(2024) 26 Ecc LJ 96–101
doi:10.1017/S0956618X23000613

Ecclesiastical Law Society
CAMBRIDGE UNIVERSITY PRESS

PARLIAMENTARY REPORT

June to September 2023

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Bill of Rights Bill

The Bill of Rights Bill was withdrawn on 27 June, signalling what appears to be a major change of policy. After the withdrawal announcement had been made, *The Times* quoted Dominic Raab as suggesting that 'All the wrong people will celebrate'[1] – among whom is your correspondent.

The tone of the debate seemed to change when, in a keynote speech on 'The Rule of Law and Effective Government' on 10 July, the Attorney General, Victoria Prentice KC MP, told the Institute of Government that, 'While there is a conceptual debate about whether the rule of law includes compliance with international law … it is certainly clear that the UK must comply with its international obligations and an important part of my role is to ensure that we do so'.[2]

However, the issue of the UK's continued adherence to the European Convention of Human Rights is by no means dead. *The Times* reported that on 26 September the Home Secretary, Suella Braverman, had made a speech in Washington DC that had been cleared by 10 Downing Street in which she raised the prospect of Britain leaving the Convention if membership continued to hold up the policy of sending immigrants to Rwanda: 'I reject that notion that a country cannot be expected to respect human rights if it is not signed up to an international human rights organisation … As if the UK doesn't have a proud history of human rights dating back to Magna Carta, and the ECHR is all that is holding us back from becoming Russia'.[3]

Levelling-up and Regeneration Bill

As noted in the last report, on 24 May the House of Lords debated an amendment to the Levelling-up and Regeneration Bill tabled by the Bishop of Bristol, which

[1] M Dathan, 'Dominic Raab Rages as Bill of Rights is Binned for Good', *The Times*, 28 June 2023.

[2] Attorney General's Office, 'Attorney General Delivers Speech on the Rule of Law', 10 July 2023, available at https://www.gov.uk/government/news/attorney-general-delivers-speech-on-the-rule-of-law?, accessed 26 October 2023.

[3] M Dathan, 'No 10 Backs Threat to Leave Human Rights Convention', *The Times*, 28 September 2023.

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was intended to clarify the confused state of the law about the powers of parish, town and community councils to make grants to places of worship. In reply to that debate, the Parliamentary Under-Secretary of State at the Department for Levelling Up, Housing and Ccommunities, Baroness Scott of Bybrook, agreed to reflect on the comments made in the debate.[4]

The Government subsequently tabled an amendment to make it clear that the Local Government Act 1894 does not prohibit parish and town councils from funding the maintenance and upkeep of churches and other religious buildings, as follows:

> 'After Clause 78, insert the following new Clause—
> *Powers of parish councils*
> After section 19 of the Local Government Act 1894 (provisions as to small parishes), insert—
> "19A Powers under other enactments
> (1) Nothing in this Part affects any powers, duties or liabilities conferred on a parish council by or under any other enactment (whenever passed or made).
> (2) This section does not apply in relation to community councils (see section 179(4) of the Local Government Act 1972)".'

The new clause was agreed to by the Lords on 13 July[5] and, given that it is a Government amendment, is unlikely to be resisted by the Commons.

It should be noted that inserted subsection (2) refers to community councils in Wales, which are therefore excluded from the operation of the new section. My understanding is that the powers of community councils are regarded as a devolved matter and that any clarificatory legislation in respect of them will have to be made by the Senedd.

Draft Terrorism (Protection of Premises) Bill

The last report noted that the Government had published the draft Terrorism (Protection of Premises) Bill[6] and that, regardless of capacity, all places of worship were to be treated as 'standard tier' premises for the purposes of the legislation unless they imposed an admission charge.

On 27 July, the Commons Home Affairs Committee published a fairly critical report on the draft Bill. In summary, although it welcomed the Government's overall intention behind the draft, it had serious concerns about the proportionality of its proposals, especially in relation to its impact on smaller businesses and voluntary and community organisations in standard tier premises. It also had some concerns about the purpose of the Bill, the unfinished provisions in the

[4] HL Deb 24 May 2023, vol 830 c131GC.

[5] HL Deb 13 July 2023, vol 831 c1938.

[6] Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1154100/Terrorism__Protection_of_Premises__Draft_Bill_-_Command_Paper.pdf>, accessed 26 October 2023.

https://doi.org/10.1017/S0956618X23000613 Published online by Cambridge University Press

draft, the role of the regulator and some of the duties required under the proposed legislation.

One aspect that concerned the Committee that may be of interest to readers was the capacity figure of 100 for standard tier premises, which it suggested could be disproportionate and burdensome:

> 'This category is particularly troubling because it would include many smaller venues that may not have sufficient resources to cover costs of what is proposed. It would also cover village halls, *places of worship* and similar amenities that provide vital community support, often on low budgets. *If such places are forced to close down, this represents a win for terrorism, rather than an effective means of combatting it.*'[7]

Diocesan Stipends Funds (Amendment) Measure 2023

Under the Diocesan Stipends Funds Measure 1953, each diocese is required to maintain two accounts: a capital account that holds the glebe land, legacies and other assets, and an income account that holds the proceeds from the capital account. The funds in the income account may only be used for specified statutory purposes (principally payment of parish clergy stipends) and only within the relevant diocese.

The Diocesan Stipends Funds (Amendment) Measure 2023, which came into force on 29 June, enables richer dioceses to transfer money to poorer ones. It inserts a new section 5B into the Diocesan Stipends Funds Measure 1953, as follows:

> **'5B Distribution of income to other dioceses**
>
> (1) Money standing to the credit of the income account of the diocesan stipends fund of a diocese, and which the diocesan board of finance is satisfied does not need to be applied for a purpose specified in section 5(1), may be applied in accordance with this section.
> (2) The diocesan board of finance may transfer the money concerned—
> (a) to the income account of the diocesan stipends fund of another diocese, or
> (b) to the account held for the purposes of this section by the Archbishops' Council or by another charity (whether established before or after the passing of this Measure).
>
> (3) Where money is transferred under subsection (2)(b), the charity, having decided to which diocese or dioceses to give the money, must—
> (a) if it decides to give the money to one diocese only, transfer it to the income account of the diocesan stipends fund of that diocese;

[7] House of Commons Home Affairs Committee, *Terrorism (Protection of Premises) Draft Bill: Fourth Report of Session 2022–23*, HC 1359, 27 July 2023, para 39 (emphasis added).

https://doi.org/10.1017/S0956618X23000613 Published online by Cambridge University Press

(b) if it decides to give separate portions of the money to different dioceses, transfer each portion to the income account of the diocesan stipends fund of the diocese concerned.'

The Measure does not extend to the Diocese of Sodor and Man.'[8]

Legal Officers (Annual Fees) Order 2023

The Legal Officers (Annual Fees) Order 2023[9] made under section 86(11) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 was laid before Parliament on 31 July and will come into effect on 1 January 2024.

Elections and Non-Party Campaigning: Draft Code of Practice

In September, the Government published the *Non-Party Campaigning: Draft Code of Practice*[10] under the provisions in sections 110A and 100B of the Political Parties, Elections and Referendums Act 2000, accompanied by a Ministerial Statement.[11] If approved by Parliament, it is due to come into force in November.

The Code applies to UK Parliamentary General Elections and to elections for the Northern Ireland Assembly. It does *not* apply to elections to the Senedd or Scottish Parliament unless the regulated period (the period when the spending laws apply) for either of those elections overlaps with the regulated period for a UK General Election.

Charity Commission Guidance on Charities and Social Media

In September, the Charity Commission published its *Guidance on Charities and Social Media*.[12] The draft version issued for consultation had attracted a degree of criticism for its suggestion that charities in England and Wales should monitor their employees' and volunteers' personal use of social media to make sure that what they posted did not reflect adversely on their charities. The final version, however, states that 'trustees, charity employees and any other individuals have the right to exercise their freedom of expression within the law in their communications, including when using social media'. While it suggests that 'trustees should be aware of the potential for content posted by individuals in their personal capacity being associated with the charity', it

[8] Nor to the Channel Islands – but the Deaneries of Jersey and Guernsey are not dioceses in any case.

[9] Available at <https://www.legislation.gov.uk/uksi/2023/864/contents/made>, accessed 26 October 2023.

[10] Available at <https://www.gov.uk/government/publications/non-party-campaigning-draft-code-of-practice/non-party-campaigning-draft-code-of-practice>, accessed 26 October 2023.

[11] Available at <https://questions-statements.parliament.uk/written-statements/detail/2023-09-13/hcws1018>, accessed 26 October 2023.

[12] Available at <https://www.gov.uk/government/publications/charities-and-social-media/charities-and-social-media>, accessed 26 October 2023.

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states unequivocally that, 'There is no expectation that trustees monitor personal social media accounts'.

Joint Committee on Human Rights

As noted previously, the Joint Committee on Human Rights opened an inquiry entitled 'Human Rights at Work'[13] for which the call for evidence closed in March. In August, the Catholic Union, the Christian Institute and the Evangelical Alliance wrote jointly to the Chair, Labour MP Harriet Harman, calling for religious freedom to be made a 'key part' of the Committee's inquiry and for a dedicated evidence session on the issue.[14]

Burials and Burial Law in Scotland

On 25 August, the Scottish Government opened a series of consultations on aspects of burials and burial law:

i. 'Statutory inspection of burial authorities, cremation authorities and funeral directors';
ii. 'Funeral director licensing scheme for Scotland';
iii. 'Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs:[15] regulation in Scotland'; and
iv. 'Regulation of alkaline hydrolysis ("water cremation") in Scotland'.

All four consultations were to close on 17 November 2023.[16]

Guidance for Charity Trustees in England and Wales on Investment Policy

In *Butler-Sloss*,[17] two charitable trusts sought a declaration that they were entitled to adopt an investment policy that excluded investments inconsistent with the Paris Climate Agreement even though that might reduce the anticipated rate of return. Michael Green J held that while trustees' powers to invest had to be exercised in furtherance of the charity's purposes, which would normally mean maximising financial returns, trustees had a discretion to exclude investments that they reasonably believed conflicted with their charity's purposes.

Following a consultation, the Charity Commission issued updated guidance in August on charities and investments to reflect that judgment, dropping

[13] Available at <https://committees.parliament.uk/call-for-evidence/3054/>, accessed 26 October 2023.

[14] Available at <https://catholicunion.org.uk/2023/08/christian-groups-call-on-parliament-to-tackle-workplace-discrimination/>, accessed 26 October 2023.

[15] *Anglice* 'burial plots'.

[16] Available at <https://consult.gov.scot/burial-cremation/consultation-collection/>, accessed 26 October 2023.

[17] *Butler-Sloss & Ors v The Charity Commission for England and Wales & Anor* [2022] EWHC 974 (Ch).

https://doi.org/10.1017/S0956618X23000613 Published online by Cambridge University Press

references to 'ethical investment'.[18] In addition, HMRC has updated its guidance on approved charitable investments and loans.[19]

Listed Places of Worship Grant Scheme Website

Not before time, the Listed Places of Worship Grant Scheme website has been redeveloped: the new site is at https://listed-places-of-worship-grant.dcms.gov.uk. It includes a new online application portal which follows the same format as the existing PDF form but should be easier to process than downloading and completing a physical document. The option to use the old PDF version will remain, but the application portal is intended to be more efficient, with all the information and attachments uploaded and submitted in one place.

[18] Charity Commission, 'Investing Charity Money: A Guide for Trustees', 1 August 2023, available at <https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-a-guide-for-trustees>, accessed 26 October 2023.

[19] HMRC, 'Approved Charitable Investments and Loans', 2 August 2023, available at <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-iii-approved-charitable-investments-and-loans>, accessed 26 October 2023.

Cite this article: F Cranmer, 'Parliamentary Report: June to September 2023' (2024) 26 Ecc LJ 96–101. https://doi.org/10.1017/S0956618X23000613

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