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PARLIAMENTARY REPORT

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BISHOPS (CONSECRATION OF WOMEN) BILL

On 21 March, Mr Andy Reed introduced a Bill under the ten-minute procedure 'to amend the Priests (Ordination of Women) Measure 1993 so as to remove the bar on the consecration of women as bishops; and for connected purposes'.[1] Mr Reed's expressed intent was merely to test the reaction of the House of Commons to the possibility of women bishops in the Church of England: 'the truth is that the House will not be legislating this afternoon, but it has an opportunity to send a simple message and declare its support for women's ministry at every level of the Church'.[2] In the event, though Sir Patrick Cormack spoke against the motion for leave to bring in the Bill, he did not seek to divide the House – with the result that the level of support for the proposal was not tested. The Bill was duly introduced but it will not make further progress in the current Session.

BURIAL LAW

In April, the Department of Constitutional Affairs published its preliminary conclusions on the earlier consultation document on burial law in England and Wales, *Burial law and policy in the 21st century: the need for a sensitive and sustainable approach*.[3] The consultation revealed a very broad level of support

1 Bill 151 of Session 2005–06, which was drafted, alas, by your correspondent. Connoisseurs of legislative drafting in search of light relief can find it at <http://www.publications.parliament.uk/pa/pabills/200506/bishops_consecration_of_women.htm>, accessed 5 October 2006, while the debate in *Hansard* can be found at <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060321/debtext/60321-10.htm#60321-10_head1>, accessed 5 October 2006.

2 HC Deb (2005–06) 21 March c 173.

3 See <http://www.dca.gov.uk/consult/buriallaw/buriallaw_cpresp.pdf>, accessed 28 September 2006, for the preliminary conclusions. The original consultation paper (at <http://www.homeoffice.gov.uk/documents/2004-cons-burial-law.pdf?view=Binary>, accessed 28 September 2006) was published by the Home Office, following which responsibility within government for burial law was transferred to the DCA.

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for consistent legislation in relation to burial matters and the DCA concludes that this should be a key aim in any reform of burial law. However, a substantial number of respondents felt that the need for consistency had to be balanced with proper recognition of the needs and customs of particular faiths and cultures. The DCA therefore suggests that it might be best to work towards common burial legislation, under which unjustified inconsistencies will not be permitted but which will provide a framework flexible enough to accommodate appropriate differences.

The original consultation envisaged obligatory quinquennial inspection of burial-grounds by a team of specialist inspectors. The majority of respondents warned against excessive and unnecessary regulation, preferring a reactive, light-touch approach rather than compulsory inspection. The Department seems to have got the message and has dropped the proposal for a burial-grounds inspectorate, concluding that 'a limited and specific inspection regime would be consistent with the government's recently announced policy in respect to the inspection of public services generally'.

On exhumation, responses were mixed. There was broad support for the existing criteria and procedures for authorising single exhumations; but support for delegation of authority from the centre was matched by a degree of concern that delegated authority could lead to inconsistency and abuse. There was, however, support for delegating the power to give an emergency local authorisation to the coroner as an officer independent of the local authority and the civil service.

The overall response to the consultation paper has not been conclusive, but the government believes that the response indicates a broad level of support for burial law reform. The next stage will 'be to explore in more depth the detail of the changes necessary to implement a modernisation programme, including sensitive ways to make best use of old burial grounds'. This further work, involving discussion with burial practitioners, relevant experts and other central departments and agencies, is expected to take about six months, following which the government will bring forward detailed proposals for reform.

In March it was announced that the Scottish Executive had set up a review group to make recommendations on modernisation of burial law in Scotland.

PASTORAL (AMENDMENT) MEASURE 2006

This Measure amends the Pastoral Measure 1983 so as to allow the granting of a lease of part of a church in use. Parishes increasingly wish to promote community use of part of their churches; however, they sometimes find that, if such use is to be possible, the intended user group needs to have a full lease of the part of the church in question rather than merely a licence (which can already be

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authorised under faculty), often because a lease is necessary to enable the potential users to secure financial support from one or more public funding bodies.

At present, a lease of part of a church can only be granted after the making of a scheme for partial redundancy under the Pastoral Measure. The amending Measure therefore provides an alternative, by enabling the chancellor of the diocese to authorise the granting of a lease of part of a church by faculty, subject to the qualification that, taken as a whole, the church building will continue to be used primarily as a place of worship. It will still be possible to authorise a licence when a lease is not required. The Measure also provides that both the purpose and the manner of any use of the church building under a lease must not be inconsistent with the use of the rest of the premises primarily as a place of worship.

MARRIAGE BETWEEN PARENTS AND FORMER CHILDREN-IN-LAW

The Marriage Act 1949 (Remedial) Order 2006 announced by the Department of Constitutional Affairs in November,[4] which will come into effect later in the year, removes the existing restriction on the marriage of in-laws, in order to bring the law in England and Wales into conformity with the judgment of the European Court of Human Rights in *B and L v United Kingdom*.[5] The existing exemption for clergy on grounds of conscience under section 5A(b) (which was inserted into the parent Act by the Marriage (Prohibited Degrees of Relationship) Act 1986 (c.16)) is extended to cover marriages under the Order. Article 3 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 makes similar provision for Northern Ireland by repealing article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (SI 1984 (NI 14)). Both Orders make parallel provision in respect of civil partnerships.

MISCELLANEOUS PROVISIONS MEASURE 2006

The latest Church of England (Miscellaneous Provisions) Measure is the ninth in a series that deals with various uncontroversial matters that would not ordinarily merit freestanding legislation. Its most important provisions are as follows:

i. Section 7 makes changes in the appointment and terms of office of deputy chancellors. A chancellor will continue, with the bishop's consent, to appoint deputies as at present; but future appointments

4 HC Deb (2005–06) 21 Nov 2005 c 94WS.
5 36536/02 [2005] ECHR 584 (13 September 2005): see (2006) 8 Ecc LJ 479–480.

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will be for an indefinite term and the appointment will terminate three months after a vacancy has occurred in the office of chancellor. The retirement age for chancellors will in future apply equally to deputy chancellors. Additionally, the existing power under the Ecclesiastical Jurisdiction Measure 1963 for the House of Bishops to make regulations to restrict the number of chancellorships that any one person can hold at any one time will be extended to cover deputy chancellorships;

ii. Section 8 amends the Constitution of Synod so as to permit divisions of the whole Synod to be conducted by electronic voting, and removes the current restrictions on the number of persons (a minimum of three and a maximum of eight) whom the archbishops may appoint to the panel of Synod members available to take the chair.

In addition, the Measure makes a number of fairly minor changes to the law. For example, section 6 permits the Church Commissioners to sell or otherwise dispose of Farnham Castle, formerly the residence of the Bishops of Winchester and which became, for a time, the see house of the Diocese of Guildford.

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