

GOVERNMENT AND PARLIAMENTARY REPORT

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FRANK CRANMER

Fellow, St Chad's College, Durham

Honorary Research Fellow, Centre for Law and Religion, Cardiff University

BREXIT AND THE GENERAL ELECTION 2019

The Supreme Court ruled unanimously in the conjoined cases of *Miller and Cherry*¹ that the advice given by the Prime Minister to Her Majesty that Parliament should be prorogued from a date between 9 and 12 September until 14 October was unlawful, and that the resulting Order in Council and the prorogation itself were *also* unlawful, void and of no effect – so it was back to the constitutional drawing-board. Parliament was subsequently prorogued from 8 to 14 October, sat until 5 November and was dissolved at 00.01 am on the following day.

In the ensuing general election, the Conservatives were returned with a majority of 80, the European Union (Withdrawal Agreement) Act 2020 was duly passed and the UK left the EU at 11 pm on 31 January 2020 (midnight Central European Time). However, under the terms of the Act, the UK will cease to be bound by EU law only on 'implementation period completion day': 31 December 2020 at 11 pm.

The subsequent Queen's Speech said nothing specific about either repealing or amending the Human Rights Act 2010 but included a commitment that is likely to be of interest – not to say concern – to many readers of this *Journal*. 'A Constitution, Democracy and Rights Commission will be established' which, says the accompanying briefing, will 'consider the relationship between Government, Parliament and the courts and to explore whether the checks and balances in our constitution are working for everyone'. Watch this space.

SECOND CHURCH ESTATES COMMISSIONER

Dame Caroline Spelman having stood down at the general election, on 10 January it was announced that the Queen had approved the appointment of Andrew Selous MP as Second Church Estates Commissioner. He has been Member for South-west Bedfordshire since 2001.

1 *R (Miller) v The Prime Minister* [2019] UKSC 41 and *Cherry and Ors v Advocate General for Scotland*.

MHCLG FAITH ENGAGEMENT ADVISER

The Communities Secretary has appointed Colin Bloom as Faith Engagement Adviser at the Ministry of Housing, Communities & Local Government to lead a review into how best the Government should engage with faith groups in England. He has previously been executive director of the Conservative Christian Fellowship and director of ‘Christians in Politics’.

MARRIAGE, CIVIL PARTNERSHIP AND DIVORCE

England and Wales

The draft Civil Partnership (Opposite-sex Couples) Regulations 2019, whose principal purpose is to make provision for opposite-sex civil partnerships in England and Wales, came into force on 2 December. Part 3 amends the Civil Partnership Act 2004 so that Regulations made under that Act and the Equality Act 2010 do not oblige religious organisations and those acting on their behalf to be involved in the formation of civil partnerships against their will – whether in relation to all civil partnerships or only to same-sex or to opposite-sex partnerships.

The Divorce, Dissolution and Separation Bill, first introduced into Parliament in June 2019 and which fell at the Dissolution, was reintroduced in the Lords on 7 January. It would amend the law of England and Wales so as to allow one spouse, or the couple jointly, to make a statement of irretrievable breakdown – in effect, ‘no-fault’ divorce – and would also prevent one partner contesting a divorce if the other wanted one. The Government says that, in some cases, the present law has allowed domestic abusers to exercise further coercive control over their victims. In short, it should prevent a reoccurrence of the situation in *Owens*.² At the time of writing, it stood committed to a Committee of the whole House.

Meanwhile, uncertainty about the intended changes to marriage registration in England and Wales under the terms of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 continues: the Church of England’s website still states that ‘the Government has announced neither the details nor the dates for implementing these changes’ and that, when further information becomes available about the timescale, updates will be posted on the site.³

Northern Ireland

The Northern Ireland (Executive Formation) Act 2019 required the Westminster Government, *inter alia*, to introduce secondary legislation providing for

² *Owens v Owens* [2018] UKSC 41.

³ At <<http://www.churchofengland.org>> and <<http://www.churchsupporthub.org>>, accessed 12 February 2020.

same-sex marriage, opposite-sex civil partnership and greater access to abortion unless a Northern Ireland Executive was formed by 21 October 2019. It was not; and on 28 October, during a debate on the *Report pursuant to section 3(5) of the Northern Ireland (Executive Formation etc) Act 2019*, the Secretary of State for Northern Ireland told the House that the Government would put the necessary Regulations in place to legalise same-sex marriages and opposite-sex civil partnerships by 13 January 2020 and that, given the usual 28-day notice period, he expected the first marriages to take place in the week beginning 10 February.

The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 were made on 19 December and laid on 23 December. On 13 January, therefore, civil marriage between same-sex couples and civil partnerships for opposite-sex couples became lawful and couples were able to give notice to the General Register Office for Northern Ireland. The first same-sex marriage took place on 11 February.

Section 8 of the Northern Ireland (Executive Formation etc) Act 2019 allows the Secretary of State to make further Regulations covering related provisions, including giving the right to convert from a civil partnership to marriage (and vice versa) and how to allow for religious same-sex marriage ceremonies while providing the appropriate protection for religious organisations that do not wish to conduct them. On 20 January, the Westminster Government published consultations on two related issues: implementing same-sex religious marriage in Northern Ireland (and the appropriate protections) and whether or not to allow same-sex and opposite-sex couples to convert their civil partnerships to marriages (and vice versa). The consultations were to close on 23 February.

Scotland

On 1 October, the Scottish Government published the Civil Partnership (Scotland) Bill: 'An Act of the Scottish Parliament to enable persons of different sexes to be in a civil partnership'. At the time of writing, it was under consideration in committee.

CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

The draft Church of England (Miscellaneous Provisions) Measure was published on 4 November, together with a link to the 'Comments and explanations' on the Measure by the Legislative Committee of General Synod. At the time of writing, it had been approved by the Lords⁴ but not yet by the Commons.

4 HL Deb 30 January 2020, vol 801, cols 1608–1612.

CHURCH REPRESENTATION RULES 2020

The Church Representation Rules 2020 came into force on 1 January. The text of the Rules is available on the Church of England website,⁵ together with an introduction and basic outline.⁶

ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2019

The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2019 came into force on 1 January.

FACULTY JURISDICTION (AMENDMENT) RULES 2019

In July, General Synod agreed the Faculty Jurisdiction (Amendment) Rules 2019, which will come into effect on 1 April 2020. Various procedural changes have been made but of greater significance are the revisions to Lists A and B in response to comments from around the dioceses. The Church of England's Legal Office has prepared an updated version of the Faculty Jurisdiction Rules 2015 as amended by the Faculty Jurisdiction (Amendment) Rules 2019, incorporating all the changes made by the Amendment Rules into a single text.⁷

LISTED PLACES OF WORSHIP GRANT SCHEME EXTENSION

HM Treasury agreed to extend the Listed Places of Worship Grant Scheme for a further year until 31 March 2021. There was no Government publicity about the extension. However, there is a reference to it buried deep among the FAQs on the Listed Places of Worship Grant Scheme website.⁸

SAFEGUARDING

On 31 October, the Government responded to recommendation 3 of the IICSA report on 9 May 2019, *Anglican Church Case Studies: the Diocese of Chichester and the response to allegations against Peter Ball, that*

The Government should amend Section 21 of the Sexual Offences Act 2003 so as to include clergy within the definition of a position of trust. This

5 Available at <<https://www.churchofengland.org/more/policy-and-thinking/church-representation-rules/church-representation-rules-online-contents>>, accessed 7 February 2020.

6 Available at <<https://www.churchofengland.org/more/policy-and-thinking/church-representation-rules/church-representation-rules-online-introduction>>, accessed 7 February 2020.

7 Available at <<https://www.churchofengland.org/sites/default/files/2019-12/FJR%202015%20as%20amended%20by%20FJ%28A%29R%202019.pdf>>, accessed 7 February 2020.

8 Under 'general queries': see <http://www.lpwscheme.org.uk/frequently_asked_questions.html>, accessed 7 February 2020.

would criminalise under s16–s20 sexual activity between clergy and a person aged 16–18, over whom they exercise pastoral authority, involving the abuse of a position of trust.

The Government's response, in short, was that ministers were still considering the matter.⁹

The issue was taken up by the All-Party Parliamentary Group on Safeguarding in Faith Settings in its report of 29 January, 'Positions of trust: it's time to change the law'.¹⁰ Its principal recommendation, which goes slightly beyond recommendation 3 of the IICSA report, is that the 2003 Act should be amended so that the application of the definition of 'positions of trust' as an adult who is 'regularly involved in caring for, training, supervising or being in sole charge' of a child should no longer be limited to the professions listed in section 21 of the Act but should be extended to *any* adult to whom that description applies.

RELIGION IN SCHOOLS IN WALES

The law on religious education is currently the same in both England and Wales. However, in October the Welsh Government published a consultation on proposals to ensure 'access to the full curriculum' for all learners in Welsh schools.¹¹ One of its proposals was to remove the parental right to opt out their children from religious education and collective worship.

In January the Education Minister, Kirsty Williams AM, announced that the Government had decided to end the parental opt-out from religious education – to be renamed 'Religion, values and ethics' – but to leave the issue of collective worship until after the next Assembly elections. Whether or not removing the opt-out accords with the obligation under Article 2 of Protocol 1 of the European Convention on Human Rights (the right to education) to 'respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions' remains to be seen.

doi:10.1017/S0956618X20000071

- 9 The response is available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843876/independant-inquiry-child-sexual-abuse-letter.pdf>, accessed 7 February 2020.
- 10 Available at <https://thirtyoneeight.org/media/2566/appg_report_positions_of_trust_jan2020_thirtyoneeight.pdf>, accessed 7 February 2020.
- 11 Available at <https://gov.wales/sites/default/files/consultations/2019-10/consultation-document-ensuring-access-to-the-full-curriculum_o.pdf>, accessed 7 February 2020.