

PARLIAMENTARY REPORT

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A BRITISH BILL OF RIGHTS?

On 9 May, the EU Justice Sub-Committee of the House of Lords, chaired by Baroness Helena Kennedy QC, published a report on the Government's proposals to repeal the Human Rights Act and replace it with a new Bill of Rights – and suggested that there was a forceful case for a Government rethink:

The proposals the Secretary of State outlined did not appear to depart significantly from the Human Rights Act – we note in particular that all the rights contained within the ECHR are likely to be affirmed in any British Bill of Rights. His evidence left us unsure why a British Bill of Rights was really necessary. If a Bill of Rights is not intended to change significantly the protection of human rights in the UK, we recommend the Government give careful thought before proceeding with this policy ... the repeal of the Human Rights Act and its replacement by a Bill of Rights would be a constitutional change of the greatest significance.¹

Nevertheless, the Queen's Speech on 18 May included an undertaking that there would be a further round of consultation on the proposal. The Government's explanatory notes say that the bill would include measures to reform and modernise the UK human rights framework and 'better protect against abuse of the system and misuse of human rights laws and would restore common sense to their application'. Further, it 'would be based on those [rights] set out in the European Convention on Human Rights, while also taking into account our common law tradition'.

1 Summary of Conclusions and Recommendations 2 and 3.

ABORTION GUIDELINES FOR NORTHERN IRELAND

In March the Northern Ireland Department of Health, Social Services and Public Safety published new *Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland*. The guidance makes clear at the outset that it ‘cannot, and does not, make any change to the law of Northern Ireland’. In the event of any conflict between this guidance and the law, the latter will always prevail.² So the issue of the declaration of incompatibility with the Human Rights Act 1998 made by Horner J in *Northern Ireland Human Rights Commission, Re Judicial Review*³ in relation to the failure to provide termination where there is a serious malformation of the foetus or a fatal foetal abnormality or where the pregnancy is the result of rape or incest remains unresolved. Change will require primary legislation; and it is not at all clear that either the Executive or the Assembly has any intention of bringing it forward.

BUDGET 2016

The Budget included a series of announcements of greater or lesser interest to religious organisations:

- i. The publication of ‘Review of crematoria provision and facilities: discussion paper’, in response to concerns about the capacity of crematoria to accommodate, in particular, Hindu and Sikh cremations, which are often attended by large numbers of mourners;⁴
- ii. The announcement of a £20 million cathedral repairs fund to provide grants to listed Anglican and Roman Catholic cathedrals in England. The Government also announced a review of the sustainability of the Church of England’s churches and cathedrals, assessing maintenance and repair pressures and examining how the sector could become more financially sustainable;
- iii. An announcement that the Small Business Rate Relief in England would be doubled from 50 per cent to 100 per cent and that the thresholds would be increased and, subsequently, that the mandatory 80 per cent charity relief for buildings used by charities for their charitable purposes would be retained.

2 Section 1(9), emphasis in original.

3 [2015] NIQB 96.

4 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508321/Review_of_Crematoria_Provision_and_Facilities_2016.pdf>, accessed 18 April 2016.

BURIAL AND CREMATION (SCOTLAND) ACT 2016

The Burial and Cremation (Scotland) Act 2016 restates and amends the law relating to burial and cremation, makes provision about exhumation of human remains and makes provision in relation to the inspection and licensing of funeral directors. The legislation that it replaces is primarily the Burial Grounds (Scotland) Act 1855, which had not been substantially revised since the nineteenth century, the Cremation Act 1902 and the Cremation (Scotland) Regulations 1935.

CHARITIES ACT 2008 (DESIGNATED RELIGIOUS CHARITIES) ORDER (NORTHERN IRELAND) 2016

Section 86 of the Charities Act (Northern Ireland) 2008 provides for certain persons to be automatically disqualified from being a trustee of a charity, including those who have been convicted of any offence involving dishonesty or deception, those who have been adjudged bankrupt and not discharged or removed as a trustee of a charity, and those who have been discharged from administration of a charity on the grounds of misconduct or mismanagement. The Charities Act 2008 (Designated Religious Charities) Order (Northern Ireland) 2016, which came into force on 1 March, disapplies section 86 in respect of designated religious charities.

Introducing the Order in the Northern Ireland Assembly, the Minister for Social Development, Lord Morrow, said that the Order had been made in response to representations from all the major churches. Disapplying section 86 would allow designated religious charities to manage their own disciplinary issues in relation to disqualification of trustees without secular interference, as in Scotland. The Charity Commission for Northern Ireland would retain its powers to conduct inquiries into designated religious charities and could withdraw designation where it concluded that the criteria were no longer being met or where, as a consequence of a statutory inquiry, it considered that it was no longer appropriate for a charity to be so designated.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) ACT 2016

The Charities (Protection and Social Investment) Act 2016 received Royal Assent on 16 March. In summary, it gives the Charity Commission greater regulatory powers, including new powers to give charities official warnings and to disqualify unsuitable people from serving as charity trustees; it imposes more controls over the relationship between charities and commercial organisations that raise funds on their behalf, in an attempt to deter aggressive fund-raising; and it places beyond doubt the power of charity trustees to make social investments.

The Act is to be brought into force by statutory instrument and the Government is committed to waiting at least a year before commencing some of the provisions on the disqualification of trustees. The rest of the legislation may well be implemented more quickly, though the Commission is to issue guidance on some of the provisions before they come into effect.

CHURCH OF ENGLAND FACULTY JURISDICTION PRACTICE NOTE 1 OF 2016

Following the decision that the Diocese of West Yorkshire and the Dales would henceforward be referred to as the Diocese of Leeds, the Dean of Arches issued a Practice Note amending Schedule 1 to Practice Note 1 of 2015 (23 December 2015). The neutral citation for the diocese is now ECC Lee.

DIOCESAN STIPENDS FUND (AMENDMENT) MEASURE

The Diocesan Stipends Funds (Amendment) Measure gives the trustees of a diocesan stipends fund the power already enjoyed by trustees of other charities to invest the capital account of the fund on a total return basis. The trustees will therefore be entitled to determine what proportion of the total return (the sum of the capital gains and income) should be expended for the purposes of the fund and what proportion should be reinvested in the capital account.

ECCLESIASTICAL EXEMPTION IN NORTHERN IRELAND

In March 2016 the Northern Ireland Environment Minister, Mark Durkan, launched a consultation on a proposal to remove the ecclesiastical exemption from listed building consent in respect of alterations to places of worship in active use – of which there are currently over nine hundred. The proposal was that the Department of the Environment for Northern Ireland (DOENI) should issue an order under section 85 of the Planning Act (Northern Ireland) 2011 to remove the exemption: the result would require churches to apply to district council planning departments for listed building consent in respect of changes that might alter the architectural or historic interest of a place of worship currently in use. In parallel, DOENI was to develop and publish guidance on alterations to listed buildings in ecclesiastical use and consideration of liturgical requirements by planning authorities. The consultation was to end on 13 June.

After the election for the new Assembly, the DOENI was abolished and its responsibilities divided between the Department for Communities (DfC), the Department for Infrastructure (DfI) and the Department of Agriculture,

Environment and Rural Affairs (DAERA). Built heritage issues are now the responsibility of DfC and planning policy the responsibility of DfI.

HOUSE OF LORDS SELECT COMMITTEE ON CHARITIES

On 25 May, the House of Lords agreed a motion to appoint a Select Committee ad hoc ‘to consider issues related to sustaining the charity sector and the challenges of charity governance, and to make recommendations’. Baroness Pitkeathley will chair the committee and it includes several peers with experience as charity chief executives, as well as Lord Harries of Pentregarth, the former Bishop of Oxford. The committee has been ordered to report by 31 March 2017.

GIFT AID SMALL DONATIONS SCHEME

The Queen’s Speech included an announcement that the Government would bring forward a bill to make further reforms to the Gift Aid Small Donations Scheme – from which the churches collectively are probably the major beneficiaries – by simplifying the Scheme and reducing the administrative burden for charities. At the time of writing, the details of the Scheme were subject to a consultation that had not been concluded.

It should also be noted that the increase from £5,000 to £8,000 in the limit for claims under the Scheme that was made by the Small Charitable Donations Act (Amendment) Order 2015 came into effect on 6 April 2016.

INDEPENDENT REVIEW INTO SHARIA

On 26 May, the Home Secretary announced the membership and terms of reference of the promised independent review into the operation of sharia law in England and Wales. Mona Siddiqui, Professor of Islamic and Interreligious Studies at the University of Edinburgh, will chair a review panel that includes Sir Mark Hedley, Chancellor of the Diocese of Liverpool and a former High Court judge, the family law barrister Sam Momtaz and the specialist family lawyer Anne-Marie Hutchinson, a partner with Dawson Cornwell solicitors. The panel will be advised by two religious and theological experts: Imam Sayed Ali Abbas Razawi and Imam Qari Asim.

The panel’s terms of reference are to explore whether, and to what extent, the application of sharia may be incompatible with the law of England and Wales and the ways in which it might be misused or exploited to discriminate against certain groups, undermine shared values and cause social harm. The review will also seek examples of best practice among sharia councils.

SAFEGUARDING AND CLERGY DISCIPLINE MEASURE

The Safeguarding and Clergy Discipline Measure:

- i. Empowers a bishop, on the basis of information supplied by the police or a local authority, to suspend a priest or deacon who presents a significant risk of harm to children or vulnerable adults (section 1);
- ii. Extends on safeguarding grounds provisions that disqualify certain persons from holding office as a churchwarden (section 2);
- iii. Introduces on safeguarding grounds provisions to disqualify certain persons from being members, treasurers or secretaries of parochial church councils (section 3);
- iv. Enables a bishop on certain safeguarding grounds to suspend churchwardens (section 2) and members, treasurers and secretaries of parochial church councils (section 3);
- v. Imposes a duty on all 'relevant persons' within the Church of England (as defined in section 5(2)) to have due regard to the Church's safeguarding policies (section 5);
- vi. Removes the normal one-year limitation period for disciplinary proceedings against clergy for alleged misconduct of a sexual nature towards a child or vulnerable adult, so that permission to make a complaint out of time will not be required (section 7); and
- vii. Makes a number of technical amendments to the Clergy Discipline Measure 2003.

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