

5 July 2021

The Lord Hodgson of Astley Abbotts CBE
Chair of The Secondary Legislation Scrutiny Committee

By email: hlseclegscrutiny@parliament.uk

Dear Lord Hodgson

Re: Draft Statutory Instrument - The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (The Government's decision to mandate COVID-19 vaccination in care homes)

I am writing to you in my capacity as the legislative representative of Christian Science in the United Kingdom with regard to the above SI. At the outset I'd like to say, we acknowledge the gravity of the current public health situation and fully support the Government's intent to prevent future COVID-19 outbreaks in care homes.

Our concerns are that this SI will have an unintended significant impact on the Christian Science community in England.

First, it would curtail the ability of Christian Scientists to receive the care that they have chosen in a setting that is consistent with their religious beliefs. As explained below, there are two Christian Science Houses (care homes) in England that provide exclusively religious non-medical healthcare to individuals relying on the teachings of Christian Science for health needs. They are the only institutions in this country specifically for Christian Scientists who need in-patient care. Because they are very small institutions, the departure of even a handful of staff members who object to vaccination on religious grounds could render it difficult, if not impossible, to provide safe and appropriate care.

Second, the requirement to be vaccinated could lead to the exclusion of Christian Scientists who would not want to be vaccinated, but who are essential to the day to day running of these care homes, such as Trustees, Christian Science practitioners and volunteers, etc. As the Christian Science community in England is not large this would further exacerbate the problem because it would reduce the number of Christian Scientists who are able to fulfil these essential roles.

For example, one of the two care homes operates a rota of Christian Scientists who volunteer to read the Scriptures and other religious texts to residents of the Christian Science House. This is an integral part of the activity of the care home and the religious non-medical care chosen by those in the care home.

Background on Christian Science and Christian Science Houses (see attached)

Christian Science is a religion that is based on the Bible and has been practised in the UK for more than a century. One of the central aspects of Christian Science is that, by gaining an increased knowledge of one's relationship with God through prayer and Scripture study, one will inevitably experience healing of problems of all kinds, including health problems.

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Although the Christian Science Church does not dictate the decisions of its members, Christian Scientists usually turn to its teachings rather than medical care to address health problems because they have found this to be reliable and effective. The constitutional governing document of our Church establishes a religious ministry through which individuals known as 'Christian Science nurses' are trained to provide skilful physical care and spiritual reassurance to individuals in accordance with the teachings of Christian Science. Some Christian Science nurses work in those care homes which are specifically for individuals who have chosen this type of care ('Christian Science Houses'). These institutions are small in size but actively supported by Christian Scientists in their communities. The two Christian Science Houses are: Lime Tree House, Sale, M33 4RZ and Charton Manor, Farningham, DA4 0JT.

Over many years successive UK Governments have recognised and accommodated the unique approach to health care provided in Christian Science. For example, in a speech made in the House of Lords about the Care Standards Bill (28 March 2000) The Rt Hon the Lord Hunt of Kings Heath (then The Parliamentary Under-Secretary of State, Department of Health) stated:

'Perhaps I may say right at the start that the Government have no intention of preventing or discouraging people from being cared for in accordance with the principles and practices of the Church of Christ, Scientist. The Care Standards Bill will not mean that Christian Science houses or their visiting nurse services will have to give medical treatment to their patients, or do anything else which would go against their religious principles...

... The Department of Health will consult and work with the Church of Christ, Scientist, to ensure that regulation by the commission is compatible with the church's principles and practices.' (Hansard reference: Column 741)

The Christian Science Houses in England are registered as care homes with CQC and over the years a longstanding relationship has been established with both CQC and its predecessors. Individuals receiving care in these Houses have consciously and voluntarily chosen to receive religious non-medical care for their health needs provided by Christian Science nurses. Throughout the pandemic, both Christian Science Houses have been alert and responsive to relevant public health guidelines. They also have made their staff and patients aware of vaccination opportunities, and we are grateful to report that they have experienced no outbreaks of COVID-19 thus far.

The Christian Science approach to vaccination

As indicated above, health care decisions for Christian Scientists, including those relating to vaccination, are not dictated by the Church. The writings of the founder of the religion, Mary Baker Eddy, counsel compliance with law and the Golden Rule as taught by Jesus Christ. In making decisions about how to address health matters, including the serious ones presented by our current public health situation, Christian Scientists are attentive to the needs and concerns of their families, friends, and the larger community, and the obligations to comply with the law.

For nearly 150 years Christian Scientists have relied on their spiritual practice to successfully maintain their health and meet health needs without recourse to medicine. This is not out of opposition to medical practice but because they have found reliance on the teachings of their religion to be effective in preserving and maintaining their health.

Christian Scientists are not a homogeneous group with respect to vaccination. Some Church members have decided to accept vaccination for COVID-19 whilst others have not.

Concerns about not taking into account religious belief

As already stated, we acknowledge the gravity of the current public health situation, and we accept that individual rights may be limited when there is a need to protect the community. Nevertheless, requiring individuals to set aside their sincerely held religious beliefs is a serious matter, and this even more so when those beliefs are relied on to maintain the individual's health and wellbeing.

Our primary concern is that the draft SI is based on a *Consultation outcome* (as published by the Department of Health and Social Care on 16 June 2021) that rejected the feasibility of religious exemptions without exploring whether there are reasonable, less restrictive alternatives available that would honour individual religious beliefs while at the same time serving public health interests.¹ This is particularly significant given that the proposed legislation would apply to an entire religious group (Christian Scientists) in a setting where care is both received and provided by those with similar religious beliefs.

Furthermore, the Government has previously acknowledged the significance of Article 9 of the European Convention on Human Rights. For example, in the context of the Civil Contingencies Bill 2004 which specifically addressed the imposition of public health measures in response to bioterrorism, a Government Minister at that time, The Rt Hon Douglas Alexander MP, wrote to my Office stating: *'I would like to assure you that the Government is committed to upholding the individual's rights to practice their religious beliefs as enshrined in the European Convention on Human Rights'* (letter attached).

The *Consultation outcome* indicated that allowing religious exemptions *'would likely significantly reduce the impact of the policy in achieving its aims of increasing levels of protection for both residents and staff.'* No supporting information was provided for this statement, and we note that it runs contrary to our own experience thus far. As explained above, the Christian Science Houses have made their staff (the overwhelming majority of whom are practising Christian Scientists) aware of opportunities to receive the COVID-19 vaccine, and decisions to be vaccinated have been made on an individual basis.

Moreover, if the Government is concerned that allowing for a religious exemption will allow too many care home employees to decline vaccination, it could take steps to narrow the scope of the available exemption. For example, the Government could confer on CQC the authority to grant religious exemptions for 'good cause' or based upon a showing that allowing the exemptions would not adversely impact the overall vaccination rate in the area.

The *Consultation outcome* also indicated that religious exemptions *'would be difficult to implement and prove,'* implying that they would be susceptible to abuse. Whilst this concern is understandable and warranted, it is surmountable. We think that relatively simple measures could be put into place to enable care home managers and CQC to determine whether an individual's decision to decline vaccination is based on a sincere religious belief as opposed to some other reason.

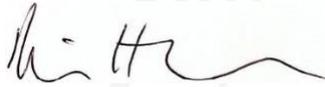
¹ In construing *Article 9 Freedom of thought, belief and religion* of the European Convention on Human Rights, the European Court on Human Rights has held that the 'Court's task is to determine whether the measures taken at national level are justified in principle and proportionate (Leyla Şahin v. Turkey [GC], § 110). That means that there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned; on that point, the burden is on the authorities to show that no such measures were available (Biblical Centre of the Chuvash Republic v. Russia, § 58).

The *Consultation outcome* also stated that religious exemptions to vaccination should not be permitted because they *'may also cause tension between those who have been exempted, and other staff who have received the vaccine, as a condition of deployment.'* We do not understand why this would necessarily be the case. Our understanding is that health care disclosures, including decisions about whether to be vaccinated, are and should remain private and confidential to the care home. Whilst there may well be a need for care home employers (and CQC) to be aware of the numbers of vaccinated and unvaccinated staff within care homes, measures should be instituted so that this information does not become common knowledge among employees.

Conclusion

We are writing to ask that you include the issues we have raised in your discussions because of the unintended and disproportionate impact this legislation would have on the Christian Science community in England. With this SI Christian Science Houses may have to close for lack of staff and volunteers, leaving Christian Scientists without recourse to their chosen form of care.

Yours sincerely,



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1. Background Information on Christian Science
2. Copy of letter - Douglas Alexander, MP to Tony Lobl, dated 17 February 2004

Background Information on Christian Science and Christian Science Houses

About Christian Science: Christian Science is a Bible-based, Christian religion and healing system founded and discovered by Mary Baker Eddy in the nineteenth century. It has had a presence in England since the 1890's. Today, there are local Christian Science congregations in over 70 countries, including approximately 90 congregations throughout the UK. The Church is formally known as the Church of Christ, Scientist.

About Christian Science nursing: Christian Science nurses (care workers) are trained to provide spiritual support and practical non-medical care to individuals who have chosen to rely on Christian Science for their health needs. Christian Science nursing is a worldwide religious ministry grounded in the theology of Christian Science.

Because the individual, by electing to rely on Christian Science for their health needs, has chosen a non-medical form of care, (s)he would not expect or want to receive medical or medically related services. Instead, such an individual would want to receive care from those who share the spiritually-based principles upon which (s)he is relying.

About Christian Science Houses: A Christian Science House (care home) provides in-patient services to adults who require more care than may be appropriately provided at home. Individuals admitted to a Christian Science House have made a conscious choice to rely on the teachings and practice of Christian Science. Their care is provided for by Christian Science nurses.

Historical assurances from the Government regarding individual choice of care: Since the mid-1920s, the Christian Science Church has worked with successive UK governments to maintain an understanding that Christian Scientists may be cared for in accordance with the principles and practices of the Church of Christ, Scientist.

One of the most significant developments in this regard related to the *Care Standards Act 2000*. During a debate about that Bill in the House of Lords, The Rt Hon the Lord Hunt of Kings Heath (then The Parliamentary Under-Secretary of State, Department of Health) gave public assurances to the House that Christian Scientists could continue to rely on Christian Science for their health needs. (*House of Lords Hansard, 28 March 2000, Cols 649-743*).

June 2021

Christian Science Committee on Publication

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17 February 2004

Dear Mr Lobl -

Thank you for your letter of 3 February regarding the Civil Contingencies Bill. You wrote separately to my colleague Fiona Mactaggart on this subject. I am replying on behalf of us both.

I have noted your concerns about provisions under Part 2 of the Bill and I would like to assure you that the Government is committed to upholding the individual's rights to practice their religious beliefs as enshrined in the European Convention on Human Rights. Part 2 will modernise the 1920 Emergency Powers Act to ensure that the legislative tools are available to Government to deal with the most serious emergencies in the most effective and efficient manner. I would like to make it clear that emergency regulations under the Bill would only ever be introduced in very rare and exceptional circumstances when it is vital to launch an effective response and existing powers are insufficient. The Bill has been designed to ensure emergency powers will only become available where necessary and must be used in a targeted and proportionate manner.



Emergency regulations can only be made for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency, and must be exercised in a reasonable fashion. Any emergency regulations made must also comply with the Human Rights Act, it being an “unlawful act” for a Minister or Her Majesty to make regulations which breach the Convention rights.

You raised particular concerns about protecting an individual’s right to refuse medical intervention during an emergency. Under emergency regulations an adult of sound mind can refuse medical treatment even if in doing so he or she is endangering their own life. Therefore, there is no question that a person of sound mind would be compulsorily treated to save their own life. However, where the failure of a person to accept treatment would have an effect on the health and life of others it would be permissible to take action in relation to that person to protect the life and health of others. Nevertheless, wherever possible religious beliefs would be respected and alternatives such as quarantine made available.

The Government was unable to accept the amendment proposed by Richard Allan MP during the Commons Standing Committee stage of the Bill aimed at providing in law a prohibition on treatment in emergency situations of those with religious beliefs that reject it. In extreme cases, where the only way to prevent a person from threatening the life or health of others, and where it is absolutely necessary to do so, it is possible to conceive of theoretical cases where it would be appropriate to compulsorily treat people. For example, where a person was highly infectious with a deadly disease for which there was no reliable cure, and the person both refused treatment and persistently attempted to breach quarantine, and there was no method in the time available to ensure that quarantine was enforced, it is possible that compulsory treatment would be considered. But – as the example shows – the circumstances would have to be extreme and unusual.

The Government is committed to ensuring that such treatment is in accordance with the individual’s beliefs so far as possible. However, the risk of infection or

contamination to others and need for urgent action must remain the overriding concern. As I outlined above, any use of emergency regulations must be in full compliance with the European Convention of Human Rights (ECHR). The requirement of the protection of human life is one of the most fundamental provisions in the Convention, from which no derogation is possible, except for very limited cases in times of war. Therefore, the safeguards in place under the Bill must ensure that, during an emergency that is serious enough to require emergency regulations, any action taken will strike a fair balance between the demands of the community or society and the need to protect the individual's fundamental rights.

I hope that you have found this reply helpful.

Yours ever,

A handwritten signature in black ink that reads "Douglas Alexander". The signature is written in a cursive style with a large initial 'D' and a long horizontal stroke at the end.

DOUGLAS ALEXANDER