HOUSE OF LORDS

# Secondary Legislation Scrutiny Committee

## Uncorrected oral evidence: Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021

Tuesday 13 July 2021

4.05 pm

Watch the meeting

Members present: Lord Hodgson of Astley (The Chair); Lord Chartres; Lord German; Viscount Hanworth; The Earl of Lindsay; Lord Lisvane; Lord Sherbourne of Didsbury; Baroness Watkins of Tavistock.

Virtual Proceeding Questions 1 - 12

## Witnesses

I: Nadhim Zahawi MP, Minister for Covid Vaccine Deployment and Minister for Business and Industry; Stuart Miller, Director, Adult Social Care Delivery, Department of Health and Social Care; Martin Teff, Head of Covid-19 Vaccines Consultation and Legislation, Adult Social Care, Department of Health and Social Care.

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# Examination of witnesses

Nadhim Zahawi, Stuart Miller and Martin Teff.

Q1 **The Chair:** Minister, thank you very much for taking the time out of your busy day to come and talk to us today. Welcome. I should say "Welcome back", because you have been before this committee before. It was not when I was Chair, but I understand that you gave a polished performance, which we are anticipating again today. I also welcome Mr Miller and Mr Teff. Could I remind you, as is always the case at these events, that this is a formal evidence-taking session? It is on the record and is being webcast live. A verbatim note is being taken, which we will put on the public record in printed form and on the parliamentary website. We will be sending you a copy of the transcript for amendment of any errors. Our team would appreciate a quick return of that from the point of view of us being able to complete our scrutiny.

Finally, I have to ask members of the committee formally for the record whether they have any interests they wish to declare. In the absence of anybody waving their hand, I will assume that there are none. We have 60 minutes—or probably 58 minutes now. We may, Minister, if we feel it necessary, ask for more written evidence. I would ask everybody to raise their hand and wave wildly if they want to contribute and join the discussion.

If I could, I would like to break with normal practice and begin by setting our committee's concerns in context. It would help to explain a little about the circumstances for us asking you to join us today. Most importantly—we need to get this on the record—the committee recognises the extraordinary and very special pressures which the pandemic has put on the Government, the importance of keeping our fellow citizens safe, and how difficult it is to strike the right balance.

Equally, Minister, you will be aware of the phrase, "The road to hell is paved with good intentions". There are three or four areas which this committee has been concerned about for some time. They are, first, a blurring of the difference between regulation and guidance; secondly, a failure to produce guidance of sufficient granularity to be helpful or sometimes any guidance at all in time for the scrutiny of the parent regulation; thirdly, a failure to produce impact assessments on time; and, fourthly and finally, a tendency to mission creep and an ability to extend the reach of powers, in an as-yet-unspecified way, at a future date.

We have raised these concerns in a number of places at a number of times, most notably with the Lord President of the Council, Jacob Rees-Mogg, who wrote to us on 6 July: "As a general principle, legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation. Similarly, where guidance accompanies legislation, it is important that it describes the effect of the legislation accurately, and I have asked officials to remind departments of this". That was just on 6 July.

I hope you will forgive me if I say that the committee feels that this

instrument infringes nearly every one of those tenets, and we would like to discuss that with you today. That is the background for us wishing to have this session with you and your two officials. Before we go to questions, would you like to say something or would you like to get down to the nitty-gritty straightaway?

***Nadhim Zahawi:*** I am grateful to you, Lord Hodgson. I completely understand where the committee is coming from. I wanted to come and spend time with you, because you play a vital role in this really important process. Part of the success of our vaccination programme in the United Kingdom has been the ability to move at pace and speed but also to carry people with us. It is really important that I just place that on the record. I hope, through today's evidence session, I am able to address the specific areas that you outlined.

Suffice it to say, as you will know, that over the last year and a half Covid has sadly taken many thousands of lives, particularly the lives of older people. Now we have had 14 or 15 months of having to deal with this pandemic and just over seven months of vaccination, there is clear evidence that the JCVI—the Joint Committee on Vaccination and Immunisation—was absolutely right to prioritise the residents of care homes and those who look after them as phase 1, category 1, with the rest of social care and healthcare in category 2. I will return to all those.

It is just worth bearing that in mind. That is the landscape or the background to all this. You will all know that more than 30,000 deaths among care home residents have sadly occurred. We have also lost some of our most dedicated care workforce to this pandemic. This time last year, although infection rates were falling and restrictions were easing, we continued, in my view absolutely rightly, to make preparations to support care homes through the winter. Thank goodness we did. There were sadly many deaths, but without all the PPE and testing it would have been much, much worse. I am so glad that we made those preparations and scaled up testing and PPE for care homes.

Looking ahead to this winter, we know that it is likely to be another challenging time. We are making preparations at the moment. We have had interim advice from the JCVI on the booster campaign, which we are operationalising to begin around 6 September. As for the current vaccination programme, the very clear advice from the experts, from SAGE, is that the minimum threshold—this is not where we want to get to, but the minimum protection—for the most vulnerable people in our care homes is to get a one-dose uptake rate of 80% for staff and 90% for residents.

Despite a huge effort to drive up uptake, contracting visits by primary care and GPs to go to care homes four times, webinars, local champions and an uptake strategy designed with local government to deliver that ramp-up in uptake, we are not there yet. The latest published data shows that only 44% of care homes in London, for example, are meeting this level with their staff.

It is critical that we not only meet but absolutely smash that number, and I will tell you why. This is the most contagious respiratory aerosol-transmitted virus that mankind has experienced. Thankfully it is not the most lethal, because there is a balance that viruses strike. If it becomes too lethal, if it becomes like Ebola and disables the host's body, it fails. Nevertheless, for the most vulnerable people in care homes, it is absolutely lethal.

Hence my plea to you is about the speed at which we have to move to do the work that we need to do with this committee, while making sure, as you say, that we satisfy you. To your quote, "The road to hell is paved with good intentions", I absolutely agree. We have developed this policy at pace in order to ensure that the necessary protections are in place ahead of winter, when the risks that present themselves are pretty high and will be exacerbated further by the winter flu season.

**The Chair:** Minister, what we are interested in is how these regulations take us to the promised land that you suggest and that I am sure we all endorse.

***Nadhim Zahawi:*** Yes, absolutely. For example, because of our experience over the past eight months with the vaccination programme, we want to co-produce guidance with the sector. That will deliver the best operational outcomes. If we are all interested in ensuring the protection of the most vulnerable in our society, and enacting our duty of care to them by protecting the workforce that looks after them and the people who enter homes, we are doing the right thing. We are allowing a 16-week grace period to ensure that we minimise the impact on the lives of the workforce, the residents and the sector as a whole. A lot of work is taking place on the co-creation of the guidance.

I want to return to the impact assessment issue. We are working hard on this.

**The Chair:** I understand that you are giving this bravura positional speech, but we have some quite granular questions that we would like to get down to.

***Nadhim Zahawi:*** Let us do it.

**The Chair:** We are all aiming in the same direction, Minister. We are reassured by you saying that you want to take people with you. We are worried that this regulation does not take people with you, because it does not give Parliament sufficient scrutiny. If I may, I would like to get down to some of the detailed questions and ask Lord Sherbourne whether he would like to kick off.

Q2 **Lord Sherbourne of Didsbury:** I certainly take the point about speed, Minister. I totally endorse that, but the first question I would like to put to you is this. The regulations at the moment require staff and other tradespeople entering a care home to produce evidence of their vaccination or exemption status to the registered person. In the

information we got from your department, we were told that evidence could be provided by the NHS app. We were not clear: is this the same mechanism that is currently used for international travel? If it is, why was this not mentioned in the Explanatory Memorandum?

***Nadhim Zahawi:*** Thank you very much for that question. It is the NHS app or a physical letter, because we also recognise that some in the workforce or entering care homes do not have a smartphone. They can have either one. It is the vaccination and the very-soon-to-be-added-to testing app, which NHSX has developed. We now have agreements with 33 countries around the world on that, so it is the same app that we will be using, or a physical letter, which has some security added to it, to deliver that proof.

Q3 **Lord Sherbourne of Didsbury:** That is very helpful, because in fact some of us who are travelling or hoping to travel are going through the same process of having it both printed and on the app. It would have been very helpful, if I may say so, had that information been provided in the memorandum.

The next question is this. To avoid sanction, the registered person will need to demonstrate that he or she has checked everyone's status. It is not clear from the information that we have how this is to be done. You say, "The method of proving compliance will be a localised decision based on what is appropriate for each setting and not prescribed by DHSC". Is this a clear and simple way of demonstrating compliance?

***Nadhim Zahawi:*** From operational experience, yes. It usually is the person who manages the care home. The service provider is the legal entity responsible for carrying out the regulated activity and is therefore answerable to the CQC. A resident manager is the person appointed to provide that service, and they will have to satisfy themselves that they have checked somebody's vaccination status and have registered that they have been fully vaccinated.

Operationally, that is the best way of doing it. I have an aunt in a care home. The best way to do it is to allow flexibility and localised ways of handling this. Some bigger operators, Barchester and others, will be able to provide a bigger system, but you have to allow for smaller operators to do this as well. We want to make it as simple and easy as possible for them to record that they have registered that person who is coming in. Whether it is someone coming in to work on an en suite bathroom for my aunt in her care home, or someone who is working permanently in that care home, they need to be able to hold that record and demonstrate it to the CQC upon inspection and requirement.

**Lord Sherbourne of Didsbury:** I completely understand that you want that flexibility, but our concern is whether the people having to do this will be clear on what they have to do. Is it clear enough to them how they can know whether they are compliant? I am not sure that I am quite clear, but maybe they would be clear, I do not know.

***Nadhim Zahawi:*** All I would say on that is what I said at the outset. Maybe I will bring in Stuart to say a little more on this. We want to co-create the guidelines with the sector so that the practical application, which you are getting at, is not just common sense, but common sense where you can hold people's hand and say, "This is what you do if you are a small care home. This is what bigger care homes do". We will give them examples of how they can do it. Stuart, I do not know whether you want to come in here.

***Stuart Miller:*** Thank you, Minister. That is exactly right. We are anticipating that the service provider or manager will ask for evidence. We are not expecting them to record any data other than to say, "Yes, I've seen evidence of vaccination or evidence of exemption", and to have that record available when inspected by the CQC. We are not anticipating any depth of data being recorded other than a yes/no binary record. Of course, many people will be coming into care homes regularly, and it may be that this check just needs to happen once, so that the care home manager or the person on the reception desk is aware of the status of people coming in and out regularly.

Q4 **The Earl of Lindsay:** Minister, you referred earlier to SAGE's recommendation that 80% of staff and 90% of residents should have had the first dose, but the department chose with this regulation to require full vaccination. Why did you go beyond SAGE's advice?

***Nadhim Zahawi:*** I will tell you why. First, SAGE's advice is a minimum threshold. Secondly, we are learning more about this virus as time goes by. We have had the vaccines regulated, safe and deployed at scale for only seven or eight months. We are touching almost 81 million vaccination events in the UK. As I said, this virus is probably the most infectious respiratory aerosol-transmitted virus that the world has ever experienced, hence why we want to make sure that those who are most vulnerable are as protected as we can make them with this legislation.

It is really important that we get this right. If frail people in residential care homes catch influenza, we know that it can be life-threatening. This is a quantum more infectious. You could talk to Richard Sykes, who is the head of the Vaccine Taskforce. To be infected with influenza you need 10 to the power of three particles. The latest data is that, with this virus, you need maybe seven, eight or 10 particles for an infection. It is highly infectious, and hence we have a duty to protect the most vulnerable in our society with this legislation.

**The Chair:** Your official Stuart Miller wants to come in. Do I see you waving, Mr Miller?

***Stuart Miller:*** Yes, I was not sure whether you wanted a physical hand or a virtual hand, so I waved my physical hand. Just to add to what the Minister was saying, the SAGE advice is from the social care working group of SAGE. As the Minister says, that advice was in relation to the first dose. We had that advice in March. Of course, the onset and rise of the delta variant took off in mid-April, so I would argue that we are now

seeing a more transmissible and dangerous variant in circulation. In fact, I would say that the case for going above and beyond the SAGE recommendation is made partly by that.

On uptake more generally, it feels like we are into the hard yards here of driving uptake. As we were saying earlier, we have done a great deal on the softer levers. Increasingly, it looks like we need more to get us to where we want to be.

**The Earl of Lindsay:** Thank you for the explanation.

Q5 **Lord Lisvane:** Good afternoon, Minister. Can I follow up, in a sense, on what Lord Lindsay was saying about the statistics? You have told us that, as of 27 June, 85% of total staff in care homes serving older people have had a first dose and 74% have had a second. When you say "older people", I take it that is people over the age of 65. It is a little hard to follow in places, because your statistics deal with different categories in quick succession, and it is slightly hard to make the distinction. That is a bit over a fortnight ago now. Can you update us on the current percentages?

***Nadhim Zahawi:*** Yes. Stuart, do you have the latest data in front of you?

***Stuart Miller:*** I will come back to you on the latest data, but I have in front of me the 4 July data, which is the most recent published data. In older adult care homes, which is the 65-plus category, for residents it is 96% for first dose and 93% for second dose; among staff, it is 86% for first dose and 75% for second dose. I have figures for working-age younger adult care homes, too. Among residents, it is 92% for the first dose and 87% for the second dose; among staff, it is 83% for the first dose and 72% for the second dose. In the younger adult care homes, the figures are slightly lower.

**Lord Lisvane:** Fine, that is very helpful. It would be very helpful to the committee to have the latest available figures after we finish this afternoon's session. Those are based on responses from 98% of providers. Presumably, there is a continuing dialogue with all the providers who are updating your information. Can you tell me how many people—I am thinking now of care home staff particularly—might have exemption from vaccination?

***Nadhim Zahawi:*** I can get you information on the percentage of people who are exempt from vaccination, if we have it available. I can certainly look to supply it to you. This probably impacts on the question asked earlier about the impact assessment, but Barchester Healthcare, for example, has 16,000 staff. After exemptions for health reasons, only 78 people out of that 16,000 refused to be vaccinated or were lost because of the requirement for staff to be vaccinated. That is 0.5% in staff loss, which is important when we start looking at the impact on the sector.

**Lord Lisvane:** That is really helpful, and that puts it in proportion as well. Given those very high figures that Mr Miller gave us a moment or

two ago, some people might say that the need for legislation has perhaps decreased a little. Presumably, the driver will be those hotspots. You quoted London at 44%. That underlies the need to legislate as opposed to allowing matters to take their course.

***Nadhim Zahawi:*** Indeed. There is a geographical spread, London being a particularly concerning region of the country for us. It is also interesting to note—I have just seen it on the wires—that President Macron has announced something similar. That goes further, in that all healthcare and social care staff in France will be required to be vaccinated. Through our consultation on this legislation, the feedback came back that we should be looking at domiciliary care and at the rest of the healthcare system under our duty of care to the most vulnerable who are, say, in hospital. We should be consulting on effectively widening the requirement to the rest of the healthcare sector and the rest of the social care sector, such as domiciliary care.

The best way to put it to you is this. If the vaccines protect against serious illness, hospitalisation and death at a rate of 96%—it is obviously lower for transmission—we want to avoid inflicting that lethal damage on 4% of this large community of residents, who are the most vulnerable, and the care workforce. It is important that we are protecting people. The world has now surpassed 1 billion doses of the vaccine. These vaccines are incredibly safe and incredibly effective, hence why we want to do this.

**Lord Lisvane:** Indeed. Mr Teff wanted to follow up on one of your answers, Minister.

***Martin Teff:*** To reinforce the point about variations, as well as the national figures that Stuart quoted, there are figures for the proportion of care homes that are meeting the 80% or 90% threshold as advised by SAGE. According to the latest published data, still only 65% of care homes in the country are meeting that dual threshold on an individual care home basis, and that falls to 44% in London. There is still quite a long way to go, in particular regions such as London and nationally.

**The Chair:** That takes us to and partially answers Lord German's question, but, Lord German, do you want to probe a bit further on these differential figures?

Q6 **Lord German:** Yes, I would not mind. You have told us that there is significant difference regionally and locally. Could you give us some understanding, as it is not clear from the documentation that accompanies this legislation, of why there is that variance between having 85% of staff meeting that standard and only 65% of care homes meeting the criteria? Is it because they are the larger ones? Is it because of their locality, and why London? Can you give us some sense of why that difference is occurring?

**The Chair:** Mr Miller wanted to come in on this, Minister, if that is all right. He is waving his hand furiously.

***Nadhim Zahawi:*** I will let Stuart come in on this. Suffice it to say that we have worked with local systems, whether it be the London NHS team, the Mayor of London or in other areas. We have worked to try to unpack some of that variation, including carrying out our own direct telephone calling to those who are falling below the threshold and trying to understand why that is happening. Stuart, I do not know whether you want to come in and unpack some of the work that we did.

***Stuart Miller:*** I was just going to talk about the variation point. A number of people have asked in the past why these high overall figures do not translate into a high proportion of the care homes meeting the threshold. The reason, as we have tried to set out, is a significant variation in performance. It is worth knowing that the market of care homes is dominated by a very large number of small care providers. That large number of small providers will be contributing to this low performance against that 80% or 90% threshold.

From ONS data, we know that there are some areas that experience greater hesitancy. Nationally, about 4% of the population say that they are hesitant; if you look at London, it is 7%. If you look at it on a socioeconomic basis, in more deprived areas the hesitancy is 8%. There is this geographical variation. Clearly, that will be in pockets as well. There will be individual care homes and many, many small care homes. The big four providers—Bupa, Four Seasons, Barchester and HC-One—have about 15% of the care home market between them, so 85% of the market is dominated by smaller providers. That goes some way to explaining it.

**Lord German:** Is it the very small individual care homes or those that are small by comparison with the big four, because 85% of the market is a lot?

***Stuart Miller:*** Apologies, but we will have to come back to you with that analysis by stratification of the market. I do not have those figures in front of me.

Q7 **Lord German:** You are trying to target this legislation, presumably, at that group of people, yet we do not have the explanation of who those people are. That would be very helpful.

What is your reasoning for not requiring all visitors, including the family and friends of care home residents, to meet the same vaccination standard? After all, when they go into a care home, they are just as infectious as anybody else who may not have been vaccinated or who maybe even has been vaccinated. Why do you concentrate only on those? In other areas, you are concentrating on those who work outside the care home but go inside, even hairdressers. It seems very strange that you are not including visitors, who of course will be quite numerous, if they can get in.

***Nadhim Zahawi:*** Part of the reason is because, if you are a hairdresser, an employee of a care home or a GP going to a care home, you are very

likely to go into more than one care home. You may visit a number of care homes. Therefore, if you happen to be a superspreader, and unvaccinated, you could create a serious problem for that community as a whole. With a family member, there is a very different relationship; you are going in to see your family member and you are probably very anxious in wanting to protect them, as I would be with my aunt when I visit her.

The driver behind that is really to minimise the probability of infection and, operationally, to make it effective and reasonably easy for care home providers to manage. Stuart, I do not know whether you want to add anything else on this.

***Stuart Miller:*** Yes, just a couple of things. Throughout this pandemic, we have been trying to strike the balance—sometimes people say that we have not got it right—between protecting the residents in the care home and keeping them connected to their families. We recognise how important that is for their well-being, for their mental health and to avoid deterioration. Keeping people in contact with their families is very important.

It is possible to find another plumber; it is not possible to find another child, grandson or relative. We need to strike that balance by ensuring that the rights of the people living in care homes are protected as well, including their right to family life.

**Lord German:** It just seems to me that, given the very infectious variant that we have at the moment, unless you have complete separation of the visitor with their relative, people are likely to pass other people in a corridor or to be in a room when they are there. If I were wanting to visit an elderly relative in a care home, I would want to know not only that was I protecting myself and my relative, but that other people coming in were protecting my relative as well.

Is the rationale simply that it is quicker and easier to legislate in the way you are doing it? Did you want to think about extending it? Are you leaving it to the discretion of care homes?

***Stuart Miller:*** We are not intending to extend this to visitors. A significant degree of infection prevention and control goes on around visiting: visitors are required to take lateral flow tests, they are encouraged to use PPE and to maintain distance, and there is guidance about handwashing and so forth. There is quite a degree of control or precaution around visiting.

Q8 **Baroness Watkins of Tavistock:** Chair, you gave us the opportunity earlier to declare any interests. I am a registered nurse and a member of the Royal College of Nursing, and I am involved with two quality committees for care homes, one for people with learning difficulties and another for older people.

My concern, Minister, is that we do not appear to have had an impact assessment of the current viability of care homes and of any risks to their

operation if a high proportion of the care home workforce declines to be vaccinated, recognising that particularly small care homes in rural environments find it very difficult to get staff at the moment.

Do you have an assessment of the potential size of the cohort of care home staff who may become ineligible to work and how this would affect high-quality care?

***Nadhim Zahawi:*** You are absolutely right to say that it is important that we have an impact assessment, which we are working on. We will have that, I hope, by the end of July. I am also hoping, if the committee will support this, to be able to do an impact statement before the Lords debate on this, because it is really important. That will mean having to work all the hours of the night between now and then, but it is something that I will certainly consider with your permission.

**Baroness Watkins of Tavistock:** Could I just come back to you on that? I am delighted to hear that, and I recognise the amount of work involved. I am very pro-vaccination, so please take this the right way; I think you are doing a great job. But the feedback I am getting, very seriously, is that this is anti low-paid workers, anti women and anti certain members of the BAME community, who truly do not believe in vaccination. Will the impact assessment grasp those issues?

***Nadhim Zahawi:*** I have spent a lot of my time on this. I launched the uptake strategy on 13 February to make sure that we make access to the vaccine—this is not about people who are vaccine hesitant; this is about access to it and access to information about it—available to those communities. I am glad to see you nodding, because that is exactly how we win this argument. We did some tremendous work with the Bangladeshi community and we saw an uplift in uptake. We did similar work with the Pakistani community and, again, saw a big uplift in uptake. We are taking those lessons and seeing how we could scale them up for other communities, such as the black and Afro-Caribbean community.

These are the hard yards. This is the reason we contracted with GPs to go four times into care homes. The best way I can bring it to life for you is this. The director of primary care in the NHS is a GP called Nikki Kanani. She was vaccinating in care homes. While vaccinating the staff, there was a member of staff from the black and Afro-Caribbean community, a middle-aged lady, who said, "No, we don't take vaccines in my family. We've never taken vaccines".

She spent four hours standing next to Nikki while she was vaccinating her colleagues and the residents. She was asking questions constantly, and Nikki was sharing all the information with her about the vaccines and how they were developed. She raised concerns about fertility and all sorts of other things. Before Nikki left, she tapped her on the shoulder and said, "D'you know what? I'll take the vaccine now". These are the hard yards.

**Baroness Watkins of Tavistock:** A lot of us have been doing work like that.

***Martin Teff:*** On some of the issues that you raise, we have published a public sector equality duty assessment, which went alongside our consultation response. That looked very much at the potential for disproportionate effect of the policy on the groups you reference and others. To some degree, that would also be drawn out as part of the impact assessment, but we have published information on that in the public domain already.

Q9 **Baroness Watkins of Tavistock:** Thank you very much. Are you aware that some part-time staff who have had the vaccination in care homes have had to take a day off to get over side effects and have not been paid? We need to do something about that.

***Nadhim Zahawi:*** You are quite right, Baroness Watkins. We are working with employers across the sector and the rest of the economy to make sure that they do everything in their power to facilitate the vaccination programme for their staff. People are responding really strongly to this.

I just want to put the committee's minds at rest. With Lord Lisvane, we talked about Barchester Healthcare. That is a big sample. I come from a research background. Of 16,000 staff, only 78 ended up not wanting to be vaccinated and therefore either being redeployed—because this is a condition of deployment rather than employment, of course—or leaving the company. It is important that we look at that sample, for example, to understand what the impact would be.

To the question earlier from Lord Lisvane about data, Stuart quoted you the latest data. Another iteration will be published on Thursday, but the data that we quoted was the latest. Sadly, we do not hold data on the percentage of people who are exempt from vaccination, because this is our first attempt at making it a condition of deployment in the healthcare sector.

Q10 **The Earl of Lindsay:** I just want to come back on the NHS itself. Minister, in the context of the Macron announcement, which you referred to, you agreed that there was a requirement now to drive vaccination uptake across the rest of the NHS service provision and the rest of the healthcare sector. Why has the NHS not managed to achieve the vaccination levels recommended by SAGE?

***Nadhim Zahawi:*** The NHS front-line workforce has achieved very high levels: 93% or 94% of front-line staff are now vaccinated with first and second doses. The consultation that we carried out for this piece of legislation came back very strongly to suggest that we should look at the whole of the healthcare sector. We will be required to do another piece of consultation on the NHS and front-line healthcare staff about making it a duty of care or condition of deployment for the larger workforce of the NHS, the healthcare sector and, of course, domiciliary care.

**The Earl of Lindsay:** With everything else that you have in train, are you confident that you can achieve this impact across the rest of the healthcare sector? It is a huge challenge, I would imagine. Are you optimistic that you can get the programme pushed out and taken up?

***Nadhim Zahawi:*** Yes, very much so. For the rest of the healthcare sector, we will have to have that consultation. Then we will come back and look at that, and return to this committee if we think that is the direction of travel—ie that we will legislate to make it a condition of deployment for domiciliary care, as an example, and the rest of the healthcare sector. It is important that we have that consultation with the sector, and it is important that we get that feedback.

They have responded really well to this. There is precedent. This is slightly different, but surgeons in the NHS can practise only if they have the hepatitis vaccination, in order to protect their patients and the people they are operating on. That duty of care is already a precedent in our healthcare system: you protect yourself by vaccination if you are going to practise or look after those who are incredibly vulnerable to infection. That is also important. We will have to assess that once we have consulted.

**The Chair:** Lord Chartres is invisible, but he is audible. He wanted to ask a question.

Q11 **Lord Chartres:** I am sorry to be a disembodied voice, but I have been listening very carefully. Listening to you, nobody could doubt the laudable ambitions of this regulation. Of course, scrutiny also involves checking compatibility with human rights legislation. Has the department taken any advice about providing exemptions only for medical reasons and not for any other reasons.

***Nadhim Zahawi:*** Martin touched on the assessment of equality that we published. That is important. We also considered the exemption of religious belief. Again, we chose not to go down the route of making that exemption, not least because I think it would also create tensions within the workforce in this sector as to why people are exempt. It would also probably dilute the reason why we want this to become a condition of deployment, which is ultimately to protect the workforce but also to protect the people they are entrusted to look after, who are the most vulnerable in our society to serious infection and death from Covid. I do not know, Martin, whether you want to come in on this at all.

***Martin Teff:*** We have extensively sought legal advice from Sir James Eadie throughout the process of developing these regulations. That covers all kinds of things, including how the policy interacts with employment law, the implications for human rights legislation and a whole range of factors. Understanding the issues and risks of different exemptions was central to that process. In the policy, we have ended up with a carefully balanced judgment in understanding those legal risks and rights, and understanding the public health outcomes that we need to deliver for the policy overall. I do not know whether Stuart wants to come in as well.

***Stuart Miller:*** I am not sure whether this is necessary, but I was just going to run through the full list of exemptions. It is residents. It is friends and family—ie visitors, including essential caregivers. It is

emergency services in the course of their business. We have made an exemption for people conducting urgent maintenance; we do not want there to be a broken lift or burst pipe that does not get sorted because we cannot find a vaccinated tradesperson. That was in direct response to feedback from the sector. There is then a range of exceptions for clinical reasons, including people who are participating in trials. There is an exemption for under-18s, and one for end-of-life and bereavement support to residents.

**Lord Chartres:** I have had two jabs myself, so you will understand that this is not a matter of personal concern, but as a committee we have had representations from Christian Science, which itself runs care homes and which says that this will be a very considerable problem for them. I think it is such a significant issue that perhaps it ought to be mentioned at some point in the explanations that accompany the regulations. To say that there is no exemption on any grounds other than medical is quite a serious principle which perhaps some people would want to debate.

***Nadhim Zahawi:*** Lord Chartres, that is a point well made. Let me take that away and reflect on it, in terms of the explanatory notes on this.

Q12 **The Chair:** Those are all the questions. Thank you very much indeed, Minister. Thank you, Messrs Miller and Teff. As Chair, I want to ask one last question. You see that this has aroused a certain amount of concern and angst among the committee. What would you do differently, if you were starting again?

***Nadhim Zahawi:*** My goodness, that is a tough question. If I were starting again, I would make sure, which we are going to do now anyway, that we get you an impact statement. Going back to your opening remarks, rather than the committee having to push the Minister to make sure that happens, as you have today, it would have been much better if we had decided to come fully armed with that statement beforehand. But life is not perfect. I shall concede that to you, because you are absolutely right, and I will take that rap on the knuckles. We will go away and work 19-hour days, as we do, but we will make sure that happens.

**The Chair:** Thank you very much indeed. I want to say that we appreciate the pressure that the Government, the department and officials have been under. We understand the importance of being successful in what you are doing, so I do not want you to think that we are trying to delay the passage of these regulations for any reasons other than getting a proper level of public scrutiny. We want this to be a success as much as you do.

We will conclude again by thanking you. After this, the committee will meet for our normal Tuesday session. We will be back in touch as to whether we feel reassured by the very persuasive explanation from you and your two officials, or whether we would still like to see something, maybe your impact statement, so that the House can have some background to the questions we have been asking you when we come to debate the regulations.

I am sure I speak for the committee when I say that we are extremely grateful to all three of you for coming along and answering our questions so fully this afternoon. Thank you very much. We look forward to seeing you again, probably not too soon.

***Nadhim Zahawi:*** Thank you so much, Lord Chair.