

The Christian Institute – written evidence (CIC0288)

House of Lords Constitution Committee Inquiry into the Constitutional Implications of COVID-19

Introduction

1. The Christian Institute exists for “the furtherance and promotion of the Christian religion in the United Kingdom” and “the advancement of education”. We are a nondenominational Christian charity supported by individuals and churches throughout the UK.
2. In particular, we are very concerned at the manner in which the Government has used emergency powers to criminalise acts of public worship during periods of lockdown.
3. We will confine our response to questions 2 and 4 of the call for evidence.

Question 2

4. Question 2 asks about the existing powers (other than those in the Coronavirus Act 2020) which *might have been* used to deliver the Government’s response to the Covid-19 pandemic. It also asks whether the 2020 Act was necessary to implement the Government’s response to the pandemic.
5. Our concern is about emergency regulations made under legislation *other than* the Coronavirus Act 2020.
6. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) (“the March regulations”) were made under powers conferred by the Public Health (Control of Diseases) Act 1984. Regulation 5(5) provided that a person responsible for a place of worship was required to ensure that it was closed during the “emergency period”, except for uses permitted by regulation 5(6), which were for: (a) funerals; (b) broadcasting services; and (c) provision of “essential voluntary services or urgent public support services”.
7. With effect from 4 July 2020, the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) lifted restrictions on gatherings for worship.
8. The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 (SI 2020/1200) (“the November regulations”) were made on 3 November and came into force on 5 November 2020. Like the March regulations, the November regulations were made under the Public Health (Control of Disease) Act 1984. And, like the March regulations, they provide: “A person who is responsible for a place of worship must ensure that the place of worship is closed, except for uses permitted in paragraph (8) and regulation 11(18).”¹ Those exceptions are similar to the March regulations in not permitting any communal acts of worship. However, they do allow for individual private prayer.

¹ Regulation 18(7)

9. The Public Health (Control of Disease) Act 1984 does not confer on Government the specific power to limit such fundamental freedoms as public worship. Lord Sumption, former Justice of the Supreme Court, has made the point powerfully that general powers should never be used to limit fundamental freedoms:
10. *"The government chose not to include a general lockdown power in the Coronavirus Act and not to use the power that it already had under the Civil Contingencies Act. Instead it resorted to the much more limited powers conferred by Part IIA of the Public Health (Control of Disease) Act 1984, as amended in 2008. Section 45C(1) authorises the Secretary of State to make regulations "for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales." That sounds very wide, but the problem about it is that the power is couched in wholly general terms. It is a basic constitutional principle that general words are not to be read as authorizing the infringement of fundamental rights."*²
11. This raises significant concerns about the lawfulness of the manner in which the Government legislated for restrictions. Only express statutory language can be used as a basis for interfering with freedom of religion and the autonomy of religious institutions. The making of the regulations prohibiting religious worship was outside the legislative power conferred by the 1984 Act. In constitutional terms, a Rubicon was crossed.

Question 4

12. Question 4 asks whether the use of emergency powers by the Government to address the pandemic has been proportionate. Our focus is on the vital place of public worship.
13. The European Convention on Human Rights provides in Article 9:
 - "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
 - 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*
14. The European Court of Human Rights has repeatedly recognised that Article 9 rights constitute "one of the foundations of a 'democratic society' within the meaning of the Convention". In their religious dimension, they are "one of the most vital elements that go to make up the identity of believers and their conception of life". They are also a "precious asset" for all in society, since "the pluralism indissociable from a democratic society, which has been dearly won over the centuries" depends upon them.³

² Government by decree: Covid-19 and the Constitution, Cambridge Freshfields Annual Law Lecture 27 October 2020: https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf

³ *Kokkinakis v Greece* (1993) 17 EHRR 397 at [31]; *Eweida v UK* (2013) 57 EHRR 8 at [79]; *Lee v Ashers Baking Company Limited and others* [2018] UKSC 49 at [49].

15. The gathering together of the people of God for corporate worship and the celebration of the sacraments is integral to Christian religious observance and a biblical understanding of the Church. This is reflected in numerous Christian doctrinal statements. The Articles of Religion of the Church of England provide that "*The visible Church of Christ is a congregation of faithful men, in the which the pure Word of God is preached, and the sacraments be duly administered*".⁴ The confessional standard of Presbyterian churches requires the Sabbath to be "taken up the whole time in the *public and private exercises of His worship*" (emphasis added).⁵ Similar statements are contained in the doctrinal statements of Baptist and Independent churches.⁶
16. Given a) the doctrinal necessity for corporate worship and b) the fundamental constitutional freedoms guaranteeing corporate worship, it is clear that the use of emergency powers to prohibit corporate worship as a means to address the pandemic has not been proportionate. Indeed, it become increasingly disproportionate after places of worship went to great lengths after 4 July to put measures in place to ensure the safety of congregants.

17. Factors demonstrating the disproportionate use of emergency powers

- Churches have taken very seriously the requirement to conduct thorough risk assessment before reopening for public worship and have put in place comprehensive measures to prevent transmission of the virus. They have taken advice and diligently followed Government guidance. In order to maintain social distancing, larger churches have offered multiple services. Of all people, Christians take very seriously the need to protect and preserve life.⁷
- No evidence has been presented that worship services of churches operating Covid-secure measures have been linked to outbreaks of the virus anywhere in Great Britain since restarting in July.
- Education gatherings continue to be permitted under the November regulations.
- Both the March and November regulations seek to ensure that places of worship may still be used for non-religious activities (e.g. childcare or welfare services) while forbidding them from being used for their central purpose. They permit what may in many cases be more regular and larger gatherings than acts of worship.
- The measures permit individual prayer, while criminalising acts of communal worship. However, in Christian theology individual prayer is no substitute for collective worship. The fact individual prayer is permitted demonstrates the ban on corporate worship is not proportionate. Under the November regulations, a large number of people may lawfully gather in a place of worship to engage in individual prayer but the gathering would be unlawful if a minister led them in that prayer.
- There is no precedent in a thousand years of British history – whether in times of war, plague or pestilence – for the State requiring the closure of

⁴ Article XIX of The Articles of Religion of The Church of England.

⁵ Westminster Confession of Faith, chapter 21.

⁶ Chapter 22 of the 1689 Baptist Confession of Faith and Chapter 22 of the 1658 Savoy Declaration.

⁷ Exodus 20:13: "Thou shalt not kill". This extends to actively seeking the protection of human life. For example, it is a requirement to use "all lawful endeavours to preserve our own life, and the life of others" (see Westminster Shorter Catechism).

churches for Christian worship and maintaining that closure through criminal sanctions.

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