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PARLIAMENTARY REPORT

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SCOTTISH DEVOLUTION (CONTINUED)

As noted in the report for June–September 2014, in the wake of the 'No' vote in the Scottish independence referendum the Prime Minister appointed Lord Smith of Kelvin to lead a commission to put together an agreed package for further devolution. In October the Westminster Government issued *The parties' published proposals on further devolution for Scotland* (Cm 8946) and in January followed this with the necessary draft legislation: *Scotland in the United Kingdom: An enduring settlement*.[1] Perhaps the most important outcome for the Churches of the inter-party settlement is that the Equality Act 2010 will remain a matter reserved to Westminster.

ASSISTED DYING

Lord Falconer's Assisted Dying Bill completed its committee stage in the House of Lords but was expected to make no further progress in the present Parliament.[2] However, the Assisted Suicide (Scotland) Bill, introduced by the late Margo MacDonald MSP on 13 November 2013, continued to make slow progress through the Scottish Parliament: at the end of the period under review it was still under consideration by the Health and Sport Committee.[3]

BURIAL LAW

England and Wales

The amendment to section 25 of the Burial Act 1857 made by the Church of England (Miscellaneous Provisions) Measure 2014 came into effect on 1

1 Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf>, accessed 25 January 2015.
2 Available at <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0006/15006.pdf>, accessed 25 January 2015.
3 Available at <http://www.scottish.parliament.uk/S4_Bills/Assisted%20Suicide/b40s4-introd.pdf>, accessed 30 January 2015.

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January 2015. Its purpose is to simplify exhumations in a small number of cases involving consecrated ground; and in December the Ministry of Justice announced consequential changes to the granting of exhumation licences.

Under the previous provisions, the Secretary of State for Justice granted exhumation licences in accordance with section 25 and the law required such a licence unless 'a body [was] removed from one consecrated place of burial to another by faculty'. The wording of the Act meant that there were certain circumstances in which both a licence and a faculty might be required: for example, when a body was to be removed from consecrated ground then reburied in the same place or in unconsecrated ground.

Since 1 January an exhumation has required either the Secretary of State's licence or a faculty (or approval of a proposal under the Care of Cathedrals Measure 2011), depending on the location of the remains – but not both. Transitional arrangements provide that a licence granted under the old system prior to 1 January 2015 will be treated as if it were granted under the new arrangements and any conditions attached to that licence will continue to apply.[4] Equally, any faculty or approval under the Care of Cathedrals Measure 2011 granted before 1 January 2015 continues to be valid, subject to any attached conditions.

Scotland

On 26 January the Scottish Government announced a web-only consultation on a proposed Bill relating to burial and cremation and other related matters.[5] The Government explains that the basic burial legislation is over 150 years old and the cremation legislation over 100 years old. It has concluded that the law is in need of consolidation and reform: in particular, the Burial Grounds (Scotland) Act 1855 is no longer sufficient for modern purposes because it places duties on administrative units that no longer exist and does not give current burial authorities the powers that they require. In contrast, the Cremation Act 1902 and the Cremation (Scotland) Regulations 1935 have been amended so many times as to be 'confusing and difficult to follow'. The consultation closes on 24 April.

CHARITY LAW

Annual return

In October 2014 the Charity Commission for England and Wales announced changes to the annual return to apply when charities report on their financial years ending in 2015. Three questions have been added to the return:

4 If the existing licence is not required under the new system, it simply ceases to have effect.
5 Available at <http://www.scotland.gov.uk/Publications/2015/01/2869/2>, accessed 30 January 2015.

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i. In the reporting period, how much income did you receive from contracts from central or local government to deliver services and grants from central or local government?
ii. Does your charity have a policy on paying its staff?
iii. Has your charity reviewed its financial controls during the reporting period?

The Commission has chosen not to add a fourth extra question on how much charities have spent on campaigning expenditure; but it has indicated that it will revisit the issue because it maintains that charities' campaigning expenditure is a matter of public interest.

Draft Protection of Charities Bill

The draft Protection of Charities Bill, which would amend the Charities Act 2011 to give extra powers to the Charity Commission for England and Wales, was published on 22 October 2014. In brief, it would:

i. Empower the Commission to issue official warnings for less serious cases of misconduct by a charity or a charity trustee (Clause 1);
ii. Put beyond doubt that failure to comply with an order of the Commission constitutes misconduct or mismanagement (Clause 2);
iii. Extend the range of evidence about individual conduct by a trustee that the Commission can take into account where it has opened an inquiry into the operation of a charity (Clause 3);
iv. Clarify the Commission's powers to make a scheme in relation to a charity when an inquiry is open (Clause 4);
v. Empower the Commission to remove a disqualified charity trustee who attempts to continue in office (Clause 5);
vi. Enable the Commission to direct a charity to wind up in certain circumstances (Clause 6);
vii. Extend the circumstances in which the Commission may direct the application of charity property (Clause 7);
viii. Extend the criteria for automatic disqualification as a charity trustee (Clause 8); and
ix. Give the Commission power to disqualify from being a trustee any person whom it considers unfit (Clause 9).

Possibly its most controversial aspect relates to disqualification of charity trustees and managers. There are still unincorporated membership charities in existence in which all members are trustees by default; therefore, even allowing for the possibility of waiver, there is at least a chance that someone who has been a perfectly competent trustee of charity A, but who is a default trustee of another charity X,

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which has got into difficulties, might find him- or herself disqualified. Moreover, if a minister of religion were disqualified by virtue of being an errant trustee of an unrelated charity, the provision for disqualifying 'managers' as well as trustees might well make it impossible for that person to continue in ministry at all.

The draft Bill was committed for pre-legislative scrutiny to a Joint Committee chaired by Lord Hope of Craighead, lately Deputy President of the Supreme Court; at the time of writing, the Committee had finished taking evidence and was drafting its report. The assumption is that the legislation proper will be taken forward in the new Parliament.

The Essential Trustee

In November the Charity Commission published a consultation draft of its revision of *The Essential Trustee (CC3)*; responses were requested by 17 February. Perhaps surprisingly, the draft makes only passing reference to charities 'excepted from registering' – which, of course, include a very large number of religious charities, of which the most numerous are probably Church of England parochial church councils.

IMMIGRATION ACT 2014 AND MARRIAGE

Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015

In late November 2014 the Home Office announced the timetable for changes to the law on marriage notice which came into effect on Monday 2 March 2015. Under the provisions of the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015, from that date:

i. The notice period for marriage and civil partnership was extended from 15 days to 28 days for all couples in England and Wales marrying following civil preliminaries or forming a civil partnership;
ii. Where one of the couple who wish to marry in the Church of England or the Church in Wales is a non-EEA national that person is now required to complete civil preliminaries and give notice at a register office;
iii. All proposed marriages and civil partnerships involving a non-EEA national who has limited or no immigration status in the UK, or who does not provide specified evidence that he or she is exempt from the scheme, are referred to the Home Office;
iv. Where there are reasonable grounds for suspicion, the Home Office may extend the notice period in referred cases to 70 days in order to investigate and take appropriate enforcement or casework action. A couple is now unable to get married or enter into a civil partnership

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on the basis of that notice if they do not comply with an investigation under the scheme.

The Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 extend the referral and investigation scheme to the rest of the United Kingdom.

Those who gave notice of marriage or civil partnership before 2 March 2015 were not to be affected by the changes. Transitional arrangements would also apply for couples including a non-EEA national who before 2 March 2015 had been granted, or had applied for and were later granted, a common licence to marry in the Church of England or Church in Wales. Couples in that situation would still be able to marry on the basis of the licence and would not be required to complete civil preliminaries before marrying.

Section 57 Immigration Act 2014

In addition to the foregoing, there remains section 57 (Solemnization of marriage according to rites of Church of England) of the Immigration Act 2014, which, at the time of writing, was not yet in force. Once it is commenced, except in limited circumstances non-EEA nationals will no longer be able to marry in the Church of England or the Church in Wales after the calling of banns or by common licence. Instead, all such couples seeking an Anglican marriage will need to obtain superintendent registrar's certificates by completing civil preliminaries (subject to the referral and investigation scheme where applicable), unless the provisions for the Archbishop of Canterbury's Special Licence apply. Clergy will have to check the parties' nationality but they will not have to consider a non-EEA national's immigration status. The timing of commencement was unclear but the understanding was that it would not happen before spring 2015.

LOCAL GOVERNMENT (RELIGIOUS ETC. OBSERVANCES) BILL

The Local Government (Religious etc. Observances) Bill, 'A Bill to make provision about the inclusion at local authority meetings of observances that are, and about powers of local authorities in relation to events that to any extent are, religious or related to a religious or philosophical belief', is a private Member's bill introduced on 2 July 2014 with Government support.[6] Its aim is to put beyond question the power of local councils to hold prayers as part

6 The latest version is available at <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0084/15084.pdf>, accessed 30 January 2015.

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of their proceedings. On 16 January it completed its Commons stages and was expected to become law in the present Parliament.

SAME-SEX MARRIAGE AND CIVIL PARTNERSHIP

England and Wales

As noted in the last report, on 26 June 2014 the Ministry of Justice announced a consultation pursuant to the requirement in section 14 of the Marriage (Same Sex Couples) Act 2013. The consultation, which closed on 18 September, asked for views on a range of issues: principally whether or not there was a substantial case for changing the law to establish non-religious belief ceremonies as a third type of legal marriage ceremony alongside religious and civil ceremonies.

The Government's response was published on 18 December 2014.[7] The majority of respondents were in favour of changing the law to allow non-religious belief ceremonies and for them to take place in unrestricted locations (including out of doors). However, the Ministry concluded that the consultation raised a number of complex issues with wider implications for marriage law: the potential difference in treatment as against the majority of couples with religious or non-religious beliefs, who are restricted in where they can marry; how to prevent what the Ministry described as 'inappropriate groups' from registering to conduct ceremonies; and how to 'guard rigorously against increasing the risk of forced and sham marriages' and against the 'commercialisation of the solemnization of marriage'.[8] The result was that the Government put the issue on hold by asking the Law Commission to undertake a broader review of the law concerning marriage ceremonies.

Scotland

The Marriage and Civil Partnership (Scotland) Act 2014 was duly implemented. Conversion of existing civil partnerships became possible from 16 December and the first marriages under the new legislation took place on 1 January 2015.

WOMEN IN THE CHURCH OF ENGLAND EPISCOPATE

Bishops and Priests (Consecration and Ordination of Women) Measure 2014

The Bishops and Priests (Consecration and Ordination of Women) Measure was duly approved by Parliament and published on 23 October 2014.[9] Section 1(1) and (so far as not already in force) section 4 came into force on 14 November and the

7 Available at <https://consult.justice.gov.uk/digital-communications/marriages-by-non-religious-belief-organisations/results/marriages-by-non-religious-belief-organisations.pdf>, accessed 30 January 2015.

8 Why weddings in the open air should be a particular problem is beyond the comprehension of this correspondent, who was married in a civil ceremony in Scotland out of doors – and, as it happens, in light drizzle.

9 Available at <http://www.legislation.gov.uk/ukcm/2014/2/pdfs/ukcm_20140002_en.pdf>, accessed 30 January 2015.

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remainder on 17 November, together with Amending Canon No 33 (Of the consecration of bishops, etc).[10] The Revd Libby Lane was consecrated Suffragan Bishop of Stockport on 26 January 2015.

Lords Spiritual (Women) Bill

The Lords Spiritual (Women) Bill was introduced into the House of Commons on 18 December 2014.[11] The Bill has a single purpose: to enable vacancies among bishops in the House of Lords to be filled, for a limited period, by female bishops instead of by male bishops who would otherwise have become members of the House under the current law. The Bill completed its parliamentary stages on 12 March 2015 and received Royal Assent on 26 March 2015.

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10 Available at <https://www.churchofengland.org/media/2101062/gs%201926d%20-%20amending%20canon%20no.33.pdf>, accessed 30 January 2015.

11 The latest version is available at <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0087/15087.pdf>, accessed 30 January 2015.

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