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GOVERNMENT AND PARLIAMENTARY REPORT

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BREXIT

The European Union (Withdrawal) Bill was read the third time in the Commons on 17 January and sent to the Lords.

AUDIT AND INDEPENDENT EXAMINATION

In November, the Charity Commission for England and Wales, the Charity Commission for Northern Ireland and the Office of the Scottish Charity Regulator issued a joint publication, 'Reporting of relevant matters of interest to UK charity regulators', urging auditors and independent examiners to be more proactive about reporting concerns that may arise during their examination of charity accounts.[1] This is in addition to the guidance on matters of material significance that *must* be reported as a legal duty: the new publication provides examples of the matters that *may* be reported to the charity regulators if an auditor or independent examiner has any cause for concern. The regulators' basic message is, 'If in doubt, report it'.

CHARITY COMMISSION ANNUAL RETURN FOR 2018

In September, the Charity Commission announced a consultation on the content of the charity Annual Return for 2018 ('AR18') and published the results of that consultation in the form of the Charities (Annual Return) Regulations 2017, which came into force on New Year's Day:[2] the questions to

1 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661393/Reporting_of_relevant_matters_of_interest_to_UK_charity_regs_211117.pdf>, accessed 20 January 2018.
2 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/671287/The_Charities__annual_return__Regulations_-_2017.pdf>, accessed 20 January 2018.

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be answered are listed in a Schedule to the Regulations. AR18 must be completed by all charities with financial years ending from 1 January 2018 onwards and with an annual income of £10,000 or more – unless they belong to one of the excepted denominations and have an annual income below £100,000. Charities have ten months from the end of their financial year in which to complete the return.

As a result of the consultation, the Commission amended its proposed new question on income from overseas: the only information that will be mandatory for the first year will be income from overseas governments or quasi-governmental bodies, charities and NGOs. Providing information about income from other overseas institutions and donors will be voluntary for AR18; it will become mandatory in subsequent years but the Commission intends to set a financial threshold for that information. The Commission decided not to ask charities whether they claim rate relief for the premises they use and how much Gift Aid they have claimed but it has decided to require charities to provide information about their total staff remuneration, including salary, bonuses, pension contributions, private health care and other benefits-in-kind, and will make public how many individuals receive total packages worth £60,000 or more. It will also require charities to provide information about their highest-paid employee, but the answers will be held by the Commission for regulatory purposes rather than being made public.

Some of the most controversial aspects of the original proposals have either been moderated or dropped altogether; however, the Commission appears to be pressing ahead with its proposal that every trustee should provide it with an e-mail address. According to the Office for National Statistics, in 2017, 9 per cent of adults in the UK had never used the Internet and the suspicion must be that a high proportion of non-users are elderly.[3] So how many current parochial church council (PCC) members do not have an e-mail address? And should that debar them from future election to the PCC?

CHURCHES AND CATHEDRALS

The Taylor Review and the Cathedrals Working Group

In December, the Government published *The Taylor Review: sustainability of English churches and cathedrals*.[4] The scope of the Review was limited to listed buildings of the Church of England only. Its recommendations include national networks of Community Support Advisers to build cross-community

3 Office for National Statistics, 'Statistical bulletin: Internet users in the UK: 2017', available at <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017#main-points>, accessed 20 January 2018.

4 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669752/Taylor_Review_Final.pdf>, accessed 20 January 2018.

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relationships and promote wider and more mixed use of church buildings, and of Fabric Support Officers to provide churches with access to skills and resources including maintenance assessment, building management and maintenance, and the ability to guide PCCs as to how to prioritise and fund works; and further simplification of church building management through the faculty system.

On funding, the Review recommended that both minor repairs and planned long-term maintenance should be financed principally by local fundraising, with top-ups from a Major Repairs Fund where a need could be demonstrated. Its ninth recommendation was that 'a nationally administered fund for works to keep cathedrals safe and open, similar to the First World War Centenary Cathedral Repairs Fund, should be considered as a separate exercise'.

Subsequently, in January, the Church of England's Cathedrals Working Group published its draft report on cathedral governance.[5] In a wide-ranging analysis, it concluded that the cathedral chapter should continue to be the governing body and that the dean should continue to chair it, but that the chapter should have an enhanced membership with a majority of 'non-executive' members, at least two-thirds of whom would be laity. It also recommended a clear separation of governance and management and the establishment of a senior executive team to oversee day-to-day cathedral operations. The Working Group announced a consultation on its proposals, which was to close on 28 February.

Planning law and church bells

The issue of perceived noise nuisance from church bells came up in a Commons Written Answer on 15 January, when Craig Mackinlay (Conservative, South Thanet) asked the Secretary of State for Communities and Local Government what steps his department has taken within planning and other guidance to local authorities to support the continued ringing of church bells and traditional chimes. The Minister of State for Housing and Planning, Dominic Raab, replied,

> We are standing up for England's churches. National planning policy already sets out that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. We are minded to amend the National Planning Policy Framework to give greater emphasis to this matter, by setting out that planning policies

5 Available at <https://www.churchofengland.org/sites/default/files/2018-01/Cathedrals%20Working%20Group%20Report_0.pdf>, accessed 20 January 2018.

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> and decisions should take account of existing businesses and other organisations, such as churches, community pubs and music venues, when locating new development nearby.[6]

That said, however, it should be remembered that, in addition to planning law, ringing church bells is also subject to potential liability for nuisance at common law and under the Environmental Protection Act 1990.

GIFT AID SMALL DONATIONS SCHEME AND COMMUNITY BUILDINGS

In September, HMRC issued updated guidance on the operation of the Community Buildings element of the Gift Aid Small Donations Scheme (GASDS), revised to clarify the rules for claims under the GASDS from 6 April 2017. Nevertheless, the rules – which were devised at least in part to cater for churches that have more than one place of worship operating under the same charitable trust – remain very complex.[7]

Readers who require detailed information should consult the HMRC guidance.[8] In brief however, a charity with two or more community buildings can claim a maximum of £8,000 either on small donations collected anywhere in the United Kingdom or on small donations for each community building collected within the same local authority area as the community building for which the claim is being made, *but not both*. A charity with fewer than two community buildings is best advised to claim under the head of 'small donations collected anywhere in the UK'.

LAW COMMISSION: 13TH PROGRAMME OF LAW REFORM

On 14 December, the Law Commission announced its conclusions on the contents of its 13th Programme of Law Reform.[9] A major item will be reform of the law on burial and cremation, under the title 'A modern framework for disposing of the dead'.

The Commission will also look at chancel repair liability, in what it describes as a 'small project' to resolve the uncertainty about the legal status of the liability 'and so achieve with certainty what was intended to be achieved by the Land

6 Available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-29/116503>, accessed 20 January 2018.

7 The Roman Catholic Church in England and Wales, for example, is organised so that each diocese, rather than each parish, is a single charity.

8 Available at <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-8-the-gift-aid-small-donations-scheme#community-buildings>, accessed 20 January 2018.

9 Available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/12/13th-Programme-of-Law-Reform.pdf>, accessed 20 January 2018.

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Registration Act 2002'. The Commission believes that reform will put an end to the current practice of purchasers insuring against the risk of liability – at an estimated annual total cost of £20 million.

MARRIAGE LAW REFORM FOR ENGLAND AND WALES ON HOLD

One proposal that did not make it into the 13th Programme was the reform of marriage law. In December 2014, the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. The underlying question was whether the current law provided a fair and coherent legal framework for enabling people to marry. The Commission conducted a preliminary study and published its findings as *Getting Married: a scoping paper* in December 2015.[10]

In September, Dominic 'standing up for England's churches' Raab, who was then Minister of State for Justice, wrote to the Commissioner in charge of the project, Professor Nick Hopkins, to say that the Government was not taking the project forward because its priority was to address the increase in public and private family law cases currently putting pressure on the justice system. However, he was keeping the situation under review and had not ruled out the option of further Law Commission work on marriage law in the future.

Professor Hopkins' response of 26 October was tinged with a degree of disappointment: he suggested that the pressure for reform – or at least for a comprehensive review – was unlikely to diminish, and noted the campaigns both by humanist groups to be allowed to conduct weddings and by those with concerns about religious-only marriages, not least within the Home Office.[11] He also suggested that, because it was a complex area that needed wide consultation, it would take some considerable time to formulate any options for law reform. As the Commission noted on its website, this is not an issue that is going to go away.[12]

QUINQUENNIAL INSPECTIONS

The Draft Inspection of Churches Measure, GS 2028, was given a First Consideration by General Synod on 9 July 2016; however, debate on the draft Measure was adjourned after the Archbishop of Canterbury intervened to question its necessity. He told Synod that he had not heard any evidence that the draft

10 Available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/12/Getting_Married_scoping_paper-1.pdf>, accessed 20 January 2018.

11 Available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/12/Letter-to-Dominic-Raab-MP-Response-to-protocol-support-rejection-26.10.2017.pdf>, accessed 20 January 2018.

12 See <http://www.lawcom.gov.uk/project/marriage-law/>, accessed 20 January 2018.

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Measure would significantly improve a system that seemed to be working satisfactorily; moreover, he was not convinced of the need for consistency across the Church as a whole, given that the problems of church buildings in some areas were going to be very different from the problems in others.

The draft Measure was abandoned; and in October, the Church Buildings Council launched a consultation on new draft guidance on the quinquennial inspection system, covering the commissioning of quinquennial inspection reports, a model scheme for dioceses and a new online template to be hosted on the Church Heritage Record. The consultation closed on 31 December.[13]

SAFEGUARDING AND THE CHARITY COMMISSION

In December, the Charity Commission issued a revised and updated 'Strategy for dealing with safeguarding issues in charities'.[14] The revised strategy makes it crystal clear that trustees must ensure that no-one who comes into contact with their charity suffers distress or harm, as well as safeguarding children and adults at risk. It emphasises that safeguarding is a key priority for all charities – not just for those working with groups traditionally considered at risk – and reminds trustees that their charity must provide a safe environment for staff, volunteers and anyone who comes into contact with it. It also makes clear that safeguarding goes beyond preventing physical abuse and includes protecting people from neglect, emotional abuse, exploitation, radicalisation and the consequences of the misuse of personal data.

Safeguarding is one of the three priority risk areas identified by the Commission, together with extremist and terrorist abuse and fraud and financial abuse and mismanagement. The Commission emphasises that charity trustees always remain responsible for safeguarding, even if they delegate some aspects of it to staff.

ILLEGAL RELIGIOUS SCHOOLS

Ofsted published its Annual Report in December – the first since Amanda Spielman was appointed HM Chief Inspector of Education, Children's Services and Skills.[15] Of particular interest are the report's comments about conservative religious schools, where the legal requirements for shared values and

13 Details, with links to the supporting documentation, are available at <http://www.churchcare.co.uk/churches/guidance-advice/looking-after-your-church/quinquennial-inspections>, accessed 20 January 2018.

14 Details, with links to the supporting documentation, are available at <https://www.gov.uk/government/publications/strategy-for-dealing-with-safeguarding-issues-in-charities/strategy-for-dealing-with-safeguarding-issues-in-charities>, accessed 20 January 2018.

15 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666871/Ofsted_Annual_Report_2016-17_Accessible.pdf>, accessed 20 January 2018.

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tolerance may clash with community expectations, and the creation of illegal 'schools' that avoid teaching the unifying messages taught in the vast majority of schools in England. The report notes that 'Within state education, there are schools spreading beliefs that are widely shared within the community that the school serves but that clash with British values or equalities law' and that, in even more extreme cases, children are being educated illegally in unregistered settings, without any safeguards to make sure that they 'are either safe or receiving a decent education'. The report also states bluntly that 'Current legislation is inadequate to tackle unregistered schools. It limits our powers to tackle them and allows institutions to exploit loopholes about definitions of education.'[16]

Shortly afterwards, in January, a Children and Young People's Scrutiny Commission appointed by the London Borough of Hackney finalised its draft report into unregistered educational settings.[17] The Commission found that in Hackney around 29 unregistered yeshivas offer religious teaching to approximately 1,000–1,500 boys within the Charedi Orthodox community. The report's key concerns were an apparent lack of safeguarding procedures, the narrow educational focus of yeshivas and the lack of interaction with education and safeguarding professionals. The investigation echoed Ofsted's criticism that the current legislation allows unregistered schools to operate without appropriate safeguarding, health and safety or curriculum standards.

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16 Ibid, pp 15 and 16.
17 Available at <http://mginternet.hackney.gov.uk/documents/s58810/FINAL%20UES%20for%20PUBLICATION.pdf>, accessed 20 January 2018.

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