

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT REPRESENTATION OF THE PEOPLE
(PROXY VOTE APPLICATIONS) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2022

Monday 7 February 2022

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The Committee consisted of the following Members:

Chair: DR RUPA HUQ

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Allan, Lucy (*Telford*) (Con)

† Anderson, Stuart (*Wolverhampton South West*)
(Con)

† Bradley, Ben (*Mansfield*) (Con)

† Cherry, Joanna (*Edinburgh South West*) (SNP)

† Colburn, Elliot (*Carshalton and Wallington*) (Con)

† Crouch, Tracey (*Chatham and Aylesford*) (Con)

† Fletcher, Colleen (*Coventry North East*) (Lab)

† Grundy, James (*Leigh*) (Con)

† Hall, Luke (*Thornbury and Yate*) (Con)

† Hughes, Eddie (*Parliamentary Under-Secretary of
State for Levelling Up, Housing and Communities*)

† Jones, Mr Kevan (*North Durham*) (Lab)

† Kruger, Danny (*Devizes*) (Con)

† Mann, Scott (*Lord Commissioner of Her Majesty's
Treasury*)

† Norris, Alex (*Nottingham North*) (Lab/Co-op)

Timms, Stephen (*East Ham*) (Lab)

† Whittome, Nadia (*Nottingham East*) (Lab)

Kevin Maddison, Matt Case, *Committee Clerks*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 7 February 2022

[DR RUPA HUQ *in the Chair*]

Draft Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022

6 pm

The Chair: Before we begin, I remind hon. Members to observe social distancing and to wear masks, except when speaking or unless exempt. I am exempt because I can speak at any moment.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Eddie Hughes): I beg to move,

That the Committee has considered the draft Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022.

It is a pleasure to serve under your chairmanship, Dr Huq. The regulations that we are considering today extend the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021 for a further 12 months. The temporary regulations were first introduced ahead of the May 2021 elections. They allowed electors to appoint an emergency proxy, or change their existing proxy arrangement, up until 5 pm on the day of the poll where they, or their previously appointed proxy, were unable to attend a polling station because of covid. That was without any form of attestation, which is normally required for a standard emergency proxy. It was part of a range of measures that have helped to ensure that elections have been able to take place safely in the course of the last year.

Although much has changed in the intervening 12 months, extending this measure is prudent. Although we have been able to remove a great many of the restrictions that covid has made necessary, it is still the case that those who test positive for covid are legally required to isolate, as may be some of their close contacts. While that is the case, and as the situation and the exact nature of isolation requirements remain difficult to predict, we must ensure that those required to isolate are not, in the process of doing so, deprived of the ability to participate in the vital democratic process. This is a tested and appropriate way to continue to protect our democratic process during the pandemic. Now is not the right time to abandon this necessary temporary measure.

On the specific details of the statutory instrument, its key purpose is to extend for a further 12 months the regulations brought into effect by the 2021 instrument, which is due to expire on 28 February 2022, so that it instead expires at the end of February 2023. We will keep that under review and consider repealing the measures early should they no longer be required.

The instrument will also remove the existing reference to the “clinically extremely vulnerable” and people who are at the highest risk of severe illness from coronavirus from the 2021 regulations. That terminology was used

in England and Scotland respectively and its removal will bring the wording into line with the latest respective Government guidance.

Anyone following advice from a registered medical practitioner or a registered nurse to isolate will still be able to apply for an emergency proxy under these rules. This ensures that electors unable to attend a polling station for covid-related health reasons will not be adversely affected. The instrument applies to UK parliamentary elections in Great Britain, police and crime commissioner elections in England and Wales, and local elections in England. The Scottish and Welsh Governments have extended, or are about to extend, their equivalent arrangements.

It is essential to our democracy that people are able to cast their vote. The 2021 regulations brought into effect a temporary measure to ensure that those required to isolate because of covid shortly before a poll could still vote, or that a proxy arrangement could be amended where the appointed proxy was unable to attend a polling station for a covid-related reason. This instrument is a simple yet vital extension of that measure. It will cover local and mayoral elections in England scheduled for May 2022, as well as any applicable by-elections or unscheduled polls that occur before the May 2023 polls. However, as I have outlined, we will keep these measures under review and we will consider repealing them early should they no longer remain necessary or proportionate.

We have consulted the Electoral Commission, which is supportive of the measures. I note the cross-party support that the 2021 regulations received last spring, and I hope there will be such support for their sensible and necessary extension today.

6.5 pm

Mr Kevan Jones (North Durham) (Lab): It is a pleasure to serve under your chairmanship, Dr Huq. It is a novelty that the Government are doing something to make it easier for people to vote, especially in the light of their Elections Bill, which is making it more difficult for most people to vote.

I have few common sense questions for the Minister. I agree that the draft regulations are partly about just a change in the terminology in the present regulations, which refer to things that no longer occur, such as shielding and clinically vulnerable people. He said that the draft regulations will apply to by-elections and subsequent elections after May, as the explanatory memorandum states. Am I right in assuming that if we agree the draft regulations today, council by-elections and other by-elections, such as the forthcoming Erdington by-election caused by the sad death of our colleague Jack Dromey, will be covered by these draft regulations, or will there be a gap until they come into force? I would like some clarification on that. I accept there will be very few instances, because those near to May will be wound into the May elections, but there will be some in February and March, so I would like to clarify whether they will be covered.

The previous regulations allowed anyone to have a proxy vote who wants one. Having read the regulations, there is currently no need to produce medical evidence. We are basically taking people’s word for it; when they contact the council, they say they have had a positive test or have been told to shield, or give some other

reason. There is no way of checking that what people are saying is the truth. The Minister or any of us could just claim, although I am sure we would not, to want an emergency proxy because we have tested positive for covid. That would be perfectly sensible because it would be dangerous for that us to go to the poll, but there is no way of checking that that is true, is there? That is fine for most people, who will be honest about that and will take a responsible attitude to obtaining a proxy vote, but certain unscrupulous people may be encouraged to put in proxy vote applications and get the vote for their candidate up. I would like to know what monitoring will be done.

In the last year that we have had the regulations, has the Department collected data on how many applications have been made? Have there been any cases where there has been a sudden surge in the number of people coming forward in an election? I think it would be useful to know that. I know fraud is taken seriously by the Department. Could the Minister publish the data on how many times the emergency proxy vote has been used?

Another issue is that, under the regulations, an individual can not only apply for a proxy vote but change their proxy if their proxy becomes ill. Again, are the regulations as tight as they are in a normal proxy vote? I think there can be a proxy only if there are two people involved. Is that still the same under these regulations? I would not want a situation where an individual or a group of individuals could amass a number of proxy votes and act on behalf of electors in an election. That is just a point of clarification. I am not opposed to the regulations, which seem eminently sensible in these uncertain times.

The Minister also said that he would keep the measure under review. I am interested to know what the data was for last year and how many applications there were. At what stage will we reduce the need for this or say that we do not need it? Does he have information on how local councils are implementing the measure? We all know that councils and returning officers vary in terms of experience and their capacity, in some cases, to run elections. Have there been any problems so far with how returning officers have reacted?

The broader issue is how we will ensure that people know this measure is available. It is one thing to pass legislation here, but what will the Department do to ensure that the public in the May elections know that they can apply for this if they unfortunately find themselves in a situation where they have to self-isolate because of covid or, as these regulations state, any other reason.

The Chair: As this is a non-specifically Scottish measure, I will call the official Opposition first and then the Scottish National party. The Minister can then respond to the lot. I call shadow Minister Alex Norris.

6.11 pm

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Dr Huq. As with the 2021 iteration, we support these draft regulations, so I will keep my contribution brief and not divide the Committee. Before we start, I want to pass on the best wishes of Labour Members to the Minister for Levelling Up Communities, the hon. Member for Saffron Walden (Kemi Badenoch), who we would normally expect to

field this instrument. As she is going through something really awful, our thoughts and prayers are with her. I hope the Minister will pass that on to her.

Allowing for late urgent applications to vote by proxy when an individual is required to self-isolate or in response to other coronavirus-related medical advice, or if things change for a proxy who goes through the same thing, is an important part of maintaining our democracy during uncertain times. The reality is that we will be dealing with the pandemic for some time as we learn to live with it, but we might still need sensible adjustments to ensure that we can, and this instrument is one of those.

This morning a member of my staff tested positive for coronavirus for the first time in this pandemic. If this was polling day and these regulations were not in place, he would not be able to vote. That would not be right, so it is right that there is capacity to get a proxy up until quite late on polling day, as these provisions allow.

I want to be doubly reassured about a point that I think I heard in the Minister's contribution. The wording has been updated to ensure that the regulations align with current medical guidance, which does not ask the clinically extremely vulnerable to self-isolate, but the assurance in the explanatory notes—and, I think, what the Minister said—was that those individuals will still have access to a proxy in the way that they did, provided that that is in line with what their medical practitioner advises. I think that is what the Minister said, but I am keen to have clarification.

To build on the point made by my right hon. Friend the Member for North Durham, I say to the Minister and his colleagues that this is how legislation relating to elections ought to be: working to ensure the maximum legitimate participation. This is a practical instrument in the pursuit of tackling a real-world problem. It is incongruous with the Government's Elections Bill, which creates new hurdles to participation in pursuit of tackling a problem for which evidence is flimsy at best, but that might be a matter for another day.

It is right that this instrument is carried over, but can the Minister give us clarity on why this covid-related one has been extended and others have not—for example, the instrument allowing councils to choose how they meet, including, perhaps, virtually? The hon. Member for Mansfield is a member of Nottinghamshire County Council, my neighbouring authority. Indeed, he is the leader. I have counselled him against it, but he never listens to me. He will correct me if I am wrong, but Nottinghamshire is probably one of the longest north-to-south counties, if not the longest; it is very long. There is a great distance between County Hall in the south and Bassetlaw in the north, so there could be an argument—this would be for the hon. Gentleman's colleagues, not me, to say—that it would be better for certain committees to meet virtually. I cannot understand why we in this place would want to take that option away from them. They had that chance during the pandemic, and it worked effectively. I am surprised that the Government have not at least given that another year in order to evaluate its use. I hope the Minister might talk about why these covid-related regulations have been extended and others have not. I will stop there.

6.15 pm

Joanna Cherry (Edinburgh South West) (SNP): It is a real pleasure to serve under your chairpersonship, Dr Huq. I, too, offer my condolences to the Minister for Levelling Up Communities, the hon. Member for Saffron Walden (Kemi Badenoch). I have been in touch with her personally to do so, but I would like to put that on the record as well.

The Under-Secretary of State for Levelling Up, Housing and Communities, the hon. Member for Walsall North, said earlier that it is essential to democracy that people should be able to cast their votes without impediment, and of course I agree with that. The regulations are sensible and unobjectionable in the circumstances. They will of course apply to the local elections, which are due to take place in Scotland at the beginning of May. It is only right that the Government should act to preserve the voting rights of people who are self-isolating with coronavirus, but we in the SNP continue to be concerned that, at the same time, the Government are undermining the right of millions of people in this country to vote through the Elections Bill. Their own figures show that 2.1 million people would be unable to vote under their proposals in that Bill.

We are already in a situation whereby 17% of the voting-age population across the United Kingdom are not registered to vote, so increasing the number of those who are ineligible to vote, and making it harder for those currently not registered to vote, is a step in the wrong direction. Of course, the Elections Bill will also make it harder for partially sighted and blind people to vote independently and secretly, and it was a matter of disappointment that the amendments tabled by my party and the Labour party were rejected—those amendments were recommended by the Royal National Institute of Blind People. Although acting to preserve the rights of voters, especially the self-isolating, throughout the remainder of the pandemic—I hope we are at its tail end—is right and necessary, we in the SNP remain very concerned about the attack on the right to vote in the Elections Bill.

6.17 pm

Eddie Hughes: I guess it is incredibly unfortunate that my brilliant colleague the Minister for Levelling Up Communities, my hon. Friend the Member for Saffron Walden (Kemi Badenoch), is not here. She might have been able to stretch your patience, Dr Huq, by indulging in debate about items that simply do not relate to the statutory instrument, but relate instead to the Elections Bill. I am sure that she would have been well versed and well placed to be able to rebut or defend as appropriate, but as she is not present, it is probably best for you and I, Dr Huq, that we do not stray too far from where we are.

The Chair: The contribution of the hon. and learned Member for Edinburgh South West was brief enough to be in scope. If it had been any lengthier, I would have had to intervene.

Eddie Hughes: However, I will stray in order to say that I understand the Government have taken consultation on remote voting for councils and are considering options,

so who knows what might happen in the future? That is not necessarily within the remit of the SI or my personal ministerial remit.

I will consider some of the points raised by the hon. Member for North Durham.

Mr Jones: Right honourable.

Eddie Hughes: The right hon. Member—*Hansard* would have corrected my poor knowledge.

There will be no gap with regards to legislation; there will be continuity. The right hon. Member asked whether we would trust people or whether they would need to prove that they have covid. Given the circumstances, we will continue to trust them to do so—they do not need to prove that they have covid. Even if they were required to prove it, I am not all together sure how they would do so. With regards to how many times the measure has been used, we do not hold that information centrally. The Electoral Commission holds it, so the right hon. Member might be advised to direct his question to the commission.

Mr Jones: Yes, but the Minister is the one who is introducing the legislation. I accept that the Electoral Commission might collate that information, but would it not be useful for the Department to know that information and publish it? The situation has gone on for a year now, so it would be easy to find out from councils. First, it would show whether the measures are needed. Secondly, it would show how effectively councils run the applications. Thirdly, do people actually know about the provision? That was one of the points I raised earlier.

Eddie Hughes: I will talk to the Department to find out whether we intend to collate the information and publish it, and I will let the right hon. Gentleman know. With regard to his final point on whether people know about the draft regulations, I can only hope that they do through the multiple platforms available to people in this room and, more importantly, to the right hon. Gentleman. I will check his Facebook page, Twitter account, Instagram and TikTok to see whether he has shared with his constituents this vital change that we are making to legislation. No doubt, reels will be available.

Mr Jones: You will not be surprised, Dr Huq, to know that I am not on TikTok—

Eddie Hughes: Disappointed!

Mr Jones: Disappointingly, yes.

I am sorry, but I find this astounding. I have no problem with publicising the provision, but what steps has the Department taken to ensure that people know about it? What steps has the Department taken to inform councils and to assess what they do? If the Department says that it does not know how many times it has been used, I get the clear impression that the Minister, once we have passed the statutory instrument, will wash his hands of it. I am sorry but I do not think that that is right.

Eddie Hughes: I am slightly disappointed by the reinterpretation of what I said. I did not say that we are not interested or that we do not hold the information; I said that it is not our job to hold the information—

Mr Jones: Yes, it is!

Eddie Hughes: The Electoral Commission does that, and the right hon. Gentleman can contact the commission, should he need to. I am assured about our conversations with it, and that we have communicated to councils and will be communicating—

Mr Jones *rose*—

The Chair: Order. Would it be useful if the Minister wrote to the right hon. Member for North Durham with that information?

Eddie Hughes: I certainly could write.

Mr Jones: I get sick and tired, frankly, of Ministers hiding behind quangos. I cannot get the Electoral Commission in here to cross-examine, but I can cross-examine the Minister on behalf of my constituents. I am sorry, but he is sidestepping the argument and saying that it is somehow the Electoral Commission's fault. That is not the case; it is his responsibility. I accept that he might not know the answer now, but will he publish the data on how many times the measure has been used, and tell us what steps the Department has taken with local councils to publicise the regulations to ensure that they are enforced?

Eddie Hughes: We can only agree to disagree. Are we hiding behind a quango, or leaving a quango to do its job? We have just gone through a couple of years when

people have perhaps expected the Government to do everything, but surely we should leave the Electoral Commission to do its job. The right hon. Gentleman will be delighted to know that he can google the information, which is available on the Electoral Commission's website. I think it was published in May 2021. The information is available.

Moving on to when we might review the legislation, that is clearly dependent on how we recover from covid. As the hon. and learned Member for Edinburgh South West said, we hope that we are moving away from covid, so that we will be able to review it in short order.

Mr Jones: If the Minister does not know how many times the regulation has been used and how effective it is, how will he do the evaluation to know when it is no longer needed? What will he base that on? Will he just stick his finger in the air and just say, "Well, today seems a good day to do it"?

Eddie Hughes: I feel that we are communicating via some dodgy broadband link and that the right hon. Gentleman has not heard my previous answers. I just told him that the information is available on the Electoral Commission's website. It is available to the Government, so no finger in the air is required. We just have to press the link and the information is available. I am sorry if people have bad broadband connections this evening and are failing to communicate with us. I conclude my remarks and commend the draft regulations to the Committee.

Question put and agreed to.

6.24 pm

Committee rose.

