



Court View Chambers,
14 Albert Street,
Douglas,
Ellan Vannin IM1 2QA
Our Ref: IK/MC/MISC-2024

Tel: 611117
Fax: 617779
Email: mail@ik.im
Website: www.ik.im

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By Post & Email: Jane.Poole-Wilson@gov.im

The Hon Mrs J. Poole-Wilson MHK
Minister for Justice & Home Affairs
Department of Home Affairs
Tromode Road
Douglas
Isle of Man
IM2 5PA

OPEN CORRESPONDENCE

Dear Mrs Poole-Wilson

Re: Pardoning of those convicted of Covid Offences

We write in respect of those persons convicted by the Isle of Man Courts for breach of Coronavirus Regulations.

Last week, Sir Robert Buckland, the former UK Justice Secretary during the Covid Pandemic, boldly stated that those convicted by the UK Courts of Covid Regulation breaches should have their, "*slates wiped clean*".

In addition, former Cabinet Minister Sir David Davis similarly asserted last week that Covid convictions should be obliterated, stating, "*Much of the Covid Regulation was heavy handed, unnecessary and penalised people wrongly. For this to turn into a lifetime penalty is a disgrace*".

As you will be aware, from March 2020, the Isle of Man Government introduced a number of Coronavirus Regulations such as the Prohibitions on Movement and the Prohibitions on Gatherings.

These Regulations were almost identical to the Coronavirus Regulations passed by the UK Government. However, a crucial difference being that Manx Regulations were punishable by a fine and/or up to 3 months custody whereas breach of Regulations in the UK was punishable only by way of a Fixed Penalty Notice.

In the UK only if a Fixed Penalty Notice was not paid would the offender be subject to Court proceedings where fines would be issued instead of the Fixed Penalty Notice.



(2)

Other countries around the world also introduced various types of Covid restrictions.

A Freedom of Information reply to us dated 10th October 2022 revealed that, between 1st March 2020 and 1st April 2022 there had been a startling 248 arrests (including 22 child arrests) on the Island for breach of Coronavirus Regulations.

No children were arrested in the UK because Coronavirus Regulations there only applied to persons aged 18 or over, whereas in the IOM they applied to anyone over the age of criminal responsibility (10 years old).

Many residents were shocked to learn from the same FOI reply that **70 persons received custodial sentences** in the Isle of Man for such breaches, including two custodial sentences handed down by the Juvenile Court (to children under the age of 17).

Custodial sentences were passed during the first lockdown in 2020 for normal everyday activities such as having a barbeque on the beach with friends or sharing a car with a neighbour to work or visiting parents for dinner or being caught by the Police walking the streets of Douglas late at night.

Such custodial sentences were typically for 28 days at Jurby Prison for adults or at the *Cronk Sollysh* Secure Unit, White Hoe, Braddan for children.

In addition, some other defendants were fined for breaches.

A conviction in Court for breach of Coronavirus Regulations in the Isle of Man is recorded on a person's criminal record as a conviction.

This means that it may have to be legally declared as a conviction on application forms such as for jobs, or educational courses or foreign visas where criminal background checks are deemed appropriate and disclosure necessary.

Coronavirus Regulations by their stringent nature represented draconian restrictions on civil liberties and interference with human rights such as the European Convention on Human Rights, *Article 8*, the right to respect for private life and *Article 10*, the right to freedom of peaceful assembly.

Unsurprisingly, therefore, serious legal and constitutional concerns were raised by various persons and bodies such as *Amnesty International* in respect of the legitimacy of such Covid Regulations.

In Spain, the highest Court in the country, the Constitutional Court, sensationally ruled in July 2021 that the country's 2020 lockdown *State of Alarm* was unconstitutional and had violated paramount human rights.



(3)

All those Spanish citizens who were fined (over 400,000 persons) for breaching Covid restrictions could accordingly apply for a full monetary refund, with interest.

In Turkey, the government announced on 5th August 2023 that all fines for non-compliance with Covid lockdown rules would be cancelled and fines refunded.

It is estimated that approximately 309 million Turkish Liras will be refunded to Turkish citizens.

In Australia, the country's largest state, New South Wales, cancelled 33,121 fines following Court action in November 2022 alleging Covid fines were invalid. In one alarming example, a Mr Rohan Pank was fined AUS \$1,000 just for sitting in a Sydney park with his girlfriend. The State subsequently withdrew this fine following the Court action.

In Slovenia, the Constitutional Court struck down Covid restrictions as being unreasonable and unlawful.

The Slovenian government subsequently introduced legislation in 2023 allowing all citizens to be refunded (approximately 60,000 Slovenians were fined for Covid breaches).

Justice Minister Dominika Pipan said repaying the Covid fines would help to rebuild Slovenians' trust in the rule of law, *"which was significantly undermined by the use of excessive and unconstitutional repression during the pandemic"*.

In Canada, the Court of the King's Bench in Alberta ruled in August 2023 that pandemic related health restrictions were invalid.

The Alberta Crown Prosecution Service responded by indicating that it would apply for a Court Order quashing the convictions of those charged with contravening Covid related Public Health Orders. Any fines paid would be refunded to all those Albertan citizens convicted.

Equally, in April 2021, the *House of Commons Justice Committee on Human Rights* recommended that all UK Covid lockdown penalties should be reviewed.

As at 20th June 2021, 117,213 Fixed Penalty Notices had been issued for breach of lockdown restrictions but the Parliamentary Committee described the system as being *"Muddled, discriminatory and unfair"*.

The Justice Committee Chairwoman, respected MP Ms Harriet Harman, cogently argued that there was a lack of legal clarity about Covid rules and there were significant concerns about the validity of fines, the inadequacy of the appeal process, the size of the penalties and the criminalisation of those who could least afford to pay.



(4)

Following on from Sir Robert Buckland's comments last week, Sir John Bell, the UK Government's very own *Covid Tsar* in 2020-2021, backed up the calls for an amnesty/annulment of Covid convictions by stating, *"It is quite important that people understand it was a crazy time and that we don't want it to have a long tail to affect people for a long time because people were making decisions quickly and maybe the decisions were not that good. Why someone has to live with that seems beyond me"*.

Sir John continued by remarkably stating, *"Truth be told when somebody writes the history of this, they are going to view this whole policy as **bonkers** because you have got people going on business trips to a country and coming back to the wrong airport because the country's been reclassified while they have been away. People being done for exercising and a Policeman says you are not exercising, you are not sweating. And that literally happened. Scenes like this, it was a barking mad period of time, really, but the truth is, what can we do? We can stop people having their lives ruined, and we should do that"*.

In light of the above UK and global developments, it is evident that there is considerable disquiet about the justification for and legitimacy of Covid restrictions.

In the Isle of Man, there is recent precedent for criminal convictions to in effect be annulled or quashed.

Under the Sexual Offences and Obscene Publications Act 2021, anyone who has been cautioned or convicted of a historical sexual offence will be automatically pardoned, if the sexual act would no longer be considered a crime in modern law.

The result of this legislation is that official pardons have been granted for historical homosexual offences committed on the Isle of Man.

In addition to the pardons, residents are also now able to apply to the Department of Home Affairs to have any historical conviction removed from their record. This means that any conviction, caution, warning or reprimand for a homosexual offence would be **disregarded** and considered as having never happened and would not appear on a criminal record or in any criminal record checks.

Clearly, the same could also apply to all Covid convictions if the relevant legislation is passed by the Island's Parliament, Tynwald.

Conclusion

There is plainly an important and growing international school of thought that considers Covid Regulations to be have been hastily introduced, ill conceived, constantly changing, unjust, insufficiently publicised, discriminatory, unnecessary, disproportionate and in breach of fundamental human rights.



(5)

Do you therefore agree with Sir Robert Buckland's and Sir John Bell's enlightened views that Covid convictions should be quashed or pardoned? If so, what plans does the Isle of Man Government have to progress legislation to bring this into effect, perhaps akin to the legislation pardoning homosexual acts?

We repeat that citizens on the Isle of Man (including children) received custodial sentences for breach of Covid Regulations.

Many people now rightly regard this as a shamefully dark and authoritarian period in Manx political and policing history.

By way of contrast, no person received a jail sentence in the United Kingdom for breach of identical Covid Regulations.

In the Isle of Man, at least 70 persons, not statistics but individual men, women and children, now have Covid criminal convictions which may significantly blight their lives and careers for years to come.

If there are no plans to introduce Covid amnesty or pardon legislation, please can you properly explain why this is the case?

Please may we respectfully request a response from you no later than Friday 19th July 2024 with regard to the above matters which are of obvious public interest.

Thank you for your assistance.

Yours sincerely

Ian Kermode Advocate
Email: ian@ik.im