

PARLIAMENTARY REPORT

February–May 2017

FRANK CRANMER

Fellow, St Chad's College, Durham

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

BREXIT AND THE GENERAL ELECTION

The EU (Notification of Withdrawal) Bill completed its passage through Parliament and received Royal Assent on 16 March. On 29 March, the United Kingdom's Ambassador to the European Union, Tim Barrow, handed over the Prime Minister's formal letter of notification under Article 50 of the Treaty on the European Union to the President of the European Council, thereby triggering the withdrawal process. Inevitably, however, the period since the last report was dominated not so much by Brexit as by the unexpected General Election.

Under the provisions of the Fixed-term Parliaments Act 2011, an election had not been due until 7 May 2020; however, on 18 April the Prime Minister announced a snap election and on the following day received the necessary two-thirds majority in the House of Commons to set aside the provisions of the 2011 Act. Parliament was prorogued on 27 April, dissolved on 3 May and the electorate finally struggled to the polls on 8 June after what seemed like an interminable campaign. The result was a hung Parliament with the Conservatives as the largest party. At the time of writing, the implications of that were unclear; however, there would appear to be two areas of interest to readers where it is likely to have an impact.

If a Conservative minority government hopes to rely on the explicit or tacit support of the DUP, the Irish dimension is going to loom very much larger than before in the upcoming Article 50 negotiations. The DUP leader, Arlene Foster, is already on record as rejecting a 'hard Brexit', declaring that withdrawal needs to be done 'in a way that respects the specific circumstances of Northern Ireland, and, of course, our shared history and geography with the Republic of Ireland'.¹ This is of obvious interest to the Churches in Ireland, many of whose

1 L Hughes, 'Who are the DUP and will they demand a soft Brexit to prop up the Tories?' *Daily Telegraph*, 9 June 2017, available at <<http://www.telegraph.co.uk/news/o/Who-are-the-DUP-democratic-unionist-party-northern-ireland/>>, accessed 14 June 2017.

jurisdictions cross the national border – and it might not be the simplest part of the Brexit negotiations.

The second issue is the continued adherence of the United Kingdom to the ECHR. Mrs May has made no secret of her distaste for the Human Rights Act 1998 and her desire to withdraw from the jurisdiction of Strasbourg; and the Conservative Manifesto said that

We will not repeal or replace the Human Rights Act while the process of Brexit is underway but *we will consider our human rights legal framework when the process of leaving the EU concludes*. We will remain signatories to the European Convention on Human Rights for the duration of the next parliament.²

That now seems to be off the agenda – at least until after the next election.

ASSISTED DYING: LORDS DEBATE

On 6 March 2017, the House of Lords held what was, inevitably, an inconclusive short debate on assisted dying.³ Baroness Jay of Paddington asked Her Majesty's Government what assessment they had made of recent legislation on assisted dying in North America and whether those laws provided an appropriate basis for legislation in England and Wales. As readers will be aware, the issue has been the subject of several private Peers' bills. On behalf of the Government, the Advocate-General for Scotland, Lord Keen of Elie, concluded as follows:

The legal, administrative, practical and resource implications of any change to the law in this highly controversial area are considerable. We cannot in the very limited time available this evening do justice to them, although . . . we of course take these issues seriously. I have no doubt that the debate will continue in one form or another, in Parliament and elsewhere.⁴

CASTE AND EQUALITY LAW

On 28 March, the Government launched 'Caste in Great Britain and equality law: a public consultation',⁵ inviting views on whether legal protection against caste discrimination is best ensured by developing case law under the

2 Conservative and Unionist Party, *Forward, Together: our plan for a stronger Britain and a prosperous future* (London, 2017), p 37, emphasis added.

3 HL Deb, 6 March 2017, vol 779, cols 1175ff.

4 Ibid, col 1188.

5 Available at <<https://www.gov.uk/government/consultations/caste-in-great-britain-and-equality-law-a-public-consultation>>, accessed 20 March 2017.

Equality Act 2010 or by making caste explicitly an aspect of race under that Act. The consultation suggests that

Reliance on developing case-law in courts and tribunals (in particular, the Employment Appeal Tribunal ruling in the case of *Tirkey v Chandhok*⁶) would be likely to mean that caste, as an aspect of ethnic origins within the Act, is already covered by legislation and therefore an insertion of it as an aspect of race may not be necessary.

The consultation was to close on 17 July 2017.

CHARITY ACCOUNTING AND FINANCE

In March, the Charity Commission for England & Wales updated its guidance 'Charity finances: trustee essentials'.⁷ In a subsequent speech the Commission's CEO, Paula Sussex, stressed how important it was for trustees to understand the issues involved. The three charity regulators also jointly published a revised list of matters of material significance that auditors and independent examiners must report to them.⁸ It includes two new areas for reporting:

- i. Where an auditor has concerns regarding a charity's accounts and issues a modified audit opinion report or a qualified independent examiner's report; and
- ii. Where an auditor or independent examiner has concerns that conflicts of interests or related party transactions have not been properly managed or declared.

The Charity Commission also published the findings of research on charity accounts which revealed that 54 per cent of the accounts reviewed had failed to meet the public benefit reporting requirement.⁹

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) ACT 2016

The provisions of the Charities (Protection and Social Investment) Act 2016 have been commenced, with the exception of automatic disqualification from being a

6 More correctly, *Chandhok & Anor v Tirkey* [2014] UKEAT 0190/14/1912.

7 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/602509/CC25.pdf>, accessed 20 May 2017.

8 'Matters of material significance reportable to UK charity regulators', available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61139/Matters_of_Material_Significance_reportable_to_UK_charity_regulators.pdf> accessed 20 May 2017.

9 'Telling your story well: public benefit reporting by charities', available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609953/AMR_Telling_your_story_well_public_benefit_reporting_by_charities.pdf>, accessed 20 May 2017.

trustee – which has been commenced only in part – and the power under section 12 relating to participation in corporate decisions while disqualified. Section 12 was expected to come into force in April 2017 but appears not to have done so.¹⁰

DATA PROTECTION

The Department for Media, Culture and Sport (DCMS) held an online consultation on potential exemptions within the framework of the EU General Data Protection Regulation (GDPR), which will come into force in 2018. One of the areas under scrutiny was exemptions for ‘Churches and religious associations’. The consultation closed on 12 May 2017.

More generally, Elizabeth Denham, the Information Commissioner, made a trenchant speech at the Fundraising and Regulatory Compliance Conference on 21 February in which she reminded charities of the need to operate within the constraints of the Data Protection Act 1998. The Act did not stop charities from doing their jobs: ‘It simply obliges you to do it in such a way that respects the fundamental privacy rights of each and every one of your donors, your supporters, and your volunteers.’¹¹

END-OF-LIFE CARE AND SPIRITUAL BELIEFS

In March, the National Institute for Health and Care Excellence (NICE) published ‘Care of dying adults in the last days of life’, which, *inter alia*, calls on healthcare professionals to ask adults in the final days of life about their religious or spiritual beliefs:

Care at the end of life should be responsive to the personal needs and preferences of the person who is dying. Discussions with the person can identify any existing expressed preferences for care, such as advance care plans, and explore their goals and wishes, preferred care setting, current and anticipated care needs and any cultural, religious or social preferences.¹²

HOUSE OF LORDS SELECT COMMITTEE ON CHARITIES

The House of Lords Select Committee on Charities completed its work and duly published its report on the sustainability of the charity sector and the challenges

10 See the Charities (Protection and Social Investment) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2016 SI/2016/815.

11 The text of the speech is available at <<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/02/fundraising-and-regulatory-compliance-conference/>>, accessed 14 June 2017.

12 Available at <<https://www.nice.org.uk/guidance/QS144/chapter/Quality-statement-2-Individualised-care>>, accessed 20 May 2017.

of charity governance and recommended actions both for charities and for Government.¹³

Much of the report was about the need for charities to have strong governance and to put in place robust structures and processes; a recurring theme was the need for better trustee training and the need for greater participation and diversity among trustees. Perhaps as a sign of the times, the Committee suggested that all but the smallest charities should have a simple website or social media page and that charities should actively consider including a digital trustee role on their boards. On the vexed issue of charging charities for the privilege of being regulated, the Committee recognised the resource pressures that had led the Charity Commission to consider charging but believed that any charging model should not unduly burden small charities. It also stressed that the Treasury should maintain adequate direct funding of the Charity Commission, irrespective of any proposal to charge charities to be on the register.

While calls for diversity and a suitable range of skills within a charitable trust are very appropriate in the case of a large charity, religious charities must often take what they can get. If no-one in a congregation has accountancy or IT skills or any acquaintance with charity law, it is difficult to see what that congregation can do about it – and the Committee set its face firmly against the routine payment of trustees. And how many congregational charities arrange any kind of formal training for new trustees?

INQUIRIES INTO CHILD SEXUAL ABUSE

On 24 March, the Independent Inquiry into Child Sexual Abuse in England and Wales held a preliminary hearing at the Royal Courts of Justice into allegations of child sexual abuse involving the Church of England and the Church in Wales. The first preliminary hearing on the Roman Catholic Church was scheduled for 6 June. The Scottish Child Abuse Inquiry began hearings on 31 May with evidence from the Church of Scotland's Social Care Council (CrossReach) and several Roman Catholic religious orders.

LAW COMMISSION 13TH WORK PROGRAMME

In 2016 the Law Commission invited proposals for its 13th Programme of Law Reform; it received suggestions for 215 distinct projects and is still analysing the responses. The Ecclesiastical Law Society proposed that the Commission should consider a project on burial and cremation law: in March, the Commission told

13 'Stronger charities for a stronger society', HL Paper 133, 26 March 2017, available at <<https://www.publications.parliament.uk/pa/ld201617/ldselect/ldchar/133/13302.htm>>, accessed 20 May 2017.

members of the Working Group that the proposal had survived the first sift.¹⁴ It had hoped to seek the Lord Chancellor's approval for its 13th Programme during June and July; however, the General Election has delayed that process.

RELIGIOUS DRESS IN THE WORKPLACE

In a very unusual development, the Government answered an Urgent Question in the Commons shortly after the European Court of Justice had handed down judgment in the two *hijab* cases, *Achbita* and *Bougnaoui*.¹⁵ Replying to Maria Miller (Conservative MP for Basingstoke), the Parliamentary Under-Secretary of State for Women and Equalities, Caroline Dinenage, said this:

The Government are completely opposed to discrimination, including on grounds of gender or religion, or both. It is the right of all women to choose how they dress, and we do not believe that the judgments change that. Exactly the same legal protections apply today as applied before the rulings.¹⁶

SAFEGUARDING AND CLERGY DISCIPLINE MEASURE 2016 (COMMENCEMENT NO. 3) ORDER 2016

The remaining provisions of the Safeguarding and Clergy Discipline Measure 2016 were brought into force on 1 January 2017.

TAXATION OF EXPENSES AND BENEFITS-IN-KIND

In our last report, we noted that the Government had announced in the Autumn Statement that it was to consider yet again the taxation of benefits-in-kind, that it would be publishing a call for evidence and a consultation on employer-provided living accommodation at the Spring Budget in 2017 and that any change could have an impact on the tax treatment of parsonage houses. But nothing appeared at the Spring Budget and the process was then overtaken by the General Election. What *did* appear, however, was a call for evidence by HMRC on the taxation of employee expenses, which was due to close on 10 July.

doi:10.1017/S0956618X17000527

14 As did my own proposal, on behalf of the Churches' Legislation Advisory Service, that the Commission should undertake a project on certification of births.

15 *G4S Secure Solutions NV* [2017] EUECJ C-157/15; *Bougnaoui and ADDH* [2017] EUECJ C-188/15.

16 HC Deb 15 March 2017, vol 623, col 409.