

# EMERGENCY POWERS AND CIVIL LIBERTIES REPORT

## [OCT – DEC 2021]

## **About Big Brother Watch**

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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## **October-December 2021 Emergency Powers & Civil Liberties Report**

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# Introduction

As we stand on the brink of a third year of emergency law-making, it is vital we take stock of how far norms around privacy, policing and bodily autonomy have shifted. This is Big Brother Watch's 13th Emergency Powers and Civil Liberties report, and once again we have documented new intrusions into our most fundamental rights and freedoms.

It appears that in England, the overwhelming public opposition to Covid passes and excessive pandemic policing has reached a tipping point. Amid accusations of hypocrisy and allegations of unlawful parties, the Prime Minister's ability to demand that people follow confusing and draconian laws is draining away. In the devolved administrations, the illogicality of Covid pass schemes has been made plain. Leaders introduced divisive and discriminatory passes to 'save businesses', but ended up closing the very same businesses. The Covid pass policy has failed.

In Big Brother Watch's last report, we documented 'Freedom Day' – the end of restrictions in England. However, it did not take long for these promises to crumble. As we warned in March 2020, governments can become dangerously casual about emergency law-making. By the end of 2021, there were even hints from the Prime Minister of the need for a 'national conversation' about mandatory vaccination, a suggestion that would have seemed implausible in the UK just a year ago.

We must reject divisive, unscientific measures which seek to punish people for their medical choices. We must reject the continued renewal of emergency laws 'just in case'. We must reject the 'new normal' which relies on punishment in the name of safety.

It is time to move to a public health approach that is sustainable, fair and inclusive. People must be given material support and accurate, transparent information about how to keep themselves and their communities healthy and safe. A resilient and supportive approach should be taken to public health, one that takes a long term view, rather than repeated reliance on the short, sharp shocks of lockdowns and criminal law.

In this report we recommend - as have parliamentary committees, lawyers and other rights groups - that a serious investigation into Covid 'justice' is undertaken. Thousands of people are struggling to pay large fines, while others are facing court hearings for crimes they did not commit. Fines and prosecutions must be reviewed, or else risk permanently destroying public trust in the criminal justice system.

We also document the implementation of Covid passes across the United Kingdom. We have made the case in the media, in parliament and now via legal action that Covid passes are disproportionate, discriminatory and create a two-tier checkpoint society. In Scotland and Northern Ireland, they were implemented without even a prior vote. But as the rapid rise

of Omicron has made clear, Covid passes are no solution. The UK Government is scrapping the mandatory scheme in England – devolved administrations must do the same.

There are still many challenges ahead as the UK attempts to shed the remnants of authoritarian pandemic policies – from mandatory vaccinations and quarantine hotels, to secretive prosecutions for Covid offences. We will continue to campaign against all remaining measures that unnecessarily harm people's freedoms and rights, for as long as we need to.

# **Recommendations**

**RECOMMENDATION 1:** The Government should refrain from using the 'urgency procedure' contained within the Public Health (Control of Disease) Act 1984 to bypass meaningful scrutiny and accountability. All statutory instruments should be subject to robust and timely parliamentary scrutiny.

**RECOMMENDATION 2:** The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.

**RECOMMENDATION 3:** It is likely that thousands of Fixed Penalty Notices have been issued unlawfully under confusing lockdown restrictions. Police chiefs should urgently instigate a national review of all FPNs issued under the lockdown Regulations.

**RECOMMENDATION 4:** The Government should introduce a means for individuals to challenge lockdown Fixed Penalty Notices by way of administrative review or appeal, without having to risk magistrates' court proceedings.

**RECOMMENDATION 5:** The Crown Prosecution Service must review all prosecutions to date under the Single Justice Procedure in relation to the Health Protection Regulations and the Coronavirus Act.

**RECOMMENDATION 6:** The use of the Single Justice Procedure for prosecutions under the Health Protection Regulations and the Coronavirus Act must immediately be suspended.

**RECOMMENDATION 7:** Addition isolation and testing requirements for unvaccinated travellers have no basis in public health and serve only to punish those who cannot, or who have chosen not to be, vaccinated. Any restrictions should be strictly necessary and based on strong evidence.

**RECOMMENDATION 8:** The hotel quarantine requirements for travellers must be overturned, absent the publication of a full, scientifically-informed analysis explaining why this would be a strictly necessary measure and that no more proportionate options are available to pursue the same legitimate aim.

**RECOMMENDATION 9:** The Government should no longer rely on emergency legislation and should not seek to extend the Coronavirus Act 2020. Any continuing relevant measures should be introduced via primary legislation, with ample time given for scrutiny.

**RECOMMENDATION 10:** Mandating vaccination is unnecessary, counterproductive, authoritarian and discriminatory. Mandatory vaccine laws for health and care settings should be urgently repealed. The Government should not seek to extend or encourage mandatory vaccination in any setting.

**RECOMMENDATION 11:** Domestic Covid passports infringe on privacy, result in discrimination, and lead to a two-tier, checkpoint society with no significant benefit to public health. Mandatory Covid certification must be repealed across the four nations.

**RECOMMENDATION 12:** 'Spot checking' individuals' Covid-status are likely to lead to discrimination and targeting of marginalised groups. It should not form a part of any Covid-status certification scheme.

# **Emergency Laws**

Between March 2020 and the end of 2021, the UK government laid a total of 555 statutory instruments relating to coronavirus.<sup>1</sup> Of these, just 27 were laid under the Coronavirus Act 2020. Coronavirus-related statutory instruments have been laid under 138 Acts, 7 Orders, 2 sets of Regulations, 9 EU Regulations and one Church Measure. Only 38, or 6.8%, of these were made under the 'draft affirmative' procedure, meaning they were laid before Parliament as a draft and approved before they became law.

Across the four nations, a total of 1,118 pieces of legislation have been laid which reference coronavirus – an additional 100 since Big Brother Watch's July-September 2021 Report.

## **Health Protection Regulations**

The United Kingdom entered autumn 2021 with a range of restrictions across the four nations. While coronavirus cases remained relatively low, Wales, Scotland and Northern Ireland retained sets of Health Protection Regulations which imposed restrictions on businesses and, in Northern Ireland, the number of people permitted to gather. Remaining regulations in England related to self-isolation, international travel and powers for local authorities to make restrictions relating to venues, events and public outdoor land.

The UK Government set out its intention to rely on the high rate of vaccination uptake, and later, booster uptake, to maintain public health, rather than a return to stringent lockdown measures over winter. We welcomed this overdue shift from legal restrictions towards public health guidance. However, this approach was threatened by the emergence of the Omicron variant of coronavirus, which has proved to be highly transmissible and led to calls from some public health experts for increased restrictions.<sup>2</sup>

Despite the challenges that a new variant of coronavirus presents, governments' primary responses must rely on supportive public health measures, rather than policing and fines. With a wealth of information about how to treat coronavirus patients, high rates of vaccination and widespread public understanding of how to reduce transmission, it has become increasingly difficult to claim that using criminal law to manage the public's everyday life is strictly necessary and proportionate.

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1 Coronavirus Statutory Instruments Dashboard – Hansard Society (updated 29<sup>th</sup> December 2021): <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

2 Will there be a Christmas lockdown? What we know about winter Covid restrictions after Omicron variant emerges – Alex Finnis, iNews, 30<sup>th</sup> November 2021: <https://inews.co.uk/news/will-there-be-christ-mas-lockdown-winter-covid-restrictions-rules-masks-omicron-variant-1326750>



## *Reintroduction of restrictions*

On 15<sup>th</sup> November, the Prime Minister held a press conference warning of the risk of the Omicron variant and encouraging the UK population to get a third ('booster') coronavirus vaccine in order to avoid further restrictions.<sup>3</sup>

On 27<sup>th</sup> November, the first cases of the Omicron variant were detected in the UK.<sup>4</sup> The Prime Minister gave a press conference announcing new testing requirements for anyone, regardless of vaccination status, entering the UK - "[requiring] anyone who enters the UK to take a PCR test by the end of the second day after their arrival, and to self-isolate until they have a negative result" – requiring face coverings to be worn on public transport and shops and also requiring all close contacts of someone who tests positive for the Omicron variant to isolate for 10 days, regardless of vaccination status.<sup>5</sup> On 29<sup>th</sup> November, the Government laid the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 and the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 4) Regulations 2021, which came into force the following day at 4am. The regulations were debated in the House of Commons the same day they came into force, as the Government again relied on the Public Health (Control of Disease) Act's 'urgency procedure' (s. 45R).

This procedure allows Ministers to pass legislation without laying a draft before parliament, or having parliament's approval, if they believe "by reason of urgency, it is necessary". The Institute for Government has previously noted that "in some cases, the government's reliance on the urgency procedure appeared to have little justification",<sup>6</sup> while the House of Lords' Constitution Committee<sup>7</sup> and the Joint Committee on Human Rights<sup>8</sup> have also criticised the Government's over-reliance on the urgency procedure. It is undemocratic and an abuse of the procedure to repeatedly rely on s. 45R to pass coronavirus-related legislation.

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3 PM opening statement at COVID-19 press conference – Prime Minister's Office, GOV.UK, 15<sup>th</sup> November 2021: <https://www.gov.uk/government/speeches/pm-opening-statement-at-covid-19-press-conference-15-november-2021>

4 First UK cases of Omicron variant identified – Department of Health and Social Care, GOV.UK, 27<sup>th</sup> November 2021: <https://www.gov.uk/government/news/first-uk-cases-of-omicron-variant-identified>

5 PM opening statement at COVID-19 press conference – Prime Minister's Office, GOV.UK, 27<sup>th</sup> November 2021: <https://www.gov.uk/government/speeches/pm-opening-statement-at-covid-19-press-conference-27-november-2021>

6 Parliamentary Monitor 2021 – Institute for Government, 9th September 2021: <https://www.institute-forgovernment.org.uk/sites/default/files/publications/parliamentary-monitor-2021.pdf>

7 Covid-19 and the use and scrutiny of emergency powers: Third report of Session 2021–22 – House of Lords Committee on the Constitution, 10<sup>th</sup> June 2021: <https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/15/1502.htm>

8 The Government's Response to Covid-19: Human rights implications: Seventh report of Session 2019–21 – Joint Committee on Human Rights, 21<sup>st</sup> September 2020: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/265/26513.htm>

**RECOMMENDATION 1: The Government should refrain from using the 'urgency procedure' contained within the Public Health (Control of Disease) Act 1984 to bypass meaningful scrutiny and accountability. All statutory instruments should be subject to robust and timely parliamentary scrutiny.**

Throughout December, Omicron cases continued to rise rapidly across Europe, despite many countries introducing stringent Covid pass requirements and lockdowns for people who had not been vaccinated. These divisive policies lack evidence, particularly given research which indicates that vaccines are less effective at preventing infection and transmission of the Omicron variant.<sup>9</sup>

On 8<sup>th</sup> December, the Prime Minister confirmed that 'Plan B' measures would be introduced in England in response to the spread of the Omicron variant, "while more data on vaccine efficacy and disease severity is assessed."<sup>10</sup> Plan B measures were published in September, as part of the Government's Autumn and Winter Plan and included the reintroduction of working from home guidance, mandatory face coverings across public transport and indoor settings, mandatory vaccine passes for entry to nightclubs and large events and mandatory supervised testing for unvaccinated workers in certain venues.<sup>11</sup> The Prime Minister's announcement confirmed that from 10<sup>th</sup> December, face masks would be legally required in all indoor settings, with exemptions for "eating, drinking, exercising or singing", working from home guidance would resume from 13<sup>th</sup> December, and NHS Covid passes would become mandatory in nightclubs and at large events from 15<sup>th</sup> December.<sup>12</sup> Mandatory supervised testing for unvaccinated workers was not announced. No mention was made of the new regulations requiring parliamentary approval, and shortly after, official government Twitter accounts shared the measures as if they had already been enacted as law. Local authorities<sup>13</sup> and police forces<sup>14</sup> also announced the plans as though they were law, before the parliamentary vote took place.

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9 Covid-19: Do vaccines work against omicron—and other questions answered – Elizabeth Mahase, the BMJ, 10<sup>th</sup> December 2021: <https://www.bmj.com/content/375/bmj.n3062>

10 Prime Minister confirms move to Plan B in England – Prime Minister's Office, GOV.UK, 8<sup>th</sup> December 2021: <https://www.gov.uk/government/news/prime-minister-confirms-move-to-plan-b-in-england>

11 COVID-19 Response: Autumn and Winter Plan 2021 – Cabinet Office, GOV.UK, 14<sup>th</sup> September 2021: <https://www.gov.uk/government/publications/covid-19-response-autumn-and-winter-plan-2021>

12 PM opening statement at COVID-19 press conference – Prime Minister's Office, GOV.UK, 8<sup>th</sup> December 2021: <https://www.gov.uk/government/speeches/pm-opening-statement-at-covid-19-press-conference-8-december-2021>

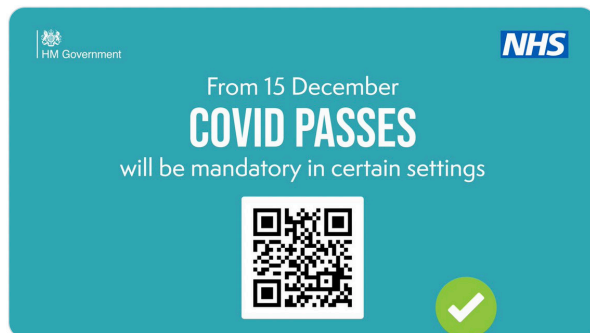
13 Coventry City Council, Twitter, 13<sup>th</sup> December 2021: <https://twitter.com/coventrycc/status/1470438557626032136?s=20>; Rochford District Council, 13<sup>th</sup> December 2021: <https://twitter.com/RochfordDC/status/1470348739688775685?s=20>

14 Met Contact Centre, Twitter, 12<sup>th</sup> December 2021: <https://twitter.com/MetCC/status/1469985390840926208?s=20>



From 15 December in England, you will need to show your NHS COVID Pass to enter places where large crowds gather, like nightclubs or large sporting events.

[gov.uk/government/new...](https://gov.uk/government/new...)



7:14 PM · Dec 8, 2021 · Twitter Web App



From 15 December:

you will need to show your NHS COVID Pass to enter places where large crowds gather, like nightclubs or large sporting events

[gov.uk/government/new...](https://gov.uk/government/new...)



8:02 AM · Dec 9, 2021 · Twitter Web App

There was significant opposition from Conservative backbenchers on the reintroduction of coronavirus-related regulations, particularly in relation to mandatory Covid passes. Many Conservative MPs publicly criticised the measures, but Shadow Health Secretary Wes Streeting MP repeatedly committed the Opposition to supporting the Government's plans,<sup>15</sup> even before further details or draft regulations had been published.

A vote was held on 14<sup>th</sup> December on all 'Plan B' measures – mandatory face coverings, Covid passes and vaccinations for all health and social care staff – as well as revoking the 10 day isolation period for vaccinated close contacts of Omicron cases. MPs were asked by the Health Secretary to support the measures in order to combat the "grave threat" of an Omicron wave, despite being provided with little data on the severity of, and vaccine efficacy against, the variant and some of regulations being published less than 24 hours before the vote.<sup>16</sup>

Due to support from the Labour Party, all measures were voted through. However, the vote on mandatory Covid passes drew significant backbench opposition of 126 votes against, 99 of which were from Conservative MPs – the largest Conservative rebellion of Johnson's premiership. The House of Commons debate was dominated by Conservative MPs criticising the proposals. The Covid pass vote drew headlines, deepened a political crisis for the Prime Minister and prompted warnings of a leadership challenge.<sup>17</sup> Andrew Bridgen MP noted that backbenchers, rather than the Opposition, were fulfilling the role of scrutinising proposals:

<sup>15</sup> Wes Streeting, Twitter, 14<sup>th</sup> December 2021: <https://twitter.com/wesstreeting/status/1470724858468253699?s=20>

<sup>16</sup> HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 937: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

<sup>17</sup> Boris Johnson suffers biggest rebellion as dozens of Conservative MPs vote against Covid-19 Plan B measures – Hugo Gye, the Independent, 14<sup>th</sup> December 2021: <https://inews.co.uk/news/politics/boris-johnson-suffers-commons-rebellion-as-dozens-of-conservative-mps-vote-against-covid-19-plan-b-measures-1352513>

"Whenever this House passes legislation, it is essential that it is effective, evidence-based and logical, and it needs to have broad public support. What I see in front of us today with regard to Plan B delivers on virtually none of these items."<sup>18</sup>

Several backbenchers called for a move away from legal restrictions towards guidance instead. Dame Andrea Leadsom MP said:

"The action by Government on boosters is fantastic, but instead of criminalising people, why do we not start a hard-hitting public health campaign—"If you're going out this Christmas, don't forget to take a test" or, "If you're seeing your granny, make sure you get a jab"? Let us persuade people, rather than criminalise them."<sup>19</sup>

Miriam Cates MP warned about the permanent impact that constantly introducing new restrictions is having on the country's understanding of liberty:

"Freedom is what enables my constituents to see their family, comfort the dying, go to school and go to work. That is what freedom looks like. After 20 months in and out of restrictions, we have to accept that there has been a permanent change in the understanding of what liberty is in this country, which is why I cannot support these measures."<sup>20</sup>

In the House of Lords debate on 15<sup>th</sup> December, there was similar opposition from Conservative peers. Lord Hannan spoke against the introduction of restrictions 'just in case':

"When proposing to take away people's elemental freedoms, the onus must be on the proponents of change to prove their case. It is not for defenders of the status quo ante, defenders of our traditional freedoms, to show why restrictions are not necessary. I am not sure that has happened in this case.

"Even if it has, how are we not opening the door to the same reasoning in future, so that we have a see-saw of constant lockdowns or other bans and restrictions, every time something happens, just to be on the safe side? That would be a fundamental alteration in the relationship between state and citizen."<sup>21</sup>

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18 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 987: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

19 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 997: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

20 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 1010: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

21 HL Deb (15<sup>th</sup> December 2021), vol. 817, col. 265: [https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection\(CoronavirusRestrictions\)\(Self-Isolation\)\(England\)\(Amendment\)\(No6\)Regulations2021](https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection(CoronavirusRestrictions)(Self-Isolation)(England)(Amendment)(No6)Regulations2021)



*“The speed of omicron is not the only danger. More worrying is the dangerous speed with which the Government immediately have recourse to invasive restrictions. This is no longer a last resort. It is almost the first policy idea at which they grab.”*

*- Baroness Fox, Crossbench Peer*



Crossbench peer Baroness Fox warned that the Government had become too comfortable with reaching for restrictions to manage public health:

“The speed of omicron is not the only danger. More worrying is the dangerous speed with which the Government immediately have recourse to invasive restrictions. This is no longer a last resort. It is almost the first policy idea at which they grab.”<sup>22</sup>

All sets of regulations were passed by both Houses, but the ensuing rapid rise in coronavirus cases led to speculation that further restrictions would be implemented over the Christmas period. SAGE warned that if stringent measures were not introduced, the UK could see hospital admissions reaching 3,000 a day.<sup>23</sup> Despite constant leaks that restrictions on gatherings would be introduced, the Prime Minister announced that Christmas plans could go ahead, although he “[couldn’t] rule out any further measures after Christmas.”<sup>24</sup> There were multiple reports in the media that senior Cabinet Ministers had refused to support further restrictions, citing a lack of evidence.<sup>25</sup> Several days later, the Health Secretary confirmed there would be no restrictions over the New Year.<sup>26</sup>

The autumn and winter months have seen the Government veering between policy positions. The advent of Omicron, coupled with new restrictions that divide society on the grounds of vaccine status and threats of further lockdowns prove that despite the language of ‘Freedom Day’ documented in our last report, there are still serious threats to both public health and civil liberties as we progress through the pandemic. We welcome, however, the UK Government’s decision to rely on people’s judgement, rather than criminalising them over the Christmas period, and reiterate the need for public health policies that support people rather than punish them.

**RECOMMENDATION 2: The Government must stop relying on complex and ever-changing criminal sanctions to enforce restrictions. Instead, clear, widely publicised and easily accessible guidance should be made available across a range of mediums.**

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22 HL Deb (15<sup>th</sup> December 2021), vol. 817, col. 272: [https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection\(CoronavirusRestrictions\)\(Self-Isolation\)\(England\)\(Amendment\)\(No6\)Regulations2021](https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection(CoronavirusRestrictions)(Self-Isolation)(England)(Amendment)(No6)Regulations2021)

23 Covid: Action needed to limit hospital admissions – Sage scientists – Jim Reed, BBC News, 18<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/health-59707252?utm>

24 Is Boris Johnson making a Covid announcement today? When to expect Christmas update and if lockdown is coming – Alex Finnis, iNews, 22<sup>nd</sup> December 2021: [https://inews.co.uk/news/boris-johnson-announcement-covid-today-when-christmas-update-uk-lockdown-1360708?ito=social\\_itw\\_thepaper](https://inews.co.uk/news/boris-johnson-announcement-covid-today-when-christmas-update-uk-lockdown-1360708?ito=social_itw_thepaper)

25 Ministers stand their ground against the scientists in lengthy battle over Christmas Covid restrictions – Christopher Hope and Ben Riley-Smith, the Telegraph, 20<sup>th</sup> December 2021: <https://www.telegraph.co.uk/politics/2021/12/20/lengthy-battle-christmas-covid-restrictions-ministers-stood/>; HOLD ON TO YOUR BAUBLES: Brits holding their breath as Boris Johnson warns he could slap Covid restrictions on Christmas at any moment – Harry Cole and Kate Ferguson, the Sun, 20<sup>th</sup> December 2021: <https://www.thesun.co.uk/news/17100048/boris-johnson-covid-christmas-restrictions/>

26 UK lockdown announcement: No new Covid restrictions before New Year, confirms Govt – Sebastian Murphy-Bates and Monica Charsley, the Daily Star, 27<sup>th</sup> December 2021: <https://www.dailystar.co.uk/news/latest-news/breaking-uk-lockdown-announcement-no-25795398>



## *Equality Impact Assessments*

Since March 2020, Health Protection Regulations have been used to restrict every area of public life to varying degrees, with dozens of complicated and confusing changes often made hours before they were enforced. Human rights group Liberty requested the Equality Impact Assessments (EIAs) for these regulations and was refused by the Department of Health and Social Care in June 2020 and again in October 2020 following an appeal.<sup>27</sup> The Department claimed that releasing the documents would “not be in the public interest”. EIAs are a vital tool in assessing how government measures impact those with protected characteristics. Given the sweeping nature of lockdown restrictions, publicly accessible, detailed EIAs should be available. Unprecedented powers should be introduced with maximum transparency. Sam Grant, Liberty’s Policy and Campaign Manager, said:

“The government side-lined our elected MPs by using emergency powers, even when it had months to prepare and ensure proper scrutiny was applied.

“Arguing that it was against the public interest to release what it knew about these powers is an insult to all of us affected by them.”

Rights groups should not have fight to access documents that should have been in the public domain. When Liberty appealed to the Information Commissioner, she ruled that the Department has an obligation to release the EIAs:

“The Commissioner acknowledges the massive restrictions imposed by the Health Protection Regulations and the impact on those with protected characteristics cannot be ignored.

“It is clear that the government was under a strong obligation to ensure that any measures introduced would not have a disproportionate impact on particular sections of the population.”<sup>28</sup>

The EIAs were published on 29<sup>th</sup> November. Concerning, the IEA covering the introduction of lockdown measures consists of just 4 pages and fails to consider any adverse impacts on groups with protected characteristics:

“It is not considered that there will be any significant impact on persons with a protected characteristic due to the policy set out in the Regulations. If, and to the extent, there is any differential impact, the public health reasons justify the approach, and there is no alternative way of dealing with the public health risks

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27 Government ordered to release Covid lockdown impact assessments after refusing to make documents public – Lizzie Dearden, the Independent, 12<sup>th</sup> November 2021: <https://www.independent.co.uk/news/uk/home-news/covid-lockdown-impact-assessments-foi-b1956743.html>

28 Government ordered to release Covid lockdown impact assessments after refusing to make documents public – Lizzie Dearden, the Independent, 12<sup>th</sup> November 2021: <https://www.independent.co.uk/news/uk/home-news/covid-lockdown-impact-assessments-foi-b1956743.html>

as effectively.”<sup>29</sup>

EIAs produced at later dates give a more detailed overview of the impact lockdown measures had on society’s most vulnerable, although they fail to provide a detailed analysis of why there was higher enforcement action against people from Asian and black ethnic groups, stating: “We cannot conclude based on these disparities alone that they are due to unlawful discrimination.”<sup>30</sup>

### *Enforcement*

As evidence emerges of Downing Street parties, quizzes and cheese and wine nights whilst the country was under various stages of lockdown, the Government’s punitive approach to the pandemic looks increasingly hypocritical.<sup>31</sup> Tristan Kirk, a journalist who has been closely following Covid prosecutions throughout the pandemic and who has given evidence to parliamentary committees on how police and courts have mishandled Covid-related offences, said the “opaque, illiberal, and sometimes unfair way rule-breakers have been prosecuted” remains a problem. He highlighted the disparity in outcomes:

“when you choose to criminalise rule-breaking and commit the courts and police to this task, the rules must apply to everyone, from tea and sandwiches at Mr Emin’s café in Bromley to cheese and wine at the heart of government.”<sup>32</sup>

The stark difference in how lockdown laws were enforced for the public and for those who created said laws is captured by a case which appeared in Westminster Magistrates Court in November. Staff at a branch of cafe Joe and the Juice were ‘red-dotted’ by police officers with tasers for holding a small gathering outside of work hours and fined £200.<sup>33</sup> When the case was brought to court, a magistrate dismissed the charges.

Police forces have continued to issue Fixed Penalty Notices (FPNs) for breaches of the remaining regulations. As of 17<sup>th</sup> October, total of 118,438 FPNs have been issued in England

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29 Considerations relating to Public Sector Equality Duty and the National Health Act – Department of Health and Social Care, GOV.UK, 26<sup>th</sup> March 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1037234/26\\_March\\_2020\\_PSED.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037234/26_March_2020_PSED.pdf)

30 Considerations relating to Public Sector Equality Duty Equality: analysis of social distancing measures, including restrictions on movement and restrictions on gatherings, in response to severe acute respiratory syndrome coronavirus 2(SARS-CoV-2) in England – Department of Health and Social Care, GOV.UK, 22<sup>nd</sup> June 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1036174/22\\_June\\_2020\\_PSED.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036174/22_June_2020_PSED.pdf)

31 Downing Street staff shown joking in leaked recording about Christmas party they later denied – ITV News, 10<sup>th</sup> December 2021: <https://www.itv.com/news/2021-12-07/no-10-staff-joke-in-leaked-recording-about-christmas-party-they-later-denied>

32 ‘Partygate’ damaged the Government, but it’s the way other lockdown rule-breakers were prosecuted that should concern us all – Tristan Kirk, the Evening Standard, 27<sup>th</sup> December 2021: <https://www.standard.co.uk/comment/partygate-downing-street-christmas-party-lockdown-prosecutions-b973629.html>

33 Met Police officers ‘drew their tasers and red-dotted Joe and Juice staff’ – Tristan Kirk, the Independent, 24<sup>th</sup> November 2021: <https://www.standard.co.uk/news/crime/met-police-tasers-joe-and-juice-b968035.html>



and Wales since March 2020, an additional 1,225 FPNs since the National Police Chief's Council's (NPCC's) last update on coronavirus FPNs on 21<sup>st</sup> June 2021.<sup>34</sup> Between 21<sup>st</sup> June 2021 to 17<sup>th</sup> October 2021, 53 FPNs were issued in England for a breach of international travel restrictions and 156 FPNs were issued for a breach of self-isolation requirements. The total number of FPNs issued in England and Wales is vast, yet given the lack of safeguards surrounding the issuing of FPNs, it is likely that thousands have been issued unlawfully.

**RECOMMENDATION 3: It is likely that thousands of Fixed Penalty Notices have been issued unlawfully under confusing lockdown restrictions. Police chiefs should urgently instigate a national review of all FPNs issued under the lockdown Regulations.**

**RECOMMENDATION 4: The Government should introduce a means for individuals to challenge lockdown Fixed Penalty Notices by way of administrative review or appeal, without having to risk magistrates' court proceedings.**

While restrictions on gatherings and venues were not introduced in England over this period, many charges brought earlier in the year (and in 2020) are still filtering through the criminal justice system. The Crown Prosecution Service (CPS) no longer publishes data from its unprecedented reviews into prosecutions under the Health Protection Regulations, limiting transparency and accessibility of this data. However, via email correspondence with Big Brother Watch, the CPS confirmed that 51 unlawful charges have been overturned since our last report – a total of 496 charges out of 2,409 since March 2020, or 21%.

These statistics evidence how poorly understood and enforced complex lockdown laws have been (and continue to be). The CPS' review has been a partial safeguard but crucially, its reviews cover only a fraction of coronavirus-related offences.

An investigation in early 2021 by Big Brother Watch and Fair Trials revealed that the CPS review of all coronavirus- related charges does not include any cases heard under the Single Justice Procedure, as no independent prosecutor is involved. Instead, the case is heard 'on paper' by a magistrate and a legal adviser, usually without the defendant having entered a plea or being in attendance. There is evidence that some people do not even receive the Single Justice Procedure notice alerting them to their prosecution and inviting them to submit a plea. One such individual was Pastor Chizumie Dyer, who was handed a £10,000 FPN in February 2021 for organising a church service in a car park.<sup>35</sup> At the time, religious gatherings were permitted, yet two riot vans arrived at the church service after she informed police she was planning to hold the gathering. Pastor Dyer was not informed that she had been convicted in her absence of an offence until a letter instructed her to

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34 Update on Coronavirus FPNs issued by police – October 2021 – National Police Chief's Council, 2<sup>nd</sup> November 2021: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-police-october-2021>

35 Pastor's joy as £10k Covid fine for church meet dropped – BBC News, 10<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/uk-england-nottinghamshire-59594391>

pay £16,275. At a full trial, the charges were dropped.

**RECOMMENDATION 5: The Crown Prosecution Service must review all prosecutions to date under the Single Justice Procedure in relation to the Health Protection Regulations and the Coronavirus Act.**

**RECOMMENDATION 6: The use of the Single Justice Procedure for prosecutions under the Health Protection Regulations and the Coronavirus Act must immediately be suspended.**

Many rights groups, lawyers, MPs and parliamentary committees have been critical of this approach to criminal justice. Sir Bob Neill MP, chair of the Justice Committee, said he was “disappointed” that the Government had reintroduced FPNs for new Plan B offences without fixing the system:

“There seems to be an unwillingness to learn lessons from the unsatisfactory way in which Covid offences were brought in last time, and a worrying failure to appreciate that rule-of-law safeguards should never be traded for speed or expediency.

“The latest ‘Covid certification’ regulations were particularly poorly drafted, and in my judgement will be extremely difficult to enforce.

“It remains objectionable to use fixed penalty notices to impose such high penalties.”<sup>36</sup> Harriet Harman MP, chair of the Joint Committee on Human Rights, similarly told the Independent:

“It was very disappointing that the government chose not to act when it had the chance to do so, and the committee will continue to be clear that any future restrictions and regulations that are introduced must include a right to appeal [FPNs].

(...)

“The whole process had inequality and unfair treatment baked into it, hitting the less well-off and criminalising the poor over the better off.”<sup>37</sup>

### *Devolved nations*

**While the UK government ultimately decided against introducing restrictions on gatherings**

36 Government ignores MPs’ calls to stop miscarriages of justice as review finds a third of Covid prosecutions were unlawful – Lizzy Dearden, the Independent, 30<sup>th</sup> December 2021: <https://www.independent.co.uk/news/uk/crime/covid-laws-fines-prosecutions-wrongful-justice-b1984012.html>

37 Government ignores MPs’ calls to stop miscarriages of justice as review finds a third of Covid prosecutions were unlawful – Lizzy Dearden, the Independent, 30<sup>th</sup> December 2021: <https://www.independent.co.uk/news/uk/crime/covid-laws-fines-prosecutions-wrongful-justice-b1984012.html>

in response to the Omicron wave, the devolved administrations took a different approach. Like the UK government, Scotland, Wales and Northern Ireland introduced mandatory Covid passes for a range of venues – in the name of keeping them open throughout winter. Yet each of the three nations closed nightclubs and prohibited large gatherings as soon as cases began to rise, in a clear indication of their lack of efficacy.

### *Scotland*

On 21<sup>st</sup> December, First Minister Nicola Sturgeon announced new restrictions in response to the spread of Omicron. All outdoor events would be limited to 500 people, and indoor events limited to 200 people (seated) or 100 people (unseated). The restrictions came into force on 26<sup>th</sup> December. The First Minister stated that limiting large events would prevent transmission and protect the resources of emergency responders being used by these events:

“(...) large events put an additional burden on emergency services, especially the police and ambulance services.

“At a time when these services are already under severe pressure and also dealing with high staff absences, limiting large scale events will help them focus on delivering essential services to the public.”<sup>38</sup>

Restrictions on hospitality venues were also reintroduced, with the resumption of mandatory table service and social distancing, meaning nightclubs were required to close, or act as bars with table service.<sup>39</sup> The Scottish Chambers of Commerce said the restrictions were “another hammer blow for employers and Scotland’s economy”.<sup>40</sup>

### *Wales*

In Wales, restrictions were also tightened. On 16<sup>th</sup> December it was announced that nightclubs would be required to close on 27<sup>th</sup> December, social distancing would be reintroduced in shops and businesses, and workers would be legally required to work from home where possible.<sup>41</sup> On 22<sup>nd</sup> December, the First Minister Mark Drakeford announced that these restrictions would be brought forward to 26<sup>th</sup> December, and that additionally

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38 Hogmanay events cancelled as Covid rules tightened – BBC News, 21<sup>st</sup> December 2021: <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-59745262>

39 Scotland’s nightclubs to close for three weeks from 27 December – BBC News, 23<sup>rd</sup> December 2021: <https://www.bbc.co.uk/news/uk-scotland-59768297>

40 Nicola Sturgeon’s Christmas Covid rules a ‘hammer blow to Scottish pubs’ – Simon Johnson, the Telegraph, 21<sup>st</sup> December 2021: <https://www.telegraph.co.uk/politics/2021/12/21/nicola-sturgeons-christmas-covid-rules-hammer-blow-scottish/>

41 Wales to introduce new restrictions and close nightclubs from December 27 – Jen Mills, Metro, 16<sup>th</sup> December 2021: <https://metro.co.uk/2021/12/16/wales-to-introduce-new-restrictions-and-close-nightclubs-from-december-27-15785038/>

the 'rule of six' would apply to hospitality venues, cinemas and theatres, as well as a resumption of table service only, social distancing and the collection of contact tracing details. Indoor gatherings of more than 30 and outdoor gatherings of more 50 would also be prohibited. The Senedd was only recalled to vote on the restrictions after Welsh Conservative leader Andrew RT Davies requested it:

"Imposing restrictions on society must be done on the strongest possible evidence, and fully communicated to the Welsh public in the form we have become accustomed to during the pandemic – not released via press release at midnight."<sup>42</sup>

### *Northern Ireland*

The remaining restrictions in Northern Ireland were only lifted on 31<sup>st</sup> October, ending mandatory social distancing measures and allowing nightclubs to reopen for the first time since March 2020.<sup>43</sup> However, less than 2 months later, it was announced that nightclubs would close again from 26<sup>th</sup> December, and indoor standing events and dancing in hospitality venues would also be prohibited, except for weddings and civil partnerships.<sup>44</sup> From 27<sup>th</sup> December, businesses would be required to ensure that office workers were kept 2m apart, and hospitality venues would be required to provide table service only, for tables of no more than 6 people.

In a particularly concerning move, exemptions from the face covering requirements were removed as part of the tightening of restrictions. The exemption of wearing a face covering where it causes severe distress was to be removed and the onus of proving an exemption on medical grounds put on the individual. We have previously highlighted the impact that face covering requirements have had on people with disabilities, with police officers demanding individuals 'prove' their disability. This hostile approach to disabled people is disproportionate and will likely discourage some individuals who cannot wear face coverings from leaving their homes. The removal of the 'severe distress' exemption will also have serious implications for those who have complex reasons for being unable to wear face coverings. Some sexual abuse survivors are unable to wear masks, and some individuals with mental health issues or PTSD are also unable to wear masks. This move will do little to reduce the rates of coronavirus, but will instead punish some of society's most vulnerable people. The Compass Advocacy Network, which supports people with learning difficulties, was highly critical of the move. Its CEO, Janet Schofield, told the BBC the plans would cause "immense anxiety" for people with disabilities:

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42      Omicron: More Covid rules needed in Wales, minister says – BBC News, 21<sup>st</sup> December 2021: <https://www.bbc.co.uk/news/uk-wales-politics-59729129>

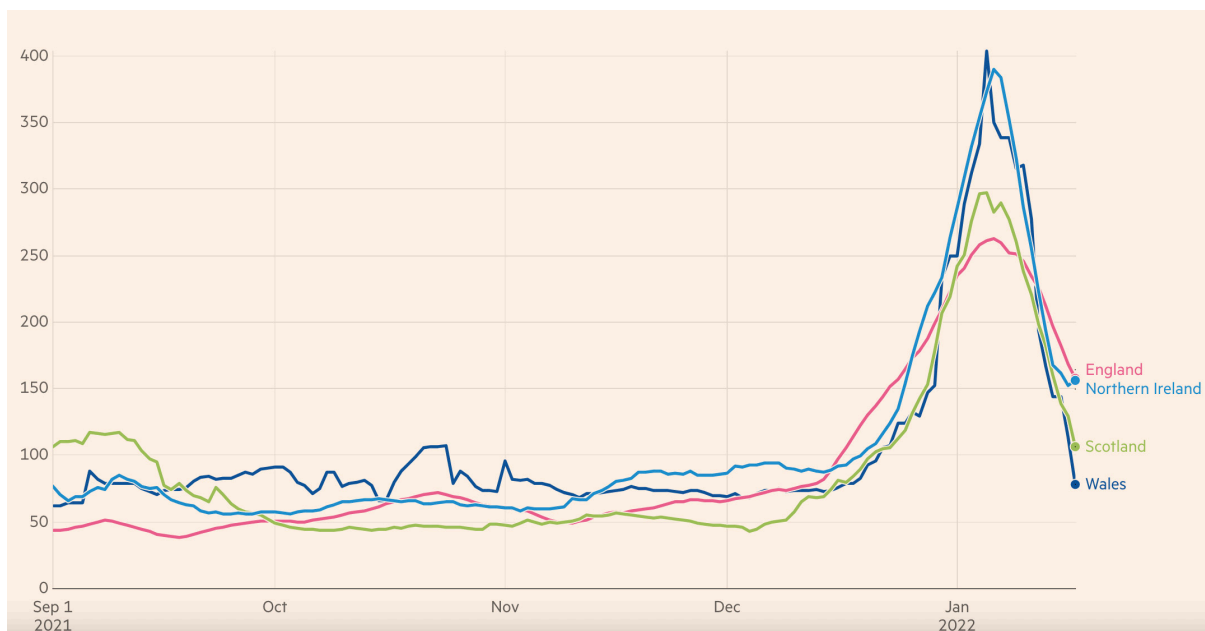
43      Covid-19: Nightclubs reopen in Northern Ireland as restrictions ease – BBC News, 31<sup>st</sup> October 2021: <https://www.bbc.co.uk/news/uk-northern-ireland-59081526>

44      Covid-19: Nightclubs in NI to close from 26 December – Jayne McCormack, BBC News, 22<sup>nd</sup> December 2021: <https://www.bbc.co.uk/news/uk-northern-ireland-59756633?>

“If you have a learning disability and you’re struggling to understand, plus this pent-up emotion and fear of what will happen with the mask and going out into the public.

“Now they have to go into the public and explain why they’re not wearing a mask and possibly see the result of that and be pulled up for not wearing the mask.”<sup>45</sup>

Despite these stringent new measures, including Covid pass requirements that have been in place for longer and apply to more venues than in England, the transmission of coronavirus has been similar across Scotland, Wales and Northern Ireland as in England.<sup>46</sup> The devolved administrations should trust the public to act responsibly, offer support for those who may need it and stop relying on endlessly changing restrictions to manage public health. Criminalising people has not led to a reduction in cases of coronavirus, but has led to a loss of liberty and rights.



45 'Mechanisms' needed for vulnerable after strengthened mask laws – BBC News, 24<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/uk-northern-ireland-59779871>

46 See chart: New confirmed cases of Covid-19 in England, Wales, Scotland and Northern Ireland – Financial Times, accessed 17<sup>th</sup> January 2022: <https://ig.ft.com/coronavirus-chart/?areas=e92000001&areas=w92000004&areas=s92000003&areas=n92000002&areasRegional=usny&areasRegional=usnh&areasRegional=uspr&areasRegional=usdc&areasRegional=usfl&areasRegional=usmi&cumulative=0&logScale=0&per100K=1&startDate=2021-09-01&values=-cases>

# International Travel Restrictions

On 1<sup>st</sup> October, the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021 were laid, which removed the 'green' and 'amber' list of countries. The 'red' list remained, which required travellers arriving from those countries to isolate in a Government-managed quarantine hotel for two weeks. The regulations also define "eligible travellers" – individuals who have not travelled from a red list country and are fully vaccinated (or have proof of participation in a medical trial, have a medical exemption from vaccination certified by the NHS Covid app or are a UK citizen under 18 years old).<sup>47</sup> "Eligible travellers" are not required to take pre-departure tests and do not have to quarantine on arrival, although they are required to take a 'day 2' lateral flow test. Travellers from non-red list countries who are not "eligible" (essentially, unvaccinated arrivals) must take a pre-departure test, isolate for 10 days on arrival and pay privately for a day 2 and day 8 PCR test. This represents increased restrictions for travellers who have not been vaccinated, given that previously all those, regardless of vaccine status, travelling from green list countries were not required to isolate. The increased division between vaccinated and unvaccinated travellers is punitive and lacks an evidence base – indeed, it did not prevent the arrival of the Omicron variant into the UK.

These Regulations were also made using s.45R of the Public Health (Control of Disease) Act 1984 – the 'urgency procedure' which allows Ministers to pass hugely consequential restrictions without parliamentary approval. Given that these alterations to travel restrictions were announced by the Transport Secretary Grant Shapps MP two weeks before on 17<sup>th</sup> September, there was no justification for using the urgency procedure.<sup>48</sup>

On 8<sup>th</sup> October, the Government removed all countries bar 7 from the red list,<sup>49</sup> and on 1<sup>st</sup> November, all remaining countries were also removed from the red list.<sup>50</sup> However, the Government stressed that "the red list and quarantine hotel policy remains in place" and countries could be re-added if necessary.

The lack of travel restrictions proved to be short lived, with several southern African countries being placed on the red list at short notice in response to the emergence of the Omicron variant.<sup>51</sup> Non-UK or Irish citizens were prevented from entering the country,

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<sup>47</sup> The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021, para 6

<sup>48</sup> Red, amber and green lists scrapped by Government in huge travel rules change – David Bentley, Birmingham Mail, 17<sup>th</sup> September 2021: <https://www.birminghammail.co.uk/travel/red-amber-green-lists-scrapped-21603487>

<sup>49</sup> Travel red list slashed to just seven countries – Charles Hymas, the Telegraph, 8<sup>th</sup> October 2021: <https://www.telegraph.co.uk/news/2021/10/07/red-list-slashed-just-seven-countries>

<sup>50</sup> Travel update: all countries removed from the UK's red list – Department for Transport, GOV.UK, 1<sup>st</sup> November 2021: <https://www.gov.uk/government/news/travel-update-all-countries-removed-from-the-uks-red-list>

<sup>51</sup> Coronavirus variant fear sparks Africa travel curbs – BBC News, 26<sup>th</sup> November 2021: <https://www.bbc.co.uk/>

while UK and Irish citizens were required to quarantine on their return. Those arriving between 12pm on the 26<sup>th</sup> November and 4am on the 28<sup>th</sup> November were required to quarantine at home, regardless of vaccine status. Those arriving after 4am on the 28<sup>th</sup> November were required to quarantine in a government operated hotel. The World Health Organisation said travel bans “attack global solidarity” and “will not prevent the international spread” of Omicron.<sup>52</sup> Similarly critical was the UN, whose Secretary General criticised “travel apartheid” measures as “not only deeply unfair and punitive [but also] they are ineffective.”<sup>53</sup> This proved to be the case, with the Omicron variant spreading rapidly across the UK despite restrictions on travel and stringent isolation measures. Just a few weeks after the measures were introduced, they were scrapped, with the Health Secretary announcing:

“Now that there is community transmission of Omicron in the UK and Omicron has spread so widely across the world, the travel red list is now less effective in slowing the incursion of Omicron from abroad”.<sup>54</sup>

It is unlikely that the red list measures were ever effective at combatting the arrival of the new variant.

**RECOMMENDATION 7: Addition isolation and testing requirements for unvaccinated travellers have no basis in public health and serve only to punish those who cannot, or who have chosen not to be, vaccinated. Any restrictions should be strictly necessary and based on strong evidence.**

### *Quarantine hotels*

Since the introduction of state-managed quarantine facilities for certain international arrivals, we have called for the Government to abandon this approach and allow people to isolate in a residence of their own choosing. Charging people thousands of pounds to be effectively held under house arrest in poorly managed hotel quarantines is exclusionary and draconian, with little evidence to support its benefits.

Dr Aleksandra Jolkina, who is researching the lawfulness of the UK government’s immigration policies in relation to Covid at Queen Mary’s University, wrote a compelling analysis of the lawfulness of hotel quarantine.<sup>55</sup> Under both national law (the Immigration

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news/uk-59424269

52 Blanket travel bans ‘attack global solidarity’, says World Health Organization – Helen Coffey, the Independent, 3<sup>rd</sup> December 2021: <https://www.independent.co.uk/travel/news-and-advice/travel-bans-world-health-organization-b1969123.html>

53 U.N. chief slams COVID-19 ‘travel apartheid’ as unacceptable – Michelle Nichols, Reuters, 2<sup>nd</sup> December 2021: <https://www.reuters.com/world/un-chief-slams-covid-19-travel-apartheid-unacceptable-2021-12-01/>

54 UK removes all 11 countries from red list – BBC News, 14<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/business-59653236>

55 £2,285 for the right to return home – or why the UK’s hotel quarantine scheme went too far – Aleksandra



Act 1971) and international law (the European Convention on Human Rights and the International Covenant on Civil and Political Rights), UK citizens have a right to return to the UK without hindrance. However, “the exercise of the right of return to the UK was effectively made conditional upon the payment of a quarantine fee,” she wrote, noting the many instances of individuals being unable to return home due to vast fees. In response to a legal challenge, the UK government widened its deferred payment plan and in “exceptionally limited circumstances” grants some travellers a fee reduction or waiver.<sup>56</sup> However, this applies only to those earning less than £13,800 before tax and with and household savings less than the cost of the managed quarantine and testing fees. Dr Jolkina also noted that – despite media depictions of ‘holidaymakers’ –

“The group most severely affected by the hotel quarantine scheme, however, is individuals with transnational connections that existed long before the pandemic. Apart from people on low incomes, the system may have had a disproportionate impact on people with foreign roots who are more likely to have families abroad.”

She suggests that while the existence of hotel quarantine could plausibly be lawful, charging people vast sums to stay in this accommodation is unlikely to be.

With countries placed at the last minute on the red list, many UK citizens were forced to isolate unexpectedly in quarantine hotels. In previous reports, we have detailed the dire conditions of the managed quarantine facilities. New reports make it clear that many of the problems with the accommodation have not been remedied. Michelle Bovey-Wood was required to pay over £7,000 to isolate with her wife Sharon and their six-year-old daughter Leah in one room after their return to England.<sup>57</sup> Their daughter was required to sleep on cushions on the floor as no bed was provided for her. The family were told they would be permitted three thirty minute exercise sessions a day, more than others, as they had a young child. However, the family was permitted just 10 minutes a day outside of their room.

Catherine Vorster’s 16-year-old son was required to quarantine in a hotel on his return from school in South Africa. She was told an adult would need to stay with her son due to his age, meaning the family had to pay for two quarantine packages: “We had to put ourselves into debt to pay the £3,715”.<sup>58</sup>

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Jolkina, London School of Economics blog, 15<sup>th</sup> November 2021: <https://blogs.lse.ac.uk/covid19/2021/11/15/2285-for-the-right-to-return-home-or-why-the-uks-hotel-quarantine-scheme-went-too-far/>

56 Hardship arrangements for those unable to pay for managed quarantine or testing – Department of Health and Social Care, GOV.UK, updated 11<sup>th</sup> November 2021: <https://www.gov.uk/guidance/hardship-arrangements-for-those-unable-to-pay-for-managed-quarantine-or-testing#full-publication-update-history>

57 ‘Inedible’ food, tears and 20min walks around a car park – the grim reality of hotel quarantine – Gareth Davies and Daniel Capurro, the Telegraph, 6<sup>th</sup> December 2021: <https://www.telegraph.co.uk/news/2021/12/06/inedible-food-tears-20-minute-daily-walks-around-car-park/>

58 Covid: ‘Quarantine hotel fiasco has cost us £5,500’ – Katy Austen, BBC News, 15<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/business-59650268>



Other travellers have complained of inedible food, security staff ignoring their requests to be let outside for exercise, dietary requirements being ignored and a lack of ventilation.<sup>59</sup> Others have been exposed to Covid during their stay.<sup>60</sup>

Quarantine hotels are an unnecessary, expensive and cruel approach to border control and public health. Where necessary, the Government should support people to self-isolate in a residence of their choosing, rather than subjecting healthy people to state-managed isolation facilities.

**RECOMMENDATION 8: The hotel quarantine requirements for travellers must be overturned, absent the publication of a full, scientifically-informed analysis explaining why this would be a strictly necessary measure and that no more proportionate options are available to pursue the same legitimate aim.**

## Self Isolation Requirements

On 22<sup>nd</sup> December, it was announced that the mandatory self-isolation period would be reduced from 10 days to 7 days for double vaccinated people who have tested positive for Covid-19, provided they test negative on a lateral flow test on day 6 and 7 of the isolation period.<sup>61</sup> Official Government guidance was updated on 22<sup>th</sup> December.<sup>62</sup> However, legislation was not updated to reflect this change to restrictions. The BBC reported that the Government was relying on an exemption from isolating for those with a “reasonable excuse”, meaning those who end their isolation period after 7 days, rather than the legally required 10, can rely on the “reasonable excuse” that the Government has changed its guidance and will not have committed an offence.<sup>63</sup>

This slapdash approach to law-making is unacceptable. Ministerial pronouncements should not be used to manipulate and alter legislation, particularly when the legislation being altered carries vast fines of up to £10,000 for an offence. It also causes confusion. It was reported that NHS Test and Trace was still instructing people to isolate for the full 10 days, rather than 7, reflecting the legislation rather than Government guidance.<sup>64</sup>

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59 ‘Inedible’ food, tears and 20min walks around a car park – the grim reality of hotel quarantine – Gareth Davies and Daniel Capurro, the Telegraph, 6<sup>th</sup> December 2021: <https://www.telegraph.co.uk/news/2021/12/06/inedible-food-tears-20-minute-daily-walks-around-car-park/>

60 Covid: ‘Quarantine hotel fiasco has cost us £5,500’ – Katy Austen, BBC News, 15<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/business-59650268>

61 Covid isolation cut from 10 to seven days as ‘test to release’ introduced – Tony Diver and Charles Hymas, the Telegraph, 22<sup>nd</sup> December 2021: <https://www.telegraph.co.uk/politics/2021/12/22/covid-isolation-periods-cut-10-seven-days-test-release-introduced/>

62 COVID-19: guidance for households with possible coronavirus infection – UK Health Security Agency, GOV.UK, 24<sup>th</sup> December 2021: <https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance#history>

63 Covid: Self-isolation cut from 10 days to seven with negative tests – Dulcie Lee, BBC News, 22<sup>nd</sup> December 2021: <https://www.bbc.co.uk/news/uk-politics-59749447>

64 Test and Trace wrongly tells people with Covid to self-isolate for 10 days – Ewan Somerville and Christopher Hope, the Telegraph, 29<sup>th</sup> December 2021: <https://www.telegraph.co.uk/news/2021/12/28/test-trace-wrongly-tells-people/>

Ministerial statements should not create, revoke or alter restrictions. This is the role of Parliament.

## Coronavirus Act

The Coronavirus Act 2020 was passed in March 2020 and contains a significant number of extraordinary and draconian powers. Big Brother Watch campaigned for, and won, an amendment which required Parliament to vote on the continuation of the Act every 6 months. The Act was approved by Parliament in September 2020 and March 2021, with the third vote on the Act taking place in the House of Commons on 19<sup>th</sup> October.

MPs were critical of the Government's decision to seek to renew the Act for a further 6 months, particularly given the availability of powers via the Civil Contingencies Act 2004 and the Public Health (Control of Disease) Act 1984 – both of which have faced greater scrutiny. Sir Graham Brady MP, Chair of the 1922 Committee, asked the Health Secretary: "Will my right hon. Friend explain in detail which of the measures that the Government seek to retain could not be implemented alternatively by means of the Civil Contingencies Act or the Public Health (Control of Disease) Act 1984?"<sup>65</sup> The Health Secretary could not answer. David Davis MP also raised the lack of scrutiny required under the Act:

"The point made at the time was that the Act is not necessary, because it replicates many other pieces of legislation, and that the Act alone allows the Government to act without recourse to the House, which is not true of the Civil Contingencies Act 2004 or the Public Health (Control of Disease) Act 1984. That is why it is wrong: because it does not have to come back to the House every time it takes away another piece of British freedom."<sup>66</sup>

Dr Liam Fox also raised the point:

"No one disputes the success that some of these measures have had but there is a strong resentment—which, I have to say, I share—in many quarters about giving any Government extension to powers that are quite as blank as these are.

"Have the Government considered any other mechanism for allowing extension for a lesser amount of time or are there alternatives by using the Civil Contingencies Act 2004, which many of us feel should have been used from the outset"?<sup>67</sup>

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ple-covid-self-isolate-10-days/

65 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 654: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

66 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 651: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

67 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 650: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

Although the Labour Party supported the renewal of the Act, due to its provisions on statutory sick pay, (then) Shadow Health Secretary Jon Ashworth MP said:

“Perhaps I am naive, but I did not anticipate that 18 months later the Act would be renewed again on the basis of a 90-minute debate not allowing Members to scrutinise this properly—and given the way in which the House has decided to debate it, Members cannot even table amendments and have their point of view expressed on the Order Paper.

“I strongly encourage the Government —the Executive who control the business of the House—to try to find a more satisfactory way in which the Act can be properly scrutinised, particularly if the Government are minded to renew it again in six months’ time rather than expire it, as was originally intended.””<sup>68</sup>

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<sup>68</sup> HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 655: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))



*"This is the mother of all Parliaments and we should always have the opportunity to scrutinise Government legislation. That is what we are elected to do. This all-or-nothing approach does not wash; it is wrong.*

*"As a parliamentarian, I want to get my control back. I want to get back my powers to scrutinise the Government. The Government should not be the sole decider of legislation. We live in a democracy, not an autocracy."*

- Dawn Butler, MP for Brent Central



Labour's Dawn Butler MP criticised the Government's continued renewal of the Act and the lack of opportunity for parliamentarians to amend it:

"Today really feels like groundhog day. The Government are again pushing through the Coronavirus Act with no scrutiny from Parliament. I do not know what it is about this authoritarian Act that the Government love to push through. Some 18 months ago, the Bill was nodded through—understandably, in a way, but it was never, ever proportionate.

(...)

"This is the mother of all Parliaments and we should always have the opportunity to scrutinise Government legislation. That is what we are elected to do. This all-or-nothing approach does not wash; it is wrong.

"As a parliamentarian, I want to get my control back. I want to get back my powers to scrutinise the Government. The Government should not be the sole decider of legislation. We live in a democracy, not an autocracy."<sup>69</sup>

Liberal Democrat Health spokesperson Munira Wilson MP also called for the Act to be scrapped:

"While there were important measures in the Act relating to benefits, furlough and registration of healthcare professionals, the Government have had ample time since to legislate properly, with proper scrutiny, for those important measures, yet they chose not to. Instead, unnecessary, far-reaching powers encroaching on our civil liberties have twice been renewed, with minimal debate—measures such as detention of potentially infectious persons that I believe have actually resulted in 295, not 292, wrongful prosecutions."<sup>70</sup>

Disappointingly, a division was not held in the House of Commons on the renewal of the Coronavirus Act, due to a lack of opposition.<sup>71</sup> In the House of Lords, crossbench peer Baroness Fox was critical of this outcome:

"I want first to register that the no-vote on the Coronavirus Act in the other House last week, with the seemingly glib statement that the House was not in the mood to vote, was unsettling. Although a majority of the most illiberal and worrying uses and abuses of the law over the last 18 months have been acted through public health

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69 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 664: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

70 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 666: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

71 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 673: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

legislation, none the less the Coronavirus Act remains as a legislative symbol of the state accruing enormous and unprecedented powers to deal with the public health emergency.”<sup>72</sup>

### *Schedules 21 and 22*

In our last report, we welcomed the Government’s announcement that Schedule 21 and 22 of the Coronavirus Act were to be expired. On 1 December, MPs approved The Coronavirus Act 2020 (Early Expiry) (No. 2) Regulations 2021,<sup>73</sup> which came into force on 9 December 2021, expiring Schedules 21 and 22. This is victory for Big Brother Watch’s constant campaigning against the inclusion of these Schedules within the Act.

Schedules 21 and 22 contained some of the Government’s most draconian pandemic powers: Schedule 21 gave police officer and immigration officers powers to detain anyone – including children – who were deemed “potentially infectious”. Schedule 22 gave Ministers the power to issue directions in relation to events, gatherings and premises, allowing the Government to close or restrict access to businesses and events without the approval of Parliament. Reviews by the Crown Prosecution Service have found that every single charge under these Schedules has been unlawful – a total of 307 as of 29<sup>th</sup> November 2021.<sup>74</sup>

Health Secretary Sajid Javid confirmed during the House of Commons debate that the powers, which he described as “some of the most stringent aspects of the Coronavirus Act”, would be removed. In doing so, he wrongly stated that Schedule 21 powers had been used “only 10 times”; but correctly acknowledged that Schedule 22 powers had never been used in England.<sup>75</sup>

Shadow Health Secretary Jonathan Ashworth welcomed the announcement:

“A number of provisions have been taken out of the Act that restricted liberties and freedoms. We raised concerns about those provisions six months ago and 12 months ago, and we are pleased that they have been lifted from the Act, particularly those sections that gave the power to detain potentially infectious persons, which have been used for a number of prosecutions, every one of which was found to be unlawful by the Crown Prosecution Service.”<sup>76</sup>

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72 HL Grand Committee Deb, 26<sup>th</sup> October 2021, vol. 815, col. 124GC: <https://hansard.parliament.uk/Lords/2021-10-26/debates/C846C077-0A96-4938-A285-CAAA8295D38D/CoronavirusAct2020>

73 Delegated Legislation, Vol 704, 1 December 2021: <https://hansard.parliament.uk/commons/2021-12-01/debates/05905DA5-49A4-4564-BBD5-FB8CE1E44879/DelegatedLegislation>

74 Figures obtained via email correspondence from the Crown Prosecution Service

75 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 653: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

76 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 656: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

Backbencher and chair of the Covid Recovery Group Mark Harper MP similarly stated: "I welcome what the Secretary of State has done in not continuing with some of the most offensive and egregious provisions in the Act, particularly the one enabling almost indefinite detention."<sup>77</sup>

During the debate on the renewal of the Coronavirus Act In the House of Lords, peers also emphasised the need to expire Schedules 21 and 22. Lord Hunt asked:

"I was very glad the Minister said what he said in relation to Schedules 21 and 22. My understanding is that every single charge made under those schedules was found to be unlawful (...) they are draconian.

(...)

"The Minister said that they will be withdrawn. Can he clarify whether they will be withdrawn through a statutory instrument?"<sup>78</sup>

Baroness Merton said:

"A year ago, the Joint Committee on Human Rights said that [Schedule 21] powers 'ought to be repealed'. We, too, have long called for those powers to be removed from the Act and it is right and proper that they have been."<sup>79</sup>

Health Minister Lord Kamall said "it is regrettable that 295 incorrect charging decisions have been made under the Coronavirus Act" and recommitted the Government to expiring the Schedules.<sup>80</sup>

The Coronavirus Act 2020 (Early Expiry) (No. 2) Regulations 2021 were laid in draft on 27<sup>th</sup> October. As well as expiring Schedules 21 and 22 (in England and Northern Ireland), the regulations also expired provisions relating to the Investigatory Powers Act 2016, which allowed regulations to be made to extend the time limit of approval of emergency surveillance warrants, from 3 working days to 12 working days.<sup>81</sup> Before the Coronavirus Act was passed, Big Brother Watch warned against the weakening of safeguards on vast surveillance powers and recommended Section 23 of the Act be removed.<sup>82</sup> The

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77 HC Deb (19<sup>th</sup> October 2021), vol. 701, col. 659: [https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)\(No3\)](https://hansard.parliament.uk/commons/2021-10-19/debates/DE41995A-64A6-4CFE-BF4C-552F6875D6C6/CoronavirusAct2020(ReviewOfTemporaryProvisions)(No3))

78 HL Grand Committee Deb, 26<sup>th</sup> October 2021, vol. 815, col. 113GC: <https://hansard.parliament.uk/Lords/2021-10-26/debates/C846C077-0A96-4938-A285-CAAA8295D38D/CoronavirusAct2020>

79 HL Grand Committee Deb, 26<sup>th</sup> October 2021, vol. 815, col. 134GC: <https://hansard.parliament.uk/Lords/2021-10-26/debates/C846C077-0A96-4938-A285-CAAA8295D38D/CoronavirusAct2020>

80 HL Grand Committee Deb, 26<sup>th</sup> October 2021, vol. 815, col. 138GC: <https://hansard.parliament.uk/Lords/2021-10-26/debates/C846C077-0A96-4938-A285-CAAA8295D38D/CoronavirusAct2020>

81 Coronavirus Act 2020, Section 23

82 Big Brother Watch briefing on the Coronavirus Bill – Big Brother Watch, March 2020: <https://bigbrotherwatch>.



Regulations also expired powers relating to the Universal Credit uplift, powers that allowed local authority meetings to be held remotely, powers that allowed telephone links during magistrates proceedings for potentially infectious people, powers to close schools and education settings and powers which allowed for the modification of certain requirements in education settings.

On 28<sup>th</sup> October the Government tabled a motion to approve the regulations.<sup>83</sup> The Regulations were considered by the Secondary Legislation Scrutiny Committee on 9<sup>th</sup> November.<sup>84</sup> On 1<sup>st</sup> December, MPs approved the motion<sup>85</sup> and Schedules 21 and 22 were finally expired on 9<sup>th</sup> December 2021. The removal of these provisions in England and Northern Ireland is welcome, but should be extended to Wales and Scotland.

### *Extension*

The Coronavirus Act will expire after 2 years, on 25<sup>th</sup> March 2022. Powers exercised under the Act can last for six further months, meaning the Act could last 2.5 years; and the Act gives far-reaching powers to ministers to extend the powers beyond two years simply by regulation (s.90). This is an extraordinary expansion of ministerial power and an unacceptably long time for exceptional, emergency powers to be at the disposal of Government.

The Act contains the most draconian powers ever seen in peacetime Britain. It was right for the Government to be equipped with the powers and resources it needed to face an uncertain and challenging period, when there were considerable unknowns about how Covid-19 would impact public health and the functioning of society. However, two years on, armed with vaccinations, new public health systems such as NHS Test and Trace, and a greater understanding of how Covid-19 transmits and impacts public health, these extreme powers cannot be justified. The Government should repeal the Act in its entirety.

If the Government believes any powers contained within the Act are necessary and useful for the long term protection of public health, such as the suspension of restrictions on the return to work for retired NHS staff, the powers should be retained through new primary legislation. This will allow them to be meaningfully and thoroughly scrutinised by Parliament and will guard against the dangerous normalisation of emergency powers.

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[org.uk/wp-content/uploads/2020/03/briefing-coronavirus-bill-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/briefing-coronavirus-bill-final.pdf)

83 Order Paper for Thursday 28 October 2021, HC, 28<sup>th</sup> October 2021: <https://commonsbusiness.parliament.uk/document/51007/html#20211028-346>

84 18th Report of Session 2021-22 – Secondary Legislation Scrutiny Committee, HL 93, 11<sup>th</sup> November 2021: <https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/93/9305.htm>

85 Delegated Legislation, Vol 704, 1 December 2021: <https://hansard.parliament.uk/commons/2021-12-01/debates/05905DA5-49A4-4564-BBD5-FB8CE1E44879/DelegatedLegislation>



**RECOMMENDATION 9:** The Government should no longer rely on emergency legislation and should not seek to extend the Coronavirus Act 2020. Any new measures should be brought through via primary legislation, with ample time given for scrutiny.

# Mandatory Vaccination

The Prime Minister alarmed the nation when his comments, at a Covid-19 press conference, were widely interpreted to imply that a “national conversation” might be needed about mandatory vaccination:

“I said right at the beginning of this pandemic that I didn’t want us to have a society and a culture where we force people to get vaccinated, I don’t think that’s ever been the way we do things in this country.

“I think that there is going to come a point – if we can show that the vaccines are capable of holding the Omicron, and that’s the key thing that I think we need to test – but I do think that we’re going to have to have a conversation about ways in which we deal with this pandemic.”

“We don’t believe we can keep going indefinitely with non-pharmaceutical interventions – I mean restrictions on people’s way of life – just because a substantial proportion of the population still sadly has not got vaccinated.

“I think we are going to need to have a national conversation about the way forward and the other things that we can do to protect those who are hard to reach, who haven’t got vaccinated for one reason or another but that is a stage that I think we will come to if and when we establish, as I hope that we will, that the booster is effective against Omicron.”<sup>86</sup>

This is deeply troubling and a sharp reminder of how gravely the principles of medical privacy and bodily autonomy have been eroded during the pandemic. Big Brother Watch maintains that no one should be legally required to be vaccinated in order to access work, education or public life.

The comments were firmly rejected by members of the Cabinet. Culture Secretary Nadine Dorries said, “I can’t believe anyone would support mandatory vaccines – I very definitely do not and never have.”<sup>87</sup> Angela Richardson, PPS to the Secretary of State for Levelling Up, tweeted: “I can say categorically that compulsory vaccinations are a step too far. That is my contribution to a national conversation.”<sup>88</sup> Health Secretary Sajid Javid said “if you’re talking about universal mandatory vaccination, I think ethically it’s wrong, but also at a very practical level it just wouldn’t work. Getting vaccinated has to be a positive decision”.<sup>89</sup>

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86 PM says ‘conversation’ must be had about mandatory vaccines in UK – LBC, 8<sup>th</sup> December 2021: <https://www.lbc.co.uk/hot-topics/coronavirus/boris-johnson-conversation-mandatory-vaccines/>

87 Nadine Dorries, Twitter, 9<sup>th</sup> December 2021: <https://twitter.com/NadineDorries/status/1469008374490615810?s=20>

88 Angela Richardson, Twitter, 8<sup>th</sup> December 2021: <https://twitter.com/AJRichardsonMP/status/1468660635902820367?s=20>

89 Mandatory Covid vaccines? Sajid Javid says they ‘wouldn’t work’ after Boris Johnson calls for ‘national conversa-

This public rejection of mandatory vaccination from Cabinet ministers is welcome. This approach should be extended to health and social care staff.

### *Care homes*

Despite widespread opposition in the care sector, the Government's Regulations came into force on 11<sup>th</sup> November. The policy deepened the crisis in the care sector, with many homes and businesses reporting serious staff shortages.

- In Hertfordshire, almost 300 members of staff left their jobs in care homes, while 200 staff members were redeployed while awaiting their second jabs.<sup>90</sup>
- MHA, the UK's largest charity care provider, estimated that around 750 care homes may have already stopped taking new residents due to a lack of staff. They report losing up to 150 staff because of the mandate. Sam Monaghan, the organisation's Chief Executive said: "It is scary as we head into winter and the concern is there will be a buildup of people in hospital who can't be discharged."<sup>91</sup>
- A survey from The National Care Forum found that operators had already lost 3.5% of staff members due to resignations or dismissals and could lose another 4.4%<sup>92</sup>
- A care home manager tearfully speaking to Good Morning Britain on the day the mandate came into force said: "saying goodbye to [staff] and knowing that you're bringing them into poverty is unbelievable. Its affecting people's mental health as well as their physical wellbeing. People are working extra hours. We're tired, we're worn out, we've just come through a pandemic (...) give us a break Boris."<sup>93</sup>
- National Care Forum Chief Executive Vic Rayner said the Government has failed to provide for the impact that taking "7-8% of staff out of the sector" will have and that the Government has not detailed how it will "mitigate the risks."<sup>94</sup>
- One carer who was dismissed said: "I built a relationship with them [care receivers]

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tion' – Elly Blake, Evening Standard, 9<sup>th</sup> December 2021: <https://www.standard.co.uk/news/uk/covid-mandatory-vaccination-jabs-sajid-javid-boris-johnson-plan-b-b970901.html>

90 Hertfordshire care homes: Almost 300 staff leave weeks before jab rule – BBC News, 22<sup>nd</sup> November 2021: <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-59376087>

91 Care homes in England set to lose 50,000 staff as Covid vaccine becomes mandatory – Robert Booth, the Guardian, 10<sup>th</sup> November 2021: <https://www.theguardian.com/world/2021/nov/10/care-homes-in-england-set-to-lose-50000-staff-as-covid-vaccine-becomes-mandatory>

92 Care homes in England set to lose 50,000 staff as Covid vaccine becomes mandatory – Robert Booth, the Guardian, 10<sup>th</sup> November 2021: <https://www.theguardian.com/world/2021/nov/10/care-homes-in-england-set-to-lose-50000-staff-as-covid-vaccine-becomes-mandatory>

93 Twitter, Nitya Gracianna Rajan, 11<sup>th</sup> November 2021: <https://twitter.com/NityaGRajan/status/1458700623273201673?s=20>

94 Sky News, Twitter, 11<sup>th</sup> November 2021: <https://twitter.com/SkyNews/status/1458718727030120448?s=20>

all. We were all there through thick and thin when everyone was poorly (...) I could have run away when there was coronavirus, but the old people were getting it and it was breaking my heart. But I went there, breaking my back to help, and it turns from that to 'You can go now'. I feel really let down.”<sup>95</sup>

- A care home managed in Warwickshire told the Guardian that she has already closed 12 of her 27 beds because “there aren’t people who want to do the job.” The chairman of PJ Care, which provides neurological care for adults, said he was losing 14 staff across three sites and potentially another dozen by 24<sup>th</sup> December unless they could persuade doctors they were medically exempt.<sup>96</sup>
- Gyan Dass, registered manager and director of Two Rivers, a care home in north London that supports women with learning disabilities, told the Independent that she had lost 13% of her staff: “It’s getting harder every day. And we are really, really worried what’s going to happen. This is really bad timing; our staff morale is low and they are feeling exhausted, completely demotivated.”<sup>97</sup>

Care homes are having to refuse requests from hospitals to discharge patients into their care due to staff shortages caused by the vaccine mandate. The Chief Executive of Four Seasons, one of the UK’s largest care home providers, called the mandate “really unhelpful and unnecessary”:

“During the winter what you tend to see is a greater level of discharges from hospital into care homes. It’s very clear the social care sector is not going to be able to support the NHS in the same way it normally does, because there just aren’t the volume of people to support the NHS’s requirements this year.”<sup>98</sup>

Nadra Ahmed, executive chair of the National Care Association, said:

“We know the vaccine is a key component of our fight against the virus, but it needs to be recognised that the unintended consequence of it is that no staff means no care. The NHS will struggle to discharge out of the acute sector into safe environments where people can be supported at a critical time in their lives.”

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95 ‘I feel really let down’: unjabbed care home staff on quitting their jobs – Robert Booth, the Guardian, 10<sup>th</sup> November 2021: <https://www.theguardian.com/society/2021/nov/10/i-feel-really-let-down-unjabbed-care-home-staff-on-quitting-their-jobs>

96 ‘I feel really let down’: unjabbed care home staff on quitting their jobs – Robert Booth, the Guardian, 10<sup>th</sup> November 2021: <https://www.theguardian.com/society/2021/nov/10/i-feel-really-let-down-unjabbed-care-home-staff-on-quitting-their-jobs>

97 Care homes refuse NHS discharges as mandatory vaccines drive staff exodus – Rebecca Thomas, the Independent, 10<sup>th</sup> November 2021: <https://www.independent.co.uk/news/health/care-home-vaccine-nhs-discharges-b1955356.html>

98 Care homes refuse NHS discharges as mandatory vaccines drive staff exodus – Rebecca Thomas, the Independent, 10<sup>th</sup> November 2021: <https://www.independent.co.uk/news/health/care-home-vaccine-nhs-discharges-b1955356.html>

## *NHS staff*

On September 9th, the Department of Health and Social Care launched a consultation on whether to extend mandatory vaccination requirements to all health and social care workers. In our last report, we outlined the likelihood that this would lead to staff shortages and serious additional pressure on the NHS, as well as fundamentally reshaping the relationship between thousands of workers and the state. Big Brother Watch submitted to the consultation and called on the Government to abandon all mandatory vaccination requirements.

On 9<sup>th</sup> November, Health Secretary Sajid Javid announced in the Commons that Covid-19 vaccination would be required for all those working in the health and social care sector, although plans to mandate the flu vaccine were dropped. This is despite the proposals being widely rejected by healthcare staff and the public, with the Government's own consultation finding that 65% of respondents did not support the proposal.<sup>99</sup> 80% of members of the public, 75% of current service users (or friends or families of service users), 58% of healthcare workers, and 56% of representatives of healthcare organisations who responded to the survey did not support the policy.

Many NHS representatives and unions have been outspoken about the problems this policy will create for the health and care sector. Chris Hopson, chief executive of NHS Providers which represents England's NHS trusts, told BBC Radio 4's Today programme: "We understand why people are vaccine-hesitant. We need to win the argument with them rather than beat them around the head".<sup>100</sup> Hopson said the possibility of losing staff is a "real problem," as the NHS runs on fine margins and already has a high number of vacancies. Matthew Taylor, the chief executive of the NHS Confederation said of the proposed mandate that there was "no necessity for compulsion, for surveillance of people at this stage, because the staff themselves are doing the right thing."<sup>101</sup> Similarly, UNISON head of health Sara Gorton said:

"This wasn't something the government needed to do. The effective and supportive approach taken by NHS trusts has persuaded the overwhelming majority of health staff to have both Covid shots.

"Now this sledgehammer approach risks doing more harm than good. Without knowing what proportion of staff are covered by exemptions, creating a new law

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99 Making vaccination a condition of deployment in health and wider social care sector: Government response to public consultation – Department of Health and Social Care, GOV.UK, 9<sup>th</sup> November 2021 (p. 15): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf)

100 Covid-19: Vaccines to be compulsory for frontline NHS staff in England – BBC News, 10<sup>th</sup> November 2021: <https://www.bbc.co.uk/news/health-59215282>

101 Mandatory Covid vaccines for NHS workers are unnecessary 'surveillance', warns NHS boss – Sophie Barnes, the Telegraph, 5th September 2021: <https://www.telegraph.co.uk/news/2021/09/05/mandatory-covid-vaccines-nhs-workers-unnecessary-surveillance/>

seems extreme.”<sup>102</sup>

As of 9<sup>th</sup> December, across the different regions of England, all NHS trusts reported high vaccine uptake amongst workers. Every region except London reported 93% or higher uptake of vaccination, with the North East and Yorkshire, South East and South West regions all reporting 95% vaccine uptake.<sup>103</sup> NHS trusts in London have a slightly lower vaccine uptake rate of 89%. A targeted approach, focusing on education, support and facilitating vaccination, with a focus on London-based NHS trusts, would be a less intrusive approach than mandating vaccination for all health and social care workers.

Indeed, unions have previously highlighted a range of measures that they believe would be more effective than vaccine mandates, such as further education, dispelling myths, making vaccination easily available and supporting staff.<sup>104</sup> The Regulatory Policy Committee, the ‘better regulation’ watchdog that scrutinises Impact Assessments, found that the Government’s Impact Assessment for the Regulations “does not include appropriate consideration of mitigation alternatives” to mandatory vaccination, such as regular testing “as an alternative to vaccination and as a check on the risks posed by waning vaccination immunity.”<sup>105</sup>

Vaccination has proven extremely effective at preventing serious illness and death from Covid-19, but it does not prevent infection and transmission. Vaccination status primarily tells the individual about their own risk of illness from the virus, rather whether they pose a risk to others. The illogicality of a mandatory vaccine which does not prevent transmission is compounded by staff working in environments where patients and visitors are not subject such requirements. Coronavirus will transmit in health and social care settings, with or without a mandate.

*The Health and Social Care Act 2008 (Regulated Activities) (Amendment)  
(Coronavirus) (No. 2) Regulations 2021*

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021 require all health and social care staff who interact with patients to be fully vaccinated, or provide evidence of a clinical exemption, in order to

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102 Forced jab rule in the NHS risks doing more harm than good – UNISON, 9<sup>th</sup> November 2021: <https://www.unison.org.uk/news/press-release/2021/11/forced-jab-rule-in-the-nhs-risks-doing-more-harm-than-good/>

103 COVID-19 weekly announced vaccinations 14 October 2021 – NHS England, 14<sup>th</sup> October 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/10/COVID-19-weekly-announced-vaccinations-14-October-2021.xlsx>

104 Unions attack ‘sinister’ plan to force NHS staff to have Covid vaccine—Denis Campbell, Robert Booth and Aubrey Allegretti, the Guardian, 3<sup>rd</sup> March 2021: <https://www.theguardian.com/society/2021/mar/03/unions-attack-sinister-plan-to-force-nhs-staff-to-have-covid-vaccine>

105 COVID-19 Vaccination as a Condition of Deployment: RPC Opinion – Regulatory Policy Committee, GOV.UK, 29<sup>th</sup> November 2021: <https://www.gov.uk/government/publications/covid-19-vaccination-as-a-condition-of-deployment-rpc-opinion>

retain their roles. The requirement comes into force 12 weeks from when the Regulations were made, the 1<sup>st</sup> April 2022.

The main purpose of the Regulations is to expand the requirement to show proof of vaccination from those working in care homes, to all those undertaking “regulated activities”.<sup>106</sup> “Regulated activities” are defined in the principle Regulations as those undertaken by healthcare professionals, including dentists, dental nurses, midwives, paramedics, radiographers, and carers, either in residential homes or private homes.<sup>107</sup> They also apply to those providing services at substance misuse treatment accommodation, those involved in blood or tissue transfusion (where there is contact with a patient), medical practitioners providing advice or treatment at slimming clinics, and other Care Quality Commission regulated services that involve contact with a patient or service user.

The Secretary of State is required to review “the extent to which those objectives are achieved, taking into account clinical advice, and availability and accessibility of authorised vaccines” and to “assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.”<sup>108</sup>

During the debate on the Regulations, a number of MPs posed concerns about the measures increasing staff shortages in the already overwhelmed NHS: “If 9% of staff to date have decided not to be vaccinated and will presumably stick with that decision, how does he expect that that will not reduce the capacity of the health service in future?” asked Sammy Wilson MP.<sup>109</sup> Steve Baker MP drew attention to the estimated workforce shortage figures: “88,000 people will leave the health sector, 73,000 will leave the NHS, 15,000 will leave the independent health sector, and 35,000 workers will leave domiciliary care.”<sup>110</sup>

MPs also raised the point that encouragement rather than mandating vaccines should be the correct approach to maintain public trust. Marie Rimmer MP noted that high vaccine uptake in her constituency of St Helens has been achieved “with persuasion, not with the threat of the sack (...) We must not get to the stage where we are threatening people.”<sup>111</sup>

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106 The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021, reg 4(2)

107 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, sch 1

108 Regulation 5(2)

109 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 951: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

110 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 951: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

111 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 967: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>



MPs expressed concern that this measure was a step on the path to widespread vaccine mandates. Dr Liam Fox MP asked:

“When compulsory vaccination was introduced for care workers, many hon. Members took the view that it was the thin end of the wedge, but we were assured that it would be care workers and no one else. Now it is all NHS workers, with a few exemptions (...) Where does it stop?”<sup>112</sup>

Conservative MP Paula Barker criticised the illogicality of the Government’s proposal:

“If it is really about patient safety, the Government should already have identified workers in the NHS who are still unvaccinated and have been working with them to alleviate fears and concerns and remove barriers. The Secretary of State should explain to the House why it is acceptable for those in the NHS who remain unvaccinated to work on the frontline to assist with the Omicron crisis but, come 1 April, to be dismissed. Quite frankly, it makes no sense.”<sup>113</sup>

The Regulations were passed, with 385 supporting and 100 opposing.<sup>114</sup> 60 Conservative MPs voted against the measures, as well as the Liberal Democrat and Green MPs. However, the Labour Party supported the Regulations, in a reversal of their previous position. During the debate on mandatory vaccinations for care home workers in July, Shadow Health Minister Dr Rosena Allen-Khan emphasised that while the Labour party encouraged all care home workers to be vaccinated, a mandate was the wrong approach:

“There are serious warnings from the care sector that the Government’s plan could lead to staff shortages in already understaffed care homes. This would have disastrous consequences for the quality of care.

(...)

“Further coercion and punishment through the threat of being dismissed from employment only reinforces the reasons for hesitancy in the first place.”<sup>115</sup>

This U-turn is extremely disappointing, with the Labour Party ignoring warnings from unions and health and social care workers. The Shadow Health Secretary Wes Streeting MP said the party had changed its position because “the NHS has asked us for it, patients

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112 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 962: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

113 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 979: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

114 HC Division 151 (14<sup>th</sup> December 2021): <https://hansard.parliament.uk/Commons/2021-12-14/division/D7AA9357-4A28-4AEC-98A1-0989446331B2/PublicHealth?outputType=Party>

115 HC Deb (13<sup>th</sup> July 2021), vol. 699, col. 278: <https://hansard.parliament.uk/commons/2021-07-13/debates/BD-25E3D7-6EFB-48A9-A564-966D3898D8FC/NationalHealthService>



want it.”<sup>116</sup> It is unclear what his statement was based on. Organisations representing the NHS have spoken against the requirement, and as noted above, 80% of the public opposed the proposal in data collected by the Government.

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116 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 958: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>



*“The very people we revered—who just a year ago we were clapping and calling our heroes—are the very people who are now exhausted, traumatised and frightened, and the legislation before us will sack them.”*

*“I will not undermine that trusted relationship, which is absolutely essential in delivering healthcare in our country, and I will not ride roughshod over Labour’s NHS constitution, which pledges to assist people to participate fully in their own healthcare decisions and to support them in decision making. I will not turn my back on working people, and I will never forget my roots and those I served alongside.”*

*– Rachael Maskell, MP for York Central*



Shadow Minister Rachael Maskell, who worked in the NHS for 16 years, resigned her shadow front bench position to vote against the proposals and gave a powerful contribution to the House:

“The very people we revered—who just a year ago we were clapping and calling our heroes—are the very people who are now exhausted, traumatised and frightened, and the legislation before us will sack them.

(...)

“I will not undermine that trusted relationship, which is absolutely essential in delivering healthcare in our country, and I will not ride roughshod over Labour’s NHS constitution, which pledges to assist people to participate fully in their own healthcare decisions and to support them in decision making. I will not turn my back on working people, and I will never forget my roots and those I served alongside.

(...)

“I want all NHS and care staff to have vaccine counselling and education with a qualified practitioner who holds the right competencies so that concerns can be explored, not with line managers, who just do not have the competencies. I want everyone to be vaccinated—I cannot stress that enough—but I want to win the trust of staff, not push them further away, as the Government’s approach will.”<sup>117</sup>

**RECOMMENDATION 10: Mandating vaccination is unnecessary, counterproductive, authoritarian and discriminatory. Mandatory vaccine laws for health and care settings should be urgently repealed. The Government should not seek to extend or encourage mandatory vaccination in any setting.**

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117 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 988-9: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

# Covid-status Certification

Big Brother Watch has been campaigning against the introduction of Covid-status certification, or Covid passes, since April 2020. We have made the case across the media, parliament and through legal action that they are ineffective, discriminatory and will usher in a checkpoint society. In the context of increasingly authoritarian and unscientific restrictions around the world imposed on those who have not been vaccinated, it is more critical than ever than the UK Government and devolved administrations consign the failed Covid pass experiment to history.

Since our last report, where we detailed the introduction of Covid passes in Wales and Scotland, Northern Ireland and England both followed suit, despite a lack of evidence that passes are an effective measure at reducing transmission.

By the end of the year, more than 90% of the UK population aged 12+ had received one dose of a vaccine.<sup>118</sup> Antibody rates are above 95% across all of the UK.<sup>119</sup> Despite this, infection rates across the UK have rocketed. Evidence increasingly indicates that an individual's vaccine-status cannot be treated as a proxy for their Covid-status. Although statistics produced by the UK Health Security Agency (UK HSA) show that vaccinated people are far less likely to be hospitalised or die from coronavirus, the same statistics consistently show higher rates of coronavirus in vaccinated people aged between 18 and 69 than unvaccinated people.<sup>120</sup> Dr Susan Hopkins, head of the UK HSA, told MPs in December that "two doses of vaccination more than three months ago will not prevent transmission".<sup>121</sup> For Ministers to claim that Covid passes will make venues safe is untrue and could create a false sense of security.

**RECOMMENDATION 11: Domestic Covid passports infringe on privacy, result in discrimination, and lead to a two-tier, checkpoint society with no significant benefit to public health. Mandatory Covid certification must be repealed across the four nations.**

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118 More than 90% of people receive first dose of COVID-19 vaccine – Department of Health and Social Care, GOV. UK, 30<sup>th</sup> December 2021: <https://www.gov.uk/government/news/more-than-90-of-people-receive-first-dose-of-covid-19-vaccine--2>

119 Coronavirus (COVID-19) Infection Survey, antibody and vaccination data, UK: 23 December 2021 – Office for National Statistics, 23<sup>rd</sup> December 2021: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronaviruscovid19infectionsurveyantibodyandvaccinationdatafortheuk/23december2021>

120 COVID-19 vaccine surveillance report Week 51 – UK Health Security Agency, 23<sup>rd</sup> December 2021 (p. 40): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1043608/Vaccine\\_surveillance\\_report\\_-\\_week\\_51.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043608/Vaccine_surveillance_report_-_week_51.pdf)

121 Oral evidence: UK science, research and technology capability and influence in global disease outbreaks – Science and Technology Committee, HC 93, 14<sup>th</sup> December 2021, Q2760: <https://committees.parliament.uk/oralevidence/3205/html/>

## England

In our last report, we documented the repeated U-turns of the UK Government over the summer of 2021 – with a consultation concluding in July that Covid passes would not be introduced,<sup>122</sup> then an announcement that they would be introduced in September,<sup>123</sup> then the Health Secretary Sajid Javid announcing vaccine passports would not be going ahead after all,<sup>124</sup> and then the release of the Autumn and Winter Plan B which committed to holding Covid passes in reserve.<sup>125</sup>

On 8<sup>th</sup> December, it was announced that Plan B measures would be introduced in England and that Covid passes would be mandatory in nightclubs, for unseated indoor events with 500 or more attendees, unseated outdoor events with 4,000 or more attendees and any event with 10,000 or more attendees from 15<sup>th</sup> December, causing widespread debate and anger. The Prime Minister also announced that “given the evidence since the emergence of Omicron”, proof of a negative lateral flow test would also be accepted.<sup>126</sup>

Health Secretary Sajid Javid previously told reporters that Covid passes were a “huge intrusion into people’s lives” and that “If the Government is going to propose anything that is going to infringe on people’s freedoms it better have a really, really good case”.<sup>127</sup> No such case was presented to the public or to parliament ahead of the vote in the House on Commons on 14<sup>th</sup> December. Instead, the Health Secretary told MPs that certification was being introduced because it “could” limit overall transmission by reducing the number of “unvaccinated, infectious people in venues”.<sup>128</sup> David Davis MP rightly pushed the Health Secretary for the evidence behind the announcement:

“Where is the evidence that vaccine passports actually work? France introduced them in the summer and now has more cases than it had in the March peak. Austria, Greece and the German states that have used them are in the same position, with

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122 COVID-Status Certification Review: Report – Cabinet Office, GOV.UK, 6th July 2021: <https://www.gov.uk/government/publications/covid-19-response-spring-2021-reviews-terms-of-reference/covid-status-certification-review-report>

123 HC Covid-19 Update (19<sup>th</sup> July 2021) vol. 699, col. 688: <https://hansard.parliament.uk/commons/2021-07-19/debates/64EACE0F-A4FD-45C9-BCAF-CD14132B5366/Covid-19Update>

124 Covid: Vaccine passports ‘will not be going ahead’ in England, Health Secretary Sajid Javid says – ITV News, 12th September 2021: <https://www.itv.com/news/2021-09-12/covid-vaccine-passports-will-not-be-going-ahead-in-england-sajid-javid-says>

125 Proposal for mandatory COVID certification in a Plan B scenario – Department of Health and Social Care, GOV.UK, 27th September 2021: <https://www.gov.uk/government/publications/proposal-for-mandatory-covid-certification-in-a-plan-b-scenario/proposal-for-mandatory-covid-certification-in-a-plan-b-scenario>

126 Prime Minister confirms move to Plan B in England – Prime Minister’s Office, GOV.UK, 8<sup>th</sup> December 2021: <https://www.gov.uk/government/news/prime-minister-confirms-move-to-plan-b-in-england>

127 Covid passports to become mandatory for large venues in England from next Wednesday – Poppy Wood and Benjamin Butterworth, iNews, 8<sup>th</sup> December 2021: <https://inews.co.uk/news/vaccine-passports-mandatory-large-venues-england-from-wednesday-1342723>

128 HC Covid-19 Update (8<sup>th</sup> December 2021), vol. 705, col. 490: <https://hansard.parliament.uk/commons/2021-12-08/debates/F626B01D-122B-4A1B-8419-E0FDCEFA19A8/Covid-19Update>

more cases.

“Vaccinated people can still catch and transmit the disease, and there is a sizeable chance that passports will introduce a false sense of security, giving exactly the reverse result to the one the Secretary of State intends, so why is he using them?”<sup>129</sup>

Javid responded that comparisons could not be made between countries.

The Government did not produce any new data or evidence to support mandatory Covid passes in the days between the Prime Minister’s announcement and the parliamentary vote. Indeed, one Conservative MP reported that in a meeting with MPs, Chief Medical Officer Chris Whitty said that vaccination had only “minimal impact on transmission” of the virus.<sup>130</sup> Prof. Christina Pagel, Director of UCL’s Clinical Operational Research Unit and member of Independent Sage tweeted: “I think many elements of plan B could help slow spread. but vaccine passports seem entirely pointless when we have already seen superspreader events of Omicron in fully vaxxed groups.”<sup>131</sup>

Industry leaders were also critical of the announcement. Nighttime Industries Association Chief Executive Michael Kill said the plans would be devastating for nightclubs:

“Vaccine passports will have a devastating impact on a sector already so bruised by the pandemic.

“The mixed public health messages this week that have been coming out of the government have arrived at the worst possible time – the pre-Christmas period is absolutely crucial for our sector. And now it is announced damaging vaccine passports are to be implemented.

“Far from ‘saving’ Christmas, the prime minister has given our sector the horrible present of more pain for businesses desperately trying to recoup losses from earlier in the pandemic.”<sup>132</sup>

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129 HC Covid-19 Update (8<sup>th</sup> December 2021), vol. 705, col. 498: <https://hansard.parliament.uk/commons/2021-12-08/debates/F626B01D-122B-4A1B-8419-E0FDCEFA19A8/Covid-19Update>

130 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 975: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

131 Prof. Christina Pagel, Twitter, 8<sup>th</sup> December 2021: <https://twitter.com/chrischirp/status/1468538711293972481?s=20>

132 Nightclubs warn Covid passports will have ‘devastating’ impact – BBC News, 9<sup>th</sup> December 2021: <https://www.bbc.co.uk/news/business-59579503>

Leaked documents from the UK Government's Department for Digital, Culture, Media and Sport reveal that Covid-status certification will reduce turnover for event organisers and require the hiring of thousands of new stewards, which may be difficult for some venues.<sup>133</sup> The documents suggest that turnover could be reduced by between £345 million and £2.067 billion.

Even before the announcement that Covid passes would be mandatory, there had been reports of problems accessing Covid passes. Covid passes were (and remain) needed for international travel and for access to venues which had voluntarily chosen to implement a Covid pass entry system, but those who have been vaccinated abroad have struggled to record and display their vaccine status on the app. In our previous report, we noted that even those who had been vaccinated in different parts of the UK were having difficulties in updating their NHS app. On 27<sup>th</sup> October, Lord Paddick asked Health Minister Lord Kamall when vaccinations administered abroad would be recorded, as people were struggling to use the NHS Covid pass and were also not being called for their booster doses.<sup>134</sup> Lord Kamall responded that just 53 people vaccinated abroad had had their vaccine status updated by the NHS.

There have also been issues with the NHS Covid Pass crashing, leaving individuals stranded abroad without access to the pass and those who required them for access to events unable to attend them.<sup>135</sup> The NHS App crashed again after the Prime Minister's announcement that the Covid Pass would become mandatory.<sup>136</sup> Although this technology can be repaired within hours or days, it highlights the precarious nature on relying on novel digital systems to enable access to public life.

Health Secretary Sajid Javid announced that receiving two doses of an approved coronavirus vaccine would not qualify an individual for an NHS Covid Pass in the future: "(...) in the light of new data on how vaccines respond to omicron, our intention is that boosters will be required instead of two doses as soon as all adults have had a reasonable chance to get their booster jab".<sup>137</sup> This approach paves the way for continuing obligations on people to undergo medical procedures in order to access public life. The availability of booster doses should not be used to further segregate people on the basis on their vaccine-status.

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133 Vaccine passports could fuel Covid and cost venues millions, says leaked government report – Ben Riley-Smith, the Telegraph, 25<sup>th</sup> October 2021: <https://www.telegraph.co.uk/politics/2021/10/25/vaccine-passports-could-fuel-covid-cost-venues-millions-says/>

134 HL Oral Question (27<sup>th</sup> October 2021), vol. 815, col. 790: <https://hansard.parliament.uk/Lords/2021-10-27/debates/84839CB0-2B7A-49F7-8676-E790E7ED6770/Covid-19VaccinationsAdministeredAbroad>

135 NHS Digital, Twitter, 13<sup>th</sup> October 2021: <https://twitter.com/NHSDigital/status/1448266626298744832?s=20>

136 NHS Covid Pass working after Plan B announcement crash – Dulcie Lee, BBC News, 9<sup>th</sup> November 2021: <https://www.bbc.co.uk/news/uk-59588562>

137 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 947: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

*The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021*

The Regulations require that a person may only be present or admitted to a relevant venue or event if they show evidence that they have completed a course of an approved vaccine, or are exempt from vaccination, taking part in a clinical trial, or have taken a test in the last 48 hours.<sup>138</sup> Proof of prior infection is not included. Those under 18 and those working at the event or venue are exempt, as are emergency responders, local authority officers and members of diplomatic missions to the UK, or those employed by an “international organisation”. They also require qualifying venues and events to retain evidence of “reasonable measures” in place to check attendees’ Covid status.<sup>139</sup>

Relevant venues are nightclubs or any venue that opens between 1am and 5am, serves alcohol after 1am, or plays music for the purpose of dancing and has a dance floor. Indoor venues and events, including live music venues, theatres, conference halls, exhibition centres and sports stadiums, where more than 500 people are gathered and they are expected to “stand or move around” during all or part of the event are also included.<sup>140</sup> Outdoor venues and events with more than 4,000 people are included if they are expected to “stand or move around” during all or part of the event. Any event or venue hosting more than 10,000 people are included. However, weddings, funerals, communal worship, unticketed events taking place in a private dwelling, and unticketed events taking place on public outdoor land are exempt.<sup>141</sup>

Evidence of vaccination can be shown through the NHS Covid Pass or equivalent from Scotland, Wales, Northern Ireland; or an EU or North American certificate; one from a country that has been accepted by the European Commission; or a certification in English, French or Spanish “issued by the competent health authority of a relevant country.”<sup>142</sup> Evidence of a clinical exemption or clinical trial can be shown through the NHS Covid pass, an NHS letter, or a maternity certificate. Evidence of a negative test can be shown through an NHS Covid pass or “a valid notification of a negative result from a qualifying test.”

Local authorities can issue improvement notices or closure notices to venues or events that are not taking reasonable measures to check evidence, or fail to provide evidence of their reasonable measure.<sup>143</sup>

Spot checks are permitted (except in nightclubs), provided the venue or event has the

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138 Regulation 5(1)(a)

139 Regulation 5(1)

140 Schedule 1, para 2(1)(a)

141 Schedule 2

142 Regulation 9

143 Regulation 11(1)



permission of local authorities.<sup>144</sup> 'Spot checks' of Covid passes are likely to be anything but, and are highly likely to result in the disproportionate targeting of marginalised groups. This approach allows authority figures and security staff to single out groups and individuals for additional checks at will – a confrontational approach to public health which could lead to staff or customers facing aggression.

**RECOMMENDATION 12: 'Spot checking' individuals' Covid-status are likely to lead to discrimination and targeting of marginalised groups. It should not form a part of any Covid-status certification scheme.**

If venues fail to check evidence, provide evidence of their "reasonable measures", fail to keep attendee numbers down to relevant limits, or fail to abide by improvement/closure notices, they can be given a fine of £1,000, increasing up to £10,000 for repeat offences.<sup>145</sup> An instant £10,000 fine is given to anyone who "makes, adapts, supplies or offers to supply false evidence of COVID status to another person which P [the person] knows is false or misleading".<sup>146</sup> This is a life-changing fine and arguably disproportionate.

The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021 were laid before parliament at 3pm on 13<sup>th</sup> December, less than 24 hours before the House of Commons was due to vote on them. Adam Wagner, a human rights barrister, said of the Regulations: "Absolutely absurd that these regulations have been published less than 24 hours before the vote. They are so complex they should have had months of debate like a proper law."<sup>147</sup> Given that the Government has been considering proposals for Covid passes for over a year, it is entirely unacceptable to publish regulations less than a day before they are due to be voted on and less than two days before they came into force. Parliamentarians, business owners, local authorities, police forces and the public deserve ample time to scrutinise and digest the regulations. Several MPs raised this during the debate. Justin Madders MP, former Shadow Health Minister, said "I know things move quickly, but some of these regulations have been the subject of consultation for many months. There is no excuse for their being dropped in at the last minute."<sup>148</sup>

The Government yet again used the urgency procedure (s.45R of the Public Health (Control of Disease) Act 1984) to lay the regulation. As previously noted, it is entirely unacceptable to exploit this section, intended for use in a genuine emergency, to pass controversial legislation quickly. Equally unacceptable is the lack of an impact assessment. They are hugely consequential regulations and require thorough scrutiny. Rushing them through

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144 Regulation 6(1)

145 Regulation 17(7)

146 Regulation 16(2)

147 Adam Wagner, Twitter, 13<sup>th</sup> December 2021: <https://twitter.com/AdamWagner1/status/1470421258244345856?s=20>

148 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 973: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

parliament, via secondary legislation, is an insult to parliamentary democracy.

With the vote on the Regulations, the Government suffered its biggest defeat of Boris Johnston's premiership, with 99 Conservative MPs voting against the Covid pass measures. It was the biggest rebellion of all the Plan B measures, more than double the previous biggest revolt of Boris Johnson's administration in December 2020, also on Covid measures, and the biggest rebellion since Conservative MPs rejected Theresa May's first "meaningful vote". Several MPs said in their contributions to the debate that while they could support other elements of Plan B, Covid passes lacked the evidence to justify their introduction. Steve Brine MP put it succinctly:

"On the covid passport, if we were to put aside the practicalities and the moral arguments, which I do not, and many of my constituents writing to me certainly do not, then a vaccine still does not stop people getting this and passing it on."<sup>149</sup>

Opposition in the House ranged from those worried about the kind of society Covid passes would create, to those worried about the impact on minority groups, to those concerned that coercion would put people off of being vaccinated. Conservative backbencher Dr Ben Spencer MP expressed concern about digital exclusion:

"As a doctor, I have spent my career looking after people who are marginalised: people with severe mental illness, people with a learning disability and the digitally excluded. Looking at the measures and the explanatory notes, I cannot see how one can show evidence of a negative test without having access to the internet or having a phone—how any validation process can go through. It is clear to me that it will exclude people.

"I cannot support excluding anyone, but especially those people who are the most marginalised in our society."<sup>150</sup>

Dr Luke Evans warned: "What businesses, what society interactions, what infections might come in scope in future months or years?"<sup>151</sup>

Green MP Caroline Lucas argued that Covid passes were the wrong approach to increasing vaccine uptake:

"People are not getting vaccinated because of a lack of trust, and trying to force them into it, either through vaccine passports or through mandatory vaccinations

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149 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 975: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

150 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 992: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

151 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 996: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

in some settings, compounds that mistrust, as does berating them or 'othering' them.

"If we want more people to be vaccinated (...) we have to build the sense that vaccination is being done for the community, not to it."<sup>152</sup>

The Labour Party supported the proposals, with Shadow Health Secretary Wes Streeting insisting that the plans were not for 'vaccine passes' but "a default requirement to show a negative test to enter venues where the virus is most likely to spread, with an opt-out available to those with an NHS Covid Pass." This is a mischaracterisation of the proposals. Widespread shortages of lateral flow tests meant that as Covid passes were made mandatory in England, the testing element of the pass was inaccessible to many.<sup>153</sup> This shortage continued across December and remains an issue across England.<sup>154</sup> With 90% of the population vaccinated and a shortage of lateral flow tests, these proposals are effectively vaccine passes with the requirement for people who have not been vaccinated to take a test (if they can access one) and record it online, in order to receive a time-limited access code.

The Shadow Health Secretary also argued that the measures would help keep businesses open, citing European countries as examples:

"Look at countries with strict covid passport rules, such as Italy, France and Denmark; all have seen their retail and recreation sectors fare far better than those here in the UK because there has been consistency and confidence."<sup>155</sup>

Nightclubs in France had closed the previous week.<sup>156</sup> Denmark had introduced a midnight curfew on all hospitality venues just a few days before, and cancelled large indoor events.<sup>157</sup> Nightclubs and open-air events were closed in Italy in late December.<sup>158</sup> Covid passes have done little to limit the spread of the Omicron variant across Europe or in any part of

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152 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 970: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

153 Covid lateral flow tests unavailable on Government website a day before new home testing plan – Benjamin Butterworth, iNews, 13<sup>th</sup> December 2021: <https://inews.co.uk/news/covid-lateral-flow-tests-not-available-government-website-launch-new-home-testing-plan-1349511>

154 Shortage of lateral flow Covid tests put Christmas plans at risk – Laurence Sleator, the Times, 24<sup>th</sup> December 2021: <https://www.thetimes.co.uk/article/shortage-of-lateral-flow-covid-tests-put-christmas-plans-at-risk-3hlvz5dwp>

155 HC Deb (14<sup>th</sup> December 2021), vol. 705, col. 957: <https://hansard.parliament.uk/commons/2021-12-14/debates/8034393B-C568-4DE6-8695-1D63F957537E/PublicHealth>

156 France to close nightclubs, extend mask use in schools amid Covid-19 surge – France 24, 6<sup>th</sup> December 2021: <https://www.france24.com/en/europe/20211206-france-to-close-nightclubs-extend-use-of-face-masks-in-schools-amid-covid-19-surge>

157 Denmark orders eateries to close early, bans large concerts – ABC News, 9<sup>th</sup> December 2021: <https://abcnews.go.com/Health/wireStory/danes-orders-eateries-close-early-bans-large-concerts-81646076>

158 Masks outdoors among Italy's new COVID-19 measures – Asana, 24<sup>th</sup> December 2021: [https://www.ansa.it/english/news/general\\_news/2021/12/24/masks-outdoors-among-italys-new-covid-19-measures\\_631d4f25-7041-4370-b6f7-f77758a8020b.html](https://www.ansa.it/english/news/general_news/2021/12/24/masks-outdoors-among-italys-new-covid-19-measures_631d4f25-7041-4370-b6f7-f77758a8020b.html)

the UK, or to prevent businesses being closed by governments.

Opposition to the Regulations was also heard in the House of Lords. Baroness Fox, cross bench peer, argued:

“Everyone’s freedom is limited if the state determines that it is contingent on accepting a medical treatment or providing medical information, or on a submission to public health priorities above all else. It is limited if we need a licence to go about our lives freely.”<sup>159</sup>

Lord Scriven, Liberal Democrat peer, argued that the Regulations would not achieve their stated aim:

“This is a chocolate teapot approach; it is not going to work.  
(...)”

“If I have not had the booster, I may still have my certification and will be able to show it—but it could have been 10 or 11 months since I was vaccinated if this continues until March. That will mean I am 40% protected going into a large venue where I may actually infect people.”<sup>160</sup>

Green peer, Baroness Bennett, warned Covid passes could foster vaccine hesitancy:

“If we send a message to people that vaccination is something that we have to force them to do, it risks building resistance and being counterproductive. We want to get to a situation where every person for whom it is medically possible is vaccinated, and has chosen to be. That requires a fairly large ask—trust in the Government—but above all it requires a programme of education and outreach, which we have clearly not seen nearly enough of.”<sup>161</sup>

Conservative Peer Lord Robathan laid an amendment motion to reject the Regulations. 38 Peers supported the motion amendment which was not passed.<sup>162</sup>

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159 HL Deb (15<sup>th</sup> December 2021), vol. 817, col. 272: [https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection\(CoronavirusRestrictions\)\(Self-Isolation\)\(England\)\(Amendment\)\(No6\)Regulations2021](https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection(CoronavirusRestrictions)(Self-Isolation)(England)(Amendment)(No6)Regulations2021)

160 HL Deb (15<sup>th</sup> December 2021), vol. 817, col. 269: [https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection\(CoronavirusRestrictions\)\(Self-Isolation\)\(England\)\(Amendment\)\(No6\)Regulations2021](https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection(CoronavirusRestrictions)(Self-Isolation)(England)(Amendment)(No6)Regulations2021)

161 HL Deb (15<sup>th</sup> December 2021), vol. 817, col. 277: [https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection\(CoronavirusRestrictions\)\(Self-Isolation\)\(England\)\(Amendment\)\(No6\)Regulations2021](https://hansard.parliament.uk/lords/2021-12-15/debates/B38AE99A-6574-45B4-95FA-091CF284C656/HealthProtection(CoronavirusRestrictions)(Self-Isolation)(England)(Amendment)(No6)Regulations2021)

162 HL Division 1 (15<sup>th</sup> November 2021): [https://hansard.parliament.uk/Lords/2021-12-15/division/AF198389-73A6-4D52-9EED-DF95C387340A/HealthProtection\(CoronavirusRestrictions\)\(EntryToVenuesAndEvents\)\(England\)Regulations2021?outputType=Names](https://hansard.parliament.uk/Lords/2021-12-15/division/AF198389-73A6-4D52-9EED-DF95C387340A/HealthProtection(CoronavirusRestrictions)(EntryToVenuesAndEvents)(England)Regulations2021?outputType=Names)

## Wales

In our previous report, we noted that the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021 had been laid on 27<sup>th</sup> September. This Regulations introduced a Covid pass scheme, which requires individuals to present proof of vaccination, a recent lateral flow test or prior infection in order to access nightclubs and large events.

A vote on the Regulations was held in the Senedd on 5<sup>th</sup> October. Health Minister Eluned Morgan said that the scheme would “support venues to stay open and enable events to continue taking place through a potentially very difficult and challenging autumn and winter.”<sup>163</sup> This proved not to be the case.

The Conservative Party in Wales strongly opposed the measures, in a position that is at odds with the UK Government. Russell George MS, the Welsh Conservative’s health spokesperson, said the scheme had “ethical, equality, privacy, legal and operational ramifications”:

“There is a real risk here that the implementation of Covid passes could be a complete disaster. In Scotland, we have seen the roll-out has been a disaster there—I don’t use that word lightly (...)

“The roll-out of the vaccination programme has been a success across the UK and here in Wales, and that is to the credit of our key workers across the UK. The majority of the UK population are now vaccinated. So, all this amazing effort, I think, negates the need for COVID passes, which impact so much on people’s freedoms.”<sup>164</sup>

Plaid Cymru deputy leader Rhun ap Iwan MS criticised the Regulations on a number of grounds:

“I’m afraid that those regulations, at this point, as they stand, raise more questions than they provide answers.

(...)

LFTs are very, very useful, as quick, self-administered tests that can give a good indication of whether somebody may be infectious, but because of very well-

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163 Plenary (5<sup>th</sup> October 2021), para 283: <https://record.senedd.wales/Plenary/12453?lang=en-GB#A67463>

164 Plenary (5<sup>th</sup> October 2021), para 290: <https://record.senedd.wales/Plenary/12453?lang=en-GB#A67463>

known issues around their accuracy as tests, coupled with the fact that there's no control whatsoever on the accuracy of registering the results, I think there are real questions here around their validity for this particular purpose. That then raises questions around the creation of a false sense of security for people attending events.”<sup>165</sup>

Due to the “quite significant implications in terms of implementation for public bodies, policing and enforcing the regulations, and on individuals affected by them”, Rhun ap Iwerth MS announced that Plaid Cymru would not be supporting the Regulations.

Due to the number of Plaid Cymru, Liberal Democrat and Conservative Members, the number of opposing Senedd Members should have been enough to defeat the Regulations. However, Conservative MS Gareth Davies who was attending the Conservative Party conference in Manchester at the time of the vote claimed he was unable to vote remotely due to “IT challenges”.<sup>166</sup> Despite complaints from Senedd colleagues that Gareth Davies was attempting to vote via Zoom but could not access the voting system, the Presiding Officer proceeded with the vote which resulted in 28 in favour and 27 against, meaning the Regulations passed. The following day, the Presiding Officer claimed “every attempt” had been made to contact Davies. It is still unclear why Davies was unable to vote. Such a result is deeply disappointing and raises questions as to the legitimacy of such a controversial scheme being introduced due to a technical issue.

There is no evidence that the Covid pass scheme is making a notable positive impact on the transmission of coronavirus in Wales. Indeed, Wales’ Chief Medical Officer, Dr Frank Atherton, said the “actual direct impact” of Covid passes “is probably quite small”.<sup>167</sup> Instead, Dr Atherton said that their impact is as a “reminder to people that we’re not out of the woods yet.” Given the scheme’s serious impact on rights and its discriminatory nature, it cannot be justified simply as a “reminder” to the public. Yet, instead of reviewing the effectiveness of the scheme, the Welsh Government announced it would seek to expand it to theatres, concert halls and cinemas.

The UK Cinema Association said the introduction of Covid passes in for cinemas in Wales would be “hugely damaging” and was “illogical”. Phil Clapp, CEO of the Association, warned that this could lead to the closure of many smaller venues:

“This is not scare-mongering – where similar schemes have been introduced in other European territories, we have seen admissions drop by as much as 50%.

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<sup>165</sup> Plenary (5<sup>th</sup> October 2021), para 303: <https://record.senedd.wales/Plenary/12453?lang=en-GB#A67463>

<sup>166</sup> Welsh Covid pass green-lighted by one vote after member ‘unable to vote due to IT challenges’- Sam Trendall, Public Technology, 8<sup>th</sup> October 2021: <https://publictechnology.net/articles/news/welsh-covid-pass-green-lighted-one-vote-after-member-%E2%80%98unable-to-vote-due-it-challenges%E2%80%9999>

<sup>167</sup> Wales’ top doctor says the ‘direct impact of Covid passes is probably quite small’ – Will Hayward, Wales Online, 3<sup>rd</sup> November 2021: <https://www.walesonline.co.uk/news/politics/wales-top-doctor-says-direct-22053885>

(...)

“Already we are hearing of older and disabled customers telling our members that this move means that they will not now want to return. This is especially concerning when for many of these groups in particular, cinemas are a vital source of community connection and mental well-being.”<sup>168</sup>

Pauline Burt, chief executive at Ffilm Cymru Wales, said the organisation was not aware of any outbreaks of Covid that were linked to cinemas and said that the scheme should be voluntary, rather than mandatory. She also warned of a reduction in admissions:

“We are particularly conscious that many venues rely on ‘walk-in’ rather than advance bookings, which, coupled with a potential hit to consumer confidence, will likely mean reduced income when the Covid Pass is implemented.”<sup>169</sup>

The Health Protection (Coronavirus Restrictions) (No.5) (Wales) (Amendment) (No.19) Regulations 2021 amended and expanded Regulation 16A of The Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020.

Regulation 16A requires specified venues to only allow persons to be “present on the premises” of specified venues “if [they] possesses evidence” of a completed course of an approved vaccine, proof that they are participating in a vaccine trial, a negative test result from the last 48 hours or a positive PCR test result from more than 10 days prior and under 180 days prior.<sup>170</sup> Previously, venues hosting live events of various sizes were required to request Covid passes for entry as well as “premises where music is provided for dancing.” The amendment to the Regulations replaces “premises where music is provided for dancing” with “specified hospitality and entertainment venues and premises,” and adds cinemas, theatres and concert halls to the list of premises.<sup>171</sup> ‘Drive-in’ venues are excluded. This amendment opens the door for further hospitality venues to be easily added to the list of premises at a later date.

On 9<sup>th</sup> November, the Senedd voted on the Regulations. Again, Health Minister Eluned Morgan argued that the Covid pass scheme would prevent further restrictions: “I

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168 Wales Covid pass plans could be “hugely damaging”, says UK Cinema Association – Ben Dalton, Screen Daily, 29<sup>th</sup> October 2021: <https://www.screendaily.com/news/wales-covid-pass-plans-could-be-hugely-damaging-says-uk-cinema-association/5164716.article>

169 Wales Covid pass plans could be “hugely damaging”, says UK Cinema Association – Ben Dalton, Screen Daily, 29<sup>th</sup> October 2021: <https://www.screendaily.com/news/wales-covid-pass-plans-could-be-hugely-damaging-says-uk-cinema-association/5164716.article>

170 The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021, reg 2(2)

171 The Health Protection (Coronavirus Restrictions) (No.5) (Wales) (Amendment)(No.19) Regulations 2021



must stress that these measures have been designed to keep these businesses open during the difficult autumn and winter months ahead, and the alternative in the current climate will mean a return to more stringent controls and restrictions in the run-up to Christmas.”<sup>172</sup> As already noted, Covid passes did not keep venues open and cinemas and theatres saw the ‘rule of six’ reintroduced in December.

Welsh Conservative Darren Miller MS reaffirmed the Welsh Conservatives opposition to the scheme:

“It’s just a few short weeks since the introduction of Covid passports here in Wales, and yet, in spite of no clear or credible evidence that they have an ability to stop the spread of coronavirus, we find ourselves today debating yet another proposal to extend their use (...)

“Vaccine passports are not a route out of restrictions, they are restrictions. They should not be expanded into other premises when they should never have been introduced or put on the table in the first place. Vaccine passports are coercive, ineffective and anti-business; they limit our freedoms but they do not limit the spread of COVID-19.”<sup>173</sup>

However, with Plaid Cymru supporting the Regulations, they were passed.

Big Brother Watch launched its legal challenge of Covid passes in Wales on the same day. Big Brother Watch Director Silkie Carlo said of the challenge:

“Within weeks, this mandatory health ID scheme has already been significantly expanded in absence of an evidence base. This is safety theatre that does nothing for public health but unfairly burdens businesses and excludes citizens.

“There are far more proportionate, effective and inclusive measures to keep people safe and get the country back to normal than excluding healthy people without the right health papers from society. But we can never get back to anything like normal with health ID checks that will inevitably continue to expand.

“We urge the Welsh government to scrap these divisive and discriminatory Covid passes. If they don’t, we will seek to make our case in court.”<sup>174</sup>

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172 Plenary (9<sup>th</sup> November 2021), para 234: <https://record.senedd.wales/Plenary/12493?lang=en-GB#A68153>

173 Plenary (9<sup>th</sup> November 2021), para 244-7: <https://record.senedd.wales/Plenary/12493?lang=en-GB#A68153>

174 Big Brother Watch launches legal challenge to Welsh Covid passes – Big Brother Watch, 9<sup>th</sup> November 2021: <https://bigbrotherwatch.org.uk/2021/11/big-brother-watch-launches-legal-challenge-to-welsh-covid-passes/>



## Scotland

Scotland's vaccine pass scheme came into force on 1<sup>st</sup> October. The Health Protection (Coronavirus (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 were published on 30<sup>th</sup> September, the day before they were due to come into force. They were not voted on by the Scottish Parliament. Although the Regulations were not enforced until 18<sup>th</sup> October, this window gave businesses little time to prepare for a new system of checkpoints. Despite opposition, and a legal bid to halt their roll-out,<sup>175</sup> Deputy First Minister John Swinney said "we hope this will allow businesses to remain open and prevent any further restrictions as we head into autumn and winter." However, as in Wales, Covid passes failed to prevent business closures in winter.<sup>176</sup>

There was instant backlash as Scotland's vaccine passport app failed to work.<sup>177</sup> First Minister Nicola Sturgeon said that she was "well aware" people found it "extremely difficult" to use the app. Scottish Conservative leader Douglas Ross labelled the scheme an "utter shambles from day one". Anas Sarwar, the Scottish Labour leader, also raised equality issues, pointing out that 20% of the population do not have a passport and 30% do not have a driving licence, which are required to access the vaccine pass app.

On 27<sup>th</sup> October, the Night Time Industries Association published research on the impact that the vaccine passport scheme was having on nightclubs.<sup>178</sup> Business at nightclubs dropped by 46% in the first week that vaccine passes were introduced, with some clubs seeing a reduction of 60%. 90% of bars and pubs that would have been in scope of the scheme have removed themselves from the remit by decommissioning dance floors, reducing opening hours or canceling live events – leading to financial losses.

"It has taken just one week for our concerns around market distortion, unfair competition, discrimination and the severe economic impact to be proven true, while the huge reduction in Covid-19 cases that happened well before the scheme came into effect demonstrates the scheme is simply not necessary."

On 30<sup>th</sup> October, the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 came into force, which exempted COP26 delegates from vaccine passport requirements from 30<sup>th</sup> October to 13<sup>th</sup> November. Exempting certain visitors from vaccine pass requirements highlights the arbitrary nature of the scheme,

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175 Judge refuses to delay Scots vaccine passport scheme – BBC News, 30<sup>th</sup> September 2021: <https://www.bbc.co.uk/news/uk-scotland-58747315>

176 Scotland's Covid vaccine passport scheme goes live – BBC News, 1<sup>st</sup> October 2021: <https://www.bbc.co.uk/news/uk-scotland-58752085>

177 Covid Scotland: Nicola Sturgeon apologises after troubled vaccine passport launch – Conor Machett, the Scotsman, 5<sup>th</sup> October 2021: <https://www.scotsman.com/news/politics/covid-scotland-nicola-sturgeon-apologises-after-troubled-vaccine-passport-launch-3408119>

178 Trade 'decimated' by vaccine passport scheme in Scotland – Gary Lloyd, Morning Advertiser, 27<sup>th</sup> October 2021: <https://www.morningadvertiser.co.uk/Article/2021/10/27/How-have-vaccine-passports-decimated-hospitality?>

with those deemed important by the Scottish Government permitted to bypass the requirement, while ordinary citizens are barred from parts of public life. Scottish Labour said the decision showed that the scheme “isn’t fit for purpose” and has been a waste of “time, energy and money”.<sup>179</sup> Stephen Montgomery, a spokesperson for the Scottish Hospitality Group, said:

“Hard-pressed hospitality businesses yet again have to suffer restrictions whilst understaffed and failing to recruit people to partake in implementing this policy even on October 18. To have thousands of people descend on Glasgow from all around the world with no need for vaccine certification, it undermines the reason why we are doing this in the first place.

“Are the Government in the same situation as we are in that they cannot find the staff to police it or are they finally realising there is no point?”<sup>180</sup>

On the 19<sup>th</sup> November, the Scottish Government published an evidence paper on vaccine certification.<sup>181</sup> The paper noted “there is as yet incomplete information about the longer term effects [of certification] on the pandemic, wider society, and the economy.” The scheme was justified by the Scottish Government partly on the grounds that it would drive vaccine uptake. In Scotland, the proportion of those aged 12+ with a first dose rose from 86.0% to 90.5% (4.5 percentage points).<sup>182</sup> In England, there was an increase of 4.4 percentage points in the same period.<sup>183</sup> The proportion of those aged 12+ with a second dose rose from 77.6% to 82.2% (4.6 percentage points). In England, there was an increase of 5.6 percentage points in the same period. The paper concluded that the scheme has had “a relatively slight impact on uptake of vaccination”, although given the negligible differences it is impossible to conclude this with confidence, and that 74% of people who had not been vaccinated still reported that they were “very unlikely” to be vaccinated.<sup>184</sup> The paper also found no impact of vaccine uptake in young people: “At the point when the scheme was announced the uptake of vaccine was decreasing, and these trends have

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179 PASSPORTS AXED: COP26 delegates to be exempt from vaccine passport scheme as 30,000 descend on Glasgow – Sarah Peddie, the Scottish Sun, 5<sup>th</sup> October 2021: <https://www.thescottishsun.co.uk/news/scottish-news/7802884/cop26-delegates-exempt-vaccine-passport-scheme-glasgow/>

180 COP26 delegates will not need Scottish Government’s covid vaccine passports – Neil Pooran and Carla Jenkins, Glasgow Live, 5<sup>th</sup> October: <https://www.glasgowlive.co.uk/news/glasgow-news/cop26-delegates-not-need-scottish-21771576>

181 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

182 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 13: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

183 Vaccination in England – GOV.UK, accessed 12<sup>th</sup> January 2021: <https://coronavirus.data.gov.uk/details/vaccinations?areaType=nation&areaName=England>

184 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 13: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

continued in the period since then.”<sup>185</sup>

The paper also found significant impact on businesses, with nightclubs reporting “implementation challenges and substantial turnover losses”<sup>186</sup>, and trade bodies have “consistently provided reports of members experiencing reduced footfall and takings.”<sup>187</sup> The events sector “highlighted that public awareness of certification among some attendee segments remains low, including older and international visitors.”<sup>188</sup> They also reported “increased aggression towards security staff and stewards.”<sup>189</sup>

The paper contained no evidence that vaccine passes were reducing transmission in venues and were making an impact on Scottish rates of coronavirus.

The Scottish Government faced pressure to add the option of evidence of a negative test to its vaccine pass. On 23<sup>rd</sup> November, the First Minister announced that the vaccine pass scheme would permit a negative lateral flow test as well as vaccine status for entrance to venues:

“When we launched the scheme, one of its primary objectives was to help to drive up vaccination rates. That is still important, obviously, but actual and projected uptake rates mean that we now judge it possible to include testing.”<sup>190</sup>

Although the introduction of a test option is a positive step, we maintain that Covid passes, even with testing, are ineffective, invasive and exclusionary. Given lateral flow test shortages, the difficulty some people have with accessing technology and serious problems with the accuracy of lateral flow tests, testing certificates are not a solution.

### *Northern Ireland*

On 15<sup>th</sup> November, Northern Irish Health Minister and Ulster Unionist Party (UUP) MLA Robin

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185 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 15: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

186 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 38: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

187 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 39: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

188 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 40: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

189 Coronavirus (COVID-19)vaccine certification: evidence paper update – Cabinet Secretary for Covid Recovery, 19<sup>th</sup> November 2021, p. 40: <https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/>

190 Official Report of Scottish Parliament (23<sup>rd</sup> November 2021): <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13424>

Swann said “now is the time” to consider the mandatory use of Covid passes to access certain venues.<sup>191</sup> Previously, the Health Minister had said he was “not comfortable” with the idea:

“(…) it’s not something from a political point of view or a personal point of view that I think we should ever develop in Northern Ireland, that we would need to provide certification of vaccination to enter a cinema or to enter a restaurant.

“That’s not something that sits comfortably with me.”<sup>192</sup>

Democratic Unionist Party (DUP) MLA and former Health Minister Edwin Poots said his party would oppose the measures:

“We’re over 90% of people vaccinated and we need to encourage the remainder to get vaccinated. But forcing them is not going to work and I don’t think creating that two-tier system is something I would be prepared to accept.”

On 17<sup>th</sup> November, the Executive Committee met and voted in favour of introducing a Covid pass system that would cover all hospitality venues, including pubs and restaurants. Despite opposition from DUP Ministers, support from Ministers from the UUP, Sinn Fin, Alliance, and the Social Democratic and Labour Party (SDLP) meant the proposals were voted for six to four.

Colin Neill, chief executive of Hospitality Ulster, said the proposals “singled out” hospitality businesses: “As the worst impacted industry, and the one singled out repeatedly for restrictions, we are facing an unknown future. Our industry will have to fight to retain staff and save businesses.”<sup>193</sup> Colin Johnson, managing director for hotel group the Galgorm Collection, agreed and said it was “quite clear the executive feel we are the easiest target to go for and yet again they have legislated against us.”

After the scheme was introduced, Mr Neill said it had been a “catastrophic” week for the hospitality industry.<sup>194</sup> Michael Deane, a Michelin starred restaurant owner in Belfast, told reporters that “business has completely started to dry up” after the introduction of Covid certification, and Bill Wolsey, managing director of hotels, pubs and restaurant group Beannchor, said that businesses was down by 15%.<sup>195</sup>

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191 Covid-19: Robin Swann calls for NI passport scheme – BBC News, 15<sup>th</sup> November 2021: <https://www.bbc.co.uk/news/uk-northern-ireland-59296889>

192 Robin Swann ‘not comfortable’ with mandatory vaccine certificates – Lisa Smyth, Belfast Telegraph, 4<sup>th</sup> March 2021: <https://www.belfasttelegraph.co.uk/news/health/coronavirus/robin-swann-not-comfortable-with-mandatory-vaccine-certificates-40158721.html>

193 Covid-19: Reaction to vote for Covid passports – BBC News, 17<sup>th</sup> November 2021: <https://www.bbc.co.uk/news/uk-northern-ireland-59326000>

194 Speculative and unnecessary comments causing havoc with hospitality christmas trade – Hospitality Ulster, 3<sup>rd</sup> December 2021: <https://hospitalityulster.org/hospitality-news/voice/speculative-and-unnecessary-comments-causing-havoc-with-hospitality-christmas-trade>

195 Vaccine passports threaten last orders for Northern Ireland’s pubs and restaurants – Russell Lynch, the Telegraph, 5<sup>th</sup> December 2021: <https://www.telegraph.co.uk/business/2021/12/05/vaccine-passports-threaten-last-orders-northern-irelands-pubs/>

The scheme is wider than any other in the UK, with hospitality venues being in scope of restrictions. When the plans were first announced and were voted on by the Executive, unlicensed hospitality venues were intended to be part of the scheme. However, when proposals were taken forward, unlicensed premises were not included within the restrictions. Justice Minister Naomi Long tweeted that she had not been made aware that the proposals she had voted for in the Executive Committee had been changed.<sup>196</sup> That a Government Minister was not aware of significant changes to the Covid pass scheme between the vote and implementation highlights the haphazard approach the Health Department in Northern Ireland has taken to law-making and communication. It is highly undemocratic for one Minister to be able to change such a consequential policy without consulting the Assembly.

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No.19) Regulations (Northern Ireland) 2021 require certain venue or events operators to ensure individuals “can evidence their Covid status” prior to entry, which may be a course of an authorised vaccine, a negative test (via the NHS Covid-19 reporting app), prior infection alongside an ID card, confirmation of their participation in a vaccination trial or evidence (via the “Covid Certification process”) of medical exemption.<sup>197</sup> Licensed venues, theatres, concert halls, cinemas, indoor premises used for performances, recordings or rehearsals, premises used for conferences or exhibitions are required to check Covid status. Covid certification is also required for events of more than 10,000 people, unseated outdoor events of more than 4,000 people and unseated indoor events of more than 500 people, with exemptions for funerals, weddings, receptions, drive-in events, pickets, illuminated trails, communal religious worship activities “at a place where beliefs are practised” and outdoor non-ticketed public events without fixed entry or exit points.

### *Assembly scrutiny*

The vote within the Northern Irish Executive to introduce Covid passes, taken in private on the 17<sup>th</sup> November, was not legally binding and did not contain any details of how the scheme would work. Big Brother Watch wrote to Health Minister Robin Swann on 19<sup>th</sup> November to stress the importance of a prior vote on the Regulations.<sup>198</sup> However, the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No.19) Regulations (Northern Ireland) 2021 were made, laid and came into force on 29<sup>th</sup> November. The vote in the Assembly was not held until 13<sup>th</sup> December.

196 Naomi Long MLA, Twitter, 26<sup>th</sup> November 2021: [https://twitter.com/naomi\\_long/status/1464294859624300545?s=20](https://twitter.com/naomi_long/status/1464294859624300545?s=20); Naomi Long MLA, Twitter, 26<sup>th</sup> November 2021: [https://twitter.com/naomi\\_long/status/1464519190006706177?s=20](https://twitter.com/naomi_long/status/1464519190006706177?s=20)

197 The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No.19) Regulations (Northern Ireland) 2021, reg 7

198 Big Brother Watch calls for a vote on “draconian” Covid passes in Northern Ireland – Big Brother Watch, 23<sup>rd</sup> November 2021: <https://bigbrotherwatch.org.uk/2021/11/big-brother-watch-calls-for-a-vote-on-draconian-covid-passes-in-northern-ireland/>

It is unacceptable and undemocratic for the Health Minister to introduce mandatory Covid-status certification without a prior vote in the Assembly. This policy represents one of the most significant changes in approach to public health seen in modern history and a profound change to public life, privacy norms and basic rights and liberties. It is deserving of the most rigorous and thorough scrutiny from the Northern Irish Assembly, not a vote after the Regulations have been in force for several weeks.

Since March 2020, multiple sets of Health Protection Regulations, made via the Public Health Act (Northern Ireland) 1967, have introduced restrictions and requirements in relation to the spread of Covid-19. All of these Regulations were passed without a draft having been laid before, and approved by a resolution of, the Assembly, in accordance with section 25Q of that Act. Section 25Q permits this only “by reason of urgency”.

The use of section 25Q to introduce regulations relating to the introduction of mandatory Covid-status certification cannot be justified. The Health Minister gave no legitimate reason to exclude the Assembly from such significant decision-making, particularly when proposals for the introduction of a mandatory Covid pass system were first discussed by the Executive in September.<sup>199</sup> Bringing a Covid certification scheme into law by ministerial decree is an assault on democracy.

It is unacceptable that the Health Minister failed to give the Assembly the opportunity to meaningfully scrutinise and oppose mandatory Covid certification prior to its introduction. A vote on the same day that Covid certification will be enforced signalled to the public and the Assembly that the Department of Health believes a democratic mandate for Covid certification is superfluous.

During the eventual vote on the Regulations, MLAs raised this lack of scrutiny. DUP MLA Deborah Erskine said: “The rush to push the policy through without due process was reckless and irresponsible. Proper scrutiny could have been allowed last week.” Paul Frew, also a DUP MLA, agreed:

“The failure to bring the regulations to the Assembly until now is deeply alarming and sets a dangerous precedent. It is unacceptable that, despite cross-Bench support for an opportunity to debate the policy, the Health Minister could not bring the regulations until now, two weeks after their enactment.”

Communication around the introduction of the scheme was also extremely poor, with Green MLA Rachel Woods stating:

“Communication around COVID certification has been abysmal. It has resulted in widespread confusion, and that was not helped by the fact that it was to apply

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<sup>199</sup> Covid-19 vaccine passport scheme to be discussed by Stormont Executive – Rebecca Black, Belfast Telegraph, 26<sup>th</sup> September 2021: <https://www.belfasttelegraph.co.uk/news/northern-ireland/covid-19-vaccine-passport-scheme-to-be-discussed-by-stormont-executive-40889474.html>

to all premises, then just to those that were licensed, or those in the arts — the cinemas, the theatres, the conference halls. Nor was it a good idea to have the media forewarn people that the scheme was going to be introduced on a certain day and not publish regulations or guidance as to what would be in it until the very end of that same day.”

The Regulations passed, with 59 in favour and 24 opposed.