

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT CORONAVIRUS ACT 2020 (EARLY EXPIRY)
REGULATIONS 2021

Wednesday 7 July 2021

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Sunday 11 July 2021

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The Committee consisted of the following Members:

Chair: †MR LAURENCE ROBERTSON

† Argar, Edward (<i>Minister for Health</i>)	Mann, Scott (<i>Lord Commissioner of Her Majesty's Treasury</i>)
Bryant, Chris (<i>Rhondda</i>) (Lab)	Pursglove, Tom (<i>Corby</i>) (Con)
Caulfield, Maria (<i>Lewes</i>) (Con)	† Rutley, David (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Crosbie, Virginia (<i>Ynys Môn</i>) (Con)	Thomson, Richard (<i>Gordon</i>) (SNP)
Duffield, Rosie (<i>Canterbury</i>) (Lab)	† Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>)
Freer, Mike (<i>Comptroller of Her Majesty's Household</i>)	Winter, Beth (<i>Cynon Valley</i>) (Lab)
† Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab)	Yasin, Mohammad (<i>Bedford</i>) (Lab)
Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>)	Kevin Maddison, <i>Committee Clerk</i>
† Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab)	
Mak, Alan (<i>Lord Commissioner of Her Majesty's Treasury</i>)	† attended the Committee

Seventh Delegated Legislation Committee

Wednesday 7 July 2021

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Coronavirus Act 2020 (Early Expiry) Regulations 2021

9.25 am

The Chair: We have moved to 1 metre-plus social distancing in general Committees; Members should only sit in places that are clearly marked. Mr Speaker has asked that masks should be worn in Committee, except when speaking and unless Members are exempt. Could Members please send speaking notes to hansardnotes@parliament.uk?

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

That the Committee has considered the draft Coronavirus Act 2020 (Early Expiry) Regulations 2021.

It is a pleasure to serve with you in the Chair, Mr Robertson.

As we all know from the Prime Minister's announcement on Monday, the country continues to move towards a "new normal", and the end is in sight. As such, the removal of some powers contained in the Coronavirus Act 2020, announced earlier this year, is not only in keeping with our direction of travel out of restrictions but also represents and reflects the achievements made by our country's collective endeavours to track, contain and mitigate the impact of the virus over the past 16 months.

The shadow Minister, the hon. Member for Ellesmere Port and Neston, and I regularly reprise these sessions when we face one another across the Committee Room. Each time I would quite rightly pay tribute to the work not only of the British people but of our health and care workforce, and indeed key workers, particularly our local government workforce and councillors across the country. He would echo that tribute. Just as we in this House have seen the volume of our work increase during this time, our colleagues in local government, irrespective of party, have seen the same. Councillors up and down the country have been doing a fantastic job. It is right that I put on record my gratitude to them, and I know that the shadow Minister will echo that.

The Coronavirus Act 2020 continues to be an important piece of legislation. It has helped to facilitate the coronavirus job retention scheme and the self-employed income support scheme—important examples of how the Government continue to support individuals and businesses. Our justice system continues to be able to operate effectively in challenging times, thanks to sections 53 to 55 of the Act, which allow the use of video technology during court cases. The NHS remains resilient, boosted by the powers in sections 2 and 6, which have helped to permit to date the temporary registration of more than 15,000 nurses, midwives, paramedics and social workers to bolster the workforce available to tackle the pandemic.

The reality is that the risk of transmission, of hospitalisation and indeed of death has thankfully been significantly reduced thanks to the unqualified success of the vaccine roll-out, and its role in weakening the link between infections and hospitalisations. That is significant as it underlines the importance of vaccinations because, although we expect cases to climb, as the Secretary of State has set out, vaccines are the reason why, despite the number of infections climbing, it is the right thing to ease restrictions now, and we are able to do so.

The reality is that social restrictions cannot and must not stay in place forever. We have now set out the detail of step 4 and confirmed our commitment to their removal, subject to the assessment and announcement on 12 July. The vaccination programme is the essential constant in our approach to managing the pandemic, and it has always been clear that that would be, and is, our route back to normality.

That is where we are today, but let us briefly go back to where we were in March, when, as part of a raft of tough safeguards built into the 2020 Act, the one-year review sought to assess the powers on an individual basis in order to ensure they continued to be necessary for managing the pandemic. As part of that process, substantial analysis of all temporary provisions was undertaken. As a result of that, 12 provisions were identified for early expiry, and are being brought before the Committee today for agreement. I will briefly detail the provisions.

Sections 8 and 9 facilitated emergency volunteering leave and compensation leave for emergency volunteers. Thanks to the fantastic efforts of the NHS and others those provisions were not needed nor used. Other measures, including NHS Professionals, the bring back staff scheme and continued efforts of bank staff, have been sufficient in addressing the need for trained clinical staff.

Section 15 provided easements to the Care Act 2014, allowing local authorities to prioritise those with the most urgent covid-19 needs by streamlining assessment and charging for care retrospectively. In England, only eight local authorities utilised those powers, and the power has not been used since 29 June 2020. The social care workforce have remained resilient under extreme pressure, and continue to work flat out to deliver excellent care. The expiry of this provision is a clear demonstration of the determination and flexibility of our health and social care system. It is right that given that track record of usage, and lack of usage recently, we expire the provision.

Section 24 allowed for the extended retention of biometric data, allowing it to be held on record for additional time. Sections 25 to 29 required information from businesses and people involved in the food supply chain. Section 71 allowed a single Treasury Minister to sign on behalf of all Treasury Commissioners. Section 79 extended arrangements for business improvement districts, and section 84 allowed for the postponement of General Synod elections. It is right that we move to expire formally all those provisions. We also suspended a further three provisions in the 2020 Act on 21 April. The early expiry of all those provisions is a clear demonstration of the Government's commitment to act upon parliamentary scrutiny to retain only the powers that are necessary and proportionate, and only for the period of time that that is essential.

In the debate on 25 March, Members raised concerns about accountability in the 2020 Act, and similar concerns were expressed when the Act was passed in 2020. We have put in place a suite of reporting requirements to ensure that the Act is as transparent as possible. The eighth two-monthly status report on the non-devolved provisions is due to be published at the end of this month, and in September we will see publication of the third six-monthly review, and a decision by Her Majesty's Government on whether to expire the Act or to renew further provisions. I would not wish to prejudge in any way what the review will say, but I would make clear my view and that of the Secretary of State is that we would wish to see provisions in the Act in place for no longer than is absolutely necessary.

The remaining 27 non-devolved provisions in the 2020 Act serve three core purposes. They help to shore up capacity in the health and care system; ensure delivery of essential public services and provide financial and other support to businesses and individuals.

Although, rightly, the threat may feel less pressing, and indeed is so, and life is beginning to look far more normal, we must still ensure that we have the correct support in place to help see us out of the end of the pandemic and set fair on the path to recovery. The Act contains facilitative, enabling provisions that are essential to help bolster our position and further support that recovery. Therefore, at this point, the need for those provisions in the Act remains. However, the next six-monthly review process, concluding in September, will rightly rigorously assess each and every one of the temporary provisions and further expire all those deemed no longer necessary.

As the approach to managing the virus evolves, so too should the legislation governing it. The amendments set out to the 2020 Act signal a step, a large one, in the right direction, a direction that focuses on the positives, on recovery and on reaching the final milestone of the roadmap.

I thank colleagues in the devolved Administrations for their engagement, support and consent in expiring the relevant provisions that apply to them. I commend the regulations to the Committee.

9.33 am

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Mr Robertson.

I thank the Minister for his introduction, and for his kind words about local government. I say that because, for the record, my wife is a member of a local authority. I absolutely agree with the Minister that, in his words, the country has shown collective endeavour to do its best to fight the virus. That has been clear whether we are talking about the NHS, social care, local government or any of the other key industries that have contributed to the national effort over the past 15 months. As the Minister said, we all owe them a great deal for the efforts that they have put in.

As the Minister said, the matter was debated in the House in March. From reading the *Hansard* report, I think it is fair to say that a number of right hon. and hon. Members felt short-changed on account of the truncated nature of the debate, especially given that various other measures were discussed at the same time, and it was not possible to vote on amendments. It feels

as though parliamentary procedure is operating in a manner that only gives us the thinnest veneer of accountability.

On a related point, I recognise the pressures on the Department of Health and Social Care, but I am not entirely clear why it has taken so long since March for the regulations to appear in Committee. Although that criticism is not as strong as it would have been were we debating the regulations merely to ratify them after their introduction, there is a pattern of delegated legislation procedures being followed weeks, indeed sometimes months, after the event. That has characterised the Government's approach throughout the pandemic. We need an explanation of that behaviour. On a related point, I draw the Minister's attention to the fact that although the legislation.gov.uk website shows the Statutory Instrument, it does not include the date on which it was made or will come into force. I appreciate that that website is outside of the Minister's control, but we need to be clear about when regulations are made and come into force. I hope that he has a correct copy of the legislation to hand to clarify that for us.

I understand, of course, that the Government have had to move very quickly, and have had to make exceptional decisions throughout the pandemic. Time has moved on, however, and that pace of action has become less and less of an excuse and more and more of a habit. It is almost a default position adopted by the Government. I am sure that that is convenient, but that does not do any good at all to accountability.

The timing of today's debate is apposite, given that the Government have decided that they no longer need emergency powers. Indeed, the Prime Minister's announcement on Monday seemed to suggest all but the end of virtually all measures on 19 July. We have been told that the roadmap to unlocking would be driven by data not dates, but the Prime Minister has announced that we will basically no longer need any restrictions before he has seen any of the relevant information. Can the Minister tell us whether Government policy has changed from data not dates to "If not now, when?" to quote the Prime Minister? That is the polar opposite.

Regardless of the methodology used to reach the decision that virtually all measures to prevent the transmission of coronavirus are no longer needed, and regardless of the wisdom of that, which I recognise is outside the ambit of today's regulations, that decision has a direct bearing on those regulations. As we have heard, the regulations remove a number of the emergency powers granted to Government under the Coronavirus Act 2020, but, as the Minister also correctly pointed out, many more powers still remain. I draw the Committee's attention to the words of the former Secretary of State, the right hon. Member for West Suffolk (Matt Hancock), who said of the powers in the 2020 Act

"we have always said that we will only retain powers as long as they are necessary. They are exceptional powers."

Indeed, they are exceptional—they are unprecedented, and that means that they should not remain in force for a moment longer than necessary. The Minister said that there will be a review in September, and we know that those provisions are subject to a two-monthly review, but if the Government's judgment is that we are so far past the worst of the crisis that we can remove all restrictions on people's movements and interactions,

[Justin Madders]

including measures such as compulsory mask wearing that has been shown to protect the most vulnerable, why do the remaining powers need to stay on the statute book for a day longer than 19 July?

The two-monthly review justifies the continued use of emergency powers under the 2020 Act by claiming

“there is further work to do before returning to a more familiar version of normal life, and the ability to respond flexibly and cautiously still exists.”

Those words jar with the noise coming out of Government. Can the Minister confirm today that all remaining emergency powers will be repealed by 19 July? If not, why not? Clearly, we are no longer in the realms of responding cautiously to the virus, so why do those powers need to remain in force a day beyond 19 July?

Has any consideration been given to retaining some of the remaining powers, rather than all of them? It has been said that, shortly, we may expect 50,000 new cases every day. In that case, the powers relating to statutory sick pay may well be worth retaining. If powers have been enacted under emergency legislation, is there now a case for those powers to be permanently on the statute book? Frankly, I think that is how Parliament would want matters to proceed.

The Minister and I are likely to spend a great deal of time together in the coming months debating the Department’s latest effort to reorganise the NHS via the Health and Care Bill, which was published yesterday. The Minister will no doubt be disappointed that I have not yet read it in its entirety.

Edward Argar: There is plenty of time.

Justin Madders: Indeed. Would any of the emergency powers contained in the 2020 Act appear in that Bill at a later stage in parliamentary proceedings? I am thinking in particular about the powers in section 14, which I believe the Government have said they found useful. No doubt we can debate the merits of that in some detail at a later stage, but I would be grateful for a response from the Minister today.

The biggest concern raised in the March debate, and which still remains, relates to the powers in section 21 of the 2020 Act to detain potentially infectious persons. That power has been used in a number of prosecutions, and I understand that every one was found to be unlawful by the Crown Prosecution Service. The Joint Committee on Human Rights advised in its report of September last year

“In the absence of any clear evidence to support the retention of these powers”

section 21 powers “ought to be repealed”. It is not at all clear to me why the Government would wish to retain such a draconian, but ineffective, power. That seems at odds with yesterday’s announcement that those who have had both vaccinations will no longer be required to self-isolate. The power to detain under section 21, however, makes no distinction between those who are and are not vaccinated.

The Minister referred to the two-monthly review as being evidence of the Government’s commitment to transparency, but those who studied the latest review in May of section 21 powers raised concerns about the thoroughness of that exercise. The review states:

“Public Health Officers have used these powers a total of 10 times, but have not used them since October 2020...Police have not used these powers to date and they are only to be used after obtaining advice from a Public Health Officer.”

Big Brother Watch, which sends regular briefings to Members on the use of the Government emergency powers, has said that it has documented multiple unlawful use of section 21 by police forces in England to arrest and detain individuals. Members made various references to that in the March debate. It is a little disappointing, and indeed disconcerting, that whoever drew up the two-monthly review did not appear to make any further inquiries about the potential misuse of that power, and indeed its effectiveness.

The two-monthly reviews feel like a bit of a tick-box exercise to me. The Government have serious, unprecedented powers, and despite allegations that those powers are being used unlawfully, the Government review does not appear to be even aware that those powers have been used at all. That is the case before we even get to considering whether those powers are necessary.

The Minister must demonstrate that the Government are not falling into the trap of keeping emergency powers because that is convenient, rather than necessary. The Opposition will not oppose regulations, but I hope that the Minister will address the points I have raised. I hope that he can demonstrate that any emergency powers no longer needed for public health reasons will be revoked as soon as we reach that point.

9.43 am

Edward Argar: As ever, I thank the shadow Minister for his typically measured and sensible contribution and pertinent questions. The 2020 Act has formed a central plank of the Government’s approach to coronavirus and has in many ways often been misunderstood. As I said in the March debate, the vast majority of the measures have been undertaken by the Government under the Public Health (Control of Disease Act) 1984, but the 2020 Act none the less plays an important role. Like the shadow Minister, I and the Government have no desire to see the powers in place a day longer than they are absolutely needed. I have highlighted that the reviews will take place and that September is the next six-monthly review. I do not want to prejudge what will emerge, but I put on the record my view that the powers should not be in place a day longer than they can be justified as essential.

In that context, the hon. Gentleman made a number of points, which I will try to address in turn. He talked about whether some powers might be useful in the longer term—I think he referred to section 14 by way of example. I hope to give him the reassurance he seeks: notwithstanding the six-monthly way point or checkpoint in September, the powers in this Act automatically sunset next spring. There was a two-year sunset clause, and the Government are clear that any powers deemed to be useful in the longer term will be subject to the normal legislative process in this place, with hon. Members having the opportunity to scrutinise, challenge and debate in the usual way, if we wish to retain anything in the long term.

In the context of the legislation to which we gave First Reading yesterday, some aspects shade into this space, but do not explicitly replicate what is there. I suspect that the hon. Gentleman and I will spend many

happy days in Committee, along with our hon. Friends the Whips sitting next to us on the Bench, so there will be opportunities to discuss and debate how that might be done.

The hon. Gentleman talked about the timing of the draft instrument after the debate on 25 March. My understanding of the timing is that immediately after that debate we went into recess, but that on our return in April, the statutory instrument was laid on 21 April, so relatively swiftly afterwards. The scheduling of debates on such instruments are a matter for the usual channels and the business managers.

My hon. Friends the Whips will have heard what the hon. Member for Ellesmere Port and Neston said, but I know that both Government and Opposition work hard, and have done throughout, to schedule debates in as timely a fashion as possible. We recognise the point he highlighted, that in the early stages the pandemic, that was extremely difficult to achieve, but I know that this House values timely debates on measures that come before it. The usual channels do everything they can to facilitate that for Members of the House.

On legislation.gov.uk, I will check the point the hon. Gentleman made. I cannot give him an answer off the top of my head, but I will endeavour to look into it. If anything is lacking, I will ensure that it is addressed. I suspect that, since the other place debated this on Monday and we are debating it today, with the dates and everything, the powers will be updated following our—I hope—approval. I take that approval slightly as read, given his kind words that he will not be opposing this piece of legislation.

The hon. Gentleman touched on a couple of other areas. Sections 21 and 22 were challenged by hon. Members, not necessarily saying no to them, but wanting to understand the reasons: were they proportionate, were they necessary and how would they operate? Section 21, he is right, has not been used since October 2020. The key aspect of section 21 is that the powers to do with infectious persons are most useful in the early stages of a pandemic, with small numbers.

Justin Madders: I think the Minister has misunderstood slightly what I said. The two-monthly review says that the power has not been used since October, but my point is that certain reports have it that it has been used, which raises the question of how thorough the review was.

Edward Argar: If I may, I will come to that. To address why section 21 is useful—I will then address the hon. Gentleman's specific point—that is so in the early and latter stages of a pandemic, when we have smaller numbers. We might wish to—or can, as we cannot when infection rates are high—prevent new variants and a new spike, so that is when such powers are useful. As I said, on the basis of the information that we have, they have not been used since October 2020, which I think shows they are only used proportionately. However, if he has any information to send me in the context of his comments on the two-monthly review or the coming six-monthly review, I am always happy to receive any correspondence from him.

When section 22 was debated in the Chamber, some hon. Members asked why it was necessary. Given the short nature of that debate, it was not possible to answer every point, so I will address it now, so that it is on the record. The Public Health (Control of Disease) Act 1984 provides considerable powers on things such as the closure of particular businesses or key infrastructure, but it lacks the power to close some elements of critical infrastructure, even in the case of a new variant or a new spike breaking out in a particular location. Section 22 ensured that the power was comprehensive and could be used if necessary. Again, Ministers have no desire to see any of the powers used unless absolutely necessary.

The hon. Gentleman referred to the Prime Minister's announcement on Monday and the new Secretary of State's statement to the House. On Monday, the Prime Minister was clear in setting out what step 4 would look like—what he envisaged and how it would work—but he was also clear, as was the Secretary of State in the House, that that was of course subject to the 12 July assessment and decision, as I said. The Prime Minister was very clear in setting out the direction of travel and his intention, and that the data and the dates both looked extremely good at this point. I share his confidence, based on my understanding of where we are today.

I hope that addresses the vast majority of the issues raised by the shadow Minister. If there are any others, he knows that he is always welcome to write to me, and I will endeavour to give him a timely response.

Question put and agreed to.

9.51 am

Committee rose.

