

## PARLIAMENTARY REPORT

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### February–May 2012

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#### ASSISTED SUICIDE

##### England and Wales

On 27 March the House of Commons debated the policy guidelines of the Director of Public Prosecutions on prosecutions for encouraging or assisting suicide. The debate, introduced by Richard Ottaway (Conservative) and David Winnick (Labour), was broadly supportive of the guidelines. The motion was amended and the House resolved to welcome the policy guidelines and to encourage 'further development of specialist palliative care and hospice provision'.<sup>1</sup>

##### Scotland

Margo MacDonald MSP has taken the first steps towards reviving the proposals in her End of Life Assistance (Scotland) Bill, which was defeated at Stage 1 in December 2010. Her proposal for an Assisted Suicide (Scotland) Bill was lodged on 23 January 2012 and the subsequent consultation closed on 30 April.<sup>2</sup>

#### CHARITY LAW

The Charities Act 2011<sup>3</sup> duly came into force on 14 March 2012. The new Act makes no change to the substantive law but it has, of course, changed all the statutory references in the various documents that charities need to file with the Charity Commission. The Commission announced that, in order to ease the transition from the old legislation to the new, for an unspecified period documents filed with the Commission would still be valid even if they referred to the earlier Acts.

<sup>1</sup> See HC Deb 27 March 2012 c 1363ff.

<sup>2</sup> For the consultation document see <[http://www.scottish.parliament.uk/S4\\_MembersBills/Final\\_version\\_as\\_lodged.pdf](http://www.scottish.parliament.uk/S4_MembersBills/Final_version_as_lodged.pdf)>, accessed 29 April 2012.

<sup>3</sup> Available at <<http://www.legislation.gov.uk/ukpga/2011/25/enacted>>, accessed 28 December 2011.

To coincide with the entry into force of the new Act, the Auditing Practices Board of the Financial Reporting Council published an update to Practice Note 11 (Revised) – *The Audit of Charities in the UK*<sup>4</sup> – and a related update to Bulletin 2010/2 (Revised) – *Compendium of Illustrative Auditor's Reports on United Kingdom Private Sector Financial Statements Ended on or after 15 December 2010*.<sup>5</sup> These updates have primarily been made to incorporate new legislative references to the 2011 Act, but they do not require any changes to audit processes and procedures. In addition, the Practice Note also reflects changes in respect of revised charity audit thresholds in Scotland and other legislative changes in Northern Ireland.

In February and March, the Hodgson Review of the Charities Act 2006 issued a series of calls for evidence about several aspects of the legislation, including the definitions in the Act, the status and functions of the Charity Commission, the experiences of current and former exempt and excepted charities, trusteeship, accounting and reporting, complaints, appeals and redress, and various fundraising issues. Responses were requested by 16 April and Lord Hodgson hoped to produce his report before the parliamentary summer adjournment in July.

## CIVIL PARTNERSHIPS AND SAME-SEX MARRIAGE

### England and Wales

After a certain amount of opposition in the House of Lords, the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011<sup>6</sup> came into effect on 5 December and opened the way for the registration of civil partnerships in religious buildings in England and Wales – though *not*, it must be emphasised, to registration during the course of a religious ceremony. However, that decision may yet be overtaken by events, because on 15 March the Home Office launched a consultation on ‘equal marriage’.<sup>7</sup>

The Government’s key proposals are to enable same-sex couples to have a civil marriage, to retain civil partnerships for same-sex couples who prefer that alternative, to allow existing civil partners to convert their partnerships into marriages and to enable married individuals legally to change their gender without having to divorce. Crucially, however, the consultation document proposes no

4 Available at <[http://www.frc.org.uk/images/uploaded/documents/PN11\\_20March%202012%20Revised.pdf](http://www.frc.org.uk/images/uploaded/documents/PN11_20March%202012%20Revised.pdf)>, accessed 28 April 2012.

5 Available at <[http://www.frc.org.uk/images/uploaded/documents/Bulletin2010\\_2%20March%202012%20FINALI.pdf](http://www.frc.org.uk/images/uploaded/documents/Bulletin2010_2%20March%202012%20FINALI.pdf)>, accessed 28 April 2012.

6 Available at <<http://www.legislation.gov.uk/ukSI/2011/2661/made>>, accessed 29 April 2012 and see also (2012) 14 Ecc LJ 294.

7 Government Equalities Office, ‘Equal civil marriage: a consultation’, available at <<http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/consultation-document?view=Binary>>, accessed 29 April 2012.

change to the current law relating to religious marriages – which will continue to be exclusively heterosexual, though it will still be possible to register civil partnerships on religious premises – nor does it provide for civil partnerships between opposite-sex couples. The consultation closed on 14 June.

### Scotland

The terms of the Scottish Government consultation,<sup>8</sup> which closed on 9 December 2011, had been rather less cut-and-dried than the Home Office proposals and less concerned to exclude religious participation. Moreover, although the ministerial foreword said that the Government's initial views were 'that religious ceremonies for civil partnerships should no longer be prohibited' and that 'same sex marriage should be introduced', the document invited views on whether or not religious organisations that wished to do so should be authorised to celebrate same-sex marriage, and did not appear entirely to discount the idea of opening up the civil partnership option to heterosexual couples. At the time of writing, the Scottish Government had received about 50,000 responses and was still analysing them.

## CONSTITUTIONAL AFFAIRS

### House of Lords reform

On 23 April the Joint Committee on the draft House of Lords Reform Bill published its report.<sup>9</sup> As widely leaked in advance, the Committee concluded that the Government's proposed House of 300 members would be too small to provide an adequate pool to fulfil all the demands on a revising chamber and recommended a membership of 450, of whom 80 per cent would be elected and 20 per cent appointed.

As to the continued presence of bishops in a reformed House, the Committee:

- i. Agreed that, in a fully elected House, there should be no reserved places for bishops (para 288);
- ii. Agreed that bishops should continue to retain seats in the reformed House of Lords *ex officio* (para 289); and
- iii. Agreed with the Government's proposal of 12 reserved seats for bishops (para 290); but

8 'Registration of civil partnerships, same sex marriage and related issues', available at <<http://www.scotland.gov.uk/Publications/2011/09/05153328/0>>, accessed 29 April 2012.

9 Joint Committee on the Draft House of Lords Reform Bill, 'First report: draft House of Lords Reform Bill', HL Paper 284-I, HC 1313-I (London: TSO 2012), available at <<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtdraftref/284/284i.pdf>>, accessed 29 April 2012.

- iv. Recommended that the transitional arrangements should be more flexible in order to make the wider pool of diocesan bishops and any future women bishops eligible for appointment in the second transitional Parliament (para 294).

The draft Bill would preserve the presence of the bishops in a reformed House as a special category of member: the two archbishops, the bishops of London, Durham and Winchester and a group of 'ordinary Lords Spiritual' that would gradually reduce from 16 to 7. However, the Committee was split on the continued presence of the Lords Spiritual as a matter of principle even in a House with a 20 per cent appointed membership; a careful reading of the Minutes of Proceedings on the draft report reveals that it divided 13 to 7 against amendments which would have proposed removing the bishops from a reformed House entirely or, alternatively, reducing their number to seven in total.<sup>10</sup>

Unusually, 12 members of the Joint Committee, including the Bishop of Leicester, published an 'Alternative Report'<sup>11</sup> separately from the official one, in which their principal theme was that the proposals in the draft Bill, if implemented, would inevitably lead to a situation in which the new-format Lords challenged the primacy of the Commons. The larger issue of whether or not the draft Bill will make any further progress in the face of such concerns remains unresolved.

### Scotland Act 2012

The Scotland Bill, which received Royal Assent on 1 May, devolved further powers, principally in the areas of taxation and capital borrowing powers, though they will not become available to the Scottish Parliament and Government until 2016. What the Act does *not* settle is the issue of an independence referendum, which was the subject of a separate consultation that closed on 11 May.<sup>12</sup>

One consequence of the Act is that, from 2016 onwards, Scotland will be able to set a different rate of income tax from Westminster. HMRC has already issued a Technical Note on the effect of a Scottish rate of income tax, which states, inter alia, that Gift Aid for charities will continue to apply at the UK basic rate, regardless of the tax position of the donor.

<sup>10</sup> Ibid, p 161.

<sup>11</sup> *House of Lords Reform: an alternative way forward: a report by members of the Joint Committee of Both Houses of Parliament on the Government's draft House of Lords Reform Bill*, available at <<http://www.houseoflordsreform.com/wordpress/wp-content/uploads/2012/04/FinalPrint9042012-3.pdf>>, accessed 1 May 2012.

<sup>12</sup> See Scottish Government, *Your Scotland, Your Referendum* (Edinburgh, 2012) available at <<http://www.scotland.gov.uk/Resource/0038/00386122.pdf>>, accessed 1 May 2012.

## ECCLESIASTICAL OFFICES (TERMS OF SERVICE)

The Ecclesiastical Offices (Terms of Service) (Consequential Provisions) Order 2012,<sup>13</sup> which came into force on 1 July 2012, makes amendments to the Mission and Pastoral Measure 2011 consequential on the provisions of the Ecclesiastical Offices (Terms of Service) Measure 2009 as follows:

- i. Amendments to section 34 of the 2011 Measure restore the distinction in that section (mistakenly removed by earlier legislation) between deacons appointed to serve as members of a team ministry and other deacons;
- ii. The amendment to section 39 relates to pastoral schemes that result in the abolition of ecclesiastical offices and, by adding a reference to offices held under Common Tenure, remedies an omission in the 2009 Measure;
- iii. Amendments to section 40 and Schedule 4 restore the position (mistakenly removed by earlier legislation) on compensating clergy for loss of office as a result of a pastoral scheme to that under provisions of the Pastoral Measure 1983;
- iv. Amendments to sections 45 and 106(1) enable a pastoral scheme to provide for the transfer of a parsonage house or land to a Parsonages Board for the purposes of its functions under the 2009 Measure or the transfer to an incumbent of land held by a Parsonages Board for the purposes of those functions.

## RELIGIOUS SYMBOLS IN THE WORKPLACE

Possibly with an eye to the forthcoming hearing in Strasbourg of the conjoined *Eweida* and *Chaplin* appeals,<sup>14</sup> the Government has been encouraging employers to be more accommodating towards employees who wish to wear discreet religious symbols at work. In reply to a question from Lord Alton of Liverpool asking if the Government had any plans to clarify the law on Christians wearing crosses in the workplace, Baroness Verma, a Government Whip and spokeswoman in the Lords for the Cabinet Office, Women and Equalities said that clarification was unnecessary since:

there is nothing in UK law that denies people the right to express their religious views – including through the wearing of a religious symbol such as a cross – while at work. Employers need to have proportionate and legitimate reasons if they want to restrict their employees from openly wearing a cross or any other religious item ...<sup>15</sup>

13 Available at <<http://www.legislation.gov.uk/ukxi/2012/992/made>>, accessed 29 April 2012.

14 For the interlocutory proceedings, see *Nadia Eweida and Shirley Chaplin v United Kingdom* Application no 48420/10 (ECtHR 12 April 2011).

15 HL Deb 22 March 2012 c WA 191.

and cited health and safety as a legitimate reason for imposing restrictions. This was reiterated by the Secretary of State for Communities and Local Government in a press statement on 16 April, who declared that it was 'reasonable, and lawful, for Christians to wear a discreet symbol of their faith as long as this does not get in the way of their work'.<sup>16</sup>

## TAX AND GIFT AID

On 24 February HM Revenue & Customs published new model Gift Aid declarations,<sup>17</sup> which include the words:

I confirm I have paid or will pay an amount of Income Tax and/or Capital Gains Tax for the current tax year (6 April to 5 April) that is at least equal to the amount of tax that all the charities and Community Amateur Sports Clubs that I donate to will reclaim on my gifts for the current tax year.

This is a significant change from the existing wording; and, while HMRC will accept claims made on donations based on declarations using the old wording until 31 December 2012, the new form of words will have to be used after that date. It will not be necessary for charities to ask existing donors for new declarations with the new wording; however, it would be prudent for readers to advise any charities with which they are associated to update their Gift Aid declarations as soon as possible.

In addition, the Finance Act 2010, Schedule 6, Part 2 (Commencement) Order 2012 and the Finance Act 2010, Schedule 6, Part 1 (Further Consequential and Incidental Provision etc) Order 2012 applied the new definition of a charity under Schedule 6 of the Finance Act 2010 to all UK charity tax reliefs and exemptions administered by HMRC that were not already covered by the definition. Charities that claim Gift Aid have been required to meet the new definition since 1 April 2010; those charities that do not claim Gift Aid but claim other charity tax reliefs and exemptions administered by HMRC have had to meet the new definition since 1 April 2012.

## LISTED PLACES OF WORSHIP GRANT SCHEME AND VAT

Without warning, the Chancellor announced in the Budget that the zero rate of VAT on alterations to listed buildings would be withdrawn from 31 October 2012

<sup>16</sup> Eric Pickles, 'Wearing of Christian symbols at work', *DCLG Newsroom Responses*, 16 April 2012, available at <<http://www.communities.gov.uk/issuesandresponses/newsroom/2131296>>, accessed 29 April 2012.

<sup>17</sup> Available at <[http://www.hmrc.gov.uk/charities/gift\\_aid/declarations.htm#2](http://www.hmrc.gov.uk/charities/gift_aid/declarations.htm#2)>, accessed 29 April 2012.

because the Government felt that it was poorly targeted and in some cases encouraged alterations and extensions instead of repairs. After some rather tense negotiations, it was then announced that the Listed Places of Worship Grant Scheme would be extended to offset the adverse financial impact of the VAT change on listed places of worship undertaking alteration works, that the Government would provide the Scheme with an additional £30 million annually for the duration of the present Parliament and that from 1 October claims under the Scheme would be paid in full, instead of the current rate of less than half the VAT reclaimed.

The change of heart did much to blunt the adverse reaction to the original announcement. However, the Scheme has been under enormous stress and, for obvious reasons, the present Government cannot give any funding commitment beyond the end of the present Parliament – which means that the issue will have to be revisited in 2015. Restoring the zero rate will *not*, however, be an option since, under the EU VAT Directive, once a zero rate has been abandoned it cannot be restored.

## PAROCHIAL FEES

The Parochial Fees and Scheduled Matters Amending Order 2012,<sup>18</sup> which comes into force on 1 January 2013, amends Schedule A1 to the Ecclesiastical Fees Measure 1986 by removing the following from the matters in respect of which parochial fees may be prescribed: services of prayer and dedication after a civil marriage, services of thanksgiving for marriage, and memorial services. The Order also updates the Parochial Fees Order 2010 in respect of certain miscellaneous matters, including marriage, burial and the erection of monuments in churchyards.

## LOCALISM AND PRAYERS AT COUNCIL MEETINGS

In an action against Bideford Town Council,<sup>19</sup> the Administrative Court held that, in principle, saying prayers as an integral part of formal council meetings was *ultra vires* section 111 of the Local Government Act 1972 and that there was no statutory authority for continuing the practice. That said, it also concluded that the manner in which the practice had been carried out in the particular circumstances of Bideford had not infringed the rights of the second applicant, Mr Bone – a former town councillor – under Article 9 ECHR (thought,

<sup>18</sup> Available at <<http://www.legislation.gov.uk/ukxi/2012/993/made>>, accessed 29 April 2012.

<sup>19</sup> *R (on the application of the National Secular Society and Another) v Bideford Town Council* [2012] EWHC 175 (Admin), available at <<http://www.bailii.org/ew/cases/EWHC/Admin/2012/175.html>>, accessed 28 April 2012.

conscience and religion) nor had the Council discriminated indirectly against him on grounds of his lack of religious belief, contrary to the Equality Acts 2006 and 2010.

The Council was given leave to appeal. On 18 February, however, section 1 of the Localism Act 2011 – which confers a general power on local authorities ‘to do anything that individuals generally may do’ – was brought into effect by the Localism Act 2011 (Commencement No 3) Order 2012 and on 28 March was extended, under certain specified conditions, to parish and town councils by the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012. The Government contends that this general power enables local councils to begin meetings with prayers if they so wish; and the intended appeal may have been overtaken by events.

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