

## PARLIAMENTARY REPORT

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### June–September 2014

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#### SCOTLAND SAYS 'NO' BUT ...

The major constitutional news of the period under review was that on 18 September the people of Scotland voted 'No' in the independence referendum by 55.3 per cent to 44.7 per cent. Alex Salmond announced his resignation as First Minister and Leader of the SNP later on the same day. But that is certainly not the end of the story.

In advance of the vote, all three Unionist parties had said that they would support a major shift of powers away from Westminster to Edinburgh and all three had published proposals for further devolution. However, their proposals differed in important details; and the Prime Minister appointed Lord Smith of Kelvin to lead a commission to put together an agreed devolution package. Lord Smith said that the Westminster Government would publish a Command Paper to guide the process by the end of October, with an outline agreement to be concluded by the end of November and draft clauses of a further Scotland Bill to be published by 25 January – Burns Night 2015. One of the most contentious issues is the extent to which taxation is to be devolved; and that has considerable implications for the Churches, particularly in relation to issues such as Gift Aid and the Gift Aid Small Donations Scheme.

#### MINISTERIAL CHANGES

Since the last issue of the *Journal* there have been two ministerial changes of importance for the Churches. In August Baroness Warsi, Senior Minister of State at the Foreign and Commonwealth Office and Minister for Faith and Communities at the Department for Communities and Local Government, tendered her resignation, evidently out of the blue. The avowed reason for her departure was her unease at the failure of the Government to say anything critical of the Israeli government's recent actions in Gaza. The Government later announced that the Faith and Communities brief would be taken over by the Secretary of State for Communities and Local Government, Eric Pickles, in person.

In September, Brooks Newmark resigned as Minister for Civil Society in advance of a scandal story about to break in the *Daily Mirror*, the truth of which he later admitted. His successor is Rob Wilson, Conservative MP for Reading East.

## ABORTION ACT 1967

On 23 May the Department of Health announced the publication of new *Guidance in Relation to Requirements of the Abortion Act 1967*, intended for all those responsible for commissioning, providing and managing service provision.<sup>1</sup> The guidance makes it clear that abortion *on the grounds of gender alone* is not lawful; that the two doctors who certify that an abortion meets the criteria set out in the Act must consider the individual circumstances of the woman and be prepared to justify their decision; that it is good practice for at least one of them to have seen the pregnant woman before reaching a decision about the termination; that pre-signing a statutory abortion certificate prior to consideration of a woman's circumstances is not compliant with the Act; and that doctors have a legal duty to report all abortions to the Chief Medical Officer. The Department states quite properly that:

The guidance does not, and indeed cannot, change the law in relation to abortion, which is governed by the criminal law and the Abortion Act and is ultimately a matter for Parliament and the courts to determine. However, the intention is to provide support for doctors by setting out how the law is interpreted by the Department of Health

Readers will no doubt be aware that in November an appeal was due to be heard by the Supreme Court in *Doogan & Anor v NHS Greater Glasgow & Clyde Health Board*,<sup>2</sup> in which the Inner House had agreed that two Roman Catholic midwives who were responsible for organising a labour ward in which terminations were carried out could legitimately claim the protection of the conscientious opt-out under section 4 of the 1967 Act.

## ASSISTED DYING

On 5 June Lord Falconer of Thoroton presented his Assisted Dying Bill yet again: a Bill 'to enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected

1 Available at <<https://www.gov.uk/government/publications/guidance-for-doctors-on-compliance-with-the-abortion-act>>, accessed 30 September 2014.  
2 [2013] ScotCS CSIH 36.

purposes'.<sup>3</sup> The Bill was published on 6 June, received an unopposed second reading (as is the convention in the House of Lords) on 18 July and was committed to a Committee of the whole House. At the time of writing the committee stage had yet to be scheduled but, in any event, it is unlikely that the Bill will become law in what is left of the present Parliament. The argument, however, will continue.

## CHARITY LAW

In June the Charity Commission launched a consultation on proposals for changes to the Annual Return for 2015. Some of the proposed additional questions focus on campaigning activity and encouraging good practice. However, the Commission also proposes to ask charities with an income of between £10,000 and £500,000 to provide more detailed information about income and expenditure, in particular: voluntary income (which includes gifts and legacies, tax reclaimed on Gift Aid donations and grants), income from investments and gifts of endowment, spending on charitable activities and expenditure on fundraising. The consultation, which closed on 12 August, looked remarkably like the kind of exercise that sought to confirm a decision already taken in principle.

Common Investment Funds (CIFs) are of particular importance to several Churches.<sup>4</sup> As registered charities they are regulated under charity law by the Charity Commission, while, as investment funds, their managers are subject to oversight by the Financial Conduct Authority. In July the Commission published revised guidance on *Common Investment Funds (CIFs) and Common Deposit Funds (CDFs)* in advance of the necessity to comply with the European Alternative Investment Fund Managers Directive, which was due to come into full force on 22 July 2014.

In July the Charity Commission and the Office of the Scottish Charity Regulator published two new Statements of Recommended Practice (SORPs) to be used by charities preparing accounts for financial years beginning 1 January 2015. Charities SORP (FRSSE) is applicable to charities preparing their accounts in accordance with the Financial Reporting Standard for Smaller Entities, while Charities SORP (FRS 102) is for those preparing accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland.

## CHURCH REPRESENTATION RULES (AMENDMENT) RESOLUTION 2014

The Church Representation Rules (Amendment) Resolution 2014 was made on 15 July and laid before Parliament on 7 August. It makes minor changes to the existing Rules.

<sup>3</sup> HL Bill 6: Explanatory Notes HL Bill 6—EN.

<sup>4</sup> The Church of England, the Church in Wales and the Roman Catholic Church all operate CIFs.

## EQUALITY, RELIGION AND BELIEF AT WORK

In August the Equality and Human Rights Commission (EHRC) asked an independent social research agency, NatCen, to conduct a call for evidence on the effectiveness of legislation designed to protect people who hold a religion or belief or who do not hold a religion or belief. The accompanying press release said that the EHRC wanted to know how individuals' religion or belief, or that of their colleagues, employees or customers, had affected them at work or when using or delivering services. The Commission was also interested in respondents' views about how effective the law was and where, if at all, it needed to be changed. The deadline for online submissions was 14 October.

## INHERITANCE AND TRUSTEES' POWERS ACT 2014

The Inheritance and Trustees' Powers Act 2014, which applies to England and Wales, came into force on 1 October. The Act:

- i. ensures that where a couple are married or in a civil partnership, assets pass on intestacy to the surviving spouse in cases where there are no children or other descendants;
- ii. simplifies the sharing of assets on intestacy where the deceased was survived by a spouse and children or other descendants;
- iii. protects children who suffer the death of a parent from the risk of losing an inheritance from that parent in the event that they are adopted after the death;
- iv. amends the rules that currently disadvantage unmarried fathers when a child dies intestate;
- v. removes arbitrary obstacles to family provision claims by dependants of the deceased and anyone treated by the deceased as a child of his or her family outside the context of a marriage or civil partnership;
- vi. permits a claim for family provision in certain circumstances where the deceased died domiciled outside England and Wales but left property and family members or dependants within the jurisdiction; and
- vii. reforms trustees' statutory powers to use income and capital for the benefit of trust beneficiaries (subject to any express provisions in the trust instrument).

The last point is of most immediate interest to the trustees of religious charities. However, the original proposal was greeted with considerable disquiet in certain Church and charity circles, which feared that making the intestacy rules more generous would mean that people would be even more reluctant than at present to make wills and that this, in turn, would reduce charitable legacy income.

## SAME-SEX MARRIAGE AND CIVIL PARTNERSHIP

### England and Wales

On 26 June, the Government Equalities Office and the Department for Culture, Media & Sport published their conclusions following the review of civil partnership in England and Wales required under section 15 of the Marriage (Same Sex Couples) Act 2013. The conclusion was that, given the lack of consensus on the way forward for civil partnership, the Government would not be making any changes. As to the possibility of extending civil partnership to *opposite-sex* couples, the analysis revealed that this was opposed by respondents by about three to one.

On 26 June the Ministry of Justice announced a consultation, pursuant to the requirement in section 14 of the 2013 Act, as to whether or not the law should be changed to permit marriages by non-religious belief organisations; the outcome of the review was to be published by 1 January 2015. The consultation, which closed on 18 September, asked for views on a range of issues: principally whether or not there was a substantial case for changing the law to establish non-religious belief ceremonies as a third type of legal marriage ceremony alongside religious and civil ceremonies; which non-religious belief organisations could meet the section 14 definition of ‘an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics’ in order to be registered to conduct belief ceremonies; and whether the definition was appropriate.

### Scotland

The Scottish Government was aiming to implement the whole of the Marriage and Civil Partnership (Scotland) Act 2014 by the end of 2014.

## POLITICAL ACTIVITY BY CHARITIES

The regulated period provisions of part 2 (Non-party campaigning, etc) of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 duly came into effect on 19 September 2014, prior to which the Electoral Commission published its full *Guidance for Non-party Campaigners*. The Guidance is largely in the form of a series of FAQs; because it is divided into topics rather than cumulated into a single document and deals with a few generalised hypothetical situations, it is extremely complicated and less useful than it might have been. Fortunately, the mood music from the Commission suggests that it intends to regulate with a fairly light touch.

## IMMIGRATION ACT 2014 AND MARRIAGE

When section 57 (Solemnization of marriage according to rites of Church of England) of the Immigration Act 2014 comes into force, except in limited

circumstances non-European Economic Area (EEA) nationals will not be able to marry in the Church of England or the Church in Wales after the calling of banns or by common licence. Instead, all such couples seeking an Anglican marriage will need to obtain superintendent registrar's certificates by completing civil preliminaries (subject to the referral and investigation scheme where applicable), unless the provisions for the Archbishop of Canterbury's Special Licence apply. Clergy will have to ascertain the parties' nationalities but will not have to consider a non-EEA national's immigration status.

At the time of writing the timing for bringing the provision into force was unclear, but my understanding was that it would not happen before spring 2015.

#### WOMEN IN THE CHURCH OF ENGLAND EPISCOPATE

On 22 July the Ecclesiastical Committee of Parliament met to consider the draft Bishops and Priests (Consecration and Ordination of Women) Measure and approved it unanimously. On 30 September the Committee published its report on the Measure, in which it concluded that it was expedient.<sup>5</sup> The draft Measure was approved by the Lords on 14 October and by the Commons on 20 October. It received Royal Assent on 23 October.

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5 Ecclesiastical Committee 223rd Report, HL Paper 45: HC 622 (30 September 2014).