

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT WATER FLUORIDATION (CONSULTATION)
(ENGLAND) REGULATIONS 2022

DRAFT HEALTH AND CARE ACT 2022 (FURTHER
CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2022

Monday 24 October 2022

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The Committee consisted of the following Members:

Chair: MRS SHERYLL MURRAY

Abbott, Ms Diane (*Hackney North and Stoke Newington*) (Lab)

† Baillie, Siobhan (*Stroud*) (Con)

† Baker, Duncan (*North Norfolk*) (Con)

Barker, Paula (*Liverpool, Wavertree*) (Lab)

† Carden, Dan (*Liverpool, Walton*) (Lab)

† Clark, Feryal (*Enfield North*) (Lab)

† Drummond, Mrs Flick (*Meon Valley*) (Con)

† Green, Chris (*Bolton West*) (Con)

† Greenwood, Lilian (*Nottingham South*) (Lab)

† Heald, Sir Oliver (*North East Hertfordshire*) (Con)

† Hunt, Jane (*Loughborough*) (Con)

† Knight, Sir Greg (*East Yorkshire*) (Con)

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

† Qaisar, Ms Anum (*Airdrie and Shotts*) (SNP)

† Quince, Will (*Minister of State, Department of Health and Social Care*)

† Solloway, Amanda (*Lord Commissioner of His Majesty's Treasury*)

Wallis, Dr Jamie (*Bridgend*) (Con)

Mariam Keating, Yohanna Sallberg, *Committee Clerks*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 24 October 2022

[MRS SHERYLL MURRAY *in the Chair*]

Draft Water Fluoridation (Consultation) (England) Regulations 2022

6 pm

The Minister of State, Department of Health and Social Care (Will Quince): I beg to move,

That the Committee has considered the draft Water Fluoridation (Consultation) (England) Regulations 2022.

The Chair: With this it will be convenient to consider the draft Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022.

Will Quince: It is a pleasure to serve under your chairmanship, Mrs Murray. Tooth decay is a significant yet largely preventable public health problem throughout the country. Water fluoridation is an effective public health intervention to reduce the incidence of tooth decay and oral health inequalities. The water fluoridation provisions of the Health and Care Act 2022 will come into force on 1 November, and in doing so will transfer the power to initiate new schemes, or to vary or terminate existing schemes, from local authorities to the Secretary of State.

Sir Greg Knight (East Yorkshire) (Con): We should make no mistake about what we are doing here. This is compulsory medication, because water is essential to human life. Will the Minister clarify one matter? Paragraph 7.8 of the explanatory memorandum says that it is not intended that consultations will amount to a referendum, and that decisions will depend on

“a range of factors...including...cogency of the argument”.

Who is to decide on the cogency of the argument: an independent arbiter or some pro-fluoridation fanatic?

Will Quince: I will come on to talk specifically about the consultation; then, perhaps in my closing remarks, I will go into a bit more detail about the role of the Secretary of State, which I think is the crux of my right hon. Friend's question. Of course, we dealt with the fundamental principle of water fluoridation in the debates on the 2022 Act, and we do not want to go over those arguments again.

We have always been clear that, in looking at how we decide how to consult on water fluoridation schemes, public consultation will continue to be an important aspect of water fluoridation proposals, and the draft regulations set out the process that any future consultations must follow. Despite there being no statutory requirement to do so before laying the draft regulations, we of course consulted with the public because we know that some people, including my right hon. Friend, have strong feelings on the subject of water fluoridation and consultations relating to it. We are keen to gather public opinion on our suggested consultation approach.

Chris Green (Bolton West) (Con): The fact that this power is being taken from the local authority level up to the Secretary of State would suggest that the Secretary of State, or the previous Secretary of State, believes that the decisions on—or progress of, as it might be seen—the fluoridisation of England's water have not gone far enough. The Government clearly start with an intent to fluoridise more of England's water. The intent is already there and the direction is being pushed in regardless of what consultation there is. It is not clear that local voices will be represented, as opposed to the establishment will that currently exists.

Will Quince: I note my hon. Friend's concerns. I will come on to address them, and if I do not do so immediately—because I am going to talk about the consultation and how we propose to undertake it—I will do so in my closing remarks about the duty of the Secretary of State. My hon. Friend is right that it is important that localities have a say on such things as water fluoridation.

Chris Green: The question of localities is important. I am a Greater Manchester MP; will Bolton be the local authority that makes the decision for my area? How much influence will the integrated care board have? Will it be a Greater Manchester Combined Authority decision, or will it be a mayoral decision?

Will Quince: My hon. Friend is right to push us on those issues. I will touch on them all, because it is about not just local authorities, metro Mayors and others having a say, but all those who live, work and study in an area. No doubt they will have strong views, notwithstanding me as a Health Minister having a view when it comes to tooth decay and the difference that fluoridation will have in that respect.

We launched a public consultation on 8 April that ran until 3 June. We sought views on whether future water fluoridation consultations should be restricted only to people affected locally and bodies with an interest, such as those referenced by my hon. Friend the Member for Bolton West—incidentally, that had been the case under legislation—or whether we should move to a model in which consultation would open to all, especially given the shift of responsibility from local authorities to central Government. Some people with strong views on water fluoridation may not live in a particular area but may have certain expertise or a particular interest.

We received 1,228 responses to the consultation; of those, 94% came from individuals and 6% came from organisations. The majority of respondents favoured a consultation open to all. The draft regulations will not restrict who can respond to any future consultation on water fluoridation, which I hope my right hon. Friend the Member for East Yorkshire and my hon. Friend the Member for Bolton West agree is the right approach.

To come to the crux of my hon. Friend the Member for Bolton West's points, we understand that the views of those who are directly affected and living, working and studying in an area in question are incredibly important. For that reason, the regulations also provide for consideration to be given, as part of the decision-making process, to whether additional weight should be given to consultation responses from those who may be particularly affected by any future proposals.

Public opinion and the extent of support for a water fluoridation proposal will continue to be important but, as my right hon. Friend the Member for East Yorkshire rightly pointed out, consultations are not referendums. It is right that regulations provide for a range of other factors to be taken into account when considering a water fluoridation proposal.

Sir Oliver Heald (North East Hertfordshire) (Con): In the consultation, were any of the representations made about the European convention on human rights, particularly articles 5 and 8?

Will Quince: The honest answer is that I am not aware of any, but no doubt my officials will look that up and I will be able to respond in my closing remarks.

The wider factors that have to be taken into account in the consultation include but are not limited to the strength of evidence underpinning an argument made by the respondents. It is absolutely right that due regard is given to those arguments and that they are properly supported by sound evidence.

On evidence, a point that my right hon. Friend the Member for East Yorkshire alluded to, we are committed to scientific evidence on water fluoridation. It has to underpin any proposal that we put forward. The Department continues to review scientific papers published both in this country and internationally as part of the continuous monitoring of the evidence. That includes papers on the epidemiology and toxicology of water fluoridation. Every four years, the Department will continue to publish a summary report on our knowledge, in line with the Secretary of State's responsibility for monitoring the effects of the water fluoridation arrangements on the health of the populations that are served by existing schemes.

Chris Green: What is the Government's view of side effects? As far as the Government are aware, are there zero side effects from the fluoridation of water?

Will Quince: I will come to that point. The common finding of several authoritative scientific reviews is that there is no convincing scientific evidence that fluoride in drinking water, at levels used in fluoridation schemes, is a cause of adverse health effects. Let me provide further assurance that if the balance of evidence in favour of water fluoridation as a public health measure were to change, a review of the current water fluoridation policy would take place.

I am conscious that I was not the Minister when the Act was passed, but this same point was made during the passage of the 2022 Act. We have 57 years of experience in England and 75 years of experience internationally of water fluoridation schemes. There continues to be no convincing evidence of health harms associated with the levels of water fluoridation use in this country. In fact, what we have seen internationally is more countries moving in that direction because of the benefits of tackling tooth decay, particularly in children.

Sir Greg Knight: The Minister is being generous in giving way. What is the duty to monitor and sample water where fluoride has been added to ensure that the dosage of fluoride is not excessive?

Will Quince: I do not know the answer off the top of my head. My officials can certainly look it up. If I can get that before my closing speech, I will. Failing that, I will of course write to my right hon. Friend and all members of the Committee to furnish them with that evidence.

Another important factor is the cost-benefit analysis, because the schemes are not cheap. They have a huge benefit, but they also come with a sizeable cost. One element in deciding whether we proceed with a water fluoridation proposal is of course a cost-benefit analysis of said proposal, and any new proposal would have to demonstrate that the benefit to health represents good value for the investment of public money being proposed.

As I have set out, where the conditions are met, we want more of the country to benefit from water fluoridation. I am pleased to announce that, subject to the outcome of this debate and any future consultations, funding has been secured to begin expansion across the north-east into Northumberland, County Durham, Sunderland, South Tyneside and Teesside, including Redcar and Cleveland, Stockton-on-Tees, Darlington and Middlesbrough. I know that the local authorities in those areas are strong supporters of water fluoridation.

In accordance with the regulations we are debating—my hon. Friend the Member for Bolton West will appreciate this because he rightly makes the point that we need to consult the public—we will hold a public consultation on the proposal next year. It is important to stress that the expansion will enable an additional 1.6 million people to benefit from water fluoridation. It will help to reduce the levels of tooth decay in the area and, over time, reduce the numbers of children who need to be admitted to hospital for tooth extractions because of decay. As children in more deprived areas are at greater risk of tooth decay, expansion will help to level up dental health for the children and families who need it most. I am conscious there were some other questions and will try to come back to as many as I can in my closing remarks.

Let me turn to the draft Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022, and start with the mandatory learning disability and autism training. People with a learning disability and autistic people face barriers in accessing the right care and support. I know that from my time as Minister for Children and Families at the Department for Education. We know that, compared with the general population, people with a learning disability are more than three times as likely to die from an avoidable medical cause of death.

The introduction of mandatory training on learning disability and autism is an important way to address persistent disparities in health and care outcomes for the affected group of people, and it will ensure that staff have the right skills and knowledge to deliver safe and good quality care. That is why the Government introduced, from 1 July, a new requirement that Care Quality Commission-registered providers have to ensure that their health and social care staff receive training on learning disability and autism appropriate to their role.

The Health and Care Act 2022 also creates a duty for the Secretary of State to publish a code of practice that will outline how to meet the new requirement, which will include the content of training, its delivery, and the ongoing monitoring and evaluation of said training. The code of practice is being developed and we expect to publish a draft for consultation next year.

[Will Quince]

The 2022 Act amends section 20 of the Health and Social Care Act 2008 so that regulations must require service providers to ensure that their employees receive training on learning disability and autism. Section 23(1) of the 2008 Act requires the CQC to issue guidance about complying with the requirements of the regulations under section 20. In its current form, the 2022 Act imposes a duty on the CQC to issue statutory guidance about the new training requirements for service providers. The CQC published the guidance on 1 July, so if it is left unchanged, service providers will have two sets of guidance—statutory guidance that is issued by the CQC and a code of practice issued by the Secretary of State.

To avoid duplication and to ensure that service providers have a single source of information, this tidying-up regulation seeks to improve the situation by removing the requirement for the CQC to issue statutory guidance about the training requirements by amending section 23(1) of the Health and Social Care Act 2008. As agreed with the CQC, the statutory guidance that it has published will be accessible for service providers until the code of practice is published.

Let me turn to virginity testing and hymenoplasty. Safeguarding vulnerable women and girls is a top priority for the Government, which is why we were one of the first countries in the world to ban virginity testing and hymenoplasty. Virginity testing and hymenoplasty have no scientific merit or clinical indication and they are a violation of human rights. They have an adverse impact on women and girls' physical, psychological and social wellbeing; they are degrading and intrusive acts; and they can lead to extreme psychological trauma in the victim, including anxiety, depression, post-traumatic stress disorder and suicide.

Virginity testing and hymenoplasty can be physically harmful. They can result in damage to the hymen, tears and damage to the wall of the vagina, and bleeding and infection. The risk of infection is particularly high in hymenoplasty, which has the added risks of acute bleeding during the procedure, scarring, the narrowing of the opening of the vagina and sexual difficulties. As such, we are proud that the 2022 Act made carrying out, offering and aiding and abetting virginity testing and hymenoplasty illegal.

As the offences are new, certain changes to other legislation are necessary to protect vulnerable groups. The Scottish Government have requested that a change be made to the Foster Children (Scotland) Act 1984, which contains a list of matters that seek to disqualify a person from fostering a child in Scotland. The consequential amendments proposed today would add to that list the conviction of an offence of virginity testing or hymenoplasty in relation to a child. This change would also flow through to assessments by adoption agencies in Scotland under the Adoption Agencies (Scotland) Regulations 2009 with regard to the suitability of prospective adopters.

The 2009 regulations require suitability assessments to be carried out with reference to a range of information, including whether the prospective adopter or any member of their household has been disqualified or prohibited from keeping a foster child under the 1984 Act. The change would have the effect of disqualifying or enabling the disqualification of individuals convicted of virginity testing or hymenoplasty offences from fostering or adopting

in Scotland. Similar changes are already in place in equivalent English and Welsh law, and this will help to protect girls and young women from so-called honour-based abuse. I commend the regulations to the Committee.

6.17 pm

Feryal Clark (Enfield North) (Lab): It is a pleasure to serve under your chairmanship, Mrs Murray.

Poor oral health is far too common in 21st century Britain and, as is so often the case, it has the most significant impact on already vulnerable and disadvantaged people. Oral health has suffered from a chronic lack of investment, with a number of opportunities missed to make a serious impact on interventions. Those interventions have long since disappeared given the deep cuts made to public health budgets throughout the country, but one such measure that remains is putting fluoride in our water, which is an effective, evidence-based intervention on oral health—nothing more and nothing less. Given that fact, and the major health inequalities we face, we should actively pursue the rolling out of these schemes to the communities that would benefit the most.

When pursuing water fluoridation, it is vital that we start where communities are and bring them with us. I am therefore particularly pleased to see the emphasis the regulations place on the need for proactive engagement and consultation with local communities when the plans are rolled out. Given the mismatch of local authority and water-provider boundaries, the centralisation of the process is understandable, but it makes engagement even more important, as the Minister set out.

Given the regulations' positive intention to improve oral health, where is the action to address the crisis of access to NHS dentistry? The Government spend on general practice in England has been cut by more than a third over the past decade, with the number of NHS dental practices in England falling by more than 1,200 in the five years prior to the pandemic. Tooth extraction remains the No. 1 cause of children being admitted to A&E. We welcome the regulations on fluoridation, but I gently remind the Minister that if we are to see progress on oral health, much more needs to be done.

On the second set of regulations, it is good to see the tidying up of the Health and Care Act 2022. I want to ask the Minister if it is correct that the regulations cover the statutory guidance on training for learning disabilities and autism?

Will Quince: I believe so, yes.

Feryal Clark: I just wanted to check, because the Minister mentioned virginity tests and hymenoplasty. I want to make clear our support for the change in that guidance on learning disability and autism training. The regulations are welcome, and their implementation is now a task for the Government.

Virginity testing and hymenoplasty are serious practices with no medical benefits that do not work in service of the goal they are supposedly pursuing. They are not medical practices; they are nothing more than abuse. Both practices are a violation of women's and girls' human rights. As the Royal College of Obstetricians and Gynaecologists has stated,

“Both are harmful practices that create and exacerbate social, cultural and political beliefs that a woman's value is based on whether or not she is a virgin before marriage.”

Women need and deserve ownership of their sexual and reproductive health. It is our right. Those who deny women that right in any part of our country are criminal. They must not have the right to foster a child. We cannot and must not entrust the care of a child to anyone who has committed such a heinous crime. We welcome the regulations and support the measures.

6.23 pm

Will Quince: I thank colleagues for their contributions, and the Opposition for their constructive response and the tone of their questions. I will focus on water fluoridation and then come to dental access, which is not entirely related, but is important and a priority for me.

Consultations seem to be the key issue, so let me focus on them. I am happy to meet my right hon. Friend the Member for East Yorkshire and my hon. Friend the Member for Bolton West to discuss this issue at greater length as we progress toward consultations. On the additional weighting that will be given to local views, which is important, the regulations require the Secretary of State to take into consideration a range of factors when making a decision on water fluoridation. That includes giving consideration to whether the views are of individuals directly affected and constitute bodies with an interest. If they are, they should be given additional weight. There are clearly established public law principles that require public bodies to act lawfully, rationally, fairly and compatibly with the human rights of those affected by their actions. We would quite rightly have to justify any decisions taken on a future scheme as part of the decision-making process.

One of the questions asked was on the methodology of the extra weight given to local people as per the regulations. Under the Water Industry Act 1991, as amended, Parliament granted the Secretary of State the power and discretion to make decisions on future fluoridation steps in England, including establishing, varying and terminating fluoridation agreements. To give those powers additional weight, the Secretary of State will be bound by the regulations to do that in an appropriate manner, in accordance with the public law principles of rationality that I have just set out.

I remind the Committee that implied in the Secretary of State's existing direction is the power to grant additional weight to any person or persons whom she deems fit. In effect, all this provision does is to compel the Secretary of State to give due consideration to doing so. As I say, I would be very happy to pick that point up in more detail with my right hon. Friend the Member for East Yorkshire and my hon. Friend the Member for Bolton West.

Questions were raised about the duty of sampling water to ensure that a dosage is not too high. Clear regulations on water supply were laid in 2018. They allow up to 1.5 mg of fluoride per litre in public water supplies. I would be happy to write to my right hon. Friend the Member for East Yorkshire about how water authorities are held to account to ensure that water is monitored and that limit adhered to.

Finally, I hear what the hon. Member for Enfield North says about dental access. Access to dentistry is difficult in too many parts of the country, especially

when people do not have ongoing relationships with a dentist. In July, we announced a package of improvements to the NHS dental system, which was detailed in our plan for patients. The Committee will have noted that the Secretary of State has her A, B, C and D priorities, and D stands for doctors and, importantly, dentists. As the Minister with responsibility for primary care, I can tell the hon. Lady that dentistry is a priority for me. I know that the delivery of dental care suffered considerably during the pandemic, but it continues to improve as we recover. Many dentists are already delivering at or above 100% of their contracted activity, but I recognise that we need to go further, and I am meeting stakeholders in the profession to see what further steps we need to take.

Sir Oliver Heald: Were any consultees concerned about human rights issues, and would that impact on consulting and on the way in which the measures on sampling and so on are implemented?

Will Quince: I was not avoiding my right hon. and learned Friend's question, but I do not have an answer for him as my officials have not been able to find one in the short time that they have had. I will certainly commit to writing to him and to any other Committee member who is interested. Of course, if people made challenges or raised concerns on those grounds, they would be given weight as part of any consultation.

I understand that this is an emotive subject and that there are strong views on either side of the debate. That debate has already been had as part of the passage of the Act, but I trust that my answers—notwithstanding the one that I have failed to deliver for my right hon. and learned Friend the Member for North East Hertfordshire—have provided some reassurance on the benefits of water fluoridation and, in particular, on the importance of the consultation regulations. The regulations reflect the consultation responses from the public, and will not restrict those who want to respond to future public consultations on water fluoridation schemes.

I hope that my answers have also provided some reassurance on removing the requirement of the CQC to issue statutory guidance on mandatory learning disability and autism training. Let me be clear: that will not leave service providers without clear information. It will not be removed until it has been replaced with the code of practice.

Sir Greg Knight: Will the Minister reassure us that if he writes to any single member of the Committee on any issue that has been raised, he will write to us all?

Will Quince: I can certainly give that commitment and assurance to my right hon. Friend. With that, I commend the regulations to the Committee.

Question put and agreed to.

DRAFT HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL AMENDMENTS) REGULATIONS 2022

Resolved,

That the Committee has considered the draft Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022.—
(*Will Quince.*)

6.29 pm

Committee rose.

