

PARLIAMENTARY REPORT

October 2007–January 2008

FRANK CRANMER

Fellow, St Chad's College, Durham

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

BLASPHEMY

On 9 January 2008, Dr Evan Harris, MP for Oxford West and Abingdon, brought forward the following new clause to the Criminal Justice and Immigration Bill: 'The offences of blasphemy and blasphemous libel are abolished'.¹ His proposal had wide cross-party support and had also attracted backing from the House of Lords in the persons of the former Archbishop of Canterbury, Lord Carey of Clifton, and the former Bishop of Oxford, Lord Harris of Pentregarth.

In replying to a debate that was almost totally in favour of abolition, the Minister, Maria Eagle, noted that the Law Commission had recommended as long ago as 1985 that the common law offences of blasphemy and blasphemous libel should be abolished and that the last prosecution for blasphemy had been in 1977.² The Government accepted the case for abolition but was unwilling to do so without first consulting the Church of England. Subject to a satisfactory outcome to that consultation, however, she confirmed that the Government would bring forward an appropriate amendment in the House of Lords to abolish both offences.³ The Government duly brought forward an amendment during the committee stage in the Lords, which was agreed to by a majority of 61.⁴

CHARITY LAW

The reform of charity law continues across all major jurisdictions and is generating a considerable amount of primary and secondary legislation and a seemingly endless procession of consultation documents.

In Scotland, the Office of the Scottish Charity Regulator (OSCR) named a series of organisations as Designated Religious Charities under the provisions

1 See HC Deb (2007–08) 9 January cc 437–455.

2 *Whitehouse v Lemon* [1979] AC 617, [1979] 1 All ER 898, HL.

3 HC Deb (2007–08) 9 January c 454. At the time of writing, the amendment had not been tabled.

4 HL Deb (2007–08) 5 March 2008 cc 117–1148.

of section 65 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10): the Church of Scotland, the Free Church, the United Free Church, and six of the eight dioceses of the Roman Catholic Church in Scotland. For an organisation to be confirmed as a Designated Religious Charity, OSCR must be satisfied that the charity has at least 3,000 members who are at least 16 years old and resident in Scotland, and that there are appropriate supervisory and disciplinary procedures in place, particularly in relation to the charity's component elements. Religious charities so designated are exempted from certain provisions of the 2005 Act relating to winding up, dissolution, suspension of managers and disqualification of trustees.

In addition, the OSCR is reviewing its guidance on the operation of the charity test under the 2005 Act. The initial guidance, *Meeting the Charity Test*, was published when the Act came into force in April 2006; since then, OSCR has made decisions on over 1,600 applications for charitable status and completed its pilot study on the 'Rolling Review' of charitable status for those charities already on the Scottish Charity Register. One particularly complex issue worth highlighting here is that of 'disbenefit'. OSCR says, at paragraph 75, that disbenefit 'is more than the mere absence of benefit, and our view is that it is equivalent to harm'.

The consultation will last until 7 April 2008. OSCR intends to publish a summary and analysis of the responses on its website by 30 April, unless confidentiality is requested, and final revised guidance will be published in the summer. The consultation document can be downloaded from the OSCR website.⁵

In Northern Ireland, the Charities Bill (Northern Ireland) is currently before the Assembly. The Bill, which was given a second reading on 15 January and is currently being considered by the Committee for Social Development, is not very different from the draft Order that lapsed at the restoration of the Assembly. It provides a definition of 'charity' and 'charitable purpose', establishes a Charity Commission for Northern Ireland and a Charity Tribunal for Northern Ireland, creates a register of charities, provides for the creation of charitable incorporated organisations and deals with the regulation of charities, their assets and public charitable collections. In short, it closely follows the pattern established by the Charities Act 2006 for England and Wales.

Where it does differ, however, is in clauses 165 and 166, which provide a separate route for the registration of a body that:

- (a) has the advancement of religion as its principal purpose;
- (b) has the regular holding of public worship as its principal activity;
- (c) has been established in Northern Ireland for at least 10 years;

5 The link is at <<http://www.oscr.org.uk/NewsItem.aspx?ID=76b9ef38-a449-454b-adbc-f688c9f5572c>>, accessed 14 January 2008.

- (d) has a membership of at least 1,000 persons who are—
 - (i) resident in Northern Ireland, and
 - (ii) at least 16 years of age; and
- (e) has an internal organisation such that—
 - (i) one or more authorities in Northern Ireland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and
 - (ii) those elements are subject to such requirements regarding the keeping of accounting records and auditing of accounts as appear to the Commission to correspond to those required by Part 8.

In effect, the Scottish provisions about registration of religious bodies have been carried over into the Northern Ireland legislation, save that the required membership is lower, to reflect Northern Ireland's smaller population.

Unlike the position in Great Britain, however, where English charities have to register afresh if they wish to operate as charities in Scotland, in a refreshing burst of realism, Northern Ireland has opted for a lighter-touch regulation for charities already registered in the other jurisdictions – including the Republic. Clause 167 of the Bill as presented makes special provision for a body 'which is not a charity under the law of Northern Ireland, but which operates for charitable purposes in or from Northern Ireland'.

In Ireland, a Charities Bill drafted very much along the lines of the Scottish and English legislation had been introduced into the *Oireachtas* but had lapsed at the general election in July 2007. It was resumed in the new *Dàil* and on 15 November passed its second stage (the equivalent of second reading at Westminster) and has been considered by a select committee.⁶

For England and Wales, an updated implementation plan for the Charities Act 2006 was published by the Office for the Third Sector (OTS) on 20 November.⁷

The Second Commencement Order,⁸ laid in November 2007, brought into force section 44, on mergers of charities, on 28 November 2007. Sections 67 and 68, on statements indicating benefits for charitable institutions, professional fundraisers and commercial participators, were to come into force from 1 April 2008.

The Third Commencement Order was to be laid in the first quarter of 2008. It will commence the provisions relating to audit and accounting (sections 29, 30, 31, 33, an order under section 77 and Schedule 6), the new definition of charity and

6 Available at <<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/3107/b3107d.pdf>>, accessed 3 January 2008.

7 Available at <http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/third_sector/ca_implementation_plan_071121.pdf>, accessed 3 January 2008.

8 Charities Act 2006 (Commencement No. 2, Transitional Provisions and Savings) Order 2007, SI 2007/3286.

the public benefit requirement (sections 1, 2, 3 and 5), the Charity Tribunal (section 8 and Schedules 3 and 4), new powers for the Charity Commission relating to removal or suspension of trustees and to protect charity property (sections 19, 20, 21 and 24), remuneration of trustees providing services to a charity (sections 36 and 37) and various provisions relating to transfer of property and *cy-près* (sections 15–18). These provisions were to be commenced at the same time as the Charity Tribunal was established in February 2008.

The Fourth Commencement Order is expected in the summer of 2008. Crucially, it will commence those parts of section 9 requiring excepted charities with an annual income over £100,000 to register with the Commission as from 1 October 2008. The OTS expects that parochial church councils in that situation will be required to register; however, both it and the Commission recognise that, in practice, it will be necessary to allow a realistic window for registration following 1 October, in order to enable charities to comply with the new requirements.

So far as wider policy issues are concerned, the *general* guidance for trustees, *Charities and Public Benefit*, appeared on 16 January 2008⁹ but the timetable for publishing the consultative document on the draft *sectoral* guidance has slipped. The general guidance does, however, state explicitly that ‘it is not within the Charity Commission’s remit to look into traditional, long-held religious beliefs or to seek to modernise them’¹⁰ – which may at least be a signal of the overall approach that the Commission will take.

The draft sectoral guidance on public benefit and the advancement of religion was published on 29 February and the closing date for responses is 30 June 2008.¹¹ The Commission’s guide to the consultation process also stated that separate draft supplementary guidance would be published on the advancement of *non-religious* beliefs, but no firm date was given for publication.

DIOCESES, PASTORAL AND MISSION MEASURE 2007

The Dioceses, Pastoral and Mission Measure 2007 (No. 1)¹² that was given Final Approval by Synod in February 2007 received Royal Assent on 30 October. The Measure reconstitutes and reforms the Dioceses Commission to keep under review the provincial and diocesan structure of the Church and to prepare reorganisation schemes, and makes provision for changing the names of sees, for creating and filling suffragan sees and for nominating suffragans and delegating functions to them and to other bishops.

9 Available at <<http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf>>, accessed 16 January 2008.

10 *Charities and Public Benefit*, p. 11.

11 Available at <<http://www.charity-commission.gov.uk/publicbenefit/pbar.asp>>, accessed 29 February 2008.

12 Available at <http://www.opsi.gov.uk/uk-church-measures/2007/ukcm_20070001_en_1>, accessed 11 January 2008.

Section 1 of the Measure imposes a duty on ‘any person or body carrying out functions’ under the new Measure or the Pastoral Measure 1983 (No. 1) to have due regard to the furtherance of the mission of the Church of England; and, as well as amending the 1983 Measure in relation to pastoral schemes and closing churches for regular public worship, it empowers a diocesan bishop to endorse and make provision for ‘mission initiatives’ and makes new provision for mission and pastoral committees. Section 61 empowers the diocesan bishop, when licensing an assistant curate, to assign to that person a special cure of souls in a part of the area of the benefice or special responsibility for a particular pastoral function.

The Measure also replaces the Council for the Care of Churches with a new organisation, the Church Buildings Council.

GIFT AID

Reference was made in the last Parliamentary Report to the consultation on the Gift Aid Scheme;¹³ in December the Treasury published a summary of responses.¹⁴

The main point that emerged was that small charities (a category that includes the vast majority of individual congregations) often had limited administrative and technical resources to administer the scheme and found the rules governing it unduly complex. The vast majority of church treasurers do not have accountancy qualifications, and the consensus was that the absence of simple, clear and easily accessible guidance made life especially difficult for inexperienced volunteers. There were also concerns about record-keeping and audit-trails. Many respondents argued for a move to an accounts-based method that would allow a charity to reclaim a fixed proportion of its total voluntary income, while others proposed that charities should be able to make an annual Gift Aid claim on the basis of a composite rate set somewhere between the basic and higher rates of income tax, on the analogy of the composite rate that used to be applied to interest on building society accounts.

The Treasury has published the summary largely without comment, though officials are suggesting that an accounts-based system would result in Gift Aid being decoupled from the tax system – something that almost everyone in the voluntary sector agrees would be a retrograde step – while a general composite rate would not. The debate continues.

IMMIGRATION RULES AND MINISTERS OF RELIGION

In December, the Home Secretary announced a new, Australian-style Points Based System (PBS) for highly skilled foreign workers from outside the

¹³ (2008) 10 Ecc LJ 101.

¹⁴ Available at <http://www.hm-treasury.gov.uk/media/1/E/giftaid_responses131207.pdf>. accessed 7 January 2008.

European Economic Area applying to come to the United Kingdom.¹⁵ Applicants will earn points for their skills and the potential they show for economic success, their competence in the English language and their ability to support themselves and their dependents. Tier 1, for highly skilled workers, will be rolled out over the next 18 months. Tier 2, targeting skilled workers with a job offer, and Tier 5, for temporary workers such as musicians, actors and sportsmen and women, will be introduced in the third quarter of 2008. Tier 4, for students, will follow at the beginning of 2009. At the time of writing, the date for the introduction of Tier 3, for low-skilled workers filling specific temporary labour shortages, had not been announced.

All this is a matter of considerable concern to some churches, and the proposals have been the subject of protracted discussions with the Home Office and the Borders and Immigration Agency. 'Religious workers' will be included in Tier 2 and Tier 5. There are several problems with the proposals, the most pressing of which has been that the Borders and Immigration Agency wanted each faith community to establish a single, overarching body for each religion that would vouch for the *bona fides* of individual religious groups (churches, say, or dioceses) who would, in turn, act as 'sponsoring bodies' for individual clergy from non-EEA countries wishing to enter the United Kingdom. A further potential snag is that, under the current proposals, religious workers entering under Tier 5 would not be allowed to undertake pastoral work or to preach: so precisely what would they do when they got here? The new rules may also cause difficulties for those theological colleges that are not linked with an institution of higher education.

VAT ON BUILDINGS AND CONSTRUCTION

As the recent VAT Tribunal judgment in *Longparish Church of England Primary School v HM Revenue and Customs*¹⁶ indicates, the issue of VAT on building construction and repairs is exceedingly complicated.

HMRC has issued a revised notice explaining:

- i. When building work can be zero-rated or reduced-rated at 5 per cent;
- ii. When building materials can be zero-rated or reduced-rated at 5 per cent;
- iii. When the sale or long lease of a building is zero-rated;
- iv. When developers are 'blocked' from deducting input tax on goods that are not building materials;
- v. When a builder or developer needs to have a certificate from his customer;

¹⁵ *Home Office Press Release* 6 December 2007.

¹⁶ [2007] UKVAT V20464. The principal issue was the extent to which various new constructions were annexes to the existing school and capable of functioning independently from the old building – in which case the annexes would qualify for zero-rating. The judgment is available in full at <<http://www.bailii.org/uk/cases/UKVAT/2007/V20464.html>>, accessed 15 January 2007.

- vi. When a customer can issue a certificate to a builder or developer;
- vii. What happens if the use of a certificated building is changed; and
- viii. The special 'time of supply' rules for builders; and when, on using one's own labour, a self-supply charge must be accounted for.

The notice has been rewritten to reflect current HMRC policy and to clarify those areas where previous advice may have been unclear.¹⁷

AND FINALLY

Early Day Motions function as the House of Commons graffiti wall and are rarely, if ever, debated. Perhaps members of the Church of England should not, therefore, be unduly alarmed that the MP for Erith and Thamesmead, John Austin, tabled such a motion on 9 January 2008 in the terms 'That this House calls for the disestablishment of the Church of England'. On the other hand, its serial number is EDM 666 . . .

doi: 10.1017/S0956618X0800121X

¹⁷ Available at <http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&id=HMCE_CL_000513>, accessed 11 January 2008.