

PARLIAMENTARY REPORT

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ASSISTED SUICIDE

England and Wales

After the Administrative Court (Toulson LJ, Royce and Macur JJ) had rejected the applications of the late Mr Tony Nicklinson and an anonymous claimant, AM, to allow doctors to end their lives without fear of prosecution,¹ *The Times* reported that Anna Soubry, Conservative MP for Broxtowe and a newly appointed minister at the Department of Health, was supporting 'the right to kill yourself'. She was subsequently supported in turn by her Liberal Democrat ministerial colleague Norman Lamb, who told the BBC that, though the issue was one for the individual's conscience and there was no Government policy on it, there was a case for looking at reform. The Ministry of Justice subsequently let it be known that there were no plans to change the existing law.

Scotland

As reported in the last issue of the *Journal*, Margo MacDonald MSP had lodged a proposal for an Assisted Suicide (Scotland) Bill on 23 January 2012 and the subsequent consultation closed on 30 April.² She has now secured sufficient cross-party support to introduce her Bill, lodged on 18 September 2012, 'to enable a competent adult with a terminal illness or condition to request assistance to end their own life, and to decriminalise certain actions taken by others to provide such assistance'.

CHARITY LAW

England and Wales

The Hodgson Review of the Charities Act 2006 completed its work before the parliamentary summer adjournment in July. Lord Hodgson's

1 *R (Nicklinson) v Ministry of Justice & Ors: R (AM) v DPP & Ors* [2012] EWHC 2381 (Admin).

2 For the consultation document, see <http://www.scottish.parliament.uk/S4_MembersBills/Final_version_as_lodged.pdf>, accessed 29 April 2012.

report³ makes a huge number of recommendations, of which perhaps the most immediately important are that the Charity Commission should remain as the main regulator of charities in England and Wales and be properly resourced to do so, that charities with an income over £1 million should be able to pay their trustees and that the general threshold for compulsory registration should be raised to £25,000 to match the accounting threshold. As widely predicted, the report also floats the idea of withdrawing Gift Aid from charities that are late in filing their reports and accounts, or possibly introducing fines for late filing.

From 27 June to 26 September the Charity Commission launched a consultation on its revised public benefit guidance.⁴ The revision became necessary after the Upper Tribunal (Tax and Chancery Chamber) quashed part of the Charity Commission's existing guidance.⁵ The new guidance, when finalised, will replace both the current guidance on charities and public benefit and the specific guidance on public benefit and fee-charging.

Northern Ireland

In contrast to its predecessor, which fell at the last Dissolution, the Charities Bill (Northern Ireland) introduced into the Northern Ireland Assembly on 2 July appears to be making unruffled progress. It passed its Second Stage on 11 September without a vote, amid general agreement that the Bill was necessary; and it is hoped that it will become law in time to allow the Charity Commission for Northern Ireland to consult on the terms of its public benefit guidance in spring 2013. That said, however, during the Second Stage debate two Unionist MLAs asked why the Charities 2008 Act (which the Bill amends) had been so hopelessly inept in the way that it mixed up elements of English and Scots charity law.

CIVIL PARTNERSHIPS AND SAME-SEX MARRIAGE

England and Wales

The Westminster Government's consultation on equal civil marriage closed on 14 June and at the time of writing there had been no formal response from ministers.

The proposal has the backing of the leaders of all three major political parties and could reasonably be expected to command majority support in the House of

3 Available at <<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Review-of-the-Charities-Act-2006.pdf>>, accessed 30 September 2012.

4 Available at <<http://publicbenefitconsultation.blogspot.co.uk/p/home.html>>, accessed 1 October 2012.

5 See *Independent Schools Council v The Charity Commission for England & Wales* [2011] UKUT B27 (TCC) (2 December 2011).

Commons. The major Churches remain concerned, however, that any exemption to accommodate their conscientious objections to performing same-sex marriages could be subject to legal challenge; and a recent article in the *Daily Telegraph* by Communities Secretary Eric Pickles suggests that at least some members of the Government share that concern.

Scotland

The Scottish Government has announced that it intends to legislate to introduce same-sex marriage but that the necessary legislation ‘will be accompanied by important protections for freedom of speech and religion’ and ‘no religious body will be compelled to conduct same-sex marriages’.⁶ A proposed Marriage and Civil Partnership Bill is included in the Programme for Government for 2012/2013.

Ministers point out that Schedule 23 to the Equality Act 2010 already includes exemptions from equality requirements where they are necessary to comply with the doctrine of the religious community concerned or to avoid conflict with the strongly held convictions of a significant number of its adherents. However, they concede that an amendment to the Equality Act 2010 will be required, and that is a reserved matter. The Scottish ministers will be working with the Westminster Government to secure agreement on the necessary amendment to the 2010 Act before introducing a Bill in the Scottish Parliament. There will also be a further consultation with stakeholders to inform the drafting of legislation and guidance, and a draft Bill will be published for consultation later in the year.

CONSTITUTIONAL AFFAIRS

Commission on a Bill of Rights consultation

The Commission on a Bill of Rights launched a second consultation on 11 July, building on the Commission’s 2011 Discussion Paper on the possible contents of a putative ‘UK Bill of Rights’ and, said the Commission, ‘on the views we have heard so far’. The closing date for responses was 30 September.

House of Lords reform

The previous Parliamentary Report ended by suggesting that it was unclear whether the draft Bill on reform of the House of Lords would make any further progress, given the strength of the opposition to it among peers on all sides. That proved to be prophetic: the Bill was formally withdrawn on 3 September. Although the Bill had passed its Commons second reading, it had

6 See <<http://www.scotland.gov.uk/News/Releases/2012/07/same-sex25072012>>, accessed 30 September 2012.

proved impossible to secure a majority in favour of the programme motion accompanying the Bill – without which it would never complete its Commons stages. So the bishops will remain in the House of Lords for the rest of this Parliament and, given the mixed fortunes of previous attempts at House of Lords reform, they will probably do so for the next Parliament as well.

GIFT AID SMALL DONATIONS SCHEME

The Small Charitable Donations Bill was introduced into the Commons on 21 June. The Bill gives effect to the Gift Aid Small Donations Scheme announced at Budget 2011 and reiterated in Budget 2012. The purpose of the Scheme is to enable charities and community amateur sports clubs to claim a payment analogous with Gift Aid on small cash donations up to £20, up to a maximum of £5,000 each year – which means that a charity claiming against the full amount will receive £1,250 from HMRC. Donors will not be required to complete a Gift Aid declaration and charities will not be obliged to provide the donors' details with their repayment claims.

The Scheme is fairly complex, with the possibility of claims for loose collections for each *charity* and for each *building in which charitable activity is carried out*. The latter provision is to avoid discrimination against single charities with large numbers of dispersed sub-groups: for example, though each Church of England parish is a separate charity, the Salvation Army is a single national charity with a single registration number. Perhaps the most controversial feature of the Scheme is that in order to make a claim the charity will have to demonstrate three years' satisfactory compliance with Gift Aid – which means that a new charity will have to sign up for Gift Aid then wait for at least three years before making claims under the new Scheme.

It was the intention that the Bill should become law before the end of 2012 so that the Scheme could begin on 6 April 2013. To that end, draft regulations setting out the general administrative framework for the Scheme were published for consultation in September, while the Bill was still in progress.

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