

## PARLIAMENTARY REPORT

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October 2016–January 2017

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### 'BREXIT MEANS BREXIT' CONTINUED

In January, the Prime Minister made a major speech at Lancaster House setting out her plans for the United Kingdom's departure from the European Union, in which she made it absolutely clear that there was no question of the United Kingdom applying for membership of the European Economic Area or making a separate arrangement with the EU since 'It would to all intents and purposes mean not leaving the EU at all'.<sup>1</sup>

Shortly afterwards, the Supreme Court handed down judgment in the three conjoined cases<sup>2</sup> challenging the right of the Government to trigger Article 50 of the Treaty on European Union 1992, as amended by the Treaty of Lisbon 2007, by exercise of the Royal Prerogative. A majority of the Court held that 'Where, as in this case, implementation of a referendum result requires a change in the law of the land, and statute has not provided for that change, the change in the law must be made in the only way in which the UK constitution permits, namely through Parliamentary legislation.'<sup>3</sup>

### A BRITISH BILL OF RIGHTS?

My last report noted the possible replacement of the Human Rights Act 1998 by a 'British Bill of Rights' and the undertaking in the Queen's Speech that there would be a further round of consultations on the proposal. Mrs May had already conceded during the Conservative leadership campaign that she could not pursue withdrawal in the present Parliament because of the small size of her majority.

1 Available at <<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>>, accessed 23 January 2017.

2 *R (Miller & Anor) v Secretary of State for Exiting the European Union, In the matter of an application by Agnew & Ors for Judicial Review, In the matter of an application by Raymond McCord for Judicial Review* [2017] UKSC 5.

3 *Ibid* at para 121.

In December, there were widespread reports that the Prime Minister has shelved plans for legislation in the current Parliament and intends to include withdrawal from the jurisdiction of the European Court of Human Rights in the Conservative Party's 2020 General Election manifesto. Whether we shall see the threatened consultation document in the current Parliament remains to be seen; Brexit is going to cause a lot of collateral damage to the legislative programme.

## CHARITY COMMISSION FOR ENGLAND & WALES

### Annual returns

The Charity Commission launched a consultation about the 2018 annual charity return as part of a two-year project looking at how the Commission collects information and whether it is collecting the right information for its regulatory work, and exploring other ways to keep the Charity Register up to date.<sup>4</sup> The latest consultation looked at structural changes to the collection of information for the annual return in 2017: in particular, whether charities should keep their fundamental information up to date more frequently than once a year; whether questions should be focused to match the Commission's strategic priorities and targeted at the relevant charities; and whether the regulatory burden could be reduced by making the annual return more proportionate and better targeted. The consultation ended on 9 March.

### Reporting serious incidents

The Commission is in the process of updating its December 2013 guidance<sup>5</sup> for charity trustees on serious incident reporting and opened a consultation on the proposed changes.<sup>6</sup> The draft updated guidance for trustees:

- i. Makes it clearer what to report, how and when – encouraging reporting at the time the incident occurs, or as soon as possible afterwards;
- ii. Includes an updated section to help with multiple reporting for larger charities and those that make regular incident reports;
- iii. Removes the need to report events that are merely risks rather than serious incidents; and
- iv. Adds new types of incident that charities are experiencing regularly or are having difficulty in managing.

The consultation closed on 12 January.

4 Available at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584606/AR17\\_consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584606/AR17_consultation.pdf)>, accessed 23 January 2017.

5 Available at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/375979/Reporting\\_Serious\\_Incidents\\_LowInk.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375979/Reporting_Serious_Incidents_LowInk.pdf)>, accessed 23 January 2017.

6 Available at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/561607/rsi\\_consultation\\_questions\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561607/rsi_consultation_questions_1.pdf)>, accessed 23 January 2017.

### **Powers under the Charities (Protection and Social Investment) Act 2016**

The Charities (Protection and Social Investment) Act 2016 gave the Charity Commission new powers and the Commission held a consultation on two of them: the power to issue official warnings and the power to disqualify individuals from trusteeship.

From the responses, it emerged that charities were unclear as to how the Commission would use the new powers; in response, it published a guide on official warnings to trustees.<sup>7</sup> In addition, however, it stated that it wanted the introduction of the official warnings provisions, originally intended for April 2017, to be postponed until at least September 2017 and that it was in discussion with the Office for Civil Society about a suitable commencement date.

### **GIFT AID DONOR BENEFIT RULES**

The donor benefit rules govern the benefits that charitable donors can receive as a consequence of donations that are eligible for Gift Aid. The Government conducted a consultation on the rules, which closed on 12 May 2016. In its summary of responses, the Government proposed three further options for amendment on which it sought feedback: retaining the existing three thresholds or introducing a single threshold or two thresholds.<sup>8</sup> The further consultation, which closed on 3 February 2017, also sought views on the merits of a low-value disregard. The Government is prepared to consider a disregard provided it is of genuine value to the charity sector and so long as it is affordable, appropriate and consistent with EU rules on state aid.

### **THE GIFT AID SMALL DONATIONS SCHEME AND SCOTTISH INCOME TAX**

From 6 April 2017, the Scottish Parliament will set the income tax rates and limits that apply to the non-savings and non-dividend income of Scottish taxpayers. Generally, all Scottish income tax rates will be reduced by 10p in the pound, then increased by the chosen Scottish rate. The current chosen rate is 10p in the pound, which means that, for the moment, rates will remain identical in Scotland.

However, the Scottish Parliament may in future decide to set a different Scottish rate; and in November 2016 HMRC published a technical note explaining how Scottish income tax rates and limits will interact with various aspects of

7 Available at <<https://www.gov.uk/government/publications/official-warnings-to-charities-and-trustees-q-and-a>>, accessed 23 January 2017.

8 Available at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544955/Gift\\_Aid\\_Small\\_Donations\\_Scheme-summary\\_of\\_responses.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544955/Gift_Aid_Small_Donations_Scheme-summary_of_responses.pdf)>, accessed 23 January 2017.

the wider income tax regime.<sup>9</sup> This is particularly important in relation to the higher and additional rates; and HMRC has drafted consequential amendments to ensure that its operations in areas such as Gift Aid will continue unchanged should the Scottish Parliament decide to set a different Scottish rate.

## INQUIRIES INTO HISTORIC CHILD ABUSE

In October 2016, Professor Alexis Jay, Dame Lowell Goddard's successor as Chair of the Independent Inquiry into Child Sexual Abuse (IICSA), released a statement setting out her strategy for ensuring that the Inquiry 'delivers against its Terms of Reference'. She said that the Inquiry would, in effect, be refocused across four major themes: the attitudes, behaviours and values within institutions that fail to prevent child sexual abuse; the legislative, governance and organisational frameworks in place, both within and between institutions; the financial, funding and resource arrangements for relevant institutions and services; and the leadership, professional and practice issues for workers and volunteers in relevant institutions.

In November, the House of Commons Home Affairs Committee published a rather critical report on the work of the Inquiry<sup>10</sup> and in December Professor Jay published the results of her internal review. The review sets out the detailed schedule of work for 2017 – including public hearings as part of IICSA's investigation into abuse in the Roman Catholic Church. All 13 existing investigations will continue. In January, it was announced that Brian Altman QC was to be the Inquiry's new lead counsel.

In Northern Ireland, however, the Historical Institutional Abuse Inquiry chaired by Sir Anthony Hart, a former judge of the Northern Ireland High Court, has come to the end of its deliberations without incident. It duly published its report on allegations of abuse in 22 homes and other residential institutions between 1922 and 1995<sup>11</sup> – to a chorus of hand-wringing apologies from those who ran them.

## SMALL CHARITABLE DONATIONS AND CHILDCARE PAYMENTS ACT 2017

The Small Charitable Donations and Childcare Payments Act 2017 received Royal Assent and will come into operation on 6 April 2017. The first part of

9 Available at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/573519/FSITP\\_TechNote.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573519/FSITP_TechNote.pdf)>, accessed 23 January 2017.

10 'The work of the Independent Inquiry into Child Sexual Abuse', 11th Report of Session 2016–17 (HC 636), available at <<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/636/636.pdf>>, accessed 8 February 2017.

11 'Report of the Historical Institutional Abuse Inquiry', available at <<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/Ci%20-%20Cover%20%26%20Contents%20Page.pdf>>, accessed 23 January 2017.

the Act makes several amendments to the Small Charitable Donations Act 2012, which established the Gift Aid Small Donations Scheme (GASDS).

The 2017 Act:

- i. Removes the two-year eligibility rule and the Gift Aid history requirement (the ‘two-in-four rule’) to allow smaller and newer charities to benefit from the Scheme earlier than they would otherwise have done;
- ii. Makes it possible to include contactless donations in a GASDS claim;
- iii. Provides that charities – or a group of charities – may claim *either* under the main allowance *or* under the community buildings allowance, but not under both (which means that where charities are connected it will no longer be possible for one to claim under the main allowance and another to claim under the community buildings provisions);
- iv. Allows a charity with more than one venue to claim top-up payments in respect of small donations of more than £8,000 in a tax year, provided that all of them qualify as ‘community buildings’ under sections 6 and 8 of the Small Charitable Donations Act 2012; and
- v. Reforms the community buildings rules to allow donations received outside the community building but within the same local authority area to qualify under the Scheme.

#### TAXATION OF BENEFITS-IN-KIND

In the Autumn Statement, the Government announced that it was to consider how benefits-in-kind are valued for tax purposes and that it would be publishing a consultation on employer-provided living accommodation and a call for evidence on the valuation of all other benefits-in-kind at the Spring Budget in 2017. This has obvious potential implications for the tax treatment of clergy houses.

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