

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

HEALTH PROTECTION (CORONAVIRUS,
RESTRICTIONS) (NO. 2) (ENGLAND)
(AMENDMENT) (NO. 2) REGULATIONS 2020

Monday 14 September 2020

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The Committee consisted of the following Members:

Chair: YVONNE FOVARGUE

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| † Aiken, Nickie (<i>Cities of London and Westminster</i>)
(Con) | † Smith, Greg (<i>Buckingham</i>) (Con) |
| Benn, Hilary (<i>Leeds Central</i>) (Lab) | † Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Clarkson, Chris (<i>Heywood and Middleton</i>) (Con) | † Twigg, Derek (<i>Halton</i>) (Lab) |
| † Crosbie, Virginia (<i>Ynys Môn</i>) (Con) | † Western, Matt (<i>Warwick and Leamington</i>) (Lab) |
| Eagle, Maria (<i>Garston and Halewood</i>) (Lab) | † Whately, Helen (<i>Minister for Care</i>) |
| † Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab) | † Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Mak, Alan (<i>Havant</i>) (Con) | † Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| † Marson, Julie (<i>Hertford and Stortford</i>) (Con) | Huw Yardley, <i>Committee Clerk</i> |
| † Moore, Robbie (<i>Keighley</i>) (Con) | † attended the Committee |
| † Richardson, Angela (<i>Guildford</i>) (Con) | |

First Delegated Legislation Committee

Monday 14 September 2020

[YVONNE FOVARGUE *in the Chair*]

Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020

4.30 pm

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

That the Committee has considered the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020, No.788).

It is a pleasure to serve under your chairmanship, Ms Fovargue. I will start by summarising the changes to the regulations. The Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020, which I will refer to as the national regulations, came into force on 4 July. There have been five changes to the national regulations, the first of which was debated in and approved by both Houses before recess. The focus of this debate is the second amendment to the regulations.

These amendments permitted from 25 July the reopening of the following businesses and venues: indoor swimming pools, including water parks; indoor fitness and dance studios; and indoor gyms, sports courts and facilities. Alongside those changes, the Government produced supporting guidance advising that the most high-risk activities within those businesses and venues, such as saunas and steam rooms, should not reopen. Those easings did not apply to the city of Leicester boundaries and the borough of Oadby and Wigston.

We have needed to use the emergency power to amend these regulations so that we can respond quickly to the serious and imminent threat to public health posed by coronavirus. I know that these national regulations have caused real disruption to people's lives. They have placed restrictions on who people can see, what they can do and where they can work. Just as the Secretary of State has the legal obligation to protect public health, he is also obligated to ease restrictions as soon as it is safe to do so.

The first three changes to the regulations opened businesses and venues that had been required to close, and covid-secure guidance was developed with industry and medical advice to ensure that they opened safely. That means that now only nightclubs, dancehalls, discotheques, sexual entertainment venues and hostess bars are required to remain closed, as they are considered to pose a high risk of transmission because of the close proximity of members of staff and customers. That shows the Government's commitment to ensuring that restrictions are in place only as long as necessary, and an evolution in our understanding and approach to tackling the virus.

Over the summer recess, we have combined the tightening of restrictions in areas where there are outbreaks with the easing of business restrictions nationally. We have given local authorities powers to act quickly in response

to local outbreaks by closing specific premises, shutting public outdoor spaces and cancelling events. We asked all councils to develop dedicated local outbreak plans, and we gave them £300 million of new funding to support that. We published the contain framework, providing further guidance on managing local outbreaks.

Where regulations have been required, the Government have worked with local partners to develop tailored and proportionate restrictions based on the best scientific evidence available, in areas varying from a single factory to an entire region, such as the north of England. These interventions have been underpinned by scientific advice and local data provided by a combination of Public Health England, the Joint Biosecurity Centre and NHS Test and Trace.

Colleagues will have seen that today the rule of six comes into effect. This change brought the gathering policy from guidance into regulation, mandating that people can only gather in groups of six, and it applies both indoors and outdoors. Single households or support bubbles of more than six are still able to gather together, and there are a small number of exemptions, such as for work, schools, weddings and organised sports activities. People should continue to follow social distancing rules with those outside their household or support bubble. As the Prime Minister announced last week, these measures are not a second national lockdown but are aimed at preventing the need for one.

It is thanks to the public and their continued effort that we have been able to slow the spread of the virus and have started cautiously to return to life as normal. Now, with winter approaching and covid rates rising again, we must keep doing whatever it takes to keep it under control, guided by our ever-increasing knowledge of how covid is spreading and what interventions are effective.

I am grateful to colleagues from across the House for their valuable contributions to these debates and for continuing to challenge us to do better in this vital area of public policy. I believe that we have met the bar set for us. These regulations are a proportionate and necessary use of the powers that Parliament has asked us to use, and I commend them to the Committee.

4.34 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Ms Fovargue. I thank the Minister for introducing the regulations. As she said, they amend the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, which dealt primarily with the reopening of the hospitality sector and came into force on 4 July. Those regulations were amended to allow further easing of restrictions, including the opening of outdoor swimming pools and water parks from 11 July, and nail bars and salons, tanning booths and salons, spas and beauty salons, massage parlours, tattoo parlours, and body and skin piercing services from 13 July. As she outlined, those amendments, which came into effect on 25 July, further allowed the reopening of indoor swimming pools, indoor facilities at water parks, indoor fitness and dance studios, and indoor gyms and sports courts and facilities.

I have several issues to raise about these regulations, starting with the fact that they came into effect on 25 July, which is now seven weeks ago. The Minister will

not be surprised to hear that my first concern is that, once again, we are debating the regulations too late. It is, regrettably, not the first time I have raised the matter; in fact, I have had to raise it each and every time we have debated the health protection regulations in Committee, because we have not yet managed to debate one of these statutory instruments before it has come into force. That is despite the fact that we are now many months down the line from the initial crisis. As I have made clear on numerous occasions, we accepted that initial regulations had to be introduced hurriedly in response to the initial threat and the rising number of infections of a new and unknown disease, but that is no longer the situation.

I am not the only person to raise concerns about the Government continuing to table business without providing time to ensure that proposed changes are debated before they become law. Members on both sides of the House and in the other place have repeatedly expressed their desire for timely debates to ensure that such proposals are subject to full parliamentary scrutiny. Despite multiple pleas and assurances that the Government had listened to those concerns and were working hard to address the problem, they still appear to believe that a rubber-stamping exercise seven weeks down the line is sufficient to meet their democratic obligations, but I disagree. Parliamentary scrutiny cannot be ditched because the timing is inconvenient. The regulations are too important not to be debated and given timely and full parliamentary scrutiny.

Senior Conservative Members raised these issues in the Chamber only last Thursday, when the Secretary of State for Health and Social Care gave his statement. Over the weekend, the airwaves were full of Members expressing their concerns about the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020, which have come into force today without any parliamentary scrutiny. In fact, it was not until 11.45 pm last night—15 minutes before those regulations became law—that a copy of them became available to look at online. That gave people no time to examine them before they came into force, let alone any opportunity for debate or scrutiny. Will those regulations be debated in seven weeks' time? Although we no longer have a recess to contend with, more than 17 other regulations have come into effect but have not yet been debated—and that does not include four that came into effect and were revoked without ever being debated. That is no way to manage legislation, and that is no way to govern.

The Government's handling of the pandemic has been too slow throughout, and they continue to be too slow in bringing legislation to the House to be scrutinised. I again plead with the Minister, as I have done on numerous occasions, that the Government should be made aware, in the strongest possible terms, that the Opposition remain extremely concerned about the continuing contempt that is being shown for parliamentary scrutiny. The Government can and should make time to debate these regulations properly.

Of course, the Opposition want these measures to work and for us to beat the virus. The Minister must surely agree that high levels of compliance are key to our success in achieving that aim. She will be aware that there are stirrings of discontent about the continuing restrictions that are being placed on our lives. However,

some people are using perfectly reasonable concerns about the lack of democratic legitimacy surrounding these restrictions to bolster their outright opposition to the measures. Let us not give them that opportunity. Let us show them that we understand the concerns about the personal implications of such restrictions, and that we take those concerns seriously, by having a full and robust debate before the restrictions are introduced. The rubber-stamping exercises that we go through in Committee weeks after the event cannot engender confidence that the measures are introduced after full consideration and deliberation.

Matt Western (Warwick and Leamington) (Lab): My hon. Friend is, as usual, making a powerful point. The hon. Member for Altrincham and Sale West (Sir Graham Brady) has been particularly vocal. The challenge for us all is ensuring that we take the public with us, be they businesses or constituents. The real criticism is that if we do get the opportunity to debate the restrictions, the public increasingly will not support them.

Justin Madders: I thank my hon. Friend for his intervention. I hope that that does not prove to be the case but, as I say, we should not give those who want to disobey the rules the opportunity to look for reasons to do so. That is why the rule of law, Parliamentary scrutiny and timely debate are important. I understand that the situation is rapidly changing and that the Government need to act quickly, but I believe that they can act quickly and transparently at the same time. I do not see any contradiction between those two objectives.

As my hon. Friend mentioned, Conservative Members have expressed concerns about this Government's approach to legislation. In a week when former leaders of the Conservative party have queued up to express their concerns about the Government's proposals to act outside the law, timely debate is one way to restore public trust. It is a way of saying that the rule of law matters in this country; that rules apply to everyone; that the restrictions are serious, not an optional extra; and that the Government do not consider themselves to be above the law.

It should not be beyond the wit of even this Government to arrange, through the usual channels, for Committees to be set up at short notice so that these important regulations are debated properly before they become law. I stand ready to clear my diary, if necessary, to ensure the Opposition plays its part in providing proper scrutiny and accountability for these regulations.

My second concern, which arises as a consequence of our debating these regulations too late, is whether the scientific advice that underpins them is now out of date. If I were to take something positive from our debating the regulations so long after their introduction, it would be that we have the opportunity to look in detail at how they have worked in practice. The explanatory memorandum reminds us that the Government announced the opening of the hospitality sector from 4 July, saying that such action was possible

“due to the continuing falling of the transmission rate”.

That was consistent with the chief medical officers' downgrading of the UK's covid alert level from four to three, which meant that we no longer faced the exponential spread of the virus, although it remained in general circulation.

[Justin Madders]

As we probably all know, it seems that that is, sadly, no longer correct. Case numbers have risen sharply in recent days. Numbers soared on Friday, with the highest rise we have seen in four months, and that continued over the weekend. The R number has gone above 1, and it is estimated to be between 1.0 and 1.2. That means that transmission is rising, not falling, contrary to what is stated in the explanatory memorandum. That is despite the fact that people cannot get tests, so we cannot even ascertain the seriousness of the problem. We know that things are deteriorating, but we cannot assess the scale of the problem because we do not have the data to measure to it.

Whatever the true scale of the increase in cases, we are in a very different position from where we were in July. It matters that we are debating, and being asked to decide whether we support, regulations that do not reflect the latest scientific evidence. I do not doubt that the advice was right at the time, but the situation has clearly moved on. Can the Minister update us on the latest scientific advice in relation to the measures in these regulations?

It is something of a nonsense that we are today debating regulations that were introduced when the picture was markedly different. Would we still be introducing these relaxations if they were due to come into force today? I would like to hear what the Minister has to say about that. What is the latest advice on whether any of the relaxations should be reversed? Can the Minister update us on whether the UK's covid alert level will change, given the increase in the number of cases and the R number?

There is another reason why the regulations are out of date, and why any debate on them now does not lend itself to proper scrutiny. As the Minister said, the Government are moving away from national restrictions across sectors, which was the strategy when the regulations were introduced, to more localised measures. In a number of areas that were subject to local lockdown restrictions, businesses that the explanatory note acknowledges were the last to open because the transmission risk was considered to be higher did not reopen on 25 July. That was the case in Leicester, for example, which went into the first local lockdown on 22 July, as well as in Blackburn with Darwen and in Luton, which were subject to extra restrictions from 25 July.

To debate whether those relaxations should go ahead now, when they did not go ahead at the time in some local areas because of a spike in infections, is to make a mockery of the process. Granted, it is not as bad as debating the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations, which closed down zoos and safari parks, on the same day as another set of regulations came into force that opened them up again, but we are not too far away from that. This shows again the importance of debating future regulations in the House before they come into force.

It is a matter of considerable regret that we are being asked to debate these regulations without the full information on which the Government based their decisions. It is not the first time that has happened. The scientific evidence behind the decision to ease the restrictions is not readily available, and that is an issue when the key question that we must ask is whether the regulations will increase the spread of the virus.

The explanatory memorandum that accompanied the original No. 2 amendment regulations stated:

“There is recognition that these changes may lead to an increase in transmission rates and will continue to be kept under review.”

I have previously asked the Minister to clarify which measures, individually or collectively, were considered to be likely to lead to an increase in transmission rates. We still have not had any clarity on that, and that is not reassuring when we hear that the Government have based their legislation on the science.

The explanatory memorandum for the original No. 2 amendment regulations shared some of the scientific advice from the Scientific Pandemic Influenza Group on Modelling on why some measures could be relaxed, but this explanatory memorandum provided no such advice. It may be that the advice no longer holds good for the reasons that I have already outlined, but unless we have complete transparency on that, we are not in a position to judge its strength or relevance. Was the decision to reopen these businesses and venues based on advice from scientific advisers? How is the risk quantified? Were any elements of the relaxation considered to be riskier than others? What, if any, mitigating measures were recommended?

As I have highlighted to the Minister on several occasions, we have not seen the legally required reviews of the regulations. We know that the Secretary of State is required to review them every 28 days. The first review was due by 31 July, which means that a second was due by the end of August. Why have we not seen the findings of those reviews to inform our decision making today? The Secondary Legislation Scrutiny Committee has called on the Government to ensure that that information is provided. Without those reviews, all that has been published alongside the regulations is an explanatory note telling us that no consultation has been carried out and no regulatory impact assessment has been undertaken. Will the Minister commit to publishing the review of the regulations alongside the full scientific evidence and full impact assessment?

We will not press the regulations to a Division, but I hope that the Minister has got the message loud and clear that the continual failure to debate these regulations in a timely manner is unacceptable. If the Government really want to live up to their ambition of Parliament taking back control, they should start by acting in a way that allows it to do so.

4.49 pm

Helen Whately: I thank the hon. Member for Ellesmere Port and Neston for his response, some of which, as he mentioned, he has said before. I will address his comments head-on.

The hon. Gentleman said that he would like us to have debated these regulations sooner, and we absolutely recognise that timely scrutiny is important. There is substantial scrutiny of the Government's decisions. For instance, there have been multiple oral statements, and numerous urgent questions have been responded to by Government Ministers. There is a great deal of challenge to decisions that are made.

However, throughout the pandemic and up to the present, we continue to need to act rapidly. We need to take rapid decisions to make restrictions to people's normal way of living, unfortunately, when we see growing risks of the spread of the disease. We also want to be

able to take rapid decisions to reduce those restrictions, recognising the difficulties that they cause for people going about their lives, whether in their family relationships, social relationships or livelihoods.

The hon. Gentleman has said that we are now at a different time, and things are different now. Yes, we have done a huge amount to bring the virus under control since the peak in the spring, and we now have a vast quantity of testing relative to the amount we had earlier on, although I fully recognise that its capacity is challenged at the moment because of the great deal of demand for it. However, we are continuing to learn all the time from the greater data we now have about how people are catching the virus—how it is spreading, but also how it is not spreading—so it is still the case that we need to be able to move quickly.

The hon. Gentleman asked about the scientific context for this, and whether because time has moved on, these easements are still the right thing to do. The restrictions are continuously reviewed, looking at what new restrictions may be appropriate and what easements might need to be introduced. As he has acknowledged, in some areas where there have been local outbreaks, restrictions have either not been lifted or have been reintroduced. We are able to do that because, thanks to the operation of Test and Trace and the Joint Biosecurity Centre, we have much more data about how the virus is spreading. For instance, we know that the virus is largely spreading through people's social interactions. For the most part, it is not spreading in workplaces, and the risk for children in schools is very low, but we have a particular challenge with social contact. Therefore, we are, in general, able to maintain the easements that have been brought in, but are introducing the rule of six today to limit the social contact through which covid is spreading.

In some areas of the country where there are greater rates of covid, there are greater restrictions on household gatherings and even on the rule of six, because we have

evidence that in some places, it is particularly spreading through households mingling in a home setting. The whole point is that having greater data and scientific insight, and following scientific advice, means that the restrictions we now have in place can be more tightly targeted, and can avoid restricting people's lives in ways that are not essential while targeting the ways in which we know the virus is being spread. I assure the hon. Gentleman that we will continue to review the situation, including whether we need to impose further restrictions. Clearly, that would be done with great reluctance, but we cannot get to a situation that is the same as the one we were in earlier in the year. We must continue to be vigilant.

Justin Madders: I am grateful to the Minister for explaining in a little more detail some of the work that is taking place to understand how the virus is spreading. Is it the case that the relaxations we have talked about today are not contributing to an increase in transmission?

Helen Whately: As I said, the work that is carried out by the Joint Biosecurity Centre, drawing on the information from NHS Test and Trace and other sources of data, looks at the main sources of spread. We know that the main source of spread is through social contact, rather than in more controlled settings. In business settings, we are seeing, for the most part, businesses taking great care to ensure their setting is covid secure, for which they should be commended.

I feel that this is the moment to bring the debate to a conclusion, and I commend the regulations to the Committee.

Question put and agreed to.

4.55 pm

Committee rose.

