

GOVERNMENT AND PARLIAMENTARY REPORT

June–September 2020

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CORONAVIRUS/COVID-19 AND RELIGION

My report for February–May began with the fateful words ‘Much of the period under review was dominated by the impact of the coronavirus (COVID-19) pandemic.’ Since then, nothing has changed and, by the end of September, the UK was experiencing a second spike in infections, as the rate of new infections rose from a low of 367 on 12 July to over 4,000 on 28 September—by which time there had been almost 42,000 deaths. By the end of the period under review, the four governments had produced over 400 statutory instruments relating to COVID-19 and the situation was changing literally from week to week.

The response of the Churches is too complex and detailed to summarise here. However, at its (socially distanced) meeting in September, the General Synod of the Church of England approved the General Synod (Remote Meetings) Measure, which was taken through all its Synod legislative stages in a day and, as it says on the tin, would amend Synod's standing orders to allow remote meetings. Once agreed by both Houses of Parliament it will come into force on Royal Assent.

CHANNEL ISLANDS MEASURE 2020

The Channel Islands Measure 2020 was given Royal Assent on 22 July. It empowers Her Majesty to move Jersey and Guernsey from the Diocese of Winchester to the Diocese of Salisbury and makes minor and consequential amendments to other legislation. The Explanatory Note to General Synod paper GS 2152X states that it also makes new provision to simplify the process for applying existing Measures to the Channel Islands.

CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE 2020

The Church of England (Miscellaneous Provisions) Measure 2020 Commencement (No. 1) Order 2020 is the first Commencement Order bringing

into force provisions of the Church of England (Miscellaneous Provisions) Measure 2020. Sections 12 to 16 (provisions concerning the validity of certain leases, pensions, the constitution of the General Synod, cross-references in the Mission and Pastoral Measure 2011, and the short title, commencement and extent of the Measure) came into force at Royal Assent. The Order brings most of the remaining provisions into force on 1 September 2020. The exceptions are sections 1(4) and 1(5) (which provide a definition of ‘religious community’ by reference to canonical provision yet to be enacted) and section 8 (which amends the Parochial Registers and Records Measure 1978 to take account of register books of services kept in electronic form in accordance with canonical provision yet to be enacted).

DIVORCE, DISSOLUTION AND SEPARATION ACT 2020

The Divorce, Dissolution and Separation Bill received Royal Assent on 25 June.

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

As noted in the last report, section 16 of the Hate Crime and Public Order (Scotland) Bill will, if enacted, abolish the common law offence of blasphemy. That particular provision has been greeted with general approval. The Bill as a whole, however, generated very mixed reactions, critics fearing that its provisions might be used to prosecute entirely legitimate expressions of opinion. In response, the Scottish Government lodged amendments to the Bill which, if agreed to by the Scottish Parliament, would mean that a conviction for the new offence of ‘stirring up’ hatred would be possible only where it was shown that someone intended to stir up hatred through their actions or behaviour. The alternative and lower threshold for the offence of behaviour that was ‘likely to’ stir up hatred would be removed.

KRUGER REPORT ON VOLUNTEERING

In June, the Prime Minister asked Danny Kruger, MP for Devizes, to undertake a consultation on how to maximise the role of volunteers, community groups, faith groups, charities and social enterprises. With regard to faith groups, the consultation was to look specifically at ‘the contribution of faith groups in strengthening social capital and community resilience’.

The consultation closed on 24 July and Mr Kruger published his report, *Levelling up Our Communities: proposals for a new social covenant*, in late September.¹ It includes a section headed ‘A new deal with faith communities’,

1 Available at <<https://www.dannykruger.org.uk/sites/www.dannykruger.org.uk/files/2020-09/Levelling%20Up%20Our%20Communities-Danny%20Kruger.pdf>>, accessed 28 September 2020.

in which Mr Kruger notes the historical role of parishes and religious charities in providing social support before the advent of the welfare state. He proposes what he describes as ‘a new deal with faith communities’, under which the Government ‘should invite the country’s faith leaders to make a grand offer of help on behalf of their communities, in exchange for a reciprocal commitment from the state’.

What Mr Kruger is suggesting is that a faith group should mobilise its congregations *and commit its own resources* to tackling one or more besetting social problems—for which, in return, the Government would issue ‘a direction, from the very top, to all public servants to facilitate the work of the faith group on the agreed mission or missions’. How much enthusiasm faith groups will have for the proposals remains to be seen.

LAW COMMISSION: REFORMING WEDDING LAW

The Law Commission of England and Wales has launched its promised consultation on the reform of wedding law. We have been here before: readers with long memories may recall that the commission conducted a preliminary study on wedding law in 2014 and published *Getting Married: a scoping paper* in December 2015—but the Government of the day had other priorities and the commission’s proposals were not taken forward.

Getting Married: a consultation paper on weddings law begins from the principles that ‘Weddings law in England and Wales is in desperate need of reform’, that most of the current law dates from the eighteenth and nineteenth centuries, ‘when virtually everyone lived, married and died within a single community, and when most people shared the same faith and beliefs’, and that the law harks back to a way of life that bears little resemblance to the present day.² The commission points out that, at present: couples have to make a choice between a religious or a civil ceremony, with no option for a ceremony reflecting other beliefs; those having a Church of England or Church in Wales wedding can give notice to the church but all others must give notice at the register office; with few exceptions, weddings must take place either in a place of worship or in licensed secular venue; and one cannot marry outdoors or even in the garden of a licensed venue. Further, if a couple does not comply with the legal requirements, their marriage may not be legally recognised, and couples often only discover their lack of legal status at the time of relationship breakdown—which means that they have no legal status or protection.

The review is guided by five principles for reform: certainty and simplicity; fairness and equality; protecting the state’s interest; respecting individuals’

2 Law Commission, *Getting Married: a consultation paper on weddings law*, 3 September 2020, available at <<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-i1jxou24uy7q/uploads/2020/09/Getting-Married-A-Consultation-Paper-on-Wedding-Law-web.pdf>>, accessed 28 September 2020.

wishes and beliefs; and removing any unnecessary regulation. As part of the project, the Commission is considering: the legal preliminaries that should be required prior to a wedding; where weddings should be able to take place; whether specific vows should be required during a ceremony; how marriages should be registered; what the consequences should be for couples who do not comply with any requirements; and who should be able to solemnise a marriage, including considering how a scheme could include weddings conducted by non-religious belief organisations and independent celebrants. It will *not*, however, be making recommendations on whether as a matter of policy new groups should be allowed to conduct legally binding weddings. In addition, the issue of a limited reform of the law on marriage and religious weddings, based on the recommendations of the Independent Sharia Review, is being taken forward separately from the wider review. The consultation ended on 3 December 2020.

NORTHERN IRELAND

Charity law after *McKee & Hughes v CCNI*

In *McKee & Hughes v The Charity Commission for Northern Ireland* [2020] NICA 13, the Northern Ireland Court of Appeal held that the Charities Act (Northern Ireland) 2008 did not empower any member or members of staff of the Charity Commission for Northern Ireland (CCNI) to exercise any of the CCNI's statutory powers or to discharge any of its statutory duties or functions and dismissed the CCNI's appeal against the ruling and order of the court below.³ In response, the CCNI published a legal update on the issues arising from the judgment, stating in brief that the judgment did not prevent any organisation that was a charity in law from operating as a charity; that whether or not an organisation was a charity in law was determined by the wording of its governing document; that registration recognised that an organisation was a charity *but did not of itself make it a charity*; and that a charity was a charity because it was established for charitable purposes. It included an assurance by the Department for Communities that 'those charities that were unlawfully registered . . . remain charities in law and need do nothing differently in the interim'.⁴

Marriage and Civil Partnership (Northern Ireland) Regulations 2020

On 23 June, in answer to a written question from Colum Eastwood (Foyle, SDLP), Robin Walker, Parliamentary Under-Secretary of State at the Northern Ireland Office, said that the Westminster Government remained committed

3 Judgment available at <<https://www.bailii.org/nie/cases/NICA/2020/13.html>>, accessed 28 September 2020.

4 Charity Commission for Northern Ireland, 'Legal update', <<https://www.charitycommissionni.org.uk/news/legal-update/>>, accessed 28 September 2020.

to introducing same-sex religious marriage and conversion entitlements, following the public consultation on the two issues earlier in 2020, and intended ‘to make regulations on same-sex religious marriage as soon as possible before the end of 2020 to provide similar rights and protections to the law in other parts of the UK’.⁵

The Marriage and Civil Partnership (Northern Ireland) Regulations 2020 were duly laid before Parliament on 15 July and came into force on 1 September. Regulation 2 removes the prohibition on the religious marriage of same-sex couples. The ‘governing authority’ of a religious body may decide to conduct same-sex weddings, but the Regulations provide protections for religious bodies and persons acting on their behalf against being compelled to undertake various actions in connection with the solemnisation of same-sex marriages.

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5 Question and response available at <<https://questions-statements.parliament.uk/written-questions/detail/2020-06-16/59919#>>, accessed 28 September 2020.