

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

HEALTH PROTECTION (CORONAVIRUS,
RESTRICTIONS) (STEPS AND LOCAL AUTHORITY
ENFORCEMENT POWERS) (ENGLAND)
(AMENDMENT) REGULATIONS 2021

Monday 26 April 2021

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The Committee consisted of the following Members:

Chair: JAMES GRAY

Begum, Apsana (*Poplar and Limehouse*) (Lab)
 Caulfield, Maria (*Lewes*) (Con)
 Cummins, Judith (*Bradford South*) (Lab)
 Davies, David T. C. (*Monmouth*) (Con)
 Double, Steve (*St Austell and Newquay*) (Con)
 Duguid, David (*Banff and Buchan*) (Con)
 † Fletcher, Colleen (*Coventry North East*) (Lab)
 † Harris, Rebecca (*Lord Commissioner of Her Majesty's Treasury*)
 Jarvis, Dan (*Barnsley Central*) (Lab)
 Jones, Mr Kevan (*North Durham*) (Lab)

† Madders, Justin (*Ellesmere Port and Neston*) (Lab)
 Pursglove, Tom (*Corby*) (Con)
 Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)
 † Throup, Maggie (*Lord Commissioner of Her Majesty's Treasury*)
 † Whately, Helen (*Minister for Care*)
 Whittome, Nadia (*Nottingham East*) (Lab)
 Yohanna Sallberg, *Committee Clerk*
 † **attended the Committee**

Second Delegated Legislation Committee

Monday 26 April 2021

[JAMES GRAY *in the Chair*]

Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021

4.30 pm

The Minister for Care (Helen Whately): I beg to move,

That the Committee has considered the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (S.I. 2021, No. 455).

First, I thank everyone who has mobilised to fight the disease. It is not possible to namecheck everyone, but may I single out for thanks all those in the NHS, social care and the Army, as well as returned healthcare staff, who are involved in the deployment of the vaccine? I also thank scientists, pharmaceutical companies and those running clinical trials for developing new vaccines, antivirals and all manner of therapies to combat the threat of mutations.

Of course, I also thank the general public for continuing to follow the rules. It has been a difficult year, but we have made significant progress towards reclaiming our freedom, while doing all we can to protect people against coronavirus. Thanks to the collective efforts of the British public, our world-leading vaccine programme and our fantastic healthcare workers, we have been able to progress to the next stage of the road map, which seeks a balance between our social and economic priorities, and the need to save lives and avoid another surge in infections that could put unsustainable pressure on the NHS.

The decision to move to step 2 was informed by the latest scientific evidence and was based on the assessment that all four tests set out in the road map have been met. Test 1 is that vaccine deployment continues successfully. We continue to make great progress in vaccinating the most vulnerable as we move through the road map. As of 25 April, more than 33.7 million people have received their first dose of the vaccine, and another 12.9 million people have received their second dose. That huge progress means that we continue to meet the first test.

Test 2 is for the evidence to suggest that the vaccine continues to be effective in reducing hospitalisations and deaths. Public Health England's analysis indicates that the UK covid-19 vaccination programme has so far prevented more than 10,000 deaths in those aged 60 and above in England. Furthermore, hospital admissions in the over-65s remain consistent with a vaccine effect of reducing serious or life-threatening illness from covid-19.

Test 3 aims to ensure that infection rates do not risk a surge in hospital admissions that could put undue pressure on the NHS. That is somewhat mitigated by those who are most vulnerable being vaccinated. However, I know from speaking to NHS staff how concerned they are about the risk of a third wave. Currently, the number of

hospital admissions continues to decrease, and case rates among the over-60s are also falling. The NHS emergency alert level has been dropped from level 4 to level 3, mirroring how the NHS was in the summer of 2020.

Test 4 is that our assessment of the risks is not fundamentally changed by new variants of concern. As further evidence is gathered on their impact, the incidence of variants of concern, such as the South African B1351 variant or the Brazilian P1 variant, remains very low and stable in the United Kingdom, with border restrictions and testing in place. The Government will continue to monitor those and other variants closely as we ease restrictions, and we will not hesitate to take firm action as necessary to protect lives and livelihoods.

We met all four tests, so we were able to take the next cautious step along the road map on 12 April 2021. That involved the easements to restrictions set out in the regulations we are debating today and covered the reopening of non-essential retail, including personal care and indoor leisure, such as hairdressers and gyms, and the reopening of additional outdoor settings, including the hospitality sector and attractions. Outdoor hospitality is not required to provide a substantial meal alongside alcoholic drinks. Furthermore, no curfew will be imposed on pubs and restaurants, but the requirement to have table service and for customers to order via table service if the venue sells alcohol remains, and payment should be taken at the table or at another outdoor location wherever possible.

The easements also included the resumption of indoor childcare and supervised activities for children, providing they are not in private homes. That includes indoor sport and parent-and-child groups, which can take place for up to 15 people. Wedding ceremonies are permitted for up to 15 people, and wedding receptions are permitted outdoors again for up to 15 people, and should be in the form of a sit-down meal. Smaller outdoor events such as fêtes, literary fairs and fairgrounds are able to take place.

Self-contained accommodation can be used for single households or bubbles. Social restrictions will remain the same as those in place from 29 March, with the rule of six or two households outdoors only. We regret that we are only just debating these amendments now. However, it was essential to introduce them quickly, as no restriction should be in place for longer than necessary.

Step 2 is a considerable achievement and is down to the sheer dedication of all health and social care sector staff, as well as the public's determination to beat this virus. The easing of regulations is hugely welcome and brings us a step closer to reclaiming normality. Although I am proud of our efforts that have led us to introduce step 2, I must be frank: the virus is not gone from our lives, and we must be cautious as we look to ease restrictions further. There is still the risk of a resurgence of cases such as those reported in other countries. However, if we continue to be guided by data rather than dates, and we ensure that we meet the four tests, we can safely reopen our society and claim back our lives. I commend these regulations to the Committee.

4.36 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. I thank the Minister for her introduction to this instrument, which, as she said, came into force on 12 April. It amends both the original steps regulations and the local

authority enforcement powers regulations. I join her in thanking all those who have contributed to the national effort so far in our struggle against the virus. I echo what she said about the great commitment that has been shown by so many. I also agree that we are not out of the woods yet.

We do not oppose these regulations, but I do of course have some observations and questions for the Minister on the various amendments in this instrument. Let me start with the amendments relating to the steps regulations. As we heard, this instrument primarily amends those regulations to move all of England into step 2, as per the Prime Minister's road map. It also includes amendments to allow businesses or services otherwise permitted to open at step 2 also to open at self-contained accommodation, caravan parks and campsites.

According to the explanatory memorandum, the instrument also makes

“minor drafting changes to remove superfluous wording and to amend references.”

I was particularly struck by that last assertion, which, it is fair to say, somewhat underplays the utter mess that was made of the original steps regulations when they were drafted. I have never seen such a harsh report as the 46th report of the Session from the Joint Committee on Statutory Instruments, which said that the original steps regulations that this instrument amends needed to be highlighted because of a number of serious concerns: first, because of their unusual or unexpected use of enabling powers; secondly, because of defective drafting; thirdly, because they required elucidation; and, fourthly, because they fail to comply with proper legislative practice.

Those are not just a couple of minor errors, but systematic failures throughout the document. The Joint Committee report identifies that those regulations make unusual or unexpected use of the enabling powers in two respects, are defectively drafted in relation to nine issues, require elucidation in relation to five issues, and fail to comply with proper legislative practice in one respect. That is quite a damning list of failures for one statutory instrument, whose purpose is to see us safely opening up society following lockdown. As we have said many times before, how can we expect people to follow the rules if they are not clearly communicated?

These regulations do not deal with all of the Joint Committee's concerns, but, be in no doubt, we will be dealing with the consequences of them all for some time to come. If a Committee of legislative experts is unsure what is or is not meant by certain regulations and does not believe they give sufficient certainty and clarity, how can we expect the average person to understand them? In one instance, the regulations are so unclear that the Joint Committee said that the law being laid down was unsatisfactory in terms of the rule of law. I am sure the Minister will agree that such statements are pretty damning. It is just not good enough. Who in Government will be responsible for dealing with all the litigation that arises from the inevitable legal challenges to the unsatisfactory drafting of these regulations? Will the cost come from the Department of Health and Social Care's budget? Who will be paying for the mistakes?

To take one example, regulation 2(2)(b) before us today amends the definition of “private dwelling” in regulation 2(5)(i)(ii) of the Health Protection (Coronavirus,

Restrictions) (Steps) (England) Regulations 2021, which is a list of exceptions and includes the magic words “as otherwise specified”. When the Joint Committee asked the Department to identify those “as otherwise specified” exceptions, the Department replied that there were none—hence the amendment made by the regulations before the Committee.

That begs the question whether there have been arguments or challenges to the regulations based on exceptions that turn out not to have existed. I should appreciate it if the Minister would explain why those words were included in the first place when they were clearly not needed, and whether there has been any cost to the public purse from what I have outlined. That is just one error that is rectified by the regulations that we are considering today.

Another concern of the Joint Committee appears to have been overlooked altogether. As we know, the regulations make a number of amendments relating to businesses, including allowing businesses or services otherwise permitted to open at step 2 also to open at self-contained accommodation, caravan parks and campsites, including public toilets, baby changing rooms and communal areas. Of course, as part of the road map, those changes have been known about for some time, and there are restrictions. Those who can stay in the accommodation are limited to those in the same or linked households.

There has not, however, been clarity in relation to one of the concerns that the Joint Committee picked up: how the providers of holiday accommodation are expected to know with certainty whether people occupying their accommodation are linked householders. That matters because there remains a question whether the provider of the accommodation could unwittingly commit a criminal offence if they were led to believe that households were linked on the basis of false evidence submitted by a household.

In its memorandum, the Department asserts that it “would expect a provider of holiday accommodation to take reasonable steps to ascertain whether persons for whom holiday accommodation was booked were from the same household or linked households”.

It adds that a provider who is misled by the submission of false evidence

“may well have a reasonable excuse for having breached the regulations but this will depend on the facts”.

That hardly gives us much clarity or reassurance, does it? What might those reasonable steps be, and why is nothing set out anywhere about that?

As the Joint Committee said, providers of accommodation could have been made the subject of a statutory duty to carry out a verification process, or the regulations could have set out another process for them to follow. Compliance would then have been clear, and there would have been a clear defence to a prosecution. With the regulations in their present form, there is no compulsory or voluntary statutory process, and the evidential burden of proving linked households seems to be a trap for the unwitting to fall into.

As we are talking about a criminal offence—a serious matter—who is policing it? Many people who own self-catering accommodation market it through a third party—usually an internet service. Where does the responsibility lie in that situation for verifying the households of the occupants? That is important, and we need clarity on it if possible.

[Justin Madders]

The regulations also clarify that individuals may enter indoor premises that serve alcohol for the purposes of paying for food and drink, as that was not in the original regulations. Businesses have obviously been preparing for the 12 April reopening for some time, so it is quite possible that, until that last-minute change was made, preparations were being made on the basis that customers would not be able to enter the premises. Is the Minister aware of whether additional unnecessary costs have been incurred by businesses because of that oversight?

As the Minister outlined, the statutory instrument also amends the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020. The Joint Committee also reported on those regulations, in its 36th report of the Session, where it again raised the matter of defective drafting on a number of counts.

The regulations before the Committee amend the 2020 regulations to clarify that coronavirus improvement notices and coronavirus restrictions notices that require businesses to remedy unsafe practices within a set period or, where rapid action is needed, to close and address an issue before reopening may be issued in relation to the restrictions on accommodation venues as set out in step 2.

The Minister will be aware that, earlier this month, the Secretary of State for Housing, Communities and Local Government wrote to all council leaders in England urging them to ensure that they work with pubs and bars that are trying to open safely and within the rules. He said that official guidance on what is defined as an outdoor shelter had to be

“applied proportionately and consistently in your areas to support businesses to reopen safely and to avoid overzealous interpretations of the rules”.

He also said that

“if a disproportionate regulatory approach is taken, it risks driving residents into unregulated activity and premises which may be far less Covid-secure and/or illegal.”

That sounds to me as though the Secretary of State believes the Government’s guidance is open to misinterpretation. Does the Minister agree that we really must have clear criteria for our local authorities and local businesses? We are too far down the line now for there to be any confusion about what the rules are and how they should be applied. That is totally unfair on the people on the ground who have to enforce the rules and on the businesses that are trying their best to get on their feet again.

On the powers to issue notices, we are only two weeks into step 2, so it is perhaps unsurprising that I did not find any figures on how many notices have been issued under the step 2 regulations. However, it was a surprise that no data seem to exist for any notices issued under the original regulations, which had been in force since December. That is an awful long time for there to be no record of how the powers have been used. I am sure hon. Members will be aware of local examples of where notices have been issued, but it is not clear whether there is intended to be any collation or publication of figures across the board. If local authorities are not publishing the data, and if the figures are not collected centrally, how are the Government measuring the effectiveness of such notices in relation to enforcement?

I hope the Minister is able to shed some light on that and on whether the Government have plans to collate and publish the figures in future, because we need to know whether the regulations are working—not just whether the timetable in the road map is being adhered to, but whether the restrictions and the draconian powers that we have handed to the state are being used effectively and proportionately and how they play into our shared objective of keeping case numbers and hospitalisations down. Too often there has been a failure to do a proper analysis of the measures taken, as well as a lack of willingness, frankly, to engage with the systemic underlying issues and to ensure that people who are sick with the virus are properly supported financially to do the right thing when they test positive.

I will make a few comments on the general process, which I hope the Minister will reflect on. She will know much of what I am going to say, because I have been saying it for the last 12 months. The SI that we are debating today is yet another example of what is wrong with the Government’s approach, because we are once again retrospectively approving legislation. The regulations have a dramatic impact on individual liberty, as well as an economic impact, and they should not be approved after the event.

The regulations were laid before Parliament on 9 April, before coming into force on 12 April—that is just three days’ notice of their introduction. Although that is actually an improvement on the three hours’ notice that we have had for some other regulations in the past, it is still a pretty poor show that these regulations arrive so late in the day, especially when a large part of this SI essentially deals with errors and oversights from earlier regulations. Again, that is not for the first time either.

On where this legislation sits on the road map, we know that the road map has been in place for several months now, so why are we debating elements of it only now? That suggests to me that there is continuing indifference to the importance of parliamentary scrutiny, disdain in the corridors of power for the impact of the rules on those affected by them, and carelessness about the clarity and accuracy of the laws governing this country. I would have expected enough experience to have been gathered by now for there to be no need to come back and correct errors time and again, especially when dealing with regulations of this nature. After all, we are a year into the pandemic. This is the third time that we have come out of lockdown, yet we still see basic errors being made. Mistakes have consequences and, frankly, there have been too many of them. I really think a proper explanation ought to be forthcoming about why we are having to deal with these things as an afterthought. They should not be an afterthought, because we are talking about people’s livelihoods.

What is the urgency for the SI? The regulations state 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 before, and approved by a resolution of, each House”.

That is plainly wrong. As I have already said, the Prime Minister set out the road map more than two months ago. There is nothing in the regulations, or in what has been said by the Minister today, to justify the Government once again claiming urgency to ride roughshod over

proper procedures and processes. It is little wonder that we have so many errors in the regulations if they are not subject to proper scrutiny before they become law.

The Government have got into bad habits and do not think the rules apply to them. Yes, they had to act quickly at the start of the pandemic—in an emergency, that is understandable—but that is no excuse for standards to drop, for transparency to be jettisoned and for scrutiny to be considered an inconvenience to them. There can be no justification at this point for normal procedures to continue to be ignored and the claim that regulations needed to be introduced urgently. That is simply a sticking plaster for an Administration who have found that they rather like not having to bother with the norms of going through good governance. This Government have found that having to explain and debate laws before they become law is all a bit inconvenient. We should be better than that, and I think the Minister knows that we should be doing better than that.

History is full of temporary arrangements and powers that somehow became permanent because Governments found that they actually rather liked doing things that way. I will not stop raising this issue until the Government stop using the pandemic as a cover to get away with things that no self-respecting democrat would consider acceptable. I really hope that this is the last time I have to make these comments, because once the slide away from a liberal democracy starts, it can be very hard to stop.

4.50 pm

Helen Whately: It has always been clear that the path set out by the road map in February would be guided by data, not dates, and we have stuck to that commitment. Data from the Joint Biosecurity Centre, the Scientific Pandemic Influenza Group on Modelling and Public Health England indicate that the five-week gap after step 1 on 8 March enabled us to meet the four tests we had previously set out. The move to step 2 is therefore the next part of our cautious but sustainable path out of the current lockdown in England.

We recognise the impact that the restrictions have had, but the risks of not following that path are too great. By taking a cautious approach, we will protect our NHS and social care system, ensuring that it will be effective in protecting us and putting us on a sustainable

footing towards normality. We must all continue to be cautious and observe the limitations that remain in place, and I ask each and every individual to continue to play their part to keep the virus rates low and the strain on the NHS even lower.

On the points made by the shadow Minister, who was critical of some of the details of the regulations, I do not necessarily accept all his criticisms, but I say to him that we are in a situation where regulations are made at pace, and we are not living in entirely normal times, as he is well aware. It may be helpful to mention that the approach taken towards compliance by the police, for instance, is to engage, explain and encourage people to follow the rules, before moving to enforcement.

Rules have been refined during the pandemic—the rule of six or of two households together in outdoor places, for example. As a member of a family of five, I, like many others, welcome that particular move. During the pandemic, we have constantly sought to assess the impact of restrictions, although we recognise that they are often applied in combination, so identifying the impact of a specific change to restrictions is not always possible to the extent that the shadow Minister might like. We have indeed sought to ensure that we understand the impact, and clearly, we have been reluctant to impose restrictions if they are not necessary for saving lives.

The shadow Minister said that he would like to have debated the regulations before, but as he knows and has heard me say before, pace is of the essence here. We wanted to remove restrictions as promptly as we could, albeit by following the steps in the cautious approach that we have taken. I am glad that he noted the slightly longer timeframe than on some of the other regulations. We have committed to following steady progress in the easing of restrictions—subject, of course, to the data and to meeting the tests that I set out earlier.

I thank each and every person for the sacrifices that they have made to keep ourselves, our loved ones and each other safe. Our road map reaffirms our commitment to protecting the citizens of the UK and to providing a credible route out of this lockdown.

Question put and agreed to.

4.54 pm

Committee rose.

