

PARLIAMENTARY REPORT

FRANK CRANMER

*Clerk of Bills, House of Commons
Honorary Research Fellow, Centre for Law and Religion, Cardiff*

This report covers the period from November 2004 to September 2005

Because the 2004–05 parliamentary session was brought to a premature end on 7 April 2005, various pieces of legislation were either simply dropped or, in agreement with the Opposition, enacted very quickly, some of them in a modified form.

CATHEDRALS

The Care of Cathedrals (Amendment) Measure 2005 (No 2) makes detailed amendments to the Care of Cathedrals Measure 1990 (No 2). Most of the amendments give effect to recommendations by a Review Group which was set up by the Archbishops' Council to review the detailed provisions of the 1990 Measure after some eight years' experience of its working. The Review Group concluded that, in general, the Measure was working effectively, but identified several detailed areas in which they regarded amendment as desirable.

CHARITIES

The Charities Bill has an unusually long legislative history. It was originally introduced in draft in the 2003–04 session and committed to a joint committee of both Houses for pre-legislative scrutiny. The substantive Bill was then introduced in the 2004–05 session, but it fell at Dissolution and was reintroduced into the Lords at the beginning of the new Parliament. At the time of writing it had completed its Lords committee stage.

Clause 2(1) of the Bill puts on a statutory footing the ruling in *Gilmour v Coats*¹ by making it clear that a charitable purpose must be 'for the public benefit'. Clause 2(2) sets out twelve new 'charitable purposes', including in clause 2(2)(b) 'the advancement of religion'; these replace and expand the four traditional heads of charity established under the Statute of Charitable Uses 1601 (43 Eliz 1, c 4) and confirmed in *Income Tax Special Purposes Commissioners v Pemsel*.² It is expected that the Bill will become law during 2006; but with the exception of clause 13(4) and (5) (which deal with the regulation of exempt charities) its provisions will be brought into

¹ *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL.

² *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531, HL, per Lord Macnaghten.

force by order appointed by the Secretary of State. For a more detailed excursus, see 'Religion and the Law of Charities' by Miguel Rodríguez Blanco at page 246 of this Issue.

CHURCH OF ENGLAND

The Church of England (Miscellaneous Provisions) Measure 2005 (No 3) is the eighth in a series of Miscellaneous Provisions Measures dealing with uncontroversial matters that would not ordinarily merit free-standing legislation. Most significantly:

- At the suggestion of HM Treasury, the requirement that the Treasury appoint the auditor of the Church Commissioners and direct the manner in which the audit of the Commissioners' accounts is to be undertaken will be removed. In future, the Commissioners' Audit Committee itself will have the responsibility both for appointing the auditor and directing the manner of the audit.
- Section 4 of the Measure, together with changes being made to the Church Representation Rules by other legislation, will complete the process of bringing the accounting regime for parochial church councils into compliance with the Charities Act 1993 (c 10) in respect of the preparation and publication of accounts.
- The pension provisions for the First and Third Church Estates Commissioners in the Church Property (Miscellaneous Provisions) Measure 1960 (8 & 9 Eliz 2, No 1) are amended.
- Each diocese is now obliged to have a diocesan secretary as its chief administrative officer and the diocesan synod is given power to specify other functions to be undertaken by the holder of that office.
- The Privy Council no longer has to confirm schemes made by the Commissioners under the Pastoral Measure 1983 (No 1). This change comes at the request of the Privy Council itself, with the support of the Commissioners and the dioceses; and it is expected to result in the faster processing of pastoral and redundancy schemes in the future. It does not affect the existing rights of appeal to the Privy Council under the 1983 Measure.

CIVIL PARTNERSHIPS

The Civil Partnership Act 2004 (c 33) was passed amid considerable controversy. In essence, it provides for the registration of a new legal relationship of civil partnership between two persons of the same sex who are not within the prohibited degrees of relationship set out in the Schedules to the Act (which makes separate provision for England and Wales, for Scotland and for Northern Ireland). The effect of the Act will be to confer rights and impose duties on civil partners that are not dissimilar from those that relate to marriage, and the Act therefore makes formal provision for the annulment or dissolution of such partnerships.

The legislation treats the civil partnership strictly as a relationship in secular law. Registration can take place at a registry office or any other place agreed with the local registration authority *except* in what are described in sections 6 and 93 as 'religious premises', though this does not apply in the case of Northern Ireland. Moreover, section 2(5) (for England and Wales) and section 137(5) (for Northern Ireland) declare that 'no religious service is to be used while the ... registrar is officiating at the signing of a civil partnership document'. Curiously, the Scottish legislation makes no mention of this; but marriage procedure in Scotland is very different from that in the rest of the United Kingdom; and the Scots civil partnership procedures reflect that difference. For a robust critique of the likely operation of the legislation, see 'The Civil Partnership Act 2004, Same-Sex Marriage and the Church of England' by Jacqueline Humphreys at page 289 of this Issue.

ECCLESIASTICAL EXEMPTION

In 2004 consultations took place on the future of the exemption from listed building controls in England and Wales of the Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church, the United Reformed Church and the Baptist Union.

For Wales, Peter Howell conducted a review in 2004 on behalf of the Assembly Government: *A Review of the System of Ecclesiastical Exemption in Wales*. He concluded that the exemption should remain for the immediate future, but felt that the operation of the exemption in Wales should be monitored by CADW to guard against any breaches of the ecclesiastical exemption procedures operated by the individual denominations or of conditions attached to grants for repairs to places of worship.

For England, the Department of Culture, Media and Sport published its conclusions on the operation of the exemption in England in July 2005: *The Ecclesiastical Exemption: the Way Forward*. The Department is content that the ecclesiastical exemption should continue. It has decided to establish a new unified register of historic sites and buildings in England; and the heritage consent system that will bring together the separate listing, scheduling and registration regimes will apply to ecclesiastical sites and buildings. The Department has dropped its earlier proposal in its February 2004 consultation paper for 'High Level Management Agreements' with English Heritage. Instead, it proposes purely voluntary 'Heritage Partnership Agreements' (HPAs) negotiated between English Heritage, local authorities and the exempt denominations at a level considered appropriate by the relevant denomination. HPAs will be designed to allow strategic management of sites including defined categories of agreed change. Denominations and other faith groups that do not currently operate under the exemption will have the option to develop HPAs; but the Government has no plans to extend the scope of the exemption.

GENDER RECOGNITION

Under section 22 of the Gender Recognition Act 2004 (c 7) it is an offence for a person to disclose 'protected information' acquired in an official capacity relating to a person who has applied for a gender recognition certificate under the Act which concerns that person's application or gender prior to being granted a full gender recognition certificate; but section 22(4) sets out the circumstances in which such disclosure is not an offence. The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005, SI 2005/916, which came into force on 4 April 2005, prescribes additional exceptions for certain categories of disclosure including, under article 4, disclosure for religious purposes. The article 4 exception rests on two conditions.

The first is that the disclosure is made for the purpose of enabling the other person to make a decision —

- whether or not to officiate at or permit the marriage of the subject or whether the subject's marriage is valid or should be annulled or dissolved;
- whether to admit, appoint or terminate the appointment of the subject as a minister of religion, to any category of membership, to any religious employment or office or to any religious order or community; or
- whether the subject is eligible to receive or take part in any religious sacrament, ordinance or rite or to take part in any act of worship.

The second is that the person making the disclosure reasonably considers that the other person may need the information in order to make a decision which complies with the doctrines of the religion in question or avoids conflicting with the strongly-held convictions of a significant number of its followers.

RACIAL AND RELIGIOUS HATRED

The Bill that resulted in the Serious Organised Crime and Police Act 2005 (c 15) had included the creation of a specific offence of incitement to religious hatred but, after considerable opposition, this proposal was dropped in order to allow the Bill to be enacted prior to Dissolution. The proposal was brought forward again at the beginning of the new Parliament in a free-standing Racial and Religious Hatred Bill which, at the time of writing, had been passed by the Commons and was about to begin its passage through the Lords. It was anticipated that it would be opposed on the floor of the House and in the media by bishops and comedians alike.

The Schedule to the Bill amends Part 3 of the Public Order Act 1986 (c 64) by inserting references to religious as well as to racial hatred and defines 'religious hatred' as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief'. The new offences apply to

the use of words or behaviour or display of written material (clause 18), publication (clause 19), plays, recordings and broadcasts (clauses 19–22) and possession with a view to such methods of publication (clause 23). The material — in whatever form—must both be threatening, abusive or insulting and be intended or likely to stir up religious hatred. The proposed legislation applies only to England and Wales; Scotland and Northern Ireland already have their own legislation.

STIPENDS

The Stipends (Cessation of Special Payments) Measure 2005 (No 1) deals with a restricted group of statutory payments which are at present made towards stipends from central funds. Most payments relate to individual benefices that had endowment income before the endowments concerned were pooled in the 1970s and the most significant of these are the guaranteed annuities of up to £1,000 paid to incumbents of benefices that formerly had endowment income. These payments form part of the total stipend rather than being an addition to it and therefore reduce payments from diocesan stipend funds to the incumbents concerned. The Measure brings these payments to an end (subject to the right of individual incumbents who at present receive them to continue doing so while they remain in office) and allows the money so released to be used to assist dioceses with stipend costs, with the intention that it be targeted on the dioceses which are most in need of financial support.