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# PARLIAMENTARY REPORT

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### BURIAL LAW REFORM

On 6 June, the Ministry of Justice published *Burial Law and Policy in the 21st Century: the way forward*[1]: the conclusion to a process that began with the 2004 Home Office consultation paper on burial law reform. As expected, the overall reaction is minimalist rather than interventionist:

> In most cases, the Government has concluded that it agrees with the majority of responses. For example, the case for enabling the re-use of old graves, keeping local authority responsibilities for burial grounds at their present levels, and improving through advice, rather than regulation, the way in which burial grounds are provided and maintained, have all been accepted. In a few cases, the Government has decided that the favoured course of action would not be justified on grounds of cost or practicality, and does not intend to pursue the proposals. … In a number of other cases, the Government believes that there may be additional work required in order to refine the proposals, assess costs or other implications, or to develop practical implementation solutions.[2]

The Department of Health and the Ministry of Justice subsequently announced two linked consultations, for which comments were invited by mid-October: *Consultation on Improving the Process of Death Certification*[3] and *Cremation Regulations Consolidation and Modernisation*.[4] The present Regulations date back to 1930 and Dame Janet Smith's Third Inquiry Report into the Shipman murders concluded that many of the forms completed by Shipman had been wholly inaccurate and that, if family members had been able to draw the

1 Available at <http://www.justice.gov.uk/docs/burial-law-policy.pdf>, accessed 4 July 2007.
2 Page 4.
3 Link available at <http://www.dh.gov.uk/en/Consultations/Liveconsultations/index.htm>, accessed 24 July 2007.
4 Link available at <http://www.justice.gov.uk/publications/cp1107.htm>, accessed 24 July 2007.



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medical referee's attention to concerns about unexpected symptoms or features of the case, Shipman's activities might well have been curtailed. Under the Department of Health's proposals, therefore, a bereaved family would have the right to inspect the medical forms of the deceased before cremation. The second consultation looks at the Regulations more generally; but it includes a specific proposal for a new provision dealing with the handling of contagious disease cases in the event of a pandemic, when the Regulations would be amended to allow for a simpler cremation procedure.

## CHARITY LAW

The law of unintended consequences meant that, as a result of the restoration of devolved government to Northern Ireland, the draft Charities (Northern Ireland) Order 2007 was withdrawn from consideration by the Parliament at Westminster. The matter is now awaiting consideration by the Northern Ireland Assembly.

So far as England and Wales is concerned, consultations on the public benefit test under the Charities Act 2006 (c 50) continued. Amid growing disquiet, the Charity Commission was at pains to reassure faith communities that the implementation of the Act would not result in wholesale deregistration; and its Chair, Dame Suzi Leather, went on record with the following statement:

> The public benefit test is not about removing whole swathes of charities from the register; it's about demonstrating the good that every charity does. There are 25,000 charities on the register set up for the purpose of advancing religion, and they provide our communities with a wealth of charitable activity – from counselling the bereaved and helping the homeless to providing places of worship and promoting ethical and moral codes. The benefit delivered by these charities is the very stuff of charity and no regulator in its right mind would want to discourage this.[5]

When, as a result of the Charities Act 2006, new section 3A(2) of the Charities Act 1993 comes into force on 1 October 2008, all excepted charities with an annual gross income over £100,000 will have to register with the Charity Commission. The 2006 Act precludes any variation of the £100,000 threshold for excepted charities until the report on the impact, required by section 73, has been laid before Parliament; this will not be until 2011–2012. Excepted status had been due to end on 30 September and, at the eleventh hour, Ministers decided to extend the excepted status of those churches listed in the Charities (Exception from Registration) Regulations 1996 (SI/1996/180) until 1 October 2012.

5 In a letter to the *Church of England Newspaper*, 7 September 2007.

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The 2007 Regulations[6] also make a further minor amendment to the temporary exception in regulation 4 of 1996 Regulations to make it clear that exception extends to Local Ecumenical Partnerships provided that they are connected with at least one of the listed bodies.

## ECCLESIASTICAL JUDGES ETC (FEES)

The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2007[7] came into force on 1 January 2008. The Order increases a variety of fees fixed under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2006.

## EQUALITY AND DISCRIMINATION

Discrimination law is currently contained in nine major pieces of legislation and Ministers believe that it needs to be simplified. The Department for Communities and Local Government therefore published a consultation paper, *A Framework for Fairness*, setting out proposals for a single Equality Bill for Great Britain.[8]

The proposals were developed as a result of the Discrimination Law Review, launched in February 2005 to consider the opportunities for creating a clearer and more streamlined discrimination legislative framework that produces better outcomes for those who currently experience disadvantage. The consultation document is in three parts with three annexes: Part 1, on harmonising and simplifying the law; Part 2, on making the law more effective; Part 3, on modernising the law; Annex A, containing detailed tables on which specific exceptions to discrimination law the Government wants to keep and which it wants to remove; Annex B, containing proposals for implementing the EU Gender Directive; and Annex C, a glossary of terms and abbreviations.

Responses were invited no later than 4 September 2007. It is assumed that the outcome of the consultation is likely to be a draft Equality Bill, which will be the subject of some form of pre-legislative scrutiny.

## ESTABLISHMENT AND PATRONAGE

One of Gordon Brown's first acts as Prime Minister was to issue a Green Paper, *The Governance of Britain*,[9] in which he put forward proposals for a degree of constitutional change. One issue addressed in those proposals is the question

6 Charities (Exception from Registration) (Amendment) Regulations 2007 (SI/2007/2655).
7 SI/2007/2340, available at <http://www.opsi.gov.uk/si/si2007/20072340.htm>, accessed 22 August 2007.
8 It can be downloaded from <http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation>, accessed 11 October 2007.
9 Cm 7170.

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of senior church appointments; and in a statement to the House of Commons he said that 'The Church of England is, and should remain, the established church in England. Establishment does not, however, justify the Prime Minister influencing senior church appointments, including bishops.'[10]

The Green Paper sets out his proposals more fully as follows:

i. The Government reaffirms its commitment to the position of the Church of England by law established, with the Sovereign as its Supreme Governor, and the relationship between the Church and State;
ii. The Queen should continue to be advised on the exercise of her powers of appointment by one of her Ministers, which usually means the Prime Minister;
iii. In choosing how best to advise the Queen, the Government believes in principle that the Prime Minister should not play an active role in the selection of individual candidates; therefore, he should not use the Prerogative to recommend senior church appointments, including diocesan bishops; and
iv. The Church should be consulted about new arrangements for selecting candidates.

The Green Paper goes on to state that, in future, the Prime Minister will ask the Crown Nominations Commission for a single nomination for a vacant diocesan bishopric, which he will then convey to the Queen. The current convention for appointing suffragan bishops will continue. The present arrangements for cathedral, parish and other Crown appointments will continue for the moment, but the Government wishes to develop new arrangements in consultation with the Church. Until new arrangements are agreed, the Secretary for Appointments will continue to assist as appropriate. The Government's initiative was subsequently welcomed by the General Synod at its July Session.[11]

Coupled with the larger question of Crown appointments is the more limited one of bishops in the House of Lords. Lords reform has been a hardy annual on the political agenda since the advent of the Labour Government in 1997 and, as previously noted in these columns, on the last occasion on which the matter was debated in Parliament, in March 2007, the two Houses came to precisely opposite conclusions as to what a reformed second chamber should look like. Subsequently, the Minister of Justice and Lord Chancellor, Jack Straw, announced in a Commons statement that he was reconvening the informal cross-party group on Lords reform in the hope of achieving some kind of consensus. The group would discuss the outstanding elements of the reform package,

10 HC Deb (2006–07) 3 July 2007 c 817.
11 See below, p 106.

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including powers, electoral systems, finance, and the balance and size of the House, and would also need to discuss 'the transition towards a reformed House in detail, including the position of the existing life peers'. He confirmed, however, that the Government would prefer a second chamber that was fully elected or substantially so, and intended to put that option to the electorate in the next Labour Manifesto.[12] So the bishops appear to be safe for a while yet.

## GIFT AID

The announcement in the 2007 Budget that the standard rate of income tax would be reduced by 2p in the pound in April 2009 caused considerable dismay in the voluntary sector, which faces a consequent reduction in tax reclaimed under the Gift Aid scheme of the order of £100 million. In an attempt to placate the sector, the Government announced a review of the scheme, and the long-awaited consultation was launched on 19 June. The consultation was aimed at the voluntary sector, rather than at donors, and sought workable suggestions as to how the Gift Aid scheme might be improved in terms of its profile, its accessibility, its ease of operation and the overall value that it delivers to the voluntary sector. The terms of reference stated that the consultation would consider Gift Aid in the wider context of the need to minimise administrative burdens and costs on charities, donors and HMRC.

The consultation document posed questions on a wide range of issues, of which the most important were:

i. Raising overall awareness and understanding of Gift Aid;
ii. Guidance and support for smaller charities;
iii. Perceived barriers to using Gift Aid among the general public;
iv. Perceived complexities of the Gift Aid scheme;
v. Claims and record-keeping; and
vi. The audit process.

The deadline for responses was 30 September 2007; and it is unlikely that firm proposals for amending the scheme will be made before the early part of 2008. The hope is that any proposals for updating the Gift Aid scheme that require legislation could be included in the Finance Bill 2008.

## INCITING HATRED

The Racial and Religious Hatred Act 2006 (Commencement No 1) Order 2007 (SI/2007/2490) was made on 24 August and came into force on 1 October

12 HC Deb (2006–07) c 449.

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2007. The Order brings the Act into operation, with the exception of the following insertions made by the Schedule into the Public Order Act 1986: section 29B(3) (power to arrest without warrant a person suspected of using threatening words or behaviour or of displaying threatening written material); section 29H(2) (power of courts in Scotland to authorise entry and search); and section 29I(2)(b) and (4) (power of courts in Scotland to order forfeiture). Subsequently, the Government announced that it would bring forward an amendment to the Criminal Justice and Immigration Bill to make it an offence to incite hatred because of a person's sexual orientation or perceived sexual orientation.[13]

## MATRIMONIAL LAW (ENGLAND AND WALES)

Under an Amendment to the Marriage Regulations that came into force on 17 August 2007, it is now possible for a bride or groom to have the name of his or her step-father recorded in the marriage register (and therefore on the marriage certificate). Hitherto, it had only been possible to record the names of natural or adoptive fathers.

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13 HC Deb (2006–07) 8 Oct 2007 c 68.

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