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PARLIAMENTARY REPORT

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CHARITABLE INCORPORATED ORGANISATIONS

In September, the Office of the Third Sector (OTS) and the Charity Commission launched a joint consultation on the detail of the new Charitable Incorporated Organisations (CIOs), a corporate structure envisaged under the Charities Act 2006. CIOs will be registered with and regulated by the Charity Commission and will offer charities an alternative to incorporation under company law, thereby avoiding dual regulation by the Commission and by Companies House.

The documents appended to the main consultation document include two sets of draft Regulations and a draft Order bringing the new structures into being. In addition, the Commission has drafted two model constitutions: one for the 'association' type of charity (with a membership as well as a trustee body) and the other for the 'foundation' type (where the only members are the trustees). The consultation closed on 10 December 2008 and the OTS and the Commission hope to publish a summary of consultation responses early in March 2009, together with a timetable for commencing the relevant provisions of the 2006 Act and bringing into force the necessary secondary legislation to enable the first CIOs to be incorporated. It is unlikely that very many churches will wish to incorporate *as churches*, though some of the smaller independent evangelical churches are giving serious consideration to that possibility; however, a church setting up a trading arm might well see advantages in incorporating it as a CIO rather than under company law.

CHARITY LAW

The Charities Act 2006 amended the Charities Act 1993 so as to oblige *excepted* charities with an annual income of over £100,000 to register with the Charity Commission. The main classes of excepted charities include those churches listed in the Charities (Exception from Registration) Regulations 1996[1] and

1 SI/1996/180. 'Excepted charities' are excepted from the requirement to register with the Charity Commission but, in most other respects, are fully within its jurisdiction. Currently, no charity is required to be registered in respect of any registered place of worship.

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certain trusts for the advancement of religion. The timetable for registration has become increasingly complicated. Originally, the commencement provisions were to be introduced in time for registration to begin in October 2008. This was then put back to January 2009 in order to give some of the affected charities more time to prepare for registration; however, the Commission was to begin registering some groups of excepted charities above the £100,000 income threshold, on a voluntary basis, from October 2008. From 1 October 2009, *exempt* charities[2] that are not subject to any other principal regulator will need to apply to the Charity Commission for registration if they have an income over £100,000.

The Commission has also continued its series of consultations on public benefit. At the time of writing, a summary of responses to the consultation on the advancement of religion and public benefit had been published[3] and the final guidance was expected by the end of 2008. In addition, however, a further consultation document had appeared in September, this time on public benefit and the advancement of ethical or moral belief-systems, seeking to explain how the principles of public benefit apply specifically to charities advancing causes such as humanism or rationalism.[4] That consultation was to close on 5 January 2009.

The Charities Act (Northern Ireland) 2008 received Royal Assent on 9 September.[5] For the moment, nothing changes: section 185 provides that the Act is to be commenced 'on such day or days as the Department may by order appoint' and the provisions 'may come into operation on different days in relation to charities of different descriptions'. Since the Act provides, inter alia, for a Charity Commission for Northern Ireland and a Charity Tribunal, along the lines of those established for England and Wales, it is likely to be some considerable time before it is brought into force in its entirety. As for the other Irish jurisdiction, at the time of writing the Charities Bill that was introduced in 2007 was still limping its way through the Oireachtas. It had not even started its proceedings in the Seanad and was unlikely to be enacted before 2009.[6]

2 That is, those charities exempt from the supervision of the Commission under Schedule 2 to the Charities Act 1993, as amended; they include the Church Commissioners, the Representative Body of the Church in Wales and property within the terms of the Church Funds Investment Measure 1958.

3 Available at <http://www.charitycommission.gov.uk/Library/publicbenefit/pdfs/responsear.pdf>, accessed 15 October 2008.

4 Available at <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbmor.pdf>, accessed 30 September 2008.

5 Available at <http://www.opsi.gov.uk/legislation/northernireland/acts/acts2008/nia_20080012_en_1>, accessed 30 September 2008.

6 The latest version of the Bill, as amended in the Select Committee, is available at <http://www.oireachtas.ie/documents/bills28/bills/2007/3107/B3107D-DC.pdf>, accessed 30 September 2008.

COMMUNITY INFRASTRUCTURE LEVY

As noted previously,[7] in December 2005 the Government published proposals for a new levy on development, to be called Planning-Gain Supplement (PGS), which was be introduced not earlier than 2009. After a false start, which resulted in the enactment of the Planning-Gain Supplement (Preparations) Act 2007, the proposals were developed further and the Planning Bill that was introduced in November 2007 provided instead for the imposition of a new tax on development, to be called the Community Infrastructure Levy (CIL).[8] The Bill itself provides little detail about how the tax will work in practice, except that, in some respects, CIL seems even more burdensome than PGS. Unlike PGS as originally proposed, CIL may, at least in principle, be levied whether or not there is any rise in site value as a result of granting planning permission.[9] At the time of writing, the precise proposals were still uncertain, since the detail was to be set out in Regulations that were not yet available in draft.

Churches and charities have not been slow to point out to the Department of Communities and Local Government that the proposals in the Bill would bear very harshly on them. Commercial developers will merely pass on the cost to their customers but, for charities that self-develop for their own internal purposes, there is no ultimate cash transaction to provide a source of revenue from which to pay the levy.

CONSTITUTIONAL AFFAIRS

In July, the Government published the latest instalment in the long-running saga of constitutional reform: *An Elected Second Chamber: further reform of the House of Lords*.[10] Prior to its publication, discussions had taken place in a cross-party group convened by the Lord Chancellor, Jack Straw, in the hope of securing a consensus for reform. Opinions, however, were divided with regard to both the shape of a reformed second chamber and the future of the bishops. The Conservatives favoured retaining the bishops in a chamber that would have a minority of appointed members,[11] while the Liberal Democrats did not want

7 (2007) 9 Ecc LJ 314.
8 See the Planning Bill as first printed in the Lords: <http://www.publications.parliament.uk/pa/ld200708/ldbills/069/2008069.pdf>, accessed 30 September 2008.
9 Clause 200(5): 'The regulations may require CIL to be paid in respect of land developed in reliance on planning permission whether or not its value has increased as a result of the grant of the permission'.
10 Cm 7438, available at <http://www.justice.gov.uk/docs/elected-second-chamber.pdf>, accessed 30 September 2008.
11 Ibid, para 4.77.

to reserve seats for them, even if a future second chamber were to include an appointed element.[12]

Although the Government accepts, unsurprisingly, that there could be no reserved seats for bishops or for any other group in a wholly elected second chamber,[13] the White Paper concludes that, if there were to be an appointed element, a number of seats should be reserved for the bishops, though fewer than at present,[14] 'in recognition of the wide and important role played by the Lords Spiritual in the life of the nation and the special constitutional position of the Church'.[15] As to any wider religious representation, while the Government agrees with the Wakeham Commission that 'providing reserved places for other faith communities would be problematic because of the small number of seats available and the large number of faiths represented in the UK',[16] the White Paper notes that, if there were to be an appointed element, 'it is likely that many church and faith leaders would be strong candidates'.[17] In his statement to the Commons, the Lord Chancellor emphasised that there was no intention to bring forward legislation in the present Parliament: 'any final package would have to be put before the electorate as a manifesto commitment ... at the next general election'.[18] Since it seems that, for the moment, both major parties see a role for bishops in a reformed second chamber, the balance of probabilities is that they will be retained, even if in smaller numbers.

The period under review ended with a revival of the controversy over the provisions of the Act of Settlement 1700/01 that discriminate against Roman Catholics. As reported previously,[19] a call in March 2008 for removal of the bar to a Roman Catholic succession to the throne had appeared to receive conflicting answers from the Ministry of Justice and the Prime Minister's press spokesman. Seven months on, the issue surfaced again, when the Local Government Association's Labour Group published a pamphlet that included an essay by Chris Bryant, Labour MP for the Rhondda, which again called for change.[20] In response, Downing Street pointed out that changing the law on succession would be a complex undertaking and would require the consent of

12 Ibid, para 6.10.
13 Ibid, para 6.48.
14 Ibid, para 6.49.
15 HC Deb 2007–08, 14 July, c 23.
16 *An Elected Second Chamber*, para 6.53.
17 Ibid, para 6.54.
18 HC Deb 2007–08, 14 July, c 24.
19 (2008) 10 Ecc LJ 350–351.
20 C Bryant, 'A leaky barque: reforming the British constitution', in N Yeowell and D Bates (eds), *Powers to the People: putting people at the heart of constitutional reform* (London, 2009), pp 84–91; the text is available at <http://www.labourgroup.lga.gov.uk/lga/aio/965379>, accessed 14 October 2008.

the Commonwealth under the Statute of Westminster 1931, but that they were 'always ready to consider the arguments in this complex area'.[21]

ECCLESIASTICAL EXEMPTION AND SHARING AGREEMENTS

The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 limits ecclesiastical exemption from listed building and conservation area controls to buildings that are subject to the internal control mechanisms by the exempt denominations.[22] Under Article 6, exemption is also granted to those 'peculiars and special cases' that are defined in the Article, including buildings subject to a sharing agreement pursuant to the Sharing of Church Buildings Act 1969 made on behalf of one or more of the exempt denominations; university, college, school and hospital chapels; and the chapels of the Inns of Court.[23] Works to buildings that fall within Article 6 can be undertaken without the need for secular listed building or conservation area consent or the approval of a denominational consent system. When the Order was passed in 1994, the Government intended that Article 6 would be a temporary measure, pending an election in respect of those buildings covered by Article 6 to become subject either to denominational controls or to secular listed building and conservation area controls. However, no timetable for such an election was ever established, even though consultation with the exempt denominations and with those responsible for individual Article 6 buildings took place in the 1990s.

A draft revised Ecclesiastical Exemption Order, code of practice and guidance were published on 2 May 2008. Under the revised Order, listed buildings in ecclesiastical use, other than Westminster Abbey and St George's Chapel, Windsor, will be covered by the exemption only where they are subject to the control procedures of one of the exempt denominations. Once the new legislation is implemented (which is expected to be in 2010), an ecclesiastical building covered by the current Article 6 that is not brought under a denominational control system will become subject to secular listed building controls. In addition, under the proposed Heritage Protection Bill, conservation area consent will be merged with planning permission;[24] hence, planning

21 T Crichton, 'No 10 "ready to consider" scrapping Act of Settlement', *The Herald*, 26 September 2008, available at <http://www.theherald.co.uk/politics/news/display.var.2452914.0.No_10_ready_to_consider_scrapping_Act_of_Settlement.php>, accessed 14 October 2008.

22 The Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church, the United Reformed Church and the Baptist Unions of Great Britain and of Wales.

23 Article 6 also exempts the small number of buildings in England 'used for worship according to the rites, doctrinal standards, principles or usages of the Church of Scotland, the Free Church of Scotland or the Free Presbyterian Church', such as Crown Court and St Columba's, Pont Street.

24 See (2008) 10 Ecc LJ 352–353.

permission will be required for works to *unlisted* buildings in conservation areas, regardless of whether or not they are subject to denominational controls.

Where a shared church meets the criteria to be covered by the exemption and wishes to be so covered, contact should be made with the local diocesan office or other denominational representatives at as early a stage as possible. The Department for Culture, Media and Sport will supply contact details on request. DCMS has also let it be known that it would be grateful if decisions either to opt into a denominational system or to revert to secular systems of control could be communicated to the relevant local planning authority.

EQUALITY AND ANTI-DISCRIMINATION

In June 2007, a consultation was launched on a Single Equality Bill,[25] which announced the Government's intention to replace the various individual race, disability and gender equality duties with a single duty on public authorities to promote race, disability and gender equality and the possibility of extending this single duty to cover discrimination on grounds of age, sexual orientation and/or religion or belief.[26] An issue of particular difficulty was whether organised religion should be allowed to treat people differently on the grounds of gender reassignment.[27] The Government's draft legislative programme announced in May 2008 included an Equality Bill as one of the measures that would be brought forward in Session 2008–09, though it was not entirely clear whether it was the Government's intention to legislate immediately or to publish a draft Bill for further consultation.

The issue of equality has been given yet further prominence by the European Commission, which, on 2 July, adopted a proposal for a Directive on protecting people from discrimination outside the workplace. The intention is to create a more level playing field for anti-discrimination across member states, some of which already have extensive anti-discrimination legislation in place. The proposal was accompanied by an EU survey that showed that most Europeans believe that discrimination is still rife, and supported an earlier survey, conducted in February 2008, that highlighted support for specific legislation to combat discrimination beyond the workplace. The proposed Directive will prohibit direct and indirect discrimination, as well as harassment and victimisation. However, it is intended that it should avoid imposing disproportionate burdens on service providers and it will apply to private persons only insofar as they are performing commercial or professional activities. It is of particular

25 *Discrimination Law Review: a framework for fairness: Proposals for a single equality bill for Great Britain*, available at <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>, accessed 30 September 2008.
26 Ibid, p 20.
27 Ibid, p 23.

interest to faith communities that the Commission is proposing exemptions that will include measures to maintain the secular nature of the state and the activities of religious organisations – but it is far too early to say what these might be.

IMMIGRATION AND MINISTERS OF RELIGION

As reported previously,[28] the new Points Based System (PBS) for immigration has been causing considerable concern to those churches who are accustomed to inviting clergy from outside the European Economic Area to minister, or who offer hospitality to theological students from the Commonwealth. After further reflection, however, the Government has somewhat moderated its proposals; and it was decided that, when Tier 2 and Tier 5 of the PBS went live in November 2008, religious workers would be able to enter the United Kingdom either as Tier 2 ministers of religion to undertake preaching and pastoral work (for which there would be an English-language requirement) or as Tier 5 religious workers. In a change of policy, those who enter under Tier 5 would, after all, be allowed to preach and undertake pastoral work and, initially at least, they would not be required to meet an English-language requirement; but leave to work in the United Kingdom under Tier 5 would only be granted for a maximum of two years and would not provide a route to permanent settlement.

In addition, it has been decided that clergy who come as Business Visitors for up to six months will be allowed to undertake some preaching or pastoral work provided that they do not take up any office, post or appointment and that any such work is consistent with a temporary absence from their employment back home. It appeared that, under the proposals as originally envisaged, if Archbishop Tutu were to visit London, he would not be allowed to preach in Westminster Abbey.

From 25 November 2008, the UK Border Agency began to issue identity cards to foreign nationals (those from outside the European Economic Area) applying for further leave to remain in the United Kingdom. The first cards were to be issued to migrants applying as students or as the husband, wife, civil partner or unmarried partner of someone holding permanent residence.

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28 (2008) 10 Ecc LJ 353–354.