

PARLIAMENTARY REPORT

February–May 2022

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COVID-19 AND RELIGION

On 21 February, the Prime Minister announced the ending of the remaining COVID-19 restrictions in England and the Government published *COVID-19 Response: living with COVID-19*. On the following day, the Scottish Government published *COVID-19: Scotland's strategic framework update February 2022*, and the First Minister set out an indicative timescale for lifting the remaining legal protections in Scotland. In Northern Ireland, the Health Minister announced on 21 February that, though his department would give careful consideration to the UK Government's plan for England and its implications, no decisions had been taken on any changes to Test and Trace in Northern Ireland.

On 4 March, the Welsh Government published *Together for a Safer Future: Wales' long-term COVID-19 transition from pandemic to endemic*, which set out a gradual, phased approach towards the long-term management of the virus on the basis that new waves of infection would not be so severe as to put unsustainable pressure on the NHS. On 29 March, it published *Alert Level 0: guidance for the public. Public health advice for living alongside coronavirus*. It subsequently announced that the Regulations made under the Public Health Act 1984 would be extended at least until Good Friday, 15 April, including the legal requirement to prepare, record and implement a risk assessment for all activities for all regulated premises, including places of worship and community centres. However, some restrictions were relaxed from Monday 28 March.

In May, Baroness Hallett published her *Terms of Reference Consultation Summary Report* on the responses to her consultation on the Government's proposed terms of reference for the UK COVID-19 Inquiry, together with her conclusions.¹ A major criticism of the draft terms, particularly but not exclusively

¹ UK Covid-19 Inquiry, *Terms of Reference Consultation: summary report*, 18 May 2022, <<https://covid19-public-inquiry.uk/wp-content/uploads/2022/05/FINAL-Consultation-Summary-Report.pdf>>, accessed 7 June 2022.

from faith communities, had been the total absence of any mention of the impact of the COVID-19 restrictions on the practice of religion.

Baroness Hallett noted that the consultation had ‘heard from faith groups about the restrictions applied to places of worship and the impact this had on community support, the marking of life events such as marriages and funerals, and the observation of religious festivals’ and the concerns expressed about the interaction between restrictions on places of worship and Convention rights. She recommended that the terms of reference be amended to include ‘the closure and reopening of the hospitality, retail, sport and leisure and travel and tourism sectors, places of worship, and cultural institutions’.² She did not, however, agree that the Inquiry should apply a specific human rights focus to its investigations because she believed that the draft terms of reference already gave sufficient scope fully to explore human rights issues.³

The period under consideration concluded with the publication on 25 May of the report by the Second Permanent Secretary at the Cabinet Office, Sue Gray, into ‘Alleged gatherings on Government premises during COVID restrictions’: slightly mistitled, given that, far from being ‘alleged’, the gatherings had in fact taken place and 83 people, including the Prime Minister and the Chancellor of the Exchequer, had received fixed penalty notices from the police as a result.⁴

COURT OF ECCLESIASTICAL CAUSES RESERVED

On 14 January 2022 the following were appointed to the Court of Ecclesiastical Causes Reserved by Royal Warrant under the Sign Manual for a five-year term from 1 December 2021: Bishop Warner of Chichester, Bishop Treweek of Gloucester, Bishop Francis-Dehqani of Chelmsford, Lord Justice Lindblom and Lord Justice Males. The court last sat in the late 1980s: see *Re St Stephen Walbrook* [1987] 2 All ER 578.

CHARITIES ACT 2022

The Charities Act 2022, which implements a series of recommendations by the Law Commission to amend the Charities Act 2011, received Royal Assent on 24 February. The Charity Commission said that it would not be possible to bring the Act into force immediately because some changes require secondary legislation and others require changes to the Commission’s systems and processes.

² Ibid, p 19.

³ Ibid, p 18.

⁴ Cabinet Office, *Findings of Second Permanent Secretary’s Investigation into Alleged Gatherings on Government Premises during COVID Restrictions*, 25 May 2022, para 6.

The aim is to implement the changes that affect the Commission in stages, ending in the autumn of 2023.

The Department for Digital, Culture, Media and Sport subsequently published an implementation plan for the Act.⁵ It expects that the following sections will be brought into force in autumn 2022:

- i. Section 4: Power to amend royal charters;
- ii. Section 5: Orders under section 73 of the Charities Act 2011;
- iii. Sections 6 and 7: *Cy-près* powers;
- iv. Section 8: Power of the court and the Commission to make schemes;
- v. Sections 15 and 16: Ex gratia payments;
- vi. Section 30: Remuneration of charity trustees etc providing goods or services to charity;
- vii. Section 32: Trustee of charitable trust: status as trust corporation;
- viii. Section 36: Costs incurred in relation to tribunal proceedings etc;
- ix. Part of section 37: Public notice as regards Commission orders etc; and
- x. Part of section 40 and schedule 2: Minor and consequential amendments.

CHARITIES ACT (NORTHERN IRELAND) 2022

The Charities Act (Northern Ireland) 2022 came into force at Royal Assent on 30 March.

In February 2020 the Court of Appeal had upheld the judgment of McBride J at first instance that the Charity Commission for Northern Ireland did not have implied or express power to delegate its functions to staff acting alone.⁶ The effect was to render unlawful all previous decisions taken by Commission staff where the staff member's authority to take the decision depended on the Commission having delegated a statutory power or duty. The Act amends the Charities Act (Northern Ireland) 2008 with retrospective effect so as to render lawful previous decisions taken by Commission staff in reliance on the unlawful delegation, where to do so is consistent with rights under the European Convention on Human Rights and where the decision to be validated was not unlawful on other grounds.

For the future, the Act gives the Commission a power of delegation to its staff. The functions to be delegated are to be set out in a Scheme of Delegation approved by the department, but the scheme will stipulate that certain functions can never be delegated. The Act also provides an enabling power to introduce a

5 DCMS, 'Charities Act 2022: implementation plan', 13 April 2022, <<https://www.gov.uk/guidance/charities-act-2022-implementation-plan>>, accessed 18 July 2022.

6 *McKee & Hughes v The Charity Commission for Northern Ireland* [2020] NICA 13.

registration threshold below which charities would not be required to register with the Commission or be subject to annual reporting requirements.

The Commission has published a helpful online information pack on the operation of the Act.⁷

MARRIAGE AND CIVIL PARTNERSHIP (MINIMUM AGE) ACT 2022

The Marriage and Civil Partnership (Minimum Age) Act 2022 received Royal Assent on 28 April. Section 7(1) provides that ‘The provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.’

The purpose of the Act is to address the practice of child marriage in England and Wales. It raises the minimum age of marriage and civil partnership to 18 in England and Wales and ends provisions allowing for 16- and 17-year-olds to marry or enter a civil partnership with parental or judicial consent. It will also mean that any marriages or civil partnerships that take place overseas or in Scotland or Northern Ireland involving under-18s where one of the parties is domiciled in England and Wales will not be legally recognised in England and Wales. It will not, however, affect the validity of any marriages or civil partnerships entered before the Act comes into force.⁸ The Act will also make it illegal for a person to arrange the marriage of a person under the age of 18 in England and Wales in circumstances where that is not already illegal.

At the time of writing, the Regulations bringing the Act into force had not been made.

FACULTY JURISDICTION (AMENDMENT) RULES 2022

The Faculty Jurisdiction (Amendment) Rules 2022, which were passed by General Synod on 9 February 2022 and laid before Parliament on 23 February, will come into force on 1 July 2022.

Rule 2 provides that persons proposing to undertake certain works must, as part of the procedure, provide an explanation of how they have had due regard to guidance issued by the Church Buildings Council on reducing carbon emissions. Rule 3 makes minor amendments to the procedure for consultation before faculty proceedings can begin, including by imposing a requirement that, where the online faculty system is used for the consultation, responses to the consultation should

7 Available at <<https://www.charitycommissionni.org.uk/charity-essentials/charities-act-update>>, accessed 7 June 2022.

8 One of the issues in the recent consultation by the Department of Finance in Northern Ireland was a proposal to raise the current minimum age for marriage from 16, with parental consent, to 18. The consultation ended on 18 February, and at the time of writing the department had not published a response. So far as I am aware, there is no current proposal to amend the law in Scotland, where the minimum age for marriage or civil partnership is 16 and parental consent is not required.

also use the online system. Rule 4 introduces the Schedule, which makes amendments to Lists A and B in Schedule 1 to the 2015 Rules. In particular, the amendments in Part 2 of the Schedule are intended to promote environmental protection (for example, by fitting boilers that do not use fossil fuels and installing charging points for electric vehicles). Rule 5 makes minor drafting improvements and corrections to the 2015 Rules. Rule 6 makes transitional provisions.

CREMATION (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2022

The Cremation (England and Wales) (Amendment) Regulations 2022, which came into force on 25 March, amend the Cremation (England and Wales) Regulations 2008 by making permanent the temporary changes introduced on 26 March 2020 by section 19 of the Coronavirus Act 2020, which removed the need for a second, confirmatory medical certificate prior to cremation. The change allows cremations to take place without the need for oversight by an additional medical practitioner.

CATHEDRALS MEASURE 2021 (SAVING PROVISION) ORDER 2022

The Cathedrals Measure 2021 (Saving Provision) Order 2022 saves the effect of section 10(1)(b) of the Cathedrals Measure 1999, which permits the constitution of a cathedral to include provision enabling the establishment of committees of the cathedral chapter. Under article 2(2), ‘section 10(1)(b) of the Cathedrals Measure 1999(1) (which permits the constitution to include provision enabling the establishment of committees) continues in force, despite its repeal by section 51(1) of the Cathedrals Measure 2021’. The repeal was presumably accidental.

SAFEGUARDING IN THE CHURCH OF ENGLAND

Under the terms of the Safeguarding (Code of Practice) Measure 2021 (Commencement and Transitional Provision) Order 2022, sections 1 and 2 of the Safeguarding (Code of Practice) Measure 2021 came into force on 1 March 2022. The Order also makes transitional provision to keep in operation any guidance made by the House of Bishops on matters relating to safeguarding children and vulnerable adults until that guidance has been replaced by a code of practice under the new section 5A of the Safeguarding and Clergy Discipline Measure 2016. A failure to have due regard to any such guidance which remains in operation continues to be misconduct for the purposes of the Clergy Discipline Measure 2003.