

PARLIAMENTARY REPORT

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ABORTION ACT 1967: DEVOLUTION

In October 2015 the Secretary of State for Scotland announced that the Government would bring forward an amendment to the Scotland Bill at consideration stage in the Commons to devolve responsibility for abortion law to the Scottish Parliament. It duly did so: see clause 50 of the Lords Bill as brought from the Commons.¹ At the time of writing the Bill was being considered in the Lords.

BURIAL AND CREMATION LAW

On 8 October 2015 the Scottish Government introduced a Bill 'to restate and amend the law relating to burial and cremation; to make provision about exhumation of human remains; to make provision in relation to the inspection and licensing of funeral directors; and for connected purposes'. At the time of writing it was being considered in committee.²

On 16 December 2015 the Westminster Government announced a consultation on 'changes to the Cremation (England and Wales) Regulations 2008, and for improving other aspects of cremation practice'.³ The announcement followed the Government's consideration of the recommendations of the Jenkins inquiry into infant cremations at Emstrey Crematorium, in Shropshire, between 1996 and 2012, and of Lord Bonomy's Infant Cremation Commission, established by the Scottish Government, which found that in some Scots cases parents had been incorrectly told that there had been, or

1 Available at <<http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0073/15073.pdf>>, accessed 11 January 2016.

2 The Bill and its associated documentation are available at <<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/92664.aspx>>, accessed 11 January 2016.

3 The consultation document is available at <https://consult.justice.gov.uk/digital-communications/consultation-on-cremation/supporting_documents/englishconsultationdoc.pdf>, accessed 11 January 2016.

would be, no ashes from their babies' cremations. The consultation was to close on 9 March 2016.

CHARITY LAW

Fundraising regulation

At the beginning of the period under consideration the National Council for Voluntary Organisations published a *Review of Fundraising Self-regulation*, following which the Minister for Civil Society, Rob Wilson, announced on 3 October 2015 that large charities could be forced to register with a new fundraising regulator and that if they failed to safeguard their supporters in any way the Government would introduce powers to intervene and regulate charity fundraising with a code of good practice. Next, Lord (Michael) Grade, former chief executive of Channel 4, was appointed interim chair of the new fundraising regulator, with the expectation that he would occupy the position for at least the next twelve months. During the passage of the Charities (Protection and Social Investment) Bill the Government introduced a new clause giving the Charity Commission a reserve power to require mandatory registration of charities' fundraising activities and to oblige them to comply with requirements imposed by a regulator and to have regard to guidance issued by the regulator.

Parallel with these developments, the Charity Commission for England and Wales launched a public consultation on a revised version of *Charity Fundraising: a guide to trustee duties* (CC20). The consultation closed on 11 February 2016.

Northern Ireland

The Charity Commission for Northern Ireland opened a consultation on its draft accounting and reporting guidance. The consultation was to close on 11 March 2016.

COUNTER-EXTREMISM

On 19 October 2015 the Government announced its new counter-extremism strategy.⁴ According to the announcement, the strategy builds on the statutory 'Prevent' duty but goes further, focusing on four areas: countering extremism; building a partnership with all those opposed to extremism; disrupting

4 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470094/51859_Cm9148_PRINT.PDF>; see also Frank Cranmer, 'The Government's new counter-extremism strategy: a summary', *Law & Religion UK*, 19 October 2015, <<http://www.lawandreligionuk.com/2015/10/19/the-governments-new-counter-extremism-strategy-a-summary/>>, both accessed 11 January 2016.

extremists; and building a more cohesive society. Media rumours of a registration scheme for ‘faith leaders’ proved to be unfounded.

Specifically in relation to faith communities:

86. The Department for Communities and Local Government is . . . commissioning a new programme of support to help faith institutions to establish strong governance. The programme aims to strengthen and support places of worship of all faiths in order to improve governance, increase their capacity to engage with women and young people, challenge intolerance and develop resilience to extremism. The programme will provide training on key issues alongside support for faith institutions facing specific challenges.

87. It is not government’s role to regulate faith leaders, but government does have a responsibility to ensure that those working in the public sector are suitably trained. The Government will therefore work in partnership with faith groups to review the training provided to those who work as faith leaders in public institutions.

On 23 October, replying to the debate on the Arbitration and Mediation Services (Equality) Bill, the Minister of State at the Ministry of Justice, Lord Faulks, said that, as part of the counter-extremism strategy, the Home Secretary was to commission an independent investigation into the application of sharia law in England and Wales.

COURT OF ECCLESIASTICAL CAUSES RESERVED

In November 2015, by Warrant under the Sign Manual, Her Majesty appointed Lord Hughes JSC, Lord Justice Clarke and the Bishops of Chichester, Coventry and Manchester as members of the Court of Ecclesiastical Causes Reserved for a period of five years from 1 July 2015. The appointments are made pursuant to section 5 of the Ecclesiastical Jurisdiction Measure 1963.

ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2015

The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2015 was made on 25 November 2015 and came into force on 1 March 2016. It revokes and replaces the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2014, substantially revising the approach taken in that Order for calculating the fees in ecclesiastical proceedings and widening and updating the matters for which fees are payable. One example of the revised approach is that an

hourly rate is set for a number of matters, including preparing a written judgment and ancillary work such as correspondence.

EMPLOYER-PROVIDED LIVING ACCOMMODATION

In the Autumn Statement, the Government announced that it would be publishing a call for evidence on the current tax treatment of employer-provided living accommodation. It duly did so on December 2015⁵ and the call for evidence closed on 3 February 2016.

Currently, no charge to income tax arises in respect of accommodation provided to workers where it customary to do so and where such provision is necessary so that they can perform their duties – and the churches collectively are one of the largest providers of tied accommodation. A serious issue arises in relation to the tax treatment of clergy accommodation in areas of high property prices, and negotiations with HMRC are in progress: watch this space.

EQUALITY AND HUMAN RIGHTS COMMISSION ON RELIGION AND BELIEF

On 5 October 2015 the Equality and Human Rights Commission (EHRC) published a *Review of Equality and Human Rights Law Relating to Religion or Belief* (Research Report no 97) by Peter Edge and Lucy Vickers of Oxford Brookes University.⁶ The study reviews the interpretation and effectiveness of the current domestic legislative framework on religion or belief under equality and human rights law: it is based upon a detailed analysis of primary and secondary sources of UK and European law, recent research carried out by the EHRC, the academic literature and the views of academics, legal practitioners, representatives of religion or belief organisations and representatives of other advisory and equality bodies.

The Commission responded to the review by stating that it would now begin work on its concluding report setting out its own views on those issues. The timetable for the revised draft guidance, which the Commission hoped to produce by the end of 2015, has slipped: at the time of writing it was still in preparation.

5 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483816/Employer_provided_living_accommodation_-_Call_for_evidence__M-7021_.pdf>, accessed 11 January 2016.

6 Available at <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/RR97_Review%20of%20equality%20and%20human%20rights%20law%20relating%20to%20religion%20or%20belief.pdf>, accessed 11 January 2016.

FACULTY JURISDICTION RULES 2015

The Faculty Jurisdiction Rules 2015⁷ came into effect on 1 January 2016: subject to transitional provisions in rule 28(3), they revoke the Faculty Jurisdiction (Appeals) Rules 1998 and the Faculty Jurisdiction Rules 2013. The overriding objective of the new Rules is to simplify faculty jurisdiction by speeding up the process and reducing expense while applying proportionate control and ensuring national consistency.

Under the 2015 Rules there is a nationally agreed core standard for works not requiring a faculty, in two categories. For works on the A list neither a faculty nor any diocesan authorisation is required. Works on the B list do not require a faculty but the archdeacon must give prior authorisation before the works can be carried out. There is no financial threshold for work covered by the A and B lists.

GIFT AID SMALL DONATIONS SCHEME

The Small Charitable Donations Act (Amendment) Order 2015, which will increase the annual limit for claims by charities under the Gift Aid Small Donations Scheme from £5,000 to £8,000, has been approved. The scheme is of particular interest to church congregations – for whom, in effect, it was originally designed. In its first year, 2013–2014, 8,100 charities claimed a total of £6 million; the following year 19,300 charities claimed a total of £21 million. It should be noted that the uprating will not come into force until 6 April 2016.

LEGAL OFFICERS (ANNUAL FEES) ORDER 2015

The Legal Officers (Annual Fees) Order 2015, which came into effect on 1 January 2016, prescribes the annual fees payable to diocesan registrars in 2016 for the professional services specified in Schedule 2 to the Order and fixes annual fees for 2016 for the provincial registrars.

LISTED PLACES OF WORSHIP ROOF REPAIR FUND: ROUND 2

The second round of the Listed Places of Worship Roof Repair Fund opened to applications in early December 2015. Applications were accepted for 12 weeks, with a deadline of 26 February 2016. The total available was £25 million and it was anticipated that grants would be allocated in early summer 2016.

7 Available at <http://www.legislation.gov.uk/uksi/2015/1568/pdfs/uksi_20151568_en.pdf>, accessed 20 January 2016.

MARRIAGE LAW IN ENGLAND AND WALES

As noted in the last issue of this *Journal*, the Law Commission has been undertaking the scoping phase of the review of the law of marriage. The Commission said that it was *not* considering:

- i. Changing the age of consent or the restrictions on marrying within the prohibited degrees;
- ii. Whether or not religious groups should be obliged to solemnise marriages of same-sex couples; or
- iii. The rights and responsibilities assumed by married couples, such as the financial entitlements of surviving spouses or the consequences of divorce.

In December 2015 the Commission published *Getting Married: A Scoping Paper*,⁸ together with an 'Executive summary'.⁹ The scoping paper does not set out specific proposals for reform: rather, it poses a list of the questions, covering each stage in getting married, that would need to be considered in any review.

The next step is for the Government to respond to the Commission's recommendations for further work. If the Government wishes to continue the process, the Commission will discuss with ministers its role in reviewing marriage law. If, after that discussion, the Commission continues to undertake the review it will agree with ministers detailed terms of reference and a timetable. The next stage of any review would be for the Commission to work towards producing a consultation paper containing concrete proposals for reform of the law.

MODERN SLAVERY ACT 2015

In October 2015 the Home Office published *Transparency in Supply Chains etc.: a practical guide*.¹⁰ Section 3(1) states that

Any organisation in any part of a group structure will be required to comply with the provision and produce a statement [*of compliance*] if they are a body corporate or a partnership ... wherever incorporated; carry on a business, or part of a business, in the UK; supply goods or services; and have an annual turnover of £36 m or more.

8 Available at <http://www.lawcom.gov.uk/wp-content/uploads/2015/12/Getting_Married_scoping_paper.pdf>, accessed 11 January 2016.

9 Available at <http://www.lawcom.gov.uk/wp-content/uploads/2015/12/Getting_Married_executive_summary.pdf>, accessed 11 January 2016.

10 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc_A_practical_guide_final_.pdf>, accessed 11 January 2016.

The guidance further notes at 3(6) that ‘So long as the organisation in question is incorporated (by whatever means) or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions.’

The provision is unlikely to apply to many religious charities but it will almost certainly apply to some of the larger ones, such as the Salvation Army; trustees need to consider whether or not they need to include a statement of compliance in their Trustees’ Annual Report.

ORGAN DONATION IN WALES

The Human Transplantation (Wales) Act 2013 was commenced on 1 December 2015. The Act introduces a ‘soft opt-out’ system for consent to deceased organ and tissue donation in Wales, under which adults are regarded as having consented to organ donation unless they have positively opted out. The Human Tissue Authority has published a code of practice on the new legislation.¹¹

OUT-OF-SCHOOL EDUCATION

In November 2015 the Department for Education announced a consultation on the registration and inspection of education in out-of-school settings, which closed on 4 January 2016.¹² Paragraph 1(i) of the document stated:

The system we envisage is intended to avoid imposing unnecessary burdens on the great number of such settings which are positively enhancing children’s education. It would, however, enable action to be taken where settings are failing to safeguard and promote the welfare of children, which includes failing to protect them from the harm caused by extremism.

The initial proposal – which, in short, appeared to suggest that Ofsted should be given the power to inspect educational activities involving those under the age of 19 for more than six hours a week – caused considerable concern among faith groups. Churches feared that such activities as intensive choir practices or rehearsals for the annual nativity play would come under Ofsted’s scrutiny, and several of the responses denounced the proposals as disproportionate. On 20 January 2016 the issue was debated in Westminster Hall,¹³ in the course of which the Minister for Schools, Nick Gibb, said that that the Government was

11 Available at <<https://www.hta.gov.uk/guidance-professionals/codes-practice/code-practice-10-human-transplantation-wales-act>>, accessed 11 January 2016.

12 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480133/out_of_school_education_settings_call_for_evidence.pdf>, accessed 9 February 2016.

13 HC Deb 20 January 2016, vol 604, col 567WH.

not proposing to regulate activities such as Sunday schools or the scouts: 'nor will it apply to one-off residential activities, such as a week-long summer camp', nor was the Government proposing routine inspection.¹⁴

The proposal is motivated in part by concerns about children being educated in unsafe premises but partly, as is evident from the extract above, by concerns about radicalisation. But the proposal to inspect educational activities for six or more hours a week while, at the same time, exempting 'a week-long summer camp' would appear to present a problem. The question remains as to how that degree of discrimination between groups and activities could be squared with the provisions of the Human Rights Act 1998 and the ECHR, in particular Articles 8 (private and family life) and 9 (thought, conscience and religion), and Article 2 of the First Protocol (education) in conjunction with Article 14 (discrimination).

PAROCHIAL FEES

The Archbishops' Council published the Table of Parochial Fees for the Church of England with effect from 1 January 2016. The full table can be downloaded from the Fees page of the Church of England website.¹⁵

doi:10.1017/S0956618X1600019

¹⁴ Ibid, col 590WH.

¹⁵ Available at <<https://www.churchofengland.org/weddings-baptisms-funerals/fees.aspx>>, accessed 11 January 2016.