

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

HEALTH PROTECTION (CORONAVIRUS)  
(WEARING OF FACE COVERINGS IN A  
RELEVANT PLACE AND RESTRICTIONS:  
ALL TIERS) (ENGLAND) (AMENDMENT)  
REGULATIONS 2021

*Wednesday 17 March 2021*

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**The Committee consisted of the following Members:**

*Chair:* † SIR EDWARD LEIGH

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

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

Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

Docherty, Leo (*Aldershot*) (Con)

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

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

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

Lewis, Clive (*Norwich South*) (Lab)

McDonnell, John (*Hayes and Harlington*) (Lab)

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

Mahmood, Shabana (*Birmingham, Ladywood*) (Lab)

† Pursglove, Tom (*Corby*) (Con)

Slaughter, Andy (*Hammersmith*) (Lab)

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

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

† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)

† Twist, Liz (*Blaydon*) (Lab)

Kevin Maddison, *Committee Clerk*

† **attended the Committee**

## Fourth Delegated Legislation Committee

Wednesday 17 March 2021

[SIR EDWARD LEIGH *in the Chair*]

### Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021

2.30 pm

**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) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021 (S.I. 2021, No. 247).

At the outset, I would like to say what a pleasure it is to serve under your chairmanship, Sir Edward. I thank every person and organisation that has mobilised to fight the coronavirus disease. It is not possible to name-check everyone, but I want to single out for thanks those involved in the deployment of the vaccine, including people working in the NHS, social care, primary care and community pharmacies, as well as returned healthcare staff and the Army. I thank scientists, pharmaceutical companies and those running clinical trials for the development of new vaccines, antivirals and all manner of therapies to combat the threat of a mutant virus. Lastly, I thank the general public for continuing to follow the lockdown rules.

The attitude of the public remains resolute, and I appreciate that huge sacrifices are being made by many, but the actions that people are taking now are protecting their families and loved ones, as well as the families and loved ones of others. Our focus remains on the roll-out of the vaccine, the development of a sure-fire system to battle any mutations, and an exit strategy from this dreadful pandemic. Thanks to the incredible efforts of the NHS, medical professionals and volunteers across the country, we are making huge strides in vaccinating the most vulnerable. Over 24 million people had their first dose by 15 March, and everyone eligible in the highest four priority cohorts has been offered their first dose.

I want to update hon. Members on the steps that the Government are taking to ease lockdown restrictions and allow us all to start to reclaim our lives. The “COVID-19 Response—Spring 2021” document provides a road map out of the current lockdown in England. The approach focuses on data, not dates, and each step has a “no earlier than” date five weeks later than the previous step, to allow time to assess the impact of the previous step and provide a week’s notice before the changes occur.

The steps for easing restrictions will be taken at the same time across England in a national approach, in the absence of significant regional disparity. At each step, we will make an assessment against the following four tests: the vaccine deployment programme continues successfully; the evidence shows that vaccines are

sufficiently effective in reducing hospitalisations and deaths among those who have been vaccinated; infection rates do not risk a surge in hospitalisations, which would put unsustainable pressure on the NHS; and the assessment of the risk is not fundamentally changed by new variants of concern.

We are here today to discuss the first set of measures, which were introduced on 8 March 2021. The first measures in steps 1 and 1A of the road map were implemented through the Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021. These are amending regulations to ease the social contact restrictions in order to permit people to leave home for the purpose of outdoor exercise and to meet another person outside their household. In line with the reopening of schools, they reopen wrap-around childcare to enable parents to go to work or seek work, or to attend educational training, a medical appointment or a support group.

The regulations also amend the all-tiers regulation to ensure that voting in polls on 6 May 2021, and the supporting activities in the weeks preceding the polls, can take place in a way that minimises transmission risk while allowing for meaningful campaigning activity.

The face-covering regulations are amended to make it mandatory for face coverings to be worn in indoor venues used as polling stations, count venues and postal vote opening venues in England. This will apply to poll workers, observers and people casting their votes at polling stations, and to vote counting venues, to ensure that the May elections are observed as safely as possible. That will help safeguard voters, counters and other staff, supporting the elections and ensuring the consistency of rules in indoor settings that are used for local elections.

Furthermore, the regulations facilitate the 2021 census, which will take place on 21 March, by ensuring access digital access to public services from certain closed venues, such as community centres. That will enable people without access to the internet at home to complete their census returns.

Finally, the regulations introduce a requirement for people travelling out of the UK from England to provide their reason for travel on a declaration to travel form. The instrument introduces fixed-penalty notices for failure to comply with those requirements. We must be cautious as we look to ease restrictions. The virus is still prevalent, with significant pressure on the NHS. We have approximately 8,000 patients in UK hospitals as of earlier this week, which is still too high. However, the number of covid patients in hospital has been decreasing since the peak on 18 January 2021, when some 39,000 patients were in hospital.

As noted in the Scientific Advisory Group for Emergencies minutes published on 22 February, the size of the epidemic is reducing, with admissions now falling in all regions and hospital occupancy declining. The measures are also clearly working to reduce transmission. That shows that we are taking the necessary action to help to keep us all safe. The data so far suggests that both the Pfizer-BioNTech and the Oxford-AstraZeneca vaccines are effective against the dominant strains of covid.

The success of the vaccination roll-out, alongside falling infections and hospitalisations, is paving the way for a cautious and gradual lifting of restrictions. Before

29 March, we expect to lay a statutory instrument to replace the previous regulations with new provisions that enable the road map to come into force. It will be for debate and approval by Parliament before the Easter recess. I again pay tribute to the fantastic staff in the NHS and social care sector, who are working tirelessly to protect the vulnerable and save lives. I commend the regulations to the House.

2.36 pm

**Justin Madders** (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Sir Edward. I thank the Minister for her introduction to the regulations, which, as she said, amend the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations and the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations, and which came into force on 8 March. They include amendments on outdoor recreation, wrap-around childcare, the census, declaration to travel forms, elections and face coverings.

I join the Minister in her thanks to all those who have been involved for what is a year now in the fight against the virus. As she rightly points out, it is in a much better place than it was, but we are not out of this yet. There are many different elements to the regulations, as she highlighted, and we will not oppose them, but it is worth pointing out that, despite the very wide range of elements in them, the only thing that they have in common is that they are not urgent. The first page of the regulations says that

“the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid”.

The Minister will forgive me, because I have said this to her many times, but there is nothing in the regulations that I would class as so genuinely urgent that they had to be implemented without parliamentary approval first. It seems that that statement is just bolted on to every regulation that the Department issues now, without any consideration about whether it is genuinely urgent. As she said, the regulations have already been operational for 10 days. As has happened many times previously in debates regarding health protection regulations, we find ourselves in a position where we are retrospectively approving legislation that has already come into effect.

We previously had a commitment from the Government that regulations would be debated in advance. Just last month, when I raised the issue with the Minister for Patient Safety, Suicide Prevention and Mental Health, on a previous set of regulations, her response was that the Government had to move very quickly on that occasion to introduce measures in response to the South African variant, but that is not the explanation today. I do not think that that explanation stood up last time, and I certainly do not think that it does today.

The Minister sought in her opening remarks to justify the use of emergency powers on this occasion. Of course, we accept that the Government need to act quickly in response to new challenges and new scientific advice—indeed, we have been calling for them to do that, because too many lives have been lost because of delayed decisions. But these regulations are not dealing with measures to do with a rise in cases or new variants, so in my opinion they do not meet the test of urgency.

When we consider that, on 21 and 22 September last year we debated 17 sets of regulations in six Committee sittings across two days, it does not sound particularly plausible that when the House is sitting it is not possible to find time to debate just one statutory instrument ahead of the regulations’ coming into force. The Minister might say that the childcare regulations were time-critical, but even they had several weeks after the Prime Minister’s announcement of the road map to be published and debated in advance of becoming law. Certainly in terms of many other things, there is no case to be made at all that they needed to be done in that way.

We know, for example, that the elections that were due to be held in 2020 have been postponed for a year, so there was arguably 12 months’ notice for the Government to decide how they wanted to deal with those elections. Of course, the census takes place only once a decade, so the Government can hardly claim that that required urgent action. Likewise, the travel element of these regulations is not new. The restrictions were announced in January, and the requirement to complete a form was announced last month. Again, there was plenty of time for the regulations to be debated before they came into force last week, and these are not minor or technical changes to the law—they are major infringements on an individual’s liberty, so they should not be relegated to a debate after the event.

We have seen such a pattern time and again, and we have seen it far too often with very little justification put forward. We accept that at the start of the pandemic there was a need to act quickly in a genuine emergency, but that point has long since passed. We are now in a very different situation where, thankfully, case numbers are falling, deaths and hospital numbers are falling, and vaccine doses are rising. It is simply not a situation where emergency measures are required in the same way as they were 12 months ago.

The Department has got itself into a very bad habit of equating the word “coronavirus” with the word “urgent”. If proceedings on every regulation with that word in it are an urgent matter, the analysis of the situation is clearly not correct. It is part of a wider pattern that we see across Government, where there is a disregard for the normal rules—where transparency, accountability and scrutiny can be dispensed with under cover of the pandemic. We have seen that that takes us into a place that I have never been comfortable with, and I will continue to object until we get back to operating in the way that we should in a properly accountable and democratic system.

I now turn to the regulations before us. I have a couple of questions for the Minister arising from the comments in the explanatory memorandum. Paragraph 2.7 on page 2 states:

“This instrument also makes minor amendments to the All Tiers Regulations to clarify policy and ensure consistency.”

This is not the first time, of course, that regulations have included an element of patching up to rectify previous mistakes. The Minister did not set out in any detail what was being clarified or rectified, so I hope she will be able to do so when she responds. Will she tell us whether these mistakes have led to anyone being wrongly fined or having their movements or liberties impinged on? If she cannot tell us that today, perhaps she will put it in writing to us because such details are important. It

[Justin Madders]

is not acceptable for people to be wrongly punished or to have other encumbrances on their liberty or livelihood because of drafting errors in legislation.

When such mistakes occur, it is not enough to give them a passing nod through a delegated legislation Committee, particularly when it is far from the first occasion on which that has happened. This shows why it is important to have the law subjected to full scrutiny before it is implemented. If these things were done in the proper order, we might not see so many mistakes being made.

I also want to ask the Minister about paragraph 7.2 of the explanatory memorandum, which states:

“Our assessment of the risks is not fundamentally changed by new Variants of Concern.”

And that is it—no context, no additional information. That surely cannot be the Government’s position; it does not seem consistent with what has been said previously. Perhaps the statement was meant to be in the preceding paragraph in the explanatory memorandum, which sets out the road map test, but it has been published in that way, so I think it is important for the record that the Minister sets out whether that is the case and it has been produced in error.

I move on to the regulations themselves. On the measures relating to elections, the Minister outlined that the regulations amend the face-covering regulations and the all-tiers regulations to make provision for voting in polls and to ensure that supporting activities—campaigning in the normal way, and nominations; Members will of course be familiar with those—can take place in the weeks preceding the polls in a way that, as we obviously all want, reduces and minimises the risk of transmission but enables meaningful campaigning to take place.

We support these measures because they are needed to make polling stations and campaigning safe, which is essential to the democratic process. It is therefore only right that there are exemptions to the stay-at-home guidance to allow the electoral process to take place. There have been concerns that the rules around leafleting were not particularly clear. Some people have argued that they would come under volunteering exemptions when leafleting, but of course some people are actually paid to deliver leaflets as part of their election work, which would come under a work exemption. We are grateful for the clarity provided on that.

It is vital that elections are delivered safely and securely, without voters being forced to choose between their health and their right to vote. However, it is a disappointment that the Government have been too slow to adapt in making the necessary changes to protect our democratic process.

The Opposition have called for new voting methods to be introduced, such as all-postal voting or voting over multiple days, to ensure safe social distancing. Unfortunately, the Government’s most radical idea to deal with this is for people to bring their own pencil, which I do not think really does the challenge justice. Having once been elected to a local council through an all-postal ballot, I have seen that elections can be held in that way, safely and securely, and indeed can increase turnout, so why has that option not been considered on this occasion?

Under the proposed arrangements, there are also concerns about how cash-strapped councils will be able to deliver the elections safely without extra financial support. Councils have expressed deep concern about the availability of polling venues, with the Government obviously insisting that schools are not used on this occasion. There are challenges in the recruitment of polling and counting staff, with so many workers needed on other duties. Of course, the demographic of that group tends to be older and may therefore be more vulnerable to the virus. I will be grateful if the Minister can give us an update on how the Government plan to address those particular challenges.

On staff working in polling stations, it is not at all clear from the regulations whether the polling stations will be covid secure and whether mask wearing will be enforced where necessary. The regulations have a little bit of a dichotomy in them: they seem to simultaneously create a right to enter a polling station without a mask at the same time as creating a requirement to wear face coverings in polling stations.

I understand that the regulations are necessary to ensure that the balance is struck, enabling people to exercise their right to vote safely. I am not excluding people who might not be able to wear a face covering for legitimate medical reasons, but the regulations appear to face both ways at the same time. I hope that the Minister will tell us that detailed guidance will be available to local authorities; I am sure it will be clear to all Members, who will be familiar with elections, that where there are all-out elections, resources will be stretched. I question how practical it will be for these regulations to be enforced properly in those circumstances.

I will just say a few words about the census. The regulations rightly provide for community centres, which otherwise might be closed, to reopen for the purposes of facilitating online access for those who cannot fill out the census. It is fair to say that Opposition Members have expressed deep concern that the upcoming census will be negatively affected by the covid pandemic, which will potentially have the unfortunate effect of skewing funding for the next decade. There is no doubt that the pandemic has changed the shape and layout of the UK population—probably temporarily, but the census is the baseline for many future decisions.

We know, for example, that many students have moved home, and that young professionals have moved out of cities to live with their parents, continuing to work from home there. Indeed, the Scottish Government have chosen to delay their census by a year to address those concerns. Will the Minister explain why it is necessary for our census to take place now? Does she anticipate any impact on the accuracy of the data and resource allocation in years to come?

I will say a few words about the travel forms. As the Minister said, the instrument amends the all-tiers regulations to require a travel declaration form to be completed and presented to a relevant person when that is directed, with the relevant person having the power to direct someone to return to where they live if they fail to produce a form. The regulations also make it an offence to contravene the requirement to produce a declaration of travel form. A fixed-penalty notice of up to £200 is potentially available for failing to complete the travel form correctly or failing to present it to a relevant person when directed to. The regulations also provide

that information presented in those forms cannot be used as evidence against individuals in criminal proceedings outside the scope of the all-tiers regulations.

Under current lockdown rules, anyone who wants to travel internationally from England can do so only for limited reasons, including work, education or medical grounds. As we know, foreign holidays for people in England will not be permitted before 17 May at the earliest, as set out by the Prime Minister in his road map. I understand that the form requires those intending to take a trip to fill in their personal details and tick a box indicating the purpose of the travel outside the country.

The Department for Transport has said that the police have been increasing patrols at ports and airports in recent weeks and will have the power to ask travellers to produce a completed form. They are obviously a “relevant person” within the scope of the regulations, but can the Minister provide us with further information as to what other relevant people might be within the scope of the regulations? I particularly want to understand whether the form has to be produced if requested and whether every single person leaving the UK will be checked. Alternatively, is it a random process that will be applicable only when a police officer happens to be in attendance?

We know there is extensive guidance on the permitted reasons for travel and that there is a fixed-penalty notice for providing false or misleading information on the form. Some might argue that £200 is quite a small sum compared with the fines potentially available for people not completing the correct details on entry to the UK. My concern is about how realistic it will be for these relevant persons to be able to undertake the kind of investigation necessary to establish whether false or misleading information has been provided on the form. Let us not forget that fixed-penalty notices are usually issued on the spot.

At an airport, for example, the relevant person will examine the form and ask a few cursory questions. If no form is produced, that is a clear situation, but where exactly is the line going to be drawn if that relevant person is not convinced that the reasons on the form are genuine?

There will be grey areas as well. What if someone wants a week away in the sun and they arrange a business meeting in Dubai for 20 minutes, and then spend the rest of their time sitting around and relaxing? Are they breaking the rules? When it comes to the people sent home—or, to use the language of the instrument, directed

“to return to where they live”—

who is meant to check whether they do return home, and what are the consequences for them if they do not? There does not seem to be anything in the regulations to address that situation.

It will certainly be of interest to see how the rules work in practice and whether they are as effective as we would want them to be. As we have already covered, the rules have been in effect since Monday. Is the Minister able to update us on what impact that has had on the numbers of people travelling abroad? How many people have been asked to produce a form? How many have been sent home and how many have been issued with a fixed-penalty notice? If she does not have that information—I appreciate it is early days—will she set it out in writing to me when she has the detail?

In relation to international travel, we know that the global travel taskforce is due to report on 12 April. After the mess we have seen with hotel quarantine and the Government’s failure to secure our borders, it is vital that the Government look not only at people leaving the country, but those returning or arriving, to make sure that we have the most secure borders possible. If the Minister can update us on that review, I will be grateful.

There is one last item. The regulations also provide that students can return home once before 29 April 2021 and they have been able to return to their student accommodation since 8 March. I have a few questions about that—not least because I have several young people living with me at the moment, who will be most interested to learn what the future holds for them. Do the regulations in effect mean that all students who intend to return to their university accommodation should do so by 29 April? One could assume that after that date there will be fewer restrictions on travel, but is that the current position? As I am sure the Minister will understand, not only I but many others in my household will be interested to know the answer.

Finally, the original all-tiers regulations provide that there is to be a review of the tiers at least once every 28 days. Can the Minister confirm whether those reviews are happening and whether we can actually see them? The regulations on restrictions, which have been in place in some form or other for over 12 months now, have always had a regular review mechanism in them. But despite repeated questioning, it never appears that we can actually see what the reviews say.

Why is that? Does the Minister not accept that it is of great national interest that we should be able to see how the reviews of the restrictions are going? Is it not important for people to be able to judge for themselves the progress being made? Again, it seems unfortunate that scrutiny and accountability are not at the forefront of the Government’s mind when it comes to these regulations.

4.56 pm

**Jo Churchill:** I thank the hon. Gentleman for once again laying out some challenges around the timing, and in his speech he articulated very well what the challenge is: he flipped from wanting to look backwards at the same point where he wanted to look forwards several months. I will go through the issues that he raised to the best of my ability. As he said, many are only newly in train; I commit to write to him on the three or four issues that he raised.

Arguably, the point of the road map is that it is a cautious unlocking and a sustainable path out of the lockdown. The devolved Administrations are setting out how it will be eased in Scotland, Wales and Northern Ireland, and we recognise the impact that restrictions thus far have had. I am sure that the hon. Gentleman also would, which is why there is an argument for making sure that things are dealt with at the right speed.

Allowing people to meet one member of another household outside and allowing individuals to gain support for childcare reasons or for finding or attending work must all be positive steps forward. As I said, by taking a cautious approach we are going to protect the NHS and the social care system, making sure that we are on a sustainable footing and that things are iterative.

[Jo Churchill]

When it comes to the challenge of timing, we are on a continuum. The SI today covers not only things that have already become available to people, but things in the future. The hon. Gentleman said that there had been 12 months' notice of the elections being changed, but he would surely agree that we have spoken many times, both in the Chamber and Committee, about how challenging forecasting is. The journey with the covid pandemic has been very iterative. By laying out how we see the elections taking place and by opening up on 8 March and 29 March, we have given a very clear set of instructions about what people can do.

Guidance on elections has been issued by the Minister for the Constitution and Devolution; as the hon. Gentleman knows, the issue does not sit within my portfolio. I am sure that he will make himself aware of that guidance in due course. On polling stations, we have been in contact with local authorities. The hon. Gentleman is right that there is a challenge. There are people who are quite rightly exempt from wearing masks. I think it was the hon. Member for Enfield, Southgate (Bambos Charalambous) who came to me with a constituent of his who finds it very difficult to wear a face mask. We have worked to try to show that there are exemptions, and people who are exempt should not be challenged; they should be allowed to go about their business.

However, there are also those who may enter the polling station having forgotten a mask, so we have been in contact with local authorities. We will provide them with free face masks so that they can enable people to vote safely if it is a matter of the masks having been forgotten. Finally, there will be people not working with us on the regulations, but we should not restrict them from casting their democratic vote. There has to be a balance.

I move on from polling stations. The census is important. The hon. Gentleman said that the Opposition would have done much more, but I would gently say that they did not do those things up to 2010. We are going to do the census because it is important that we understand where people are. As he rightly says, people have changed some of their habits, and people now live and work in different parts of the country. It is important that we have the regular drumbeat of a census.

I am sure that the Minister for Universities will be well aware that there are young people who—with no disrespect to the hon. Gentleman's household, which I am sure is a happy one—would rather be living in their student digs. She is obviously making more information available on that.

On the declaration of travel forms, as the hon. Gentleman said it is very early. I would also gently say that we would not consider a holiday a suitable reason for travel, so we are not dealing with a proliferation of the forms, but I will write to him, as I will do on point 2 about the ramifications of the rectifications. I will also clarify that for him.

We have introduced a new fixed-penalty notice for failure to complete the declaration of travel forms. Just as the passenger locator form works coming in, there is an element of trust, but in that particular case the carrier is also responsible for ensuring that somebody going on to their onward nation, if that is a red route, goes into a quarantine hotel, and if it is an amber route, has an onward place to go and isolate.

Enforcement agencies will use fixed-penalty notices as a last resort. We will use the “engage, encourage, educate, enforce” approach, because we cannot always guarantee that people have avoided something belligerently; perhaps they were just not aware of the situation. On vaccine passports, I cannot put it better than the hon. Gentleman did. We all await the Chancellor of the Duchy of Lancaster to come back to us on 12 April with more information.

I thank everyone for the sacrifices that each and every one of us has made in our families and in our lives, keeping ourselves and our loved ones and others safe. Our road map reaffirms our commitment to protect citizens of the UK and provide a credible route out of lockdown.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021 (S.I. 2021, No. 247).

3.3 pm

*Committee rose.*