

## PARLIAMENTARY REPORT

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### February–May 2010

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#### ECCLESIASTICAL EXEMPTION (LISTED BUILDINGS AND CONSERVATION AREAS) ORDER 2010

The proposal for a revised Ecclesiastical Exemption Order caused considerable concern to some of the exempt denominations. Everyone was agreed on what it should achieve; but there were serious misgivings about the drafting of the version that was issued for consultation. The proposal had been to extend exemption to buildings within the curtilage of listed places of worship whether those buildings were listed or not. The problem was that the references to 'curtilage' had not been transferred across from the 1994 Order to the new version issued for consultation; moreover, as drafted it appeared to relate to 'church buildings' only, thereby seeming to exclude church halls. The matter now appears to have been satisfactorily resolved; and the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010, SI 2010/1176,<sup>1</sup> which was laid before Parliament on 6 April, comes into force on 1 October 2010. Though the Order applies only to England, it is understood that the Welsh Assembly Government and Cadw intend to produce similar proposals for Wales.

#### END OF LIFE ASSISTANCE (SCOTLAND) BILL

The End of Life Assistance (Scotland) Bill<sup>2</sup> introduced into the Scottish Parliament on 21 January 2010 by Margo Macdonald MSP is currently being considered by a committee specially constituted for that purpose. The Parliament has agreed a deadline of 24 November 2010 for the end of Stage 1 consideration of the Bill.

1 Available at <[www.opsi.gov.uk/si/si2010/uksi\\_20101176\\_en\\_1](http://www.opsi.gov.uk/si/si2010/uksi_20101176_en_1)>, accessed 26 May 2010.

2 Available at <[www.scottish.parliament.uk/s3/bills/38-EndLifeAssist/b38s3-introd.pdf](http://www.scottish.parliament.uk/s3/bills/38-EndLifeAssist/b38s3-introd.pdf)>, accessed 26 May 2010 and see (2010) 12 Ecc LJ 232.

## EQUALITY AND RELIGION

Various issues in the Equality Bill that remained unresolved at the time of the last Parliamentary Report<sup>3</sup> were settled in the version that finally went for Royal Assent.

### Civil partnerships and religious services

During the Lords committee stage an amendment which would have removed the bar on holding a religious ceremony when registering a civil partnership was moved and withdrawn; however, the House returned to the matter at the report stage and voted to remove the bar. At third reading the Government brought forward its own amendment which was incorporated into the final text of the Act as section 202 (civil partnerships on religious premises).

Section 202 removes the prohibition on the use of religious premises for registration of civil partnerships; however, it also inserts a new section 6A(3A) into the Civil Partnership Act 2004 to the effect that '[f]or the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so'.<sup>4</sup> The new mechanism will be brought into operation by Regulations under the 2010 Act and the intention is that those denominations that wish to conduct civil partnerships should apply for permission to do so once the Regulations are in place.

### Employment: occupational requirements

Unsurprisingly, the issue of occupational requirements in relation to religious activity proved to be one of the most contentious issues during the passing of the Equality Act.<sup>5</sup> The conclusions are set out in Schedule 9, Part 1, paragraphs 2 and 3.

Paragraph 2 provides a specific exception for employment for the purposes of an organised religion – which, say the Explanatory Notes, 'is intended to cover a very narrow range of employment: ministers of religion and a small number of lay posts, including those that exist to promote and represent religion'.<sup>6</sup> The paragraph allows the employer to apply a requirement about an employee's marital or civil partnership status or to require him or her to be of a particular sex or sexual orientation or not to be a transsexual; but the employer may do so only if that requirement is a proportionate way of complying with the doctrines of the religion or of avoiding conflict with the strongly-held religious convictions

3 See (2010) 12 Ecc LJ 234–235.

4 Equality Act 2010, s 202(4).

5 And certainly one that produced some of the barmier headlines: see for example Patrick Hennessy: 'Catholic ban on women priests "illegal under Harriet Harman equality bill"', *The Daily Telegraph*, 10 January 2010.

6 Links to the Explanatory Notes are available in the HTML version of the Act, at <[www.opsi.gov.uk/acts/acts2010/ukpga\\_20100015\\_en\\_28#sch9-pt1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_28#sch9-pt1)>, accessed 29 May 2010.

of a significant number of adherents. The Explanatory Notes suggest that the exception would apply to a requirement that a Roman Catholic priest should be male and unmarried; however, they also suggest that it would be unlikely to extend to a requirement of celibacy for a homosexual church youth worker primarily engaged in organising sporting activities – though it might apply if the youth worker mainly taught Bible classes. In any event it would not apply to a church accountant.

Paragraph 3, which is designed to replicate the effect of provisions in current legislation, allows an employer with an ethos based on religion or belief to discriminate in relation to work by applying a requirement for an employee to be of a particular religion or belief, but only if that requirement is a genuine one for the work in question and proportionate to achieving a legitimate aim. The onus of proof is on the employer.

### **Marriage of couples of the same chromosomal sex**

In the previous issue it was noted that the Equality Bill as introduced did not re-enact the provisions of Section 5B of the Marriage Act 1949 (inserted into that Act by the Gender Recognition Act 2004) allowing clergy of the Church of England and the Church in Wales to refuse to marry any person whom they reasonably believe to be of an ‘acquired gender’ under the 2004 Act. Though the Government conceded the point, it was not then clear whether or not the concession would survive into the final text as enacted; however, Part 6 of Schedule 3 to the Equality Act 2010 both re-enacts the existing conscientious exemption and extends it to other religious celebrants in Great Britain.

### **MARRIAGE (WALES) ACT 2010**

An unforeseen consequence of the Church of England Marriage Measure 2008 was that couples intending to marry in the Church in Wales assumed that the new liberalised residence requirements for England would also apply to them – and were sometimes very disappointed when they learned that it did not. To change the situation required primary legislation; and the matter was resolved by the Marriage (Wales) Act 2010,<sup>7</sup> drafted in almost exactly the same terms as the 2008 Measure.

The Act, which received Royal Assent on 18 March and came into force immediately, introduces the concept of a ‘qualifying connection’ with a church for those wishing to marry other than in their own parish. From now on, a person has a qualifying connection with a Church in Wales parish if:

7 Available at <[www.opsi.gov.uk/acts/acts2010/pdf/ukpga\\_20100006\\_en.pdf](http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100006_en.pdf)>, accessed 28 May 2010.

- i. he or she was baptised in that parish (unless the baptism was part of a combined rite of baptism and confirmation) or has been entered in its confirmation register;
- ii. he or she has at any time lived in the parish for not less than six months;
- iii. he or she has at any time habitually attended public worship in the parish for not less than six months;
- iv. a parent has during the lifetime of that person lived in the parish or habitually attended public worship there for not less than six months; or
- v. a parent or grandparent was married in the parish.

#### MINISTERS OF RELIGION: ACCOMMODATION ALLOWANCES

As a result of the judgment in *R v Inland Revenue Commissioners, ex parte Wilkinson*,<sup>8</sup> various extra-statutory concessions were declared ultra vires; and since then the Treasury and HM Revenue and Customs have been considering how best to proceed. The Enactment of Extra-Statutory Concessions Order 2010, SI 2010/157,<sup>9</sup> which came into force on 1 April 2010, preserves the concession under which the income and profits of contemplative religious communities are exempt from corporation tax. It also includes amendments to the Income Tax (Earnings and Pensions) Act 2003 which preserve the concession on accommodation outgoings for lower-paid ministers of religion – ie those earning less than £8,500 a year.

doi:10.1017/S0956618X10000475

8 *R v Inland Revenue Comrs, ex parte Williamson* [2005] UKHL 30.

9 Available at <[www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100157\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100157_en.pdf)>, accessed 28 May 2010.