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# PARLIAMENTARY REPORT

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### BURIAL AND CREMATION

The Cremation (England and Wales) Regulations 2008,[1] which were put in place in the wake of the Shipman murders and the subsequent inquiry by Dame Janet Smith, came into effect on 1 January 2009. They modernise and consolidate all previous regulations, and replace the Cremation Regulations 1930,[2] as amended. However, the new Regulations are themselves an interim measure, to be replaced in due course by a new system of death certification under the Coroners and Justice Bill, which was introduced into the House of Commons in January 2009.[3]

Rather less dramatically, the Ministry of Justice published *Managing the Safety of Burial Ground Memorials: practical advice for dealing with unstable memorials*,[4] produced by a group representing burial ground operators, memorial masons, cemetery managers and the Health and Safety Executive. The guidance is intended to promote good practice on risk management of memorials in all types of burial grounds, public or private, and to encourage operators to develop a proportionate approach. Crucially, the guidance reminds operators that ownership of a memorial remains with the family of the deceased and highlights the need for them to communicate with memorial owners, the bereaved and the wider community as part of the arrangements for managing memorials, since there is considerable potential for causing distress when this is overlooked. While burial ground operators should certainly have systems in place to control the risks from unstable memorials, the incidence of harm from wobbly gravestones is very low; and immediate action needs to be taken only when a

1 SI/ 2008/2841, available at <http://www.opsi.gov.uk/si/si2008/uksi_20082841_en_1>, accessed 20 January 2009.
2 SR&O 1930/1016.
3 Available at <http://www.publications.parliament.uk/pa/cm200809/cmbills/009/09009.i-v.html>, accessed 20 January 2009.
4 Available at <http://www.justice.gov.uk/docs/safety-burial-grounds.pdf>, accessed 20 January 2009.


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memorial poses a significant risk, such as imminent collapse in a way that could lead to serious injury.

## CHARITY LAW

In a flurry of pre-Christmas activity, on 17 December the Charity Commission published its promised sectoral guidance on the advancement of education, on public benefit and fee-charging, on the prevention or relief of poverty, and on the advancement of religion. To accompany the guidance, the Commission also published revised summaries of the responses to each consultation, an analysis of the law underpinning each item of the supplementary guidance and a revised analysis of the law underpinning charities and public benefit generally, amended following the consultation on public benefit and fee-charging. The Commission has also produced new guidance on the promotion of social inclusion (on which it consulted alongside the consultation on the prevention or relief of poverty). This last is not public benefit guidance; rather, it is guidance for charities that wish to have the promotion of social inclusion as one of their charitable aims.[5]

The conclusions on the later consultation on public benefit and the advancement of ethical or moral belief systems, which closed on 5 January 2009, are still awaited; but some of the initial responses have been highly critical. The reaction of the British Humanist Association was that the draft guidance was ill-considered, inaccurate and confusing – and should be dropped altogether.

In Scotland, the Office of the Scottish Charity Regulator (OSCR) published the first thirty assessments of public benefit as part of its Rolling Review. Four independent schools were assessed as failing the charity test because, on balance, they did not provide public benefit, while a further seven charities were issued with Directions to address the wording of their constitutions, which did not meet the requirements of the Scottish charity test. The single religious charity assessed – the Edinburgh Interfaith Association – did pass the test, though OSCR recommended that the trustees should review the charity's constitution and consider adding an explicit provision that its property could only be applied for charitable purposes.

On the whole, the outcome of OSCR's first foray into assessment was thought to be encouraging; however, many observers wonder what impact this might have on the position of charities in England and Wales. The

5 A link to the documentation is available at <http://www.charitycommission.gov.uk/publicbenefit/default.asp>, accessed 21 January 2009. For a fuller discussion of the guidance on religion and public benefit, see F Cranmer, 'Religion and public benefit', on pp 203–205 of this issue.

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Chief Executive of the Charity Commission commented that OSCR's decisions do not

> set a precedent for England and Wales. OSCR's charity test is undertaken by the Scottish regulator under Scottish [sic] law . . . [and] charities registered in Scotland are subject to a different legal and regulatory framework to those registered in England or Wales.[6]

All of which is entirely correct in principle. However, many of the features of the Charities Act 2006 bear a strong resemblance to elements of the earlier Charities and Trustee Investment (Scotland) Act 2005, and it may be that future developments in England and Wales will, to some extent, be influenced by prior developments in Scotland, if only subliminally.[7]

## COMMUNITY INFRASTRUCTURE LEVY

As previously noted, the Planning Bill introduced in November 2007 provided for the imposition of a new tax, the Community Infrastructure Levy (CIL), to be levied on new development in order to help defray the costs of additional infrastructure such as roads and drains. The original proposal was for a tax on all development; however, as a result of considerable pressure from the churches and from the voluntary sector generally, the Government agreed at the eleventh hour to amend the Bill so as to give power to exempt charities and similar not-for-profit organisations from CIL in certain circumstances; and section 210 of the Planning Act 2008 makes such provision.[8] However, the precise nature of that exemption remains to be determined. It is to be set out in Regulations, a draft of which is expected shortly and which will be subjected to detailed scrutiny by the voluntary sector.

## CONSTITUTIONAL AFFAIRS

Reference was made in the last Parliamentary Report[9] to the revival of the controversy over the provisions of the Act of Settlement 1700/01 that discriminate against Roman Catholics. The controversy continues: Dr Evan Harris MP

6 'Statement in response to the Office of the Scottish Charity Regulator (OSCR) public benefit announcements', 28 October 2008, available at <http://www.charity-commission.gov.uk/news/oscr.asp> accessed 21 January 2009.

7 An example of this unconscious influence was an early attempt by the Charity Commission to import into its general guidance on public benefit the Scots concept of 'disbenefit'.

8 The Act is available at <http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1>, accessed 22 January 2009.

9 (2009) 11 Ecc LJ 84–85.

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(whom readers may recall in relation to the repeal of the blasphemy laws),[10] drew fifth place in the annual ballot for private Members' bills and on 21 January introduced his Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill. The Long Title describes it as 'a Bill to make provision to remove discrimination in respect of Royal marriages and succession to the Crown'.

The Bill had its second reading on 27 March 2009 but the debate was talked out and ordered to be resumed on 16 October 2009 – which means that the Bill has no chance whatsoever of becoming law.

In setting out the Government's view, the Lord Chancellor, Jack Straw, laid great stress on the terms of the second paragraph of the Preamble to the Statute of Westminster 1931:

> it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

Though he was conscious that there was some disagreement as to whether or not the preamble had legal force, not being an operative part of the statute, nevertheless, in his view, 'it plainly has huge moral force' and cannot be lightly disregarded.[11]

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10 (2008) 10 Ecc LJ 210.
11 HC Deb (2008–09) c 628 (27 March 2009).