. He is always measured in his remarks and constructive in the points that he makes. Even when disagree on interpretation, I always welcome his observations and his reasoned challenges.

When the hon. Gentleman mentioned the work that his wife is doing as a local councillor, he kindly did not mention that when paying tribute to our health, social care and key workers, I missed our local authorities. I pay tribute to the officers of those local authorities and to local councillors, who always work very hard but who will be facing an incredibly heavy workload at the moment, serving their communities. In that vein, I pay tribute to them, including the hon. Gentleman's wife for her work.

The hon. Gentleman is right to highlight the scale of the challenge and the situation that we face, and the number of tragic deaths we have seen. As he rightly said, every one of those is an individual with family and friends, and every one of those deaths is a tragedy. He highlighted that there are 38,000 covid patients hospitalised at the moment, which is well over a third of the beds in our NHS. To demonstrate how rapidly that number has climbed, back in September there were 500 people hospitalised with covid; in October, the number went up to about 2,000; by November, it was 11,000; and, in the past month and a half, we have seen it go up to the current level. The rate of hospitalisation has increased dramatically and he is right to highlight that backdrop to our debate.

The hon. Gentleman mentioned retrospectivity, not in the implementation of the regulations, but in debating them after the fact. While that may be in line with what is permitted under parliamentary procedure with statutory instruments of this sort, I take his point that it is better to debate them in a timely fashion. That is what we seek to do, because the House can give its view on them and because the transparent process helps to achieve consent to, and therefore compliance with, the measures. I hope the hon. Gentleman will acknowledge that we have made some significant strides since—well, not since this time last year, but since last spring, now that the House has found a way of speeding up the pace at which we bring statutory instruments before Committees.

The hon. Gentleman asked a specific question about statutory instruments being made on 30 December, a day when the House was sitting. The short answer to his question why they could not be debated that day is because they were only signed and made by the Secretary of State on that day, while the House was sitting, so there was no time to lay them or schedule them for debate. That is why we have brought them forward now, although of course events have slightly superseded them.

On tiering and the effect of tiering, which was the subject of a large part of the hon. Gentleman's remarks, I have to be very honest. Throughout this pandemic, we have said, "Here is what we are working to achieve, but even now this disease is something that we are still learning more about every day." The perfectly reasonable and scientifically rational tiering restrictions and regulations in December having to be superseded this month is in large part due to the new variant, with its significantly higher infectiousness. It was not present when the original tiering regulations were put in place. There will always be an element of having to adapt to this disease as the disease itself adapts.

The hon. Gentleman asked what determines whether an area is in a particular tier and how it can move between tiers, and he quite rightly picked up on the five tests, or the five measures, that the Secretary of State has set out. Sadly, he was right to predict that I would say the process is not black and white and is more complex than that. That is because it is the inter-relationship between the factors that matters. For example, the infection rate overall could appear to be plateauing and then coming down, as was the case for a period in my own constituency, while the rate in the over-60s continues to grow. That is a great concern because of the impact of this disease on that age group, and on older people in general. I fear that it will not be possible to say, "Here is an exact figure for each of these, and if you hit these figures, that moves you from x to y." A more nuanced and more complex judgment is required.

The hon. Gentleman spoke about the importance of data and in particular dashboard data at a localised level, so that people can at least understand the data that is driving these decisions. I hosted a call with colleagues back in December, when we had some of our team in DHSC talk through how we were developing that data dashboard, looking at the data and then subsequently providing ever greater granularity. That work continues and he is absolutely right to highlight it. I suspect that there will always be an appetite for data that we are continuing to chase and trying to keep up with, but we continue to try to put more and more data out. I would argue that, as a country, we have been at the forefront of data transparency and putting information out there. There is always more that we can do, but compared with other countries, on testing rates for example, we were at the forefront of putting data out there, even when that was quite rightly being challenged or questioned by him and by others.

We publish the SAGE papers, but I think what the hon. Gentleman was asking me to pass on to the Secretary of State was a request that those papers are not only published, but published in tandem with recommendations and decisions. I will certainly convey his points to the Secretary of State, as I will to the Transport Secretary. The hon. Gentleman is quite right that those points are above my pay grade in this role, as they relate to borders and travel.

There are three other things that I will touch on very briefly, which I think will cover what the hon. Gentleman asked about: vaccine roll-out, compliance, which he touched on, and bigger-picture elements about when we are likely to see an easing, for want of a better way of putting it, which is the road map argument, including schools as a pathway. I will try to address some of those issues, albeit briefly.

[Edward Argar]

On the vaccine, the hon. Gentleman is absolutely right: we believe, and it has always been part of our strategy, that the vaccine is our way out of this pandemic. It must be delivered quickly and safely, as he said, and I believe that it is being delivered very swiftly and safely across the country, not just by our NHS and our military, but by volunteers who are helping to run the vaccination centres. The huge number of vaccinations that have already taken place is testament to the planning and the work that has been done. As the Secretary of State has always made clear, although we are getting a huge number of people vaccinated, supply is potentially a limiting factor. We will vaccinate as many people as we can get the vaccines for, but there will always be a potential limiting factor there.

On compliance, the hon. Gentleman raised a number of points. The population of this country has been phenomenal in its willingness to comply with incredibly onerous and challenging restrictions. He highlighted support from the Department for Work and Pensions and elsewhere for particular groups, including statutory sick pay and other isolation payments. The Government continue to keep compliance rates and the factors that influence them under review.

The hon. Gentleman's final question, which is a subject of considerable discussion at the moment, was about the road map for the easing of the national lockdown and how it interacts with the vaccine roll-out. I am afraid that I have to disappoint him slightly. To echo what the Prime Minister said, we all know what we would like to see, and the number of people vaccinated, particularly those in the vulnerable groups, is a key element not just of keeping people safe and being able to ease restrictions, but of decreasing the pressure on the NHS. However, we also know that there is a long lag time between people being infected and then going into hospital and being kept there. Thankfully, with new drugs, we are able to save the lives of people who might have died in the first wave, but they are in hospital longer, so the pressure on NHS capacity will continue for some time.

It would be wrong to set an arbitrary road map and timetable when, as I say, we are constantly learning more about how this disease behaves and moves in the population. We can set out our ambitions in broad terms, but it would not be right to say, "If we hit x number, that equals x date, which equals x change." It would be premature to do that. It is right that we are open and transparent with the British people, but we are not at that point yet.

Justin Madders: I pay tribute to all those involved in the vaccine roll-out. I had the pleasure of visiting my local centre a couple of weeks ago, and it was very well organised. I was trying to gain some understanding from the Minister about whether the vaccine roll-out will be applied to tier decisions, or whether the national picture will be part of the decision. I do not expect him to say, "This number of people receiving a dose is going to mean x, y or z relaxations," but will that be considered at national or local level?

Edward Argar: I am grateful to the shadow Minister for his clarification. If I am being honest, I think it is probably premature at this point for us to speculate about things at that level of detail, but he makes his point well and it is on the record. I will relay it to the Secretary of State as we look at when the time is right for us to start easing the national regulations and potentially move towards a tiering model again. At that point, those sorts of question are of course pertinent, and I will ensure that the Secretary of State is aware of the hon. Gentleman's comments.

The hon. Gentleman's final point was, in the context of vaccines, infection rates and hospital pressure, about the need for information to be as local and granular as we can get it. Vaccinations started in earnest in early to mid-December, and we have ramped up at a huge rate the number of people being vaccinated each day. In parallel with that, we have continued to try to increase the amount and granularity of information that we publish on gov.uk and on the dashboard about vaccinations by region, area and volume. In parallel with actually getting the vaccine in people's arms, the team continues to look at what more they can do to be as transparent as possible about how that is going, so that people in a local area can understand a bit more about what it means for them.

I hope I have addressed if not all then as many as I can recall of the hon. Gentleman's questions and points. I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 (S.I. 2020, No. 1654).

4.34 pm

Committee rose.