

**EMERGENCY POWERS AND
CIVIL LIBERTIES REPORT
[JAN – MAR 2022]**

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.

Contact

Silkie Carlo

Director

Email: silkie.carlo@bigbrotherwatch.org.uk

Madeleine Stone

Legal and Policy Officer

Email: madeleine.stone@bigbrotherwatch.org.uk

January-March Emergency Powers & Civil Liberties Report

Published: 23rd March 2022

CONTENTS

| | |
|--|----|
| <u>INTRODUCTION</u> | 3 |
| <u>EMERGENCY LAWS</u> | 5 |
| HEALTH PROTECTION REGULATIONS | 5 |
| <i>End of restrictions</i> | 6 |
| <i>Enforcement</i> | 6 |
| <i>Downing Street gatherings</i> | 8 |
| <i>Devolved nations</i> | 10 |
| <i>Wales</i> | 10 |
| <i>Scotland</i> | 11 |
| <i>Northern Ireland</i> | 15 |
| TRAVEL RESTRICTIONS | 16 |
| CORONAVIRUS ACT | 18 |
| <i>Devolved administrations</i> | 20 |
| <u>MANDATORY VACCINATION</u> | 21 |
| <i>Limiting sick pay</i> | 24 |
| <u>FREEDOM OF ASSEMBLY</u> | 26 |
| <u>COVID-STATUS CERTIFICATION</u> | 28 |
| <i>England</i> | 29 |
| <i>Wales</i> | 31 |
| <i>Scotland</i> | 34 |
| <i>Northern Ireland</i> | 36 |
| <u>CONCLUSION</u> | 38 |

INTRODUCTION

The publication of this report marks two years from the passing of the Coronavirus Act 2020 and the announcement of a national lockdown in response to the rapid spread of coronavirus across the United Kingdom. These unprecedented pieces of legislation fundamentally altered the balance of power between citizens and the state and ushered in a new era of police and ministerial authority.

Big Brother Watch has been publishing regular reports on how these pieces of legislation have been used, as well as analysis of new intrusive forms of health surveillance. This is our fourteenth and final report, which documents the dismantling of virtually all Covid-related restrictions across the four nations. The new approach, in the words of the Prime Minister, is “moving from Government restrictions to personal responsibility”.¹

It was vital for Government to respond swiftly to the spread of coronavirus. In the initial weeks and months of the pandemic, little was known about how the virus would spread and how the nation’s institutions would cope. However, as we noted in our first Emergency Powers and Civil Liberties Report in April 2020, in times of crisis, respect for the rule of law, democratic scrutiny and human rights must be the foundation of any response:

“History shows we face challenges of such magnitude best when we hold onto the values that define us, not when we abandon them. This is a pivotal moment and a crucial time for parliamentarians to increase scrutiny and limitations on powers.

“As we learned in the post 9/11 years, freedoms are too easily lost in the heat of crises; emergency responses naturally extend and endure to create a new political order in absence of serious early intervention, frequent review and an unyielding commitment to democracy and human rights.”²

Unfortunately, the chaotic approach to lawmaking that characterised the early weeks of the pandemic was not remedied. Legislation which had profound implications for our most basic rights, and which carried the risk of life changing fines, was often announced via a press conference, without regulations being published, let alone scrutinised or voted on by parliament.

Some restrictions were punishing and draconian, while others were arbitrary and ineffective. Many were both. Hundreds of thousands of people faced fines and

¹ HC Deb(21st February 2022), vol. 709, col. 43: <https://hansard.parliament.uk/commons/2022-02-21/debates/982A4806-6695-4ECE-9D1C-4BD0E8798306/LivingWithCovid-19>

² Emergency Powers and Civil Liberties Report: April 2020 – Big Brother Watch, 28th April 2020: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Report-april-2020.pdf>

prosecutions for breaching them, with vulnerable and marginalised people bearing the brunt of this coercive approach to public health. We have argued since the onset of the pandemic that a public health crisis should not be treated as a public order crisis. A focus on coercion and punishment, rather than support and encouragement, has doubtlessly damaged democracy and public trust in authorities.

Big Brother Watch has been reporting, analysing and campaigning for measures to be strictly necessary, proportionate and last not a moment longer than needed. We have had many successes in these two years, alongside other rights groups, parliamentarians and our supporters.

We won the fight on Covid passes and mandatory vaccination, we secured reviews of unlawful coronavirus-related prosecutions, and we forced the Government to remove some of the most egregious powers before their expiry dates. We also forced the Government to abandon its data hungry contact tracing app and pushed back on new forms of health surveillance in both the public and private sector. Big Brother Watch has also been working behind the scenes, assisting those facing unlawful fines and prosecutions under Covid laws and keeping parliamentarians briefed on complex new regulations. In other European countries, where civil society has not been so robust in its opposition to the worst excesses of state overreach, society-altering Covid restrictions remain.

The legacy of this period will endure. The actions of this Government have demonstrated the frailties of the institutions and procedures designed to safeguard our democracy. Public health is being reimagined as biosecurity and both politicians and public bodies have acquired muscle memory for authoritarianism.

Indeed, the Government still has profoundly troubling pieces of legislation coming down the tracks. Over the past two years we have documented the suppression of the right to protest, social media giants stifling speech, the emergence and use of digital health IDs, intrusive new forms of surveillance and the curtailing of parliamentary scrutiny, amongst other authoritarian moves which concentrated power in the hands of the executive. There is more of this to come. The Policing, Crime, Courts and Sentencing Bill, the Online Safety Bill, the Elections Bill, and plans to scrap the Human Rights Act continue. All of these new powers in the hands of a Government which has seized unparalleled control over the last two years will be highly dangerous for democracy, justice and rights.

We will remain vigilant on the use of emergency laws to control public health, and of any new permanent laws and regulations that increase state control over health related freedoms. It is likely that there will be new variants and new waves of infection. It is vital that we learn the lessons of the past two years and learn to respond to public health challenges whilst protecting the British values of rights, democracy and freedom, that define us.

EMERGENCY POWERS

The legal system underpinning the last two years has been immensely complex. Rapid changes and U-turns have made Covid rules difficult to understand and follow.

A national lockdown gave way to a system of 'levels', then local lockdowns, which were followed by a circuit breaker lockdown, which then became the 'tier system', which then led to another national lockdown and the gradual easing of restrictions. After 'Freedom Day' in the summer of 2021, restrictions were soon reintroduced in the autumn and winter months, only to be removed again now in spring 2022. This summary refers only to England; in the devolved administrations, restrictions loosened and ratcheted in different ways and at different times, with variations between nations being at times subtle, and at others, unfathomably contradictory.

In total, the Government laid 582 Covid-related statutory instruments before the UK Parliament between the start of 2020 and 3rd March 2022. These account for 30% of all the statutory instruments laid before Parliament in this period.³ Covid-related statutory instruments were made and laid under 140 Acts of Parliament, seven orders, two sets of regulations, 10 EU regulations (which are now retained in UK law) and one Church Measure. Only 27 of the Covid-related statutory instruments were laid under the Coronavirus Act 2020. 1,173 pieces of legislation containing the word 'coronavirus' have been passed by the UK government and the devolved administrations since the start of 2020.⁴

HEALTH PROTECTION REGULATIONS

Many of the Government's extraordinary new powers over the past two years have been derived through hundreds of new pieces of secondary legislation, largely made under the Public Health (Control of Disease) Act 1984. The restrictions made under the Public Health Act have been responsible for 'lockdown' measures but also have ranged from introducing a 10pm curfew, to banning singing in hospitality venues, to criminalising international travel, to giving local authorities new powers to close public land. A total of 658 sets of Health Protection Regulations relating to coronavirus have been made under the Act across the four nations.⁵

Most of these statutory instruments were introduced without prior parliamentary scrutiny, and only a fraction with a prior vote. At times, the Government changed Covid guidance without changing the law, leading to confusion and a lack of legal certainty.

3 Coronavirus Statutory Instruments Dashboard, 2020-2022 – Hansard Society, accessed 9th March 2022: <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

4 Legislation.gov.uk, accessed 16th March 2022: <https://www.legislation.gov.uk/primary+secondary?title=coronavirus>

5 Legislation.gov.uk, accessed 16th March 2022: <https://www.legislation.gov.uk/primary+secondary?title=health%20protection%20regulations%20coronavirus>

One example of this was the alteration of the period required for self-isolation through guidance, rather than through an amendment to the regulations. In an evidence session of the Public Administration and Constitutional Affairs Committee looking at emergency legislation two years on, Ronnie Cowan, SNP MP, stated that the Government had been “bypassing parliamentary scrutiny” by altering guidance in this way:

“Do you think that doing so much through guidance, rather than through legal requirement, makes it difficult for people to understand and to enforce? You are putting an awful lot of pressure on the likes of police forces to interpret the law.”⁶

Health Secretary Sajid Javid defended this lack of democratic oversight, saying it was the “quickest way” to ease restrictions and that since it was “in the public interest” it was an acceptable approach to lawmaking. As we have argued throughout the pandemic, this approach to lawmaking only results in confusion and unlawful policing.

End of restrictions

On 21st February, the Prime Minister announced that Covid restrictions would be expired, and that pharmaceutical interventions were now strong and varied enough to move the Covid response away from legal restrictions:

“We have a population that is protected by the biggest vaccination programme in our history; we have the antivirals, the treatments and the scientific understanding of this virus; and we have the capabilities to respond rapidly to any resurgence or new variant.”⁷

We welcome this decision to move away from the legal micromanagement of everyday activities and the policing of public health. We have always supported measures which were necessary, proportionate and that supported people, rather than coerced them.

It had also become hard for the Government to publicly advocate for legal restrictions, when Downing Street officials became the subject of both an internal inquiry and a Metropolitan Police inquiry for breaches of the same Covid restrictions they had put into law.

Enforcement

Although restrictions have relaxed over this period, many charges brought earlier in the year (and in 2020) are still filtering through the criminal justice system. Tristan Kirk, a court reporter for the Evening Standard, has been highlighting Covid prosecutions over the past two years. He reported that in Westminster Magistrates court, Covid

⁶ Oral evidence: Coronavirus Act 2020 Two Years On – Public Administration and Constitutional Affairs Committee, HC 978, 24th February 2022, Q74: <https://committees.parliament.uk/oralevidence/3461/pdf/>

⁷ HC Deb (21st February 2022), vol. 709, col. 45: <https://hansard.parliament.uk/commons/2022-02-21/debates/982A4806-6695-4ECE-9D1C-4BD0E8798306/LivingWithCovid-19>

finances amounting to £91,000 were handed out in a single day.⁸ He noted that “[some prosecutions] feel not only pointless but also heartless”, highlighting the prosecution of a man who was fined £434 for being outside of his home begging during January 2021. The officer who reported the individual for prosecution stated that after conducting a search for drugs, “I explained to [defendant] that begging wasn’t one of the permitted reasons to be outside during the Covid lockdown period. I then explained i [sic] would be reporting him so prosecution could be considered”. Given that the list of ‘reasonable excuses’ under the Regulations was non-exhaustive, it is possible that this prosecution was unlawful. Furthermore, homeless people were not subject to the offence of leaving one’s home without a reasonable excuse.

The Crown Prosecution Service (CPS) undertakes regular reviews of prosecutions under the Coronavirus Act and Health Protection Regulations due to the unprecedented rate of unlawful charges uncovered. The CPS no longer publishes data from these reviews, limiting transparency and accessibility of this data. It now requires Freedom of Information requests to access the updated data, which is an unwelcome and obstructive development. As such, the latest data remains that a total of 496 charges under the Health Protection Regulations out of 2,409, or 21%, have been overturned since March 2020.

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 alleged 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 (SJP), 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 SJP notice alerting them to their prosecution and inviting them to submit a plea.

We have repeatedly called for the use of the SJP to be scrapped for Covid offences, given the fact that they are widely misunderstood by magistrates and police forces. It appears these concerns were shared by the Attorney General in as early as May 2020. A Freedom of Information request from the Evening Standard revealed the minutes of two key meetings on 5th and 6th May 2020, which show that the CPS had approached the Attorney General’s office about using SJP for Covid offences in order to resolve cases quickly and reduce their workload.⁹ The minutes show that the Attorney General, Suella Braverman MP, “raised early concerns” about the use of the SJP and was worried about the “political climate due to current error rate and media attention, which may be best

⁸ Tristan Kirk, Twitter, 2nd March 2022: <https://twitter.com/kirkkorner/status/1499019753624584193?s=20&t=eET4ULGjm7IiDeqQyVLqGA>

⁹ Attorney General’s office raised concern about wrongful prosecution of lockdown breakers – Tristan Kirk, the Evening Standard, 14th February 2022: <https://www.standard.co.uk/news/crime/attorney-general-covid-lockdown-b982145.html>

suitied for open not closed court as offered by SJP”. The SJP was considered to be the “least worst” option in discussions between the NPCC, the CPS, HM Courts and Tribunals Service, and the Home Office, and it was suggested that individuals within the CPS and magistrates courts should attempt to “influence” the Attorney General’s decision. Griff Ferris, Legal and Policy Officer at campaign group Fair Trials, said:

“People at the highest levels of government knew that the Single Justice Procedure would result in wrongful prosecutions and yet they went ahead with it anyway,

“They also acknowledged that prosecutions should be dealt with in open court to try and prevent this, but they still decided to use the closed court procedure. The public deserves better than this injustice which was sanctioned by the Attorney General.”

On 16th March, the National Police Chief’s Council (NPCC) release updated figures on the number of Fixed Penalty Notices (FPNs) distributed under the Health Protection Regulations.¹⁰ Up to 27th February 2022, the total number processed by in England was 106,913, and 12,065 in Wales, or a total of 118,978. Just 59% of these FPNs have been paid (70,495), meaning that 48,483 people have been or will be subject to court proceedings. For an already overburdened justice system, these cases represent a huge strain and expense that will likely continue for years. Additionally, the appeal system for FPNs is limited to an appeal in court, meaning those who have been unlawfully fined may lack the means or inclination to challenge a FPN. If the rate of unlawfully issued FPNs is similar to the rate of unlawful prosecutions, almost 25,000 FPNs could have been issued unlawfully. We have called for an appeal system for Covid FPNs.

Downing Street gatherings

Amidst countless stories of people facing fines and prosecutions, a sharp disparity has emerged in how alleged rule breakers within government have been treated compared to the rest of the population. In our last report, we detailed the first reports of parties being held in Downing Street during lockdown. In January, these rumours exploded, with multiple parties, quizzes and events being revealed to the press.¹¹ An internal inquiry was instigated, led by senior Cabinet Office civil servant, Sue Gray. The Prime Minister declared he was “furious” after a clip of Downing Street employees joking about about a lockdown party was made public;¹² it later emerged that he had been involved in several gatherings during periods of national lockdown, the legality of which are under

10 Update on Coronavirus FPNs issued by forces in England and Wales, and the payment of FPNs – National Police Chief’s Council, 16th March 2022: <https://news.npcc.police.uk/releases/update-on-coronavirus-fpns-issued-by-forces-in-england-and-wales-and-the-payment-of-fpns>

11 ‘Downing Street staff drank and danced’ night before Queen sat alone mourning Prince Philip – Benjamin Butterworth, Molly Blackall, Daniel O’Mahony, i, 13th January 2022: <https://inews.co.uk/news/politics/downing-street-party-queen-prince-philip-funeral-allegations-1400530>

12 UK’s Johnson apologizes, orders probe of staff lockdown fest – Jill Lawless, AP News, 8th December 2021: <https://apnews.com/article/coronavirus-pandemic-health-lifestyle-christmas-eu-rope-32571c5c7a550c8b418acb9e28e9815b>

investigation.

On 12th January, the Prime Minister apologised after images were leaked to the press showing him, his wife and dozens of Downing Street staff socialising in the garden of No. 10 during May 2020, the first period of lockdown. He said:

“I know the rage [the public] feel with me and with the Government I lead when they think that in Downing Street itself the rules are not being properly followed by the people who make the rules.

(...)

“I believed implicitly that this was a work event, but with hindsight, I should have sent everyone back inside.”¹³

He also argued that the gathering “could be said technically to fall within the guidance”, although he did not explain which part of ‘the guidance’ the gathering fell under. Just 10 days before the event in question, on 10th May 2020, the Prime Minister gave a press conference announcing increases in fines for those breaching lockdown rules (from £60 to £100) and urged the country to continue following stringent requirements that prevented social gathering of any kind: “It depends on all of us – the entire country – to follow the advice, to observe social distancing, and to keep that R down.”¹⁴ Meanwhile, a woman who was fined for dropping a birthday card to a friend’s house during lockdown and told the court “It was not intentional (...) I didn’t realise there would be others present”, was fined £250.¹⁵

Despite multiple media reports and photographic evidence of gatherings, the Metropolitan Police announced that it would not investigate potential Covid offences. On 25th January, after widespread public condemnation and the threat of a legal challenge,¹⁶ the Metropolitan Police Commissioner reversed this position.¹⁷ Sue Gray’s report noted that 12 events were under police investigation, whilst noting that the force’s new decision to investigate meant that she was unable to publish a “meaningful report”:

13 HC Deb (12th January 2022), vol. 706, col. 563: <https://hansard.parliament.uk/com-mons/2022-01-12/debates/CEFD521F-BECA-495E-8650-C4FF8E2C5428/Engagements>

14 Prime Minister’s statement on coronavirus (COVID-19): 10 May 2020 – Prime Minister’s Office, [GOV.UK](https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-10-may-2020), 10th May 2020: <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-10-may-2020>

15 Tristan Kirk, Twitter, 19th January 2022: https://twitter.com/kirkkorner/status/148370579137903411?s=20&t=3FkkgGsOQs0M_gFOv2VM0g

16 Met police accused over failure to investigate No 10 lockdown parties – Vikram Dodds, the Guardian, 11th January 2022: <https://www.theguardian.com/uk-news/2022/jan/11/met-police-no-10-lockdown-parties>

17 Met Police will investigate Downing Street lockdown parties, Cressida Dick confirms – Alannah Francis, the Independent, 25th January 2021: <https://inews.co.uk/news/downing-street-met-police-investigation-lockdown-rules-boris-johnson-cressida-dick-1421464>

“so as not to prejudice the police investigative process, [the Metropolitan Police Force] have told me that it would only be appropriate to make minimal reference to the gatherings on the dates they are investigating.”¹⁸

With the Metropolitan Police investigation ongoing, the public still does not have clarity over the gatherings that took place at Downing Street during lockdowns. It is striking that as we reach the end of a two-year period of unprecedented executive power, we cannot be sure that the same people writing and overseeing the rules deigned to follow them themselves.

In response to the revelations of these seemingly unlawful gatherings, Big Brother Watch wrote to the Justice Secretary, along with 14 rights groups and over 40 parliamentarians, reiterating the need for a meaningful review of all Covid FPNs and prosecutions.¹⁹ Thousands of people have been unlawfully fined and prosecuted under constantly changing coronavirus laws, whilst allegations of significant rule breaking in Downing Street are rife. Despite the ending of restrictions, a review of all fines and an accessible route to redress is still urgently needed to ensure injustice is not the lasting legacy of the pandemic.

Devolved administrations

As noted in our most recent Emergency Powers and Civil Liberties Report, Wales, Scotland and Northern Ireland introduced significant restrictions on large gatherings and businesses in relation to the Omicron wave, unlike the UK Government. However, rates of infection have not varied greatly between the four nations. The devolved administrations have made similar moves to the UK Government to end restrictions over recent months, although at a slower pace.

Wales

On 15th January, Ministers increased the number of people allowed to attend an outdoor event from 50 to 500. This was announced just the day before and was in part due to pressure from the Welsh Rugby Union considering moving its games to England, in order to allow spectators to attend.²⁰ On 21st January, the rule of six was scrapped for outdoor hospitality venues.²¹

18 Investigation into alleged gatherings on government premises during Covid restrictions: Update – Prime Minister’s Office, [GOV.UK](https://www.gov.uk/government/publications/investigation-into-alleged-gatherings-on-government-premises-during-covid-restrictions-update), 31st January 2022: <https://www.gov.uk/government/publications/investigation-into-alleged-gatherings-on-government-premises-during-covid-restrictions-update>

19 Covid Justice Crisis: MPs, rights groups and lawyers call for urgent review of all Covid fines and prosecutions – Big Brother Watch, 2nd February 2022: <https://bigbrotherwatch.org.uk/2022/02/covid-justice-crisis-mps-rights-groups-and-lawyers-call-for-urgent-review-of-all-covid-fines-and-prosecutions/>

20 Six Nations 2022: Welsh Rugby Union considering hosting games in England – BBC Sport, 5th January 2022: <https://www.bbc.co.uk/sport/rugby-union/59867675>

21 Written Statement: Review of the Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020 – First Minister Mark Drakeford, Welsh Government, 14th January 2022: <https://gov.wales/written-statement-review-health-protection-coronavirus-restrictions-no5-wales-regulations-2020-3>

On 21st January, Wales moved to 'Alert Level Zero' although some restrictions remained in place. First Minister Mark Drakeford announced pubs and restaurants in Wales could operate outdoors without the rule of six or social distancing, and limits on sports events were scrapped. Covid passes would still be required for large events, cinemas, theatres and concert halls.²² The move to Alert Level Zero was completed on 28th January, when nightclubs were permitted to reopen and the rule of six for entertainment and hospitality venues was scrapped, as was the requirement to provide table service.²³

On 18th February, the Welsh government relented to pressure from Big Brother Watch and our legal challenge, and scrapped the requirement to show a Covid pass anywhere.²⁴

On 28th February, the requirement to wear a mask in cinemas was scrapped.²⁵

On 4th March, the First Minister announced that all Covid restrictions would be expired.²⁶ From 28th March, self isolation laws would be expired, as would regulations that require mask wearing in shops and on public transport. Mark Drakeford told BBC Radio Wales that legislation could be reintroduced "should something unexpected happen".

Scotland

On 11th January, the First Minister announced that the 500 person limit for outdoor events would be lifted from 17th January. Guidance would be amended to require that 50% of attendees or 1,000 people, whichever was higher, would have to have their vaccine or test status verified for entry, rather than 20% or 1,000 people. A booster dose would also be required to obtain a Covid pass, if the date of an individual's last vaccine was more than 4 months previous.²⁷

On 24th January, nightclubs were permitted to reopen, table service and social distancing requirements for hospitality venues were removed and limits on attendance of indoor gatherings were also removed. The First Minister announced that while the government had considered extending the Covid pass scheme to all licensed venues, they had decided not to do so as this "could create additional costs for businesses at an already very challenging time".²⁸ Instead, the Regulations were amended to ensure that even

22 Written Statement: Review of the Health Protection (Coronavirus Restriction) (No.5) (Wales) Regulations 2020 – First Minister Mark Drakeford, Welsh Government, 21st January 2022: <https://gov.wales/written-statement-review-health-protection-coronavirus-restriction-no5-wales-regulations-2020-18>

23 Wales completes move to alert level 0 – Welsh Government, 27th January 2022: <https://gov.wales/wales-completes-move-alert-level-0>

24 Covid pass: Wales' law for cinemas and nightclubs ends – David Deans & Emilia Belli, BBC News, 18th February 2022: <https://www.bbc.co.uk/news/uk-wales-politics-60417333>

25 Covid in Wales: Masks not needed in classrooms and cinemas – BBC News, 28th February 2022: <https://www.bbc.co.uk/news/uk-wales-60553851>

26 Covid in Wales: Mass testing pandemic rules to be axed – BBC News, 4th March 2022: <https://www.bbc.co.uk/news/uk-wales-politics-60602012>

27 Coronavirus (COVID-19) update: First Minister's statement – 11 January 2022 – Scottish Government, 11th January 2022: <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-statement-11-january-2022/>

28 Coronavirus (COVID-19) update: First Minister's statement – 18 January 2022 – Scottish Govern-

if tables were placed on a dance floor of a nightclub “permitting dancing around the tables”, Covid passes would still be required for access.

On 22nd February, the Scottish government published an update of its Covid Strategic Framework, announcing that all remaining legal restrictions would become guidance from 21st March, including Covid passes.²⁹ The document emphasised the Scottish government’s assertion that Covid had led to permanent changes in Scottish society, and that the recovery would require a long-term, ongoing response:

“We must all continue to do everything required to remain resilient and to keep the virus in check. Our lives will not go back to exactly as they were before COVID-19 and, indeed, there are some aspects of life during the pandemic that we would want to hold on to – that could serve us well for the future.”

Despite this decision to end legal restrictions for the short term, the Government sought to extend the expiry of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 from 28th February to 28th September.³⁰ On 24th February the Scottish Parliament voted to approve this six month extension of Covid powers. This comes alongside the extension of powers contained with the Coronavirus Act 2020, the Coronavirus (Scotland) Act 2020 and the introduction of a new bill, the Coronavirus (Recovery and Reform) (Scotland) Bill, which is currently under consultation. This Bill will amend the Public Health etc. (Scotland) Act 2008 to give Scottish Ministers the power to provide for, via secondary legislation, a national public health response to any infectious disease or biological or chemical contamination. Currently, these powers exist for the coronavirus response only. It is deeply alarming that the Scottish government is seeking to put its extraordinary emergency powers on a permanent footing. Scottish Conservative leader Douglas Ross MSP was rightly critical of these proposals:

“The legislation that they propose would give the Government the power to close businesses and schools, to let prisoners out of jail early and to force people back into lockdowns in their own homes. That is a power grab from this SNP Government.

“What is more worrying than anything is that the Government could do all that without ever coming back to the chamber and the Parliament. The powers are extraordinary. They were introduced to be used in an emergency only. Outside the most severe crisis, the Government should not have such sweeping, extensive

ment, 18th January 2022: <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-statement-18-january-2022/>

29 Coronavirus (COVID-19): Scotland’s Strategic Framework update – February 2022 – Scottish Government, 22nd February 2022: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2022/02/coronavirus-covid-19-scotlands-strategic-framework-update-february-2022/documents/covid-19-scotlands-strategic-framework-update-february-2022/covid-19-scotlands-strategic-framework-update-february-2022/govscot%3Adocument/covid-19-scotlands-strategic-framework-update-february-2022.pdf>

30 See: The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022

powers to curb freedoms and control people's lives.”³¹

31 Official Report, Scottish Parliament, 1st February 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-01-02-2022?meeting=13558&iob=123034>



The powers are extraordinary. They were introduced to be used in an emergency only. Outside the most severe crisis, the Government should not have such sweeping, extensive powers to curb freedoms and control people's lives."

- Douglas Ross, Leader of the Scottish Conservative Party



On 15th March, the First Minister announced that face coverings would remain mandatory for an additional two weeks – until 4th April – due to an increase in infections.³² She said “it may help us get over this spike more quickly.”

Northern Ireland

On 20th January, Stormont ministers agreed to lift the Covid rules on hospitality, removing the rule of six and table service for licenced venues and reopening nightclubs from 26th January.³³ Covid passes would no longer be required for hospitality but were required for nightclubs.

The Northern Irish Executive collapsed in early February, after First Minister Paul Givan resigned.³⁴ Other ministers remain in place to run their respective departments, but the Executive is not able to meet. This gave the Health Minister considerable control over Covid restrictions, although any “significant or controversial” decision could not be taken. Lawyers advising the Health Minister advised him that the relaxing of Covid restrictions would fall under this category.

On 14th February Health Minister Robin Swann announced, after consulting with other Ministers, that all remaining Covid restrictions, including mandatory face coverings in public places, restrictions on indoor gatherings and mandatory Covid passes for nightclubs, would become guidance rather than law. He stated during a press conference:

“Coronavirus is likely to stay with us in some form for some time. We cannot maintain emergency restrictions indefinitely. A large part of what we currently do to protect ourselves is already covered by guidance rather than regulations.”³⁵

However, he went on to say, “I will, of course, keep the situation on regulations under ongoing and detailed review. We cannot rule out a new variant emerging down the line with new interventions being required.”

32 Covid in Scotland: Mask rules will stay in force until April – BBC News, 15th March 2022: <https://www.bbc.co.uk/news/uk-scotland-60750364>

33 Covid-19: Swann hopeful for ‘beginning of the end’ of pandemic – Jayne McCormack, BBC News, 21st January 2022: <https://www.bbc.co.uk/news/uk-northern-ireland-60075431>

34 DUP: NI First Minister Paul Givan announces resignation – Damien Edgar and Eimear Flanagan, BBC News, 3rd February 2022: <https://www.bbc.co.uk/news/uk-60241608>

35 Minister Swann Announces Easing Of Covid Regulations – Department of Health, 14th February 2022: <https://www.health-ni.gov.uk/news/minister-swann-announces-easing-covid-regulations>

INTERNATIONAL TRAVEL

From 7th January, travel restrictions, which had been tightened in response to the Omicron variant, were relaxed again. Fully vaccinated travellers and under 18s were no longer required to take pre-departure tests. Day 2 PCR tests were replaced with cheaper lateral flow tests and self-isolation until the Day 2 tests results was also scrapped.

On 14th March, the Transport Secretary announced on Twitter the end of all requirements for international travel from 18th March, including passenger locator forms and tests for unvaccinated travellers.³⁶ A Government update also stated that "remaining managed hotel quarantine capacity will be fully stood down from the end of March". However, the Government stated that it would:

"(...) maintain a range of contingency measures in reserve, which would enable it to take swift and proportionate action to delay any future harmful variants of COVID-19 entering the UK should the need arise"³⁷

This indicates that the Government will likely create new regulations under the Public Health (Control of Disease) Act 1984 if a new variant of concern is detected, as it has previously done. While it is important that the government is alert to the risks of new variants of Covid, any measures taken to restrict international travel or require proof of medical status should only be taken where strictly necessary and proportionate. As we have previously outlined, the case for mandatory and expensive hotel-managed quarantine accommodation has never been made and must not return.

The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, the Regulations which have contained the myriad of changing requirements for international travel, had been due to expire on 16th May 2022. The Health Protection (Coronavirus, International Travel and Operator Liability) (Revocation) (England) Regulations 2022, which expired the principle Regulations, were published on 17th March 2022.

The Welsh government's Health Minister Eluned Morgan said that due to "the significant practical difficulties associated with diverging from the arrangements in England in this area" the Welsh Government would follow this approach.³⁸ However, she noted that the Welsh government believes that "the UK must collectively maintain an operable suite

36 Rt Hon Grants Shapps MP, Twitter, 14th March 2021: <https://twitter.com/grantshapps/status/1503411956950216705?s=20&t=VSGsfIGJp1G65aG7oL53TQ>

37 All COVID-19 travel restrictions removed in the UK – Department for Transport and Department for Health and Social Care, [GOV.UK](https://www.gov.uk/government/news/all-covid-19-travel-restrictions-removed-in-the-uk), 15th March 2022: <https://www.gov.uk/government/news/all-covid-19-travel-restrictions-removed-in-the-uk>

38 Welsh Government confirm travel restrictions for travellers to end on Friday, March 18 – ITV News, 14th March 2022: <https://www.itv.com/news/wales/2022-03-14/travel-restrictions-to-end-in-wales-on-friday-march-18>

of border health measures, including pre-departure tests, flight bans, home isolation and isolation hotels”. The Scottish government similarly stated that it has “reluctantly agreed” to follow England’s approach, despite “concerns over the lack of border controls”.³⁹ Northern Ireland also followed the move, with Health Minister Robin Swann announcing:

“I have always said I would not keep restrictions in place longer than necessary.

“As we continue to make steady steps out of the Covid restrictions, the removal of the International Travel Regulations will enable freer travel for all ahead of the Easter period.”⁴⁰

39 Covid Scotland: Travel restrictions set to end in Scotland from Friday despite Scottish Government concerns – Sam Russell, Edinburgh Evening News, 14th March 2022: <https://www.edinburghnews.scotsman.com/news/transport/travel-restrictions-set-to-end-in-scotland-despite-scottish-government-concerns-3611163>

40 Covid-19 travel restrictions to be lifted in Northern Ireland – Gareth Hargan, Belfast Telegraph, 15th March 2022: <https://www.belfasttelegraph.co.uk/news/northern-ireland/covid-19-travel-restrictions-to-be-lifted-in-northern-ireland-41448623.html>

CORONAVIRUS ACT

The Coronavirus Act 2020 contains extreme powers, the like of which have never been seen in peacetime Britain. The Government rushed the Act through Parliament in just 4 sitting days, meaning full and thorough scrutiny of the powers contained within the Act was impossible. It was passed at the onset of a national crisis, and as such, imbued ministers with far-reaching powers to respond to the pandemic.

Many powers within the Act have not proved necessary and have never been activated. However, some that have been used, namely the broad detention and dispersal powers in the Act, have been used exclusively unlawfully.

Schedules 21 and 22 contained powers to detain and test “potentially infectious” members of the public, including children, in unidentified isolation facilities (sch. 21); and powers to shut down any gathering, including protests (sch. 22). The Act contained threadbare safeguards for these extraordinary powers.

In response to reports of unlawful prosecutions, the CPS initiated an unprecedented review of every single charge made under the Coronavirus Act and has continued to conduct a monthly review for over 18 months. Every review to date has uncovered 100% unlawful prosecutions under the Act, a total of 307 charges.

These Schedules have been recently expired by the Government after sustained pressure from Big Brother Watch and MPs. It is right that these powers have been removed from the Act. However, they were in force for almost 2 years without justification. During this period, they were used extensively and unlawfully by police forces across England and Wales.

On 21st February, as part of the Government’s move to expire Covid restrictions, the Prime Minister confirmed that the Government would:

“(...) expire all temporary provisions in the Coronavirus Act 2020. Of the original 40, 20 have already expired and 16 will expire on 24 March. The last four, relating to innovations in public service, will expire six months later, after we have made those improvements permanent via other means.”⁴¹

After two years of unlawful prosecutions and weak safeguards, we welcome the Government’s decision to expire the majority of the powers in the Act. The remaining four provisions relate to jury powers and remote court proceedings. The Health Secretary said these provisions were being retained as the Government planned to make them permanent via the Judicial Review and Courts Bill and the Police, Crime, Sentencing and

41 HC Deb Living with Covid-19 (21st February 2022), vol. 709, col. 44: <https://hansard.parliament.uk/commons/2022-02-21/debates/982A4806-6695-4ECE-9D1C-4BD0E8798306/LivingWithCovid-19>

Courts Bill. Retaining them would ensure “there is no gap” before these Bills pass.⁴² Although the Government has a large majority and will likely pass these Bills through Parliament, it is wrong to expand emergency legislation in this way. Retaining powers which were rushed through Parliament in the heat of a crisis to ease the path of the Government’s legislative agenda is an unacceptable and cynical approach to lawmaking.

The Public Administration and Constitutional Affairs Committee conducted an enquiry into the Coronavirus Act, two years on. The Committee published its report on 18th March. The Committee’s Chair William Wragg MP said:

“It is unsatisfactory that since the Coronavirus Act was passed, in just three sitting days in March 2020, parliament has been unable to substantively debate its provisions as was promised during its passage.

“Strong and broad powers such as those in the Act must be accompanied by equally robust parliamentary scrutiny mechanisms, particularly in a rapidly evolving public health emergency.”⁴³

The Committee found that the Government “rushed” through the Act, rather than relying on the Civil Contingencies Act 2004 (which we have previously argued would have been a more appropriate legislative vehicle for Covid powers, due to its stronger scrutiny provisions), “and then subsequently decided to use the Public Health Act 1984 for the majority of Covid-19 related measures, which has a weaker set of scrutiny provisions applying to the use of the powers contained in the Act.”⁴⁴

When the Health Secretary Sajid Javid was questioned on why the Civil Contingencies Act was not used in place of the Coronavirus Act, he responded that “if Ministers introduced emergency regulations under part 2 (...) they could stand for only seven days, then Parliament would have to vote on them”.⁴⁵

Ronnie Cowan MP replied:

“With all due respect, some people would have said that that is what Parliament is for, and you are aware that at one point we could access Parliament through Zoom — other technology platforms are available — and we could vote remotely as well. During something like a pandemic, to ask Parliament every 30 days to rescrutinise

42 Oral evidence: Coronavirus Act 2020 Two Years On – Public Administration and Constitutional Affairs Committee, HC 978, 24th February 2022: <https://committees.parliament.uk/oralevidence/3461/pdf/>

43 Ministers failed to allow parliament opportunity to scrutinise UK Covid laws – Heather Steward, the Guardian, 18th March 2022: <https://www.theguardian.com/world/2022/mar/18/ministers-failed-to-allow-parliament-opportunity-to-scrutinise-uk-covid-laws>

44 Coronavirus Act 2020 Two Years On: Seventh Report of Session 2021–22 – Public Administration and Constitutional Affairs Committee, HC 978, 18th March 2022: <https://committees.parliament.uk/publications/9356/documents/160698/default/>

45 Oral evidence: Coronavirus Act 2020 Two Years On – Public Administration and Constitutional Affairs Committee, HC 978, 24th February 2022: <https://committees.parliament.uk/oralevidence/3461/pdf/>

legislation that is having an effect on everybody's daily life — that is really what we are here for, is it not?"

Javid argued that a lack of scrutiny and voting was in fact a good thing, as it gave "legal certainty" to the NHS and businesses. The Committee's Chair, William Wragg MP, noted that: "For legal certainty, it might be quite convenient not to have Parliament there to make changes to the law."⁴⁶ This exchange is a revealing summary of the Government's approach to scrutiny during the pandemic. It largely viewed Parliament as an inconvenience, rather than as providing an essential function of our democracy.

Devolved administrations

In Northern Ireland, Health Minister Robin Swann announced he would seek a six month extension of the Coronavirus Act powers as "[he] cannot assume that there will be no need to protect the public from a new variant in the future."⁴⁷ Paul Frew, DUP MLA, said that it was unacceptable to seek this extension whilst scrutiny from the Executive was non-existent:

"(...) this minister now wants to extend his powers, in the midst of an election period where there is no executive and there will be no assembly to hold the minister to account. Now I don't think that's sufficient, I don't think that's appropriate".⁴⁸

The Scottish Government already passed the Coronavirus (Extension and Expiry) (Scotland) Act 2021 in August 2021, which extends the provisions of the Coronavirus (Scotland) Act 2020 until 30th September 2022. The Scottish Government also extended the powers contained within the UK Government's Coronavirus Act until 24th September 2022, via the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022. These Regulations were made via the made affirmative procedure, meaning they were not voted on by the Scottish Parliament. Health Minister John Swinney justified this lack of scrutiny by claiming that "our understanding was that that was the only procedure available to us." This was incorrect, which he acknowledged before the Delegated Powers and Law Reform Committee on 1st March.⁴⁹

The Welsh Government has not indicated that it will seek to extend any provisions within the Act.⁵⁰

46 Oral evidence: Coronavirus Act 2020 Two Years On – Public Administration and Constitutional Affairs Committee, HC 978, 24th February 2022: <https://committees.parliament.uk/oralevidence/3461/pdf/>

47 Urgent Written Statement to the Assembly by Health Minister Robin Swann MLA: Health Protection Restrictions – Department of Health, 14th February 2022: <https://www.health-ni.gov.uk/sites/default/files/publications/health/DOH-WRITTEN%20STATEMENT%20TO%20THE%20ASSEMBLY%20-%20Health%20Protection%20Regulations%2014%20Feb.pdf>

48 Covid-19: Health department wants powers extended – Marie-Louise Connolly, BBC News, 15th March 2022: <https://www.bbc.co.uk/news/uk-northern-ireland-60740453>

49 Official Report, Delegated Powers and Law Reform Committee, Scottish Parliament, 1st March 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/DPLR-01-03-2022?meeting=13608&iob=123487#123487>

50 Written Question from Andrew RT Davies answered by Minister for Health and Social Services, 10th

MANDATORY VACCINATION

In our previous report, we documented the passing of Regulations which extended the requirement to be vaccinated against Covid to all health and social care staff, despite a significant Conservative backbench rebellion. The requirement was due to come into force from 1st April 2022, with 3rd February being the last date a worker could receive their first vaccination in order to be fully vaccinated for the deadline. As this date approached, there was increasing concern in the healthcare sector that the requirement would lead to catastrophic job losses.

On 12th January, Miriam Cates MP asked an urgent question on mandatory vaccination in the UK: “given the evidence on transmission, will the Government push ahead with the compulsory vaccination of NHS staff, and will they insist on a booster dose for all staff every few months?”⁵¹ Nusrat Ghani MP also pressed Vaccines Minister Maggie Throup on “what risk assessment has been done of how, if unvaccinated staff — as many as 88,000 — leave the NHS, treatment will be made available”, while Mark Harper MP said:

“Analysis from [the Minister’s] own Department, signed off by her, thinks that 73,000 NHS staff and 38,000 domiciliary care workers will leave.

“I want people to be vaccinated, but we know that the protection against infection wanes quite quickly from 10 weeks onwards, which means that we are not protecting others. I want people to be vaccinated, but I — and public health professionals — think that the best way is to persuade them, not threaten them with the sack.”⁵²

The Vaccines Minister did not address these concerns beside general statements on the importance of people being vaccinated.

Dr Clive Kay, head of King’s College Hospital, admitted he was “worried” as around 10% of staff at the hospital had not been vaccinated.⁵³ The Health Secretary was confronted at King’s College hospital by a doctor who had chosen not to be vaccinated and was facing the loss of his job. Dr Steve James told Sajid Javid in a widely shared clip:

“I’ve had Covid at some point, I’ve got antibodies, and I’ve been working on Covid ITUs since the beginning; I have not had a vaccination, I do not want to have a vaccination. The vaccine is reducing transmission only for about eight weeks with Delta. With Omicron it’s probably less. And for that I would be dismissed if I don’t

February 2022, WQ84396 (e): <https://record.assembly.wales/WrittenQuestion/84396>

51 HC Deb (12th January 2022), vol. 706, col. 576: <https://hansard.parliament.uk/commons/2022-01-12/debates/63DB2B8B-BC94-4108-A273-68197DD23A32/VaccinationStrategy>

52 HC Deb (12th January 2022), vol. 706, col. 584: <https://hansard.parliament.uk/commons/2022-01-12/debates/63DB2B8B-BC94-4108-A273-68197DD23A32/VaccinationStrategy>

53 Covid vaccine mandate could result in loss of 1,000 staff at leading hospital – the Telegraph, 9th January 2022: <https://www.telegraph.co.uk/news/2022/01/09/covid-vaccine-mandate-could-result-loss-1000-staff-leading-hospital>

have a vaccine? The science isn't strong enough.

"(...)if you want to maintain protection you're going to need to boost all staff members every single month, which you're not going to do."⁵⁴

The Health Secretary responded: "We take the very best advice that we can, from vaccine experts."

There was widespread opposition to the mandate from unions and healthcare bodies. Martin Marshall, chair of the Royal College of GPs, said: "Our view is that mandation of vaccination for health professionals is not the right way forward. Informed choice is much better than forcing people to get it because that just risks generating mistrust."⁵⁵ The Royal College of Nursing also called on the Government to delay the implementation of the mandate:

"We're calling on the government to recognise this risk and delay a move which, by its own calculations, looks set to backfire. To dismiss valued nursing staff during this crisis would be an act of self-sabotage."⁵⁶

On 18th January, the BMA stated that it was "very worried" that managers were under no obligation to redeploy unvaccinated staff:

"The NHS does have a duty to NHS staff, who have been instrumental in keeping patient services running throughout the pandemic, and considering redeployment should be an absolute requirement given how seriously staff shortages are already affecting the NHS.

(...)

"The staff working in the NHS are its most precious asset, and to terminate their employment unnecessarily, when other options like redeployment might be available, is an unnecessary waste of their skills and expertise".⁵⁷

The Doctors' Association UK called for an urgent moratorium on mandatory vaccination, followed by a review into staffing levels:

54 Unvaccinated NHS doctor challenges Sajid Javid over compulsory Covid jabs – Damien Gayle, the Guardian, 8th January 2022: <https://www.theguardian.com/politics/2022/jan/08/nhs-doctor-challenges-sajid-javid-over-covid-vaccination-rules>

55 Mandatory Covid jabs policy divides NHS leaders in England as deadline nears – James Tapper, the Observer, 23rd January 2022: <https://www.theguardian.com/society/2022/jan/23/mandatory-covid-jabs-policy-divides-nhs-leaders-in-england-as-deadline-nears>

56 RCN calls for delay to new law on mandatory COVID-19 vaccination for NHS staff in England – Royal College of Nursing, 13th January 2022: <https://www.rcn.org.uk/magazines/News/uk-rcn-calls-for-delay-to-new-law-on-mandatory-covid-19-vaccination-for-nhs-staff-in-england-130122>

57 Covid-19: Reassess effects of mandatory vaccination on staffing, urge unions- Adele Waters, the BMJ, 18th January 2022: <https://www.bmj.com/content/376/bmj.o139>

“Any reassurance gained for the public about staff presenting less of a risk because ‘only’ vaccinated staff will be treating them is easily offset by the added pressures this mandate will cause to an already buckling NHS.”⁵⁸

On 22nd January, polling for the Sunday Express revealed that 52% of the public were against unvaccinated staff losing their jobs, while less than a third of people (29%) supported the proposal.⁵⁹ On the same day, the Telegraph reported that Ministers were considering pushing back the requirement for NHS staff to be doubled vaccinated by six months.⁶⁰ It was suggested that this would allow Ministers to change the requirement to three vaccines, with the delay giving staff time to get their booster doses.

Meanwhile, amid concerns over staffing shortages, leaked documents from the Department of Health were published, stating that the evidence base for the proposals “has changed” due to the reduced impact of vaccination on the transmission of the Omicron variant. The documents warned that this meant the Regulations were more likely to be successfully challenged by a judicial review.⁶¹ Indeed, a legal challenge was initiated by a group of NHS workers against the regulations, with one of the grounds being the inadequate assessment of the impact of vaccination on transmission.⁶²

In response to sustained pressure from members of the health and social care profession, unions, Big Brother Watch and other rights groups, MPs and the public, the Health Secretary announced that the Government would open a consultation into mandatory vaccination with a view to repealing it. He stated that due to the emergence of Omicron, it was “no longer proportionate to require vaccination as a condition of deployment through statute.”⁶³ The consultation was open for just one week – Big Brother Watch and Liberty submitted a joint call for the requirement to be scrapped. There were over 90,000 responses to the consultation, with 90% of respondents supporting revoking the requirement. Respondents who were members of the public were most likely to support revocation (96%), while 84% of the respondents from the health and care workforce supported revocation. The Government response to the consultation noted that “[t]here was overwhelming support for revocation across all

58 Covid-19: Reassess effects of mandatory vaccination on staffing, urge unions- Adele Waters, the BMJ, 18th January 2022: <https://www.bmj.com/content/376/bmj.o139>

59 Covid backlash: Boris Johnson warned ditch reckless NHS rules as thousands hit streets – David Maddox and Lucy Johnston, the Sunday Express, 22nd January 2022: <https://www.express.co.uk/news/politics/1554356/Covid-rules-latest-boris-johnson-protests>

60 Covid vaccine deadline for NHS staff set to be pushed back – Edward Malnick, the Telegraph, 22nd January 2022: <https://www.telegraph.co.uk/politics/2022/01/22/covid-vaccine-deadline-nhs-staff-set-pushed-back>

61 Health department warning over vaccine mandate for NHS staff in England – Aubrey Allegretti and Denis Campbell, the Guardian, 18th January 2022: <https://www.theguardian.com/society/2022/jan/18/health-department-warning-over-vaccine-mandate-for-nhs-england-staff>

62 NHS workers launch legal challenge against Government over vaccine mandate – Joe Kasper, GB News, 27th January 2022: <https://www.gbnews.uk/news/nhs-workers-launch-legal-challenge-against-government-over-vaccine-mandate/214638>

63 Oral statement on vaccines as a condition of deployment – Department of Health and Social Care, GOV.UK, 31st January 2022: <https://www.gov.uk/government/speeches/oral-statement-on-vaccines-as-a-condition-of-deployment>

demographic groups.”⁶⁴

On 1st March, the Government confirmed it would be bringing forward regulations to scrap the vaccine mandate:

“With the population better protected and lower levels of hospitalisations and mortality, it was right to revisit the balance of risks and benefits that had guided the government’s original decisions to introduce vaccination as a condition of deployment in health and social care.”⁶⁵

On the same day, it laid the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022, which came into force on 15th March 2022.

The Department’s Explanatory Memorandum to the Regulations states:

“Further data collected by UKHSA now shows that a full primary course of an approved vaccine does not provide the intended longer-term public health protection against the spread of COVID-19 on which the vaccination as a condition of deployment policy was originally decided.”

(...)

“in light of the latest clinical evidence and the views received in response to the consultation, the view of the government is that it is no longer proportionate to require vaccination as a condition of deployment”⁶⁶

We welcome the decision to revoke this unnecessary and intrusive requirement for healthcare staff to demonstrate their vaccine status in order to retain their roles.

Limiting sick pay

Some companies introduced policies which limited the sick pay of unvaccinated staff. Morrisons, Ikea, Ocado and Next announced that unvaccinated workers would no longer receive full sick pay if they were required by NHS Test and Trace to self-isolate after

64 Revoking vaccination as a condition of deployment across all health and social care: consultation response – Department of Health and Social Care, [GOV.UK](https://www.gov.uk/government/consultations/revoking-vaccination-as-a-condition-of-deployment-across-all-health-and-social-care/outcome/revoking-vaccination-as-a-condition-of-deployment-across-all-health-and-social-care-consultation-response#analysis), 1st March 2022: <https://www.gov.uk/government/consultations/revoking-vaccination-as-a-condition-of-deployment-across-all-health-and-social-care/outcome/revoking-vaccination-as-a-condition-of-deployment-across-all-health-and-social-care-consultation-response#analysis>

65 Regulations making COVID-19 vaccination a condition of deployment to end – Department of Health and Social Care, [GOV.UK](https://www.gov.uk/government/news/regulations-making-covid-19-vaccination-a-condition-of-deployment-to-end), 1st March 2022: <https://www.gov.uk/government/news/regulations-making-covid-19-vaccination-a-condition-of-deployment-to-end>

66 Explanatory Memorandum to the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022: https://www.legislation.gov.uk/uksi/2022/206/pdfs/uksem_20220206_en.pdf

coming into contact with someone with coronavirus.⁶⁷ David Potts, the chief executive of Morrisons, said the move was partly designed to increase vaccine uptake amongst staff.⁶⁸

Workers rights should not be contingent on vaccine status. Reducing the sick pay of unvaccinated workers does nothing to keep them or their colleagues safe, but does stigmatise certain workers due to their medical decisions.

Given that self-isolation requirements have been revoked, these measures are unlikely to be retained.

67 Morrisons confirms sick pay cut for unvaccinated staff – BBC News, 18th January 2022: <https://www.bbc.co.uk/news/business-59902929>

68 Morrisons cuts sick pay for non-jabbed workers after 'biblical' pandemic costs – Jasper Jolly, Sarah Butler and Mark Sweney, the Guardian, 9th September 2021: <https://www.theguardian.com/business/2021/sep/09/morrisons-profit-drops-as-firm-warns-over-supply-chain-crisis>

FREEDOM OF ASSEMBLY

Over the past two years, we have extensively documented attempts by government ministers and police forces to suppress the right to protest.

From Black Lives Matter marches and Kill the Bill protests, to vigils across the country held in memory of victims of sexual violence and protests against lockdown laws, no cause has been exempt from overbearing and often unlawful policing. We have maintained throughout this period that an absolute prohibition of protest was not lawful. The role of the police should be to facilitate safe protests, not shut them down.

The judgment in Reclaim These Streets' legal challenge against the Metropolitan Police has affirmed this. Reclaim These Streets is an organisation formed in response to the death of Sarah Everard, a young woman who was abducted and murdered by a police officer as she walked home in Clapham one evening. Amid the context of widespread grief and public conversations about women's safety, Reclaim These Streets organised a vigil in memory of Sarah. We have detailed in previous reports⁶⁹ the protracted negotiations that the group entered into with the Metropolitan Police over their right to hold the vigil, and the group's subsequent decision to cancel their organised vigil after police officers told them they were at risk of fines if they went ahead. Due to the strength of public feeling, hundreds of women gathered regardless. The policing response was extremely aggressive, with young women pinned to the floor and surrounded by officers, and was widely condemned by politicians.

Reclaim These Streets obtained a ruling from the High Court prior to the vigil, which made it clear that a blanket ban on the right to protest was not lawful and that police forces had an obligation to conduct proportionality assessments when considering protests under the Health Protection Regulations. However, the Metropolitan Police disregarded this ruling, stating both publicly and privately to the claimants that gatherings of more than two people were unlawful. Reclaim These Streets then sought a declaration from the court that the Metropolitan Police's decision to prohibit the vigil was unlawful.

This ruling confirms the position of campaigners and rights groups throughout the pandemic. The right to protest is essential to democracy, and blanket bans on protest were not lawful. Lord Justice Warby found that the Metropolitan Police's decisions had "a chilling effect" on the exercise of claimants' Article 10 and 11 rights.⁷⁰ He stated that in spite of the pandemic, "the need for a fact-specific proportionality assessment would remain (...) The police had a duty to weigh up the competing considerations". He found

69 Emergency Powers and Civil Liberties Report: March-April 2021 – Big Brother Watch, 7th May 2021: <https://bigbrotherwatch.org.uk/wp-content/uploads/2021/05/Emergency-Powers-and-Civil-Liberties-Report-Mar-Apr-2021.pdf>

70 Leigh & Ors v (1) The Commissioner of Police of the Metropolis and (2) Secretary of State for Health and Social Care (Interested Party)[2022] EWHC 527

that “none of the decisions complained of was in accordance with the Regulations”. Mr Justice Holgate concurred:

“(...) although the law does not expect the police to engage in choosing between different viewpoints or to approve or disapprove of a particular viewpoint (...), it does expect the police to distinguish between on the one hand, a musical event, a party or some other form of entertainment and on the other, the making of a serious protest or an act of commemoration.

(...)

“the police failed to engage properly with the claimants on the issue of appropriate measures to mitigate health risks of the public attending a vigil on Clapham Common”.

Damningly, the police force’s decisions and communications were described as “legally mistaken”, “misinformed” and “incorrect and misleading”. The statement of Dame Cressida Dick, the outgoing Metropolitan Police Commissioner, on the day of the vigil was also found to be based on “mistaken legal analysis”. We have previously criticised police forces for their misleading representation of Covid restrictions in relation to protest rights.

Reclaim These Streets said the judgment was “a victory for women”⁷¹ – furthermore, it is a victory for Article 10 and the right to protest.

The Metropolitan Police stated that it was “considering the judgment very carefully before deciding whether to appeal the court’s decision”.⁷² Harriet Harman QC MP, Chair of the Joint Committee on Human Rights, tweeted:

“Will the @metpoliceuk never learn!? They are considering appealing, for heaven’s sake! It’s not an appeal that’s needed, it’s an apology.”⁷³

Several days later, the force announced it would seek to appeal the judgment.⁷⁴ London Mayor Sadiq Khan said he was “extremely concerned” about the force’s decision, stating that “the policing of the vigil (...) eroded trust”. We condemn the Metropolitan Police’s decision to appeal the judgment. In our view, this represents a disturbing disregard for

71 Reclaim These Streets, Twitter, 11th March 2022: <https://twitter.com/ReclaimTS/status/1502230918513278977?s=20&t=xRQiuwNHyweykwfEbZ5rnQ>

72 Statement following the issuing of a judgment by the High Court – Metropolitan Police, 11th March 2022: <https://news.met.police.uk/news/statement-following-the-issuing-of-a-judgment-by-the-high-court-443865>

73 Harriet Harman, Twitter, 11th March 2022: https://twitter.com/HarrietHarman/status/1502265876657102850?s=20&t=3FkkgGsOQs0M_gFOv2VM0g

74 Met to appeal against ruling rights of Sarah Everard vigil organisers breached – Nina Lloyd, the Independent, 18th March 2022: <https://www.independent.co.uk/news/uk/crime/sarah-everard-met-high-court-sadiq-khan-cressida-dick-b2039276.html>

the right to protest, human rights and citizens' rights under rule of law that has become characteristic of the force – issues that were only exacerbated during heightened policing under lockdown.

COVID-STATUS CERTIFICATION

In our last report, we documented the introduction of Covid-status certification, or Covid passes, across the UK. Regulations were passed in all four nations, although not without significant backlash. The Prime Minister suffered the biggest rebellion of his premiership over the introduction of Covid passes in England. In Scotland, Wales and Northern Ireland, opposition parties from across the political spectrum opposed their introduction.

The rapid spread of the Omicron variant, despite extremely high vaccination and booster uptake, laid bare the ineffectiveness of Covid passes. As has been clear for a considerable period of time, vaccination is highly effective at preventing serious illness and death from Covid, but it cannot stop infection or transmission. When community transmission is high, as was seen across the UK (and much of Europe) over the winter months, Covid passes provide no guarantee that a venue is 'safe', as a vaccinated individual can still carry and transmit coronavirus. Covid passes have merely acted as health security theatre and are not a serious solution to a highly infectious virus.

Amidst a surge in infections that Covid passes had clearly not prevented, the case for their use grew even slimmer. After just five weeks, the UK Government was the first to announce, on 19th January, that Covid passes would be scrapped, on 27th January.⁷⁵ Shortly after, the devolved administrations followed, with Northern Ireland scaling back the scheme on 26th January and removing the scheme in its entirety on 15th February, Wales ending the scheme on 18th February and Scotland on 28th February. These U-turns were extremely welcome, and are a testament to Big Brother Watch's relentless campaign and the extraordinary strength of public and parliamentary opposition to Covid certification. Covid passes have proved to be ineffective, as well as intrusive and discriminatory. No administration has a case for reintroducing them and none should seek to do so.

England

In our last report, we detailed then extraordinary rebellion against the Government's introduction of Covid passes in December. Although the regulations passed, the vote was a serious challenge to the Prime Minister's leadership. Big Brother Watch launched a legal challenge against the Regulations at the end of December.⁷⁶

Businesses reported problems with the mandatory scheme. Revolution Bars' Chief Executive Rob Pitcher reported multiple issues, calling the scheme 'this year's version of the Scotch egg':

⁷⁵ Covid: Face mask rules and Covid passes to end in England – Marie Jackson and Mary O'Connor, BBC News, 19th January 2022: <https://www.bbc.co.uk/news/uk-60047438>

⁷⁶ Big Brother Watch Launces Legal Challenge to England Covid Pass Scheme – Big Brother Watch, 24th December 2022: <https://bigbrotherwatch.org.uk/2021/12/big-brother-watch-launches-legal-challenge-to-england-covid-pass-scheme/>

“We were having to deal with a lot of confrontation, as people couldn’t understand why they needed a Pass, or they weren’t aware of needing to have a Covid Pass before they entered the premises.

“It is completely unreasonable for the Government to dream up very divisive restrictions, then not pay the money to run a proper awareness campaign, thereby leaving our teams to be the ones to break the bad news to guests when they are out enjoying themselves. It’s not fair on our teams or the general public.

(...)

“We were having to explain and print off government information occasionally, to show local authorities that we were operating within the guidance and their understanding was slightly misguided”.⁷⁷

In a Plan B update delivered to Parliament at the beginning of January, the Prime Minister and the Leader of the Opposition both failed to mention the impact or importance of Covid passes in combatting the high levels of Covid. Instead, the Prime Minister said:

“People in England should carry on working from home whenever they can, wear face coverings on public transport and in most indoor public places, and take a test before going to high-risk venues or meeting the elderly or vulnerable.”⁷⁸

Taking a test before visiting a crowded venue or meeting a vulnerable relative is not what the Covid pass scheme entailed. In fact, it meant that those who were vaccinated (which is over 90% of the population) did not have to take a test before visiting a venue, as they could rely on proving their vaccine-status instead. No MP mentioned the Covid pass scheme at all during the Plan B update.

On 19th January, the Prime Minister announced that mandatory Covid passes regulations would be expired on 26th January:

“This morning the Cabinet concluded that because of the extraordinary booster campaign, together with the way the public have responded to the plan B measures, we can return to plan A in England and allow plan B regulations to expire.

“As a result, from the start of Thursday next week, mandatory certification will end. Organisations can of course choose to use the NHS Covid pass voluntarily, but we will end the compulsory use of Covid status certification in England.”⁷⁹

77 ‘Covid Passes were this year’s version of the Scotch egg’ – Amelie Maurice-Jones, the Morning Advertiser, 20th January 2022: <https://www.morningadvertiser.co.uk/Article/2022/01/20/How-did-Covid-Passes-affect-Revolution-Bars-over-Christmas>

78 HC Deb (5th January 2022), vol. 706, col. 23: <https://hansard.parliament.uk/commons/2022-01-05/debates/22010526000001/Covid-19Update>

79 HC Deb (19th February 2022), vol. 707, col. 333: <https://hansard.parliament.uk/commons/2022-01-19/debates/7EC84BC6-1374-491D-B904-102ECBC941EE/Covid-19Update>

On 21st February, Prime Minister Boris Johnson announced the Government's plan for "living with Covid":

"From 1 April, we will also no longer recommend the use of voluntary Covid-status certification, although the NHS app will continue to allow people to indicate their vaccination status for international travel."⁸⁰

This came as the Government announced the end of free lateral flow tests for the general public, meaning that those who have not been vaccinated would be required to pay for tests in order to access venues. Scrapping the recommendation that venues use Covid passes on a voluntary basis is a welcome end to the haphazard and inconsistent use of Covid certification in the private sector.

Covid certification remains available for the purpose of international travel, as many other countries still require Covid certification for entry. On 24th January, it was reported that children aged 12-15 years old would be able to access Covid pass in order to display their vaccine status.⁸¹ Ostensibly introduced to make international travel more convenient for families, this move extends health status checks to children.

Wales

In our previous report, we detailed the Welsh government's introduction of Covid passes and Big Brother Watch's legal challenge against the scheme. We sought to publish legal correspondence from the Welsh government which made it clear that the scheme had a seriously limited evidence base, but Ministers blocked this publication. In the interest of open justice, we ultimately had to seek permission from the court to publish our own correspondence, which quoted from the Welsh government's response to our initial letter.⁸² We were granted permission on 9th February and were able to reveal that Ministers' expectations were that Covid passes "might" make "only a small, and probably unmeasurable" impact on Covid cases.⁸³ Our legal correspondence indicated that there was no evidence or clinical advice before Ministers establishing that the Covid pass scheme would make any significant contribution to reducing coronavirus transmission and infection; that such a significant contribution was likely; or even that there was a realistic possibility of such a significant contribution. In fact, the Welsh government indicated that Ministers were positively advised that it was unlikely that a

80 HC Deb (21st February 2022), vol. 709, col. 44: <https://hansard.parliament.uk/com-mons/2022-02-21/debates/982A4806-6695-4ECE-9D1C-4BD0E8798306/LivingWithCovid-19>

81 Children to get Covid vaccine passports in time for half-term holidays – Lucy Fisher, the Telegraph, 24th January 2022: <https://www.telegraph.co.uk/politics/2022/01/23/children-get-covid-vaccine-passports-time-half-term-holidays/>

82 Big Brother Watch issues legal claim against Welsh Ministers over "unevidenced" Covid Pass scheme – Big Brother Watch, 19th January 2022: <https://bigbrotherwatch.org.uk/2022/01/big-brother-watch-issues-legal-claim-against-welsh-ministers-over-unevidenced-covid-pass-scheme/>

83 Statement of Facts and Grounds of Claim: Big Brother Watch Limited and Welsh Minister, 11th January 2022: <https://bigbrotherwatch.org.uk/wp-content/uploads/2022/02/2022.01.11-Grounds-Big-Brother-Watch-v-Welsh-Ministers-Permission.pdf>

Covid pass scheme would reduce Covid cases.

In light of this damning lack of evidence, it is no surprise that the Welsh government announced on 10th February that Covid passes would be scrapped on 18th February⁸⁴.

84 Face masks and Covid passes to be scrapped in latest Welsh Government lockdown review – Ruth Molsalski, Wales Online, 10th February 2022: <https://www.walesonline.co.uk/news/wales-news/wales-covid-rules-masks-pass-23058759>

“

*Covid passes “might” make
“only a small, and probably
unmeasurable” impact
on Covid cases.*

- Welsh Government

”

Scotland

Scotland's vaccine pass scheme came into force on 1st October. The Health Protection (Coronavirus (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 were published on 30th September, the day before they were due to come into force. They were not voted on by the Scottish Parliament. Initially, it was one of the only schemes in the world to not permit the alternative of a negative test result for those who were not vaccinated. However, this option was added in November.

The Health Secretary faced criticism from members of the Delegated Powers and Law Reform Committee when Covid pass regulations were brought before the Committee in January. Asked why the made affirmative procedure was used to pass the Health Protection (Coronavirus (Requirements) (Scotland) Amendment (No. 2) Regulations 2021, meaning the Scottish Parliament was not able to vote, Deputy First Minister John Swinney said:

"The simple rationale was the belief that vaccination certification would be a valuable tool in boosting levels of participation in the vaccination programme among key groups in society and that that would help us to protect public health. There was a necessity to make progress with the vaccination programme as swiftly as we could."⁸⁵

Craig Hoy MSP said this approach,

"could be perceived as an example of the Government getting into bad lawmaking habits and of legislation being published too late and without due scrutiny."

The Minister responded that the action was due to "the pressing urgency of action in a public health emergency". This is an incoherent defence, considering that the Scottish First Minister announced that Covid passes would be introduced weeks before the Regulations came into force. It is absolutely an example of poor lawmaking, which utterly undermines democracy and the importance of scrutiny.

It was revealed that the Information Commissioner's Office (ICO) had warned the Scottish Government and NHS National Services Scotland that the NHS Scotland Covid Status app could be unlawful, three days before it launched. The ICO was particularly concerned that app shared "the images and passport details of Scottish users with the software company providing the facial recognition technology behind the app."⁸⁶

85 Official Report, Delegated Powers and Law Reform Committee, Scottish Parliament, 12th January 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/DPLR-11-01-2022?meeting=13506&iob=122556>

86 CO reprimands Scottish Government over need to be upfront about NHS Scotland COVID Status app's use of people's details – Information Commissioner's Office, 25th February 2021: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2022/02/ico-reprimands-scottish-government-over-need-to-be-upfront-about-nhs-scotland-covid-status-app-s-use-of-people-s-details/>

The Scottish Government scrapped plans to share this sensitive data before the app launched, but did not engage with the ICO's wider concerns about compliance with data protection law. The ICO publicly reprimanded both organisations in February:

"When governments brought in COVID status schemes across the UK last year, it was vital that they were upfront with people about how their information was being used. The Scottish Government and NHS (...) Scotland have failed to do this with the NHS Scotland COVID Status app.

"We require both bodies to act now to give people clear information about what is happening with their data. If they don't, we will consider further regulatory action."⁸⁷

Deputy First Minister John Swinney said of the investigation:

"We welcome the engagement with the Information Commissioner's Office, but there must be acknowledgement that there is a huge amount of complexity involved in wrestling with many of the questions."⁸⁸

It is precisely because Covid certification is so complex that transparency and accountability are paramount. As well as serious data protection issues, we have previously noted the serious technical issues some individuals have had with accessing their vaccine status via an app. This was raised again in Scottish Parliament by MSPs on 2nd February. Labour MSP Sarah Boyack noted that those who had received doses in different parts of the UK were unsure how to register their vaccinations, while Liberal Democrat MSP Willie Rennie said his constituents had reported similar issues.⁸⁹ A month later, the same problems were still being raised with the Deputy First Minister in Parliament.⁹⁰

On 17th February, Big Brother Watch wrote to the Scottish Health Minister and Green Ministers urging them to follow the example of England, Wales and Northern Ireland by ending Covid pass requirements.⁹¹

On 22nd February, when setting out the Scottish Government's ongoing Covid response, First Minister Nicola Sturgeon announced that the mandatory use of Covid passes would

87 Scotland Covid passport: Ministers ignored watchdog's concerns over scheme – Chris Green, MSN, 25th February 2022: <https://www.msn.com/en-gb/news/world/scotland-covid-passport-ministers-ignored-watchdog-e2-80-99s-concerns-over-scheme/ar-AAUjmCC>

88 Official Report, Scottish Parliament, 2nd March 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-02-03-2022?meeting=13609&iob=123510#123510>

89 Official Report, Scottish Parliament, 2nd February 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-02-02-2022?meeting=13561&iob=123053#123053>

90 Official Report, Scottish Parliament, 2nd March 2022: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-02-03-2022?meeting=13609&iob=123510#123510>

91 Silkie Carlo, Twitter, 17th February 2022: <https://twitter.com/silkiecarlo/status/1494224828739506178?s=20&t=YkSmRfPoRbRu9Gku5qz13A>

be scrapped from 28th February. However, the Covid pass app would remain operational to allow venues to use it on a “voluntary basis to reassure customers”.⁹²

Northern Ireland

The Covid pass scheme in Northern Ireland was the most expansive of anywhere in the UK, with certification required for entrance to licensed hospitality venues as well as large indoor and outdoor venues and events and nightclubs. Hospitality bodies reported that the requirement had been hard for struggling businesses, with one venue stating that Covid certification had caused a 25% drop in trade.⁹³

Regulations introducing the requirement were rushed into law without a prior vote in the Northern Irish Assembly. As a consequence, they were poorly drafted. On 13th January, Health Department official Elaine Colgan appeared before the Health Committee to explain amendments to the regulations. She admitted that entire sections of the regulations had to be rewritten:

“We also reworded regulation 16E entirely to ensure greater clarity on the original intention. The original drafting included some long sentences, without punctuation, and how it was interpreted depended on where you put the punctuation. A number of stakeholders had interpreted the regulation differently, so we reworded it entirely to make sure that it was absolutely clear”.⁹⁴

She was also asked by Colin McGrath MLA about the utility and practicality of ‘point-of-entry checks’:

“For many organisations and establishments, that has become quite problematic and resulted in having to employ extra staff, which is where a lot of the cost is from. It is a one-size-fits-all policy but obviously the premises in the sector are not all one size. Many rural pubs have just one person working behind the counter for the whole evening.”

She responded that although point-of-entry checks were required by law, there was “a slight difference between the legal requirement and enforcement of that and a pragmatic approach” and that “it is not (...) that there will be a problem if the checks happen to take place five feet through the door”. It is clearly nonsensical to create a stringent legal obligation for venues whilst also accepting that it will be impossible for many venues to comply with said obligation.

92 Coronavirus (COVID-19) update: First Minister’s speech – 22 February 2022 – Scottish Government, Gov.Scot, 22nd February 2022: <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-tuesday-22-february-2022/>

93 Covid-19: NI to scrap vaccine passports in pubs and restaurants – Jayne McCormack, BBC News, 20th January 2022: <https://www.bbc.co.uk/news/uk-northern-january-2022>: <http://data.niassembly.gov.uk/HansardXml/committee-30052.pdfireland-60044349>

94 Committee for Health, Official Report, Health Protection Regulations: Department of Finance; Department of Health; The Executive Office, 13th January 2022

Lastly, when questioned about the impact certification was having on transmission, Ms Colgan acknowledged: “It won’t be possible to determine what impact vaccine certification has as a measure in itself on transmission.”

The Northern Irish Executive announced on 20th January that due to passing the peak of infections, Covid passes for hospitality venues and cinemas would be scrapped from 26th January.⁹⁵ Less than three weeks later, all Covid regulations were expired, including mandatory Covid certification for remaining venues.⁹⁶ However, NI Direct still states:

“Although it is not a legal requirement, the use of certification is strongly encouraged, so you may be asked to show COVID-19 status to access certain hospitality venues, businesses and events.”⁹⁷

To guard against continued discrimination and intrusive health surveillance, this guidance should be revoked.

95 Covid-19: NI to scrap vaccine passports in pubs and restaurants – Jayne McCormack, BBC News, 20th January 2022: <https://www.bbc.co.uk/news/uk-northern-ireland-60044349>

96 Covid-19: Remaining restrictions in NI are lifted – BBC News, 15th February 2022: <https://www.bbc.co.uk/news/uk-northern-ireland-60381377>

97 Types of COVID certificates – NI Direct, accessed 20th March 2022: <https://www.nidirect.gov.uk/articles/types-covid-certificates#toc-2>

CONCLUSION

This, our 14th Emergency Powers and Civil Liberties report, marks what we hope is the end of at least this phase of coronavirus law-making and the unprecedented restrictions on citizens' liberties.

We have meticulously documented rapidly changing laws and guidance; the emergence of new health surveillance technologies; policing behaviours, and much more in these detailed reports. We have also campaigned for change, lobbying to protect human rights, civil liberties and democratic functioning in the heart of Westminster, as well as in the devolved administrations, over the past two years. We have taken legal action on numerous occasions – including as part of our priority campaign to stop mandatory Covid passes, which culminated in the biggest parliamentary rebellion against the Johnson Government during his premiership.

Now, we are looking ahead at a new terrain for civil liberties in the UK. A whole generation of our younger citizens have been denied education for significant periods and taught to accept their lives being restricted and micro-managed by authorities. For Britons of all ages, the enlargement of state control has been normalised during this period, whilst state support has been discussed much less. Against the backdrop of a radically new public experience, the Johnson Government is pursuing a raft of authoritarian legislation that increases online censorship, criminalises protests, requires more ID checks, and seeks to rip up the Human Rights Act – the greatest constitutional protection for citizens' liberties that we have in this country.

The pandemic has changed the world and will have a lasting impact. Drives towards greater surveillance, biometric IDs and medical passes, health segregation, greater police powers and enlarged state control are prevalent in governance organisations. There is no doubt that Big Brother Watch's work is vital at this pivotal moment and in the decade to come.

After the Second World War, Winston Churchill resolved to have a "bonfire of state controls", whilst also pursuing a commitment to fundamental human rights through the European Convention on Human Rights. The state's responsibilities were reimaged and whilst ID cards were being scrapped, the welfare system was being created. Likewise, in the wake of our country's resilience and values being tested unlike any other period in peacetime, let alone the growing geopolitical tensions, now is the moment for Britain to reaffirm what we stand for and what future we wish to create. It should not, in our view, be a future where the state's grip of control is ever tighter, but one where the freedoms withheld from us for so long are celebrated, protected and enjoyed more than ever. That is the free future Big Brother Watch is fighting for.