

## PARLIAMENTARY REPORT

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#### CLERGY DISCIPLINE (AMENDMENT) MEASURE 2013

In addition to a series of minor, technical changes to the Clergy Discipline Measure 2003 the Clergy Discipline (Amendment) Measure 2013 amends the 2003 Measure in three main respects.

First, Section 1 provides an exception to the principle that no proceedings for unbecoming conduct can be taken in respect of the lawful political opinions or activities of clergy. Under the amending Measure, for a cleric to be a member of, or actively support, a political party or other organisation whose opinions have been declared to be incompatible with the teachings of the Church on racial equality will constitute misconduct. The House of Bishops will decide which organisations are incompatible with the Church's teachings; but any declaration by that House will not come into force if the General Synod disagrees with it. It is accepted that the provision will affect the rights of clergy under Articles 10 and 11 of the European Convention on Human Rights but, it is argued, it does so in a way that is compatible with the Convention.

Secondly, the amending Measure removes the absolute right of appeal from the findings of a disciplinary tribunal. Instead, under section 3 a prospective appellant will have to seek leave before pursuing the appeal.

Thirdly, sections 4 to 7 empower a bishop to remove from office and prohibit from ministry a cleric who is convicted of certain criminal offences regardless of whether or not a prison sentence has been imposed. The amending Measure also enables the bishop to remove from office a cleric who has been adjudged by the Disclosure and Barring Service to be a risk to children or vulnerable adults and who has been entered on either of the barred lists under the Safeguarding Vulnerable Groups Act 2006.

#### DIOCESE IN EUROPE MEASURE 2013

The Diocese in Europe Measure 2013 does two things. First, it widens the discretionary powers of the Church Commissioners and the Archbishops' Council to

make grants to the Diocese in Europe by making it eligible to receive grants for the same range of purposes as the other dioceses of the Church. Secondly, it amends Article 8 of the constitution of the General Synod of the Church of England to remove the exception under which permanent changes to the services of baptism or holy communion or to the Ordinal, and certain changes in the Church of England's relations with other Churches, are referred to the bishops' council and standing committee of the Diocese in Europe instead of to the diocesan synod. The reason for the original disparity was that when the Diocese in Europe was established it did not have a diocesan synod; the change reflects the fact that it has now had one for a number of years.

### EQUALITY ACT 2010: OUTLAWING CASTE DISCRIMINATION

After an extremely polite stand-off between the Government and the House of Lords, the Equality Act 2010 was amended by section 97<sup>1</sup> of the Enterprise and Regulatory Reform Act 2013. Faced with the possible loss of the entire Bill when the Lords voted for the change a second time and insisted on their amendment, the Government bowed to the inevitable and offered a compromise.

In short, the amendment that was finally agreed converts the existing permissive power in section 9(5) of the 2010 Act, under which a minister may by order 'provide for caste to be an aspect of race', into an obligatory one. It also provides for a review of the operation of the provision after five years.

### PAYE AND REAL-TIME INFORMATION

Under the previous arrangements for PAYE, employers were required to make annual returns to HMRC of information for the previous tax year by 19 May and were liable to late-filing and late-payment penalties if they failed to file and pay on time. As part of a general move towards updating HMRC's information systems and as a prerequisite for the phased introduction of the new Universal Credit, it has become obligatory for employers to provide information for PAYE as and when payments are made: in short, Real-Time Information (RTI) for PAYE. The new system came into effect on 6 April 2013.<sup>2</sup>

HMRC has recognised that some small employers who pay their employees weekly or more frequently but who only process their payroll monthly may need longer to adapt to reporting PAYE information in real time. It has therefore agreed a relaxation of reporting arrangements for small businesses and has updated its guidance on exceptions to reporting PAYE information 'on or before' paying an employee. In short, until 5 October 2013, employers with fewer than 50

1 'Equality Act 2010: caste as an aspect of race'.

2 The measure was announced at Budget 2012 and draft legislation was published in December 2012.

employees who find it difficult to report every payment to employees at the time of payment were allowed to send information to HMRC by the date of their regular payroll run but no later than the end of the tax month.<sup>3</sup> The new requirement has caused considerable disquiet to church congregations in particular.

Some years ago HMRC agreed with the Churches Main Committee<sup>4</sup> that if a 'local religious centre' (LRC) – for example, a parish church – did not operate a PAYE scheme it could instead report payments made. That arrangement will continue for those churches that are not required to operate PAYE. The crucial point about the new arrangement, however, is that if a local church pays *anyone* at or above the National Insurance Contributions (NICs) threshold – currently £473 monthly – it will need to register with HMRC as an employer, if it has not already done so, and to operate PAYE in real time. That means that it will then need to report in real time the payments that it makes to *all* its employees, irrespective of how much they are paid and including those paid *below* the NICs threshold.<sup>5</sup>

## SAME-SEX MARRIAGE AND CIVIL PARTNERSHIP

### England and Wales

As envisaged, the Marriage (Same Sex Couples) Bill was carried over from the previous Session of Parliament. The Bill completed its Commons report stage and third reading (by 366 votes to 161) on 21 May and at the time of writing was awaiting second reading in the Lords.

The critical amendment during the Commons report stage was New Clause 10, which would have amended Part 1 of the Civil Partnership Act 2004 by extending civil partnerships to opposite-sex couples. Given that this particular proposal had a good deal of support, the Culture Secretary, Maria Miller, headed off a possible rebellion by agreeing to conduct her promised review of civil partnerships immediately rather than in five years' time, with a view to completing it by the time of the 2015 general election.

### Northern Ireland

On 29 April, the Northern Ireland Assembly debated for the second time a motion by Sinn Féin calling on the Executive to bring forward the necessary legislation to allow for same-sex marriage – evidently in response to the 79 per cent majority vote in favour of same-sex marriage at the Irish

3 The tax month ends on the fifth day of the following month.

4 The predecessor to the Churches' Legislation Advisory Service, of which I am the current Secretary.

5 The detail is contained in 'PAYE23030 – Employer records: employer types: local religious centres (LRCs)', available at <<http://www.hmrc.gov.uk/manuals/pommanual/PAYE23030.htm>>, accessed 27 May 2013. PAYE23030 includes a link HMRC's 'Guide to PAYE/NIC for local religious centres' as a downloadable document.

Constitutional Convention.<sup>6</sup> Unsurprisingly, both a compromise amendment and the original motion were lost – the latter by an overall majority of 53 votes to 42.

Broadly speaking, the Nationalists voted in favour and the Unionists against. But even had there been a majority in favour the motion would still have been lost since, in accordance with the rules of the Assembly, the DUP had tabled a ‘petition of concern’ – a mechanism designed to protect the interests of minorities – which meant that the motion would pass only if separate majorities of Nationalists and Unionists supported it.

### Scotland

The Scottish Government consulted on the draft Marriage and Civil Partnership (Scotland) Bill between 12 December 2012 and 20 March 2013. At the end of the consultation period the Government undertook to publish an analysis of responses to the consultation and introduce the Bill into Parliament ‘later this year’.

### SMALL CHARITABLE DONATIONS REGULATIONS 2013

The Small Charitable Donations Regulations 2013 (which take forward the Gift Aid Small Donations Scheme) were made on 18 April and came into effect on the following day.

### SUCCESSION TO THE CROWN ACT 2013

The Succession to the Crown Act 2013 received Royal Assent on 25 April. As previously noted, it ends the system of male-preference primogeniture under which a younger son displaces an elder daughter in the line of succession, it provides that marriage to a Roman Catholic will no longer affect the succession and it replaces the Royal Marriages Act 1772 with a requirement for the Monarch’s consent to the marriage of any of the six persons nearest in line of succession to the Crown. It does not, however, disturb the provisions of the Act of Settlement 1700/01 which prevent a Roman Catholic from becoming Monarch and which oblige the Monarch to ‘joyn in’ communion with the Church of England.

6 The Constitutional Convention was established by a Resolution of the Houses of the *Oireachtas* in July 2012 to consider a series of possible amendments to the Constitution (*Bunreacht Na hÉireann*), including various measures of electoral reform, provision for same-sex marriage and – also of interest to readers of this *Journal* – the removal of the offence of blasphemy from the Constitution. Following completion of the mandated topics the Convention has power to make such other recommendations as it sees fit. The Convention includes four MLAs – Steven Agnew (Green Party), Stewart Dickson (Alliance Party), Alban Maginness (SDLP) and Martin McGuinness (Sinn Féin) – but no-one from the Unionist community.

The entry into force of the Act is complicated by the need under the Statute of Westminster 1931 to secure the necessary parallel legislative changes in those Commonwealth countries of which the Queen is Head of State. Getting all the necessary legislative ducks in a row is not a simple matter; section 5(2) therefore provides that the operative provisions will come in to force 'on such day and at such time as the Lord President of the Council may by order made by statutory instrument appoint', without any further proceedings in Parliament. The Explanatory Notes to the Act state that the Government expects to bring the operative provisions into force at the same time – but at different local times – as the other realms bring into force any necessary changes to their own arrangements, legislative or otherwise. The Government has undertaken to inform Parliament when the Lord President makes the commencement order.

#### TRUSTS (CAPITAL AND INCOME) ACT 2013

The Trusts (Capital and Income) Act 2013 gives effect with minor modifications to the Law Commission's recommendations in its Report, *Capital and Income in Trusts: classification and apportionment*,<sup>7</sup> and makes changes to the technical rules of trust law under which trustees have to distinguish between capital and income in managing the property of a private trust or a charity. The Act received Royal Assent on 31 January and the Trusts (Capital and Income) Act 2013 (Commencement No 1) Order 2013 was made on 18 March.

The Commencement Order provided for section 4 of the 2013 Act (total return investment by charities) to come into force on 6 April 2013 for the purpose *only* of enabling the Charity Commission to make regulations relating to total return investment by charities under section 104B of the Charities Act 2011.<sup>8</sup> The Commission duly produced draft regulations and launched a consultation on their contents. The remaining operative provisions – section 1 (disapplication of apportionment etc rules), section 2 (classification of certain corporate distributions as capital) and section 3 (power to compensate income beneficiary) – were to come into force on 1 October.

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<sup>7</sup> Law Com No 315, May 2009.

<sup>8</sup> Inserted into the 2011 Act by s 4 of the 2013 Act.