

PARLIAMENTARY REPORT

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COVID-19 AND RELIGION

Though public policy continued to be dominated by the COVID-19 pandemic, restrictions began to ease as the vaccine rollout progressed. The volume of secondary legislation barely slackened, however, and the lack of parliamentary scrutiny was a cause of concern both to academic commentators and to parliamentarians. On 10 June, the House of Lords Constitution Committee published its third and final report on the constitutional implications of coronavirus and was clearly very unhappy with the course of events: 'The Government has introduced a large volume of new legislation, much of it transforming everyday life and introducing unprecedented restrictions on ordinary activities. Yet parliamentary oversight of these significant policy decisions has been extremely limited.'¹

The final restrictions were lifted in England on 19 July, while Scotland moved to level zero restrictions—which allowed larger numbers of people to meet indoors and attend weddings and funerals—and most of the restrictions in Wales were lifted on 7 August. Disruptions continued, however: on 17 June the Church of England announced that the July meeting of General Synod would be held virtually, while the Church of Ireland's General Synod was to be held remotely from 30 September to 2 October. The Governing Body of the Church in Wales split the difference, with a meeting in person on 6 September and a meeting by videoconference two days later.

THE PRIME MINISTER AND THE APPOINTMENT OF BISHOPS

On 31 May, the Prime Minister—who was baptised a Roman Catholic but confirmed in the Church of England – married his partner in a ceremony at

1 *COVID-19 and the use and scrutiny of emergency powers*, 3rd Report of Session 2021–2022, HL Paper 15.

Westminster Cathedral. The news gave rise to considerable speculation about his continuing role in advising the Queen on the appointment of bishops of the Church of England, given the bar in section 18 of the Roman Catholic Relief Act 1829.² However, 10 Downing Street subsequently denied that Mr Johnson had reverted to Roman Catholicism and confirmed that he would not be handing over that duty to the Lord Chancellor.³

CLERGY DISCIPLINE (AMENDMENT) RULES 2021

The Clergy Discipline (Amendment) Rules 2021, made under sections 83 and 94 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, amend the Clergy Discipline Rules 2005. They were laid before Parliament on 13 May and came into force on 13 July. The amendments relate to the procedure and practice once an allegation has been made and referred for preliminary scrutiny by the registrar, addressing issues of efficiency, clarity, case management and vulnerable witnesses. In particular, it is now possible to submit allegations online, and a strict word/page limit applies to statements and supporting documents. At the same time, the Clergy Discipline Commission issued an updated Code of Practice.

ECCLESIASTICAL OFFICES (TERMS OF SERVICE) (AMENDMENT) REGULATIONS 2021

The Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2021, SI 2021/840, are made under section 2 of the Ecclesiastical Offices (Terms of Service) Measure 2009 and amend the Ecclesiastical Offices (Terms of Service) Regulations 2009. They were made on 13 July, laid before Parliament on 27 July and come into force in accordance with the provisions of Regulation 1.

Part 2 makes provision about residentiary canons. Part 3 relates to salary sacrifice arrangements. Part 4 relates to gender neutrality: Regulation 10 amends the Terms of Service Regulations so as to make the references to bishops gender neutral.

FEES ORDERS

Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2021

The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2021, SI 2021/843, was made on 26 May, laid before Parliament on 27 July and will come into force on 1 January 2022. The Order does what it says on the tin.

- 2 That section is titled 'No Roman Catholic to advise the Crown in the appointment to offices in the established church' and, incidentally, extends to advice on appointments in the Church of Scotland.
- 3 'Boris confirms continued role in appointing bishops', *Church of England Newspaper*, 24 June 2021.

Legal Officers (Annual Fees) Order 2021

The Legal Officers (Annual Fees) Order 2021, SI 2021/844, dated 26 May 2021, was laid before Parliament on 27 July and comes into force on 1 January 2022. It prescribes the annual fees payable to diocesan registrars in 2022 for the professional services specified in Schedule 2 to the Order and fixes the annual fees for 2022 for the provincial registrars.

LEGISLATIVE REFORM (CHURCH COMMISSIONERS) ORDER 2021

The Legislative Reform (Church Commissioners) Order 2021, which was made on 13 July, laid before Parliament on 27 July 2021 and came into force on 28 July 2021, amends the Church Commissioners Measure 1947. Inter alia, it sets a five-year maximum for nominated members of the Commissioners and provides that a nominated member may not be re-elected or reappointed as a Commissioner after ten years' consecutive service until after a five-year interval. A nominated member with ten years' consecutive service may, in exceptional circumstances, serve for a further period of up to 12 months. It makes equivalent provision for the Assets and Audit and Risk Committees and increases from six to eight the maximum number of lay Commissioners who may be appointed to the Assets Committee. It lifts the bar on salaried officials of a diocesan body becoming Commissioners. It requires lay Commissioners to be members of the Church of England or of a Trinitarian Church and to declare their support for the charitable objects of the Commissioners, and provides that a majority of each committee of the Commissioners must be members of the Church of England. It also permits remote meetings of the Commissioners, the Board and its committees.

MARRIAGES AND CIVIL PARTNERSHIPS (APPROVED PREMISES) (AMENDMENT) REGULATIONS 2021

The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021, which were made on 29 June, laid before Parliament on 30 June and came into force on 1 July, amend the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI/2005/3168). They make provision for the solemnisation of civil marriages and civil partnership ceremonies to be held in outdoor areas in the grounds of premises which have been approved under the 2005 Regulations. Regulation 4(1) declares that 'In relation to a church or chapel of the Church of England, nothing in these Regulations is intended to oust the faculty jurisdiction.' This is *not*, however, a permanent reform: Regulation 5 provides that the amendments are time-limited and will expire at the end of 5 April 2022.

CHARITIES BILL

The Charities Bill, which implements the Law Commission's report on *Technical Issues in Charity Law* (in England and Wales), was introduced in the House of Lords on 26 May and read a second time on 14 July. The Law Commission subsequently produced a Keeling Schedule of the Charities Act 2011 showing the changes that will be made to the Act by the Bill if it becomes law without amendment.⁴

MARRIAGE AND CIVIL PARTNERSHIP (MINIMUM AGE) BILL

After success in the ballot for private Members' bills, on 16 June Sajid Javid presented 'a Bill to make provision about the minimum age for marriage and civil partnership; and for connected purposes'. Shortly afterwards, Javid became Secretary of State for Health and Social Care and his Bill was taken over by Pauline Latham. It was set down for second reading in the Commons on Friday 19 November but at the time of writing had not been printed.

JUDICIAL REVIEW AND COURTS BILL

On 21 July, the Government introduced the Judicial Review and Courts Bill. Part 1 of the Bill, which deals with judicial review and which extends to the whole of the United Kingdom, consists of only two clauses. Clause 1 would allow a court to delay the point at which a decision is overturned—which, the Government argued, will allow time for consultations on the best way to replace an administrative regime rather than having to do it immediately. Clause 1 will also allow a court to rule that an action by the Government was unlawful *without invalidating any earlier decisions taken under the impugned legislation*. Clause 2, in effect, overturns the Supreme Court's decision in *R (Cart)*.⁵ In brief, the outcome of the pre-legislative consultation appears to be far less radical than some commentators (including your correspondent) had feared.

POLICE, CRIME, SENTENCING AND COURTS BILL

Section 17 of the Sexual Offences Act 2003 makes it an offence for a person, A, aged 18 or over, to engage sexual activity with a person, B, under the age of 18, where A is in a position of trust in relation to B. Clause 45 (positions of trust)

4 Available at <<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-1ijsxou24uy7q/uploads/2021/05/Marked-copy-of-the-Charities-Act-2011.pdf>>, accessed 27 July 2021.

5 *R (Cart) v The Upper Tribunal* [2011] UKSC 28, in which the Supreme Court held unanimously that judicial review of an Upper Tribunal decision should be available whenever the intended challenge raised an important point of principle or practice or where there was some other compelling reason for the High Court to hear the claim.

of the Police, Crime, Sentencing and Courts Bill, which was introduced in the Commons on 9 March, was carried over into the current session and at the time of writing was awaiting second reading in the Lords, would amend the Sexual Offences Act 2003 to include within the definition of ‘a position of trust’ teaching, training, supervising or instructing a person B in a religion on a regular basis. The proposed amendment to the 2003 Act was one of the recommendations from the Independent Inquiry into Child Sexual Abuse in *Anglican Church Case Studies: Chichester/Peter Ball investigation report*.

PROTECT DUTY: CONSULTATION

On 28 February, the Home Office issued a consultation on the Protect Duty, the objective of which is to reduce the likelihood of terrorist incidents at publicly accessible locations.⁶ The Government’s proposals are intended to apply to the whole of the UK, and a publicly accessible location is defined as any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission. The non-exhaustive list of such locations includes places of worship.

The consultation, which closed on 2 July, has caused considerable disquiet among those responsible for places of worship and for those advising them. A Commons Written Answer on 27 July, in which the Parliamentary Under-Secretary at the Home Office said that ‘The Government is mindful places of worship differ significantly in the nature of their function and operation from other locations potentially within the scope of the Protect Duty proposals’, might suggest that the Government has grasped the need to adopt a proportionate approach.⁷ But individual places of worship often have very few ‘employees’ – however defined – and sometimes none at all; the fear is that, if congregations conclude that the duties of compliance placed on them are too onerous, some volunteers will simply walk away.

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6 Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964808/Protect_Duty_Consultation_Document5.pdf>, accessed 27 July 2021.

7 Available at <<https://questions-statements.parliament.uk/written-questions/detail/2021-07-19/35592>>, accessed 6 August 2021.