

BIG BROTHER WATCH

**Big Brother Watch Briefing on Health
Protection (Self-Isolation) (England)
Regulations 2020 for the House of Lords**

October 2020

INTRODUCTION

We welcome the opportunity to provide this briefing to the House of Lords ahead of the motion on The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 on 22nd October 2020.

RECOMMENDATIONS

- **Medical confidentiality in the foundation of public health. The Department of Health and Social Care's Memorandum of Understanding with the National Police Chiefs' Council to allow police forces to access the details of those required to self-isolate has significantly damaged public trust in the contact tracing system. The MoU must be withdrawn.**
- **The British public has been voluntarily self-isolating for months without the threat of vast fines. £10,000 fines are excessive, especially given the convoluted nature of the Regulations.**
- **These Regulations should have been debated prior to their implementation. We urge parliamentarians to increase pressure on Government to respect the sovereignty of parliament and prevent the misuse of "urgency" to avoid democratic procedures in future.**

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020

The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 came into force on 28th October 2020 and were laid before Parliament on the same day.

The Regulations expire after a year and need only be reviewed after 6 months.¹

The Regulations impose an obligation on anyone who receives a positive coronavirus test or is alerted by the Secretary of State, a person employed or engaged for the purposes of the health service, or a person employed or engaged by a local authority to self-isolate in their home, in the home of a family member or friend, or in a bed and breakfast accommodation or other suitable place.² We welcome the specific exclusion of notifications from "the NHS Covid 19 smartphone app developed and operated by the Secretary of State" to impose the requirement to self-isolate.³

The period of time a person must self-isolate for is not immediately evident and requires careful reading of the Regulations.

If a person receives a positive test result, they must isolate for 10 days beginning with whichever is the later of either the day they reported their symptoms or 5 days before their test.⁴ If they receive a positive test result and did not report their symptoms, they must self-isolate for 10 days following their test result.⁵ If a person is living in the same household as someone who has tested positive for coronavirus then they must self-isolate for 14 days beginning with whichever is the later of either the day the person reported their symptoms or 5 days before the person received their test.⁶ If the person who tested positive for coronavirus

¹ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 16

² The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 2(3)(a)

³ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 2(1)

⁴ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 3(3)(a)

⁵ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 3(3)(b)

⁶ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 3(4)(a)(i)

did not report their symptoms, the other person in the household must self-isolate for 14 days following the positive test result.⁷ If a person has been in close contact with someone who has later tested positive with coronavirus, they should self-isolate for 14 days after their last contact with that person.⁸ **It is unacceptable that these Regulations require such convoluted calculations, especially considering that a breach could result in a fine of £10,000.**

There is a limited set of reasonable excuses for leaving the place where one is self-isolating. A person may leave to seek medical assistance, to access veterinary services, to fulfil a legal obligation, to avoid a risk of harm, to attend a funeral of a close family member, to obtain basic necessities where it is not possible to obtain these provisions in any other manner, to access critical public services or to move to another place if it becomes “impracticable” to remain where they are.⁹ **There is no exception for exercise, which many people may require for physical and mental health if confined to a potentially very small space.**

Enforcement

It was revealed on 17th October that police forces are being granted access to Test and Trace data in order to enforce these Regulations, through a Memorandum of Understanding (MoU) with the National Police Chiefs’ Council. Police officers have access to “the recorded name and contact details of an individual who has been instructed to self-isolate, the date on which they were told to self-isolate and the date on which the period of self-isolation ends.”¹⁰

This approach has resulted in significant backlash from civil liberties and privacy groups, local leaders, and members of SAGE. The British Medical Association said:

“We are already concerned that some people are deterred from being tested because they are anxious about loss of income should they need to self-isolate – and we are worried should police involvement add to this.”¹¹

It was reported that even the office of England’s Chief Medical Officer, Chris Whitty, has expressed concern that this approach would lead to a reduction in engagement with the Test and Trace system.¹²

Members of the House of Lords also expressed their concern about this draconian approach to public health. Lord Hunt noted that “sharing what is essentially health information with the police is a highly sensitive matter”, while Lord Scriven stated the MoU had “undermined some people’s trust in test and trace.”¹³ Despite

⁷ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 3(4)(a)(ii)

⁸ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 3(4)(b)

⁹ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 2(b)

¹⁰ HL Covid-19: Information Sharing with Police Forces (20th October 2020), vol. 806, col. 1419: <https://hansard.parliament.uk/lords/2020-10-20/debates/A263ED69-1C9A-4072-AF34-AC9E3E722F8D/Covid-19InformationSharingWithPoliceForces>

¹¹ Been Told To Self-Isolate By Test And Trace? Police Could Get Access To Your Data – Chris York, Huffington Post, 18th October 2020: https://www.huffingtonpost.co.uk/entry/test-and-trace-police-data_uk_5f8bfd2ec5b66ee9a5f0ce71

¹² Coronavirus: Police granted access to details of people told to self-isolate by Test and Trace – Sky News, 18th October 2020: <https://news.sky.com/story/coronavirus-police-granted-access-to-details-of-people-told-to-self-isolate-by-test-and-trace-12106988>

¹³ HL Covid-19: Information Sharing with Police Forces (20th October 2020), vol. 806, col. 1417-8: <https://hansard.parliament.uk/lords/2020-10-20/debates/A263ED69-1C9A-4072-AF34-AC9E3E722F8D/Covid-19InformationSharingWithPoliceForces>

promises from Health Minister Lord Bethell that police were accessing “isolation information” not “health information”, this is clearly not the case.¹⁴ Whether or not an individual is required to self-isolate will necessarily reveal health information. Health data is highly sensitive and is a special category of data under the GDPR – giving police access to this data is violation of privacy and the public’s trust in the Test and Trace system.

Not only is it chilling to use police officers, who are not medically trained, to enforce public health measures, it is also counter-productive. SAGE behavioural science advisor Professor Susan Michie said this move would ‘further cause distrust in the Government which is a massive problem in terms of adherence to restrictions.’¹⁵

Medical confidentiality is the bedrock of public health. Without the assurance that their sensitive health data will be kept private, many people will be unwilling to either take a coronavirus test or engage with the Department of Health’s contact tracers. In a pandemic, it is critical that people trust that their health data is kept private and secure. The involvement of the police in this public health effort has only squandered more of this trust.

Recommendation: Medical confidentiality in the foundation of public health. The Department of Health and Social Care’s Memorandum of Understanding with the National Police Chiefs’ Council to allow police forces to access the details of those required to self-isolate has significantly damaged public trust in the contact tracing system. The MoU must be withdrawn.

Excessive fines

It is critically important that people with coronavirus self-isolate. But rather than ensuring that people have an abundance of local care, support with basic necessities and financial support to self-isolate, the Government is relying on punitive fines to compel compliance. Catherine McKinnell MP warned that such vast fines might result in people being unwilling to take coronavirus tests, as a positive result would make them liable for vast fines: “the potentially worrying consequence that increasing the penalties may disincentivise doing the right thing from a health perspective.”¹⁶

The Regulations introduce a series of offences, all of which can result in substantial fines:

- A breach of the requirement to self-isolate, giving false information to a contact tracer (a person employed or engaged by the health service or by a local authority) about the location where you will be self-isolating or falsely naming someone as a close contact is punishable by a £1,000 FPN, rising to £10,000 for a repeat offences.¹⁷

¹⁴ HL Covid-19: Information Sharing with Police Forces (20th October 2020), vol. 806, col. 1418: <https://hansard.parliament.uk/lords/2020-10-20/debates/A263ED69-1C9A-4072-AF34-AC9E3E722F8D/Covid-19InformationSharingWithPoliceForces>

¹⁵ Backlash as police get test and trace data: Michael Gove is forced to defend the move after officers were handed personal details amid privacy row - George Odling and Victoria Allen, Mail online, 18th October 2020: <https://www.dailymail.co.uk/news/article-8853311/amp/Backlash-police-test-trace-data.html>

¹⁶ HC Fourth Delegated Legislation Committee (19th September 2020), col. 6: [https://hansard.parliament.uk/commons/2020-10-19/debates/61cc1f18-4cb9-4dd6-94d7-e0ced4cfa7f5/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(SELF-ISOLATION\)\(ENGLAND\)REGULATIONS2020HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(NORTHOFENGLANDNORTHEASTANDN](https://hansard.parliament.uk/commons/2020-10-19/debates/61cc1f18-4cb9-4dd6-94d7-e0ced4cfa7f5/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(SELF-ISOLATION)(ENGLAND)REGULATIONS2020HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(NORTHOFENGLANDNORTHEASTANDN)

¹⁷ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 12(4)

- If a person breaches the requirement to self-isolate and knowingly interacts with another person or group of people and “is reckless as to the consequences of that close contact for the health of that other person or group”¹⁸, the offence is punishable by a £4,000 FPN, rising to £10,000 for a repeat offence.¹⁹
- If an employer “knowingly allow[s] the worker or self-isolating agency worker to attend any place other than the designated place, during an isolation period, for any purpose related to the worker’s or self-isolating agency worker’s employment” then they can be punished with a £1,000 FPN, rising to £10,000 for repeat offences.²⁰
- If an employee fails to notify their employer that they must self-isolate, they can be punished with a £50 FPN.²¹
- If an employee is an agency worker, the location where they are working must inform the worker’s employer of their need to self-isolate, and vice-versa, or either organisation can be punished with a £1,000 FPN.²²

These significant new fines represent an increasing desire to rely on criminal sanctions and oppressive policing and surveillance to respond to a public health crisis. Throughout the pandemic, the public response has been defined by a willingness to undergo serious restrictions for the benefit of public health. This measure represents an unnecessary increase in police and state power over people’s everyday lives. Commentator Laura Dodsworth pointed out that:

“a £4,000 fine would be a staggering *16-week salary* for someone in the bottom fifth of earnings. There is simply no equivalent in modern Britain to the self-isolation fines. They have more in common with the ‘Weregild’ and ‘blood money’ of the Dark Ages than any modern-day fixed-penalty notice.”²³

RECOMMENDATION: The British public has been voluntarily self-isolating for months without the threat of vast fines. £10,000 fines are excessive, especially given the convoluted nature of the Regulations.

Role of Parliament

It was announced on 20th September that Regulations to enforce self-isolation guidance would be introduced.²⁴ Yet despite being announced over a week before they were due to come into force, The Health

¹⁸ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 11(2)(c)

¹⁹ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 12(5)

²⁰ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 12(6)

²¹ The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 12(7)

²² The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, Regulation 12(8)

²³ The new Covid fines could destroy your life – Laura Dodsworth, Spiked, 6th October 2020: <https://www.spiked-online.com/2020/10/06/the-new-covid-fines-could-destroy-your-life/>

²⁴ New package to support and enforce self-isolation – GOV.UK, 20th September 2020: <https://www.gov.uk/government/news/new-package-to-support-and-enforce-self-isolation>

Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 were not laid in Parliament until the day they were due to come into force. The Health Secretary, however, claimed the requirement to self-isolate was already in law 4 days before it was laid.²⁵ It is unacceptable for a Government Minister to misrepresent the law in this manner. Big Brother Watch has extensively documented the damaging impact the continued confusion around what is law has had on the rule of law and police enforcement over the past few months. Suggesting that a law is currently in force when it is not risks unlawful police interventions and arrests, which has already been a significant problem under the Health Protection Regulations.²⁶

These Regulations have not been debated in the House of Commons. Instead, they were debated by a Delegated Legislation Committee on 19th October and passed without debate in the Commons on 20th September. Not only does this represent a significant delay of three weeks, but also does not constitute full parliamentary scrutiny. The Health Secretary made assurances to MPs during the debate on the renewal of the Coronavirus Act that “wherever possible” “significant national measures” would be debated in parliament prior to their implementation.²⁷ Evidently, this promise was no more than a “gentleman’s agreement”, as characterised by Rebecca Long-Bailey MP.²⁸

As Justin Madders MP, Shadow Health Minister, stated when debating the Regulations in the Delegated Legislation Committee: “The Regulations are too important not to be debated before they become law, and full parliamentary scrutiny should be required.”²⁹ Peers and Members of Parliament should not accept this continued dismissive approach to parliamentary scrutiny. We will continue to demand proper prior parliamentary approval of Regulations for as long as Government Ministers insist on ruling by diktat.

RECOMMENDATION: These Regulations should have been debated prior to their implementation. We urge parliamentarians to increase pressure on Government to respect the sovereignty of parliament and prevent the misuse of “urgency” to avoid democratic procedures in future.

²⁵ Stefan Simanowitz, Twitter, 24th September 2020: <https://twitter.com/StefSimanowitz/status/1309054487911374855?s=20>

²⁶ Example: At least four homeless people unlawfully prosecuted for 'being outside' – Lizzie Dearden, the Independent, 15th June 2020: <https://www.independent.co.uk/news/uk/home-news/coronavirus-homeless-prosecution-lockdown-england-wales-cps-a9567336.html>

²⁷ HC Deb (30th September 2020) vol. 681, col. 388: [https://hansard.parliament.uk/commons/2020-09-30/de-bates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)](https://hansard.parliament.uk/commons/2020-09-30/de-bates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020(ReviewOfTemporaryProvisions))

²⁸ HC Deb (30th September 2020) vol. 681, col. 411: [https://hansard.parliament.uk/commons/2020-09-30/de-bates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)](https://hansard.parliament.uk/commons/2020-09-30/de-bates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020(ReviewOfTemporaryProvisions))

²⁹ HC Fourth Delegated Legislation Committee (19th September 2020), col. 7: [https://hansard.parliament.uk/commons/2020-10-19/debates/61cc1f18-4cb9-4dd6-94d7-e0ced4cfa7f5/HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(SELF-ISOLATION\)\(ENGLAND\)REGULATIONS2020HEALTHPROTECTION\(CORONAVIRUSRESTRICTIONS\)\(NORTHOFENGLANDNORTHEASTANDN](https://hansard.parliament.uk/commons/2020-10-19/debates/61cc1f18-4cb9-4dd6-94d7-e0ced4cfa7f5/HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(SELF-ISOLATION)(ENGLAND)REGULATIONS2020HEALTHPROTECTION(CORONAVIRUSRESTRICTIONS)(NORTHOFENGLANDNORTHEASTANDN)