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PARLIAMENTARY REPORT

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THE NEW GOVERNMENT

The previous Parliamentary Report dealt largely with matters from the last days of Gordon Brown. The State Opening of the new Parliament took place on 25 May and by the end of the period under review in that Report the new Coalition Government had barely got its collective feet under the Cabinet table – which made it very difficult to predict what the immediate impact of the new regime would be on Churches and the wider charity sector.

Five months on, however, the situation is becoming a little clearer. The first sign of the attitude of the new Government towards charities was the rebranding of the Office of the Third Sector as the Office for Civil Society, under the ministerial charge of Nick Hurd. Further indications were apparent in the Budget of 22 June, in which the Government committed itself to seeking ways of improving the Gift Aid system – on which the Churches are heavily dependent – and encouraging a greater degree of charitable giving. The Government also committed itself to replacing the current rules on substantial charity donors (which have been widely criticised by charities) with a view to publishing final legislation in the autumn for incorporation in a future Finance Bill. The headline news, however, was that VAT will rise to 20% on 4 January 2011; and on the best estimate of the Charity Tax Group the voluntary sector as a whole will find itself paying a further £150 million in irrecoverable VAT. Though the Government has announced that the Listed Places of Worship Grant Scheme, due to come to an end on 31 March 2011, will be renewed on a somewhat restricted basis for a further four years, the fiscal prospects for religious bodies are still not good.

As the period under review came to a close the Government announced its intention of running the current parliamentary session until Easter 2012 instead of November 2011, with the intention of opening subsequent sessions in the spring rather than the autumn. Given that the parliamentary year is at least partly driven by the need to have the February/March Budget Resolutions incorporated into a Finance Act and on the statute book by 5

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August,[1] it will be interesting to see what effect the change will have on the wider legislative and financial cycles.

CHARITY LAW

England and Wales: guidance for trustees on reporting serious incidents

The Charity Commission has updated its guidance on *Reporting Serious Incidents*.[2] Under the guidance, trustees should report serious incidents to the Commission as soon as they become aware of them; and though they may delegate this task to employees of the charity, the responsibility rests with the trustees themselves. As a matter of best practice the Commission recommends that trustees of all charities should report any serious incidents to the Commission. However, for charities with an income over £25,000 reporting of serious incidents is obligatory and trustees must, as part of the Annual Return, sign a declaration that there are no serious incidents that they have failed to bring to the Commission's attention. If they are unable to make that declaration then the Annual Return will be judged incomplete and they will have not met their legal responsibilities.

Northern Ireland: registration

The Charity Commission for Northern Ireland (CCNI) has got into some difficulties with its proposed registration timetable. The original plan was for the necessary Commencement Order to enable it to begin registration to be in place by 1 May 2010; and organisations not currently recognised as charities which wanted to be registered in Northern Ireland would be able to apply for registration from the end of June. However, that process has now been derailed.

The Act requires CCNI to publish guidance on the public benefit test which charities must satisfy prior to the roll-out of registration. A draft was issued for public consultation late in 2009 and several technical queries were raised by the Charity Law Association – not least that some of it seemed to be couched in terms more appropriate to the Scottish than to the Northern Irish legislation. The draft was referred to counsel for scrutiny and, as a result of counsel's advice, the CCNI asked the Department for Social Development to examine a technical aspect (unspecified) of the draft guidance in relation to the legislation governing the public benefit test.

The result is that CCNI has not been able to begin the registration process. Currently, therefore, there is no requirement (or indeed any provision) for an institution to register as a charity in Northern Ireland; and any institution

1 Provisional Collection of Taxes Act 1968, s 1(3)(aa).
2 Available at <http://www.charitycommission.gov.uk/Our_regulatory_activity/Reporting_issues/rsinotes.aspx>, accessed 16 August 2010.

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which operates for charitable purposes may continue to apply to HMRC for charitable status. Moreover, the Minister for Social Development has concluded that amending primary legislation is needed to resolve the point at issue. Registration is therefore unlikely to start before the summer of 2011 at the earliest.

United Kingdom: Recognition for tax purposes by HMRC

As noted in the last Parliamentary Report, in the (first) Finance Act 2010 the previous Government chose to give effect to the ruling of the European Court of Justice in *Hein Persche v Finanzamt Lüdenscheid*[3] that territorial restrictions on tax incentives for charitable giving contravene the provisions of the EU Treaty on the free movement of capital and in Schedule 6 of that Act introduced a 'fit and proper person' test for charity trustees. HMRC then issued preliminary guidance[4] on the test which makes it clear that it is not just limited to trustees but also extends to directors of corporate charities, to other officials having day-to-day control over the running of a charity and to any other person able to exert direction or influence over its running or the application of its assets.

HMRC has now published a revised version of its *Detailed Guidance on the Fit and Proper Persons Test*.[5] Crucially, it starts off from the position that 'HMRC assumes that all people appointed by charities are fit and proper persons unless they hold information to show otherwise'. Moreover, HMRC has given an assurance that a charity's tax reliefs and exemptions will not be withdrawn during an enquiry into whether or not its managers meet the test. That said, however, HMRC's definition of the 'managers' of a charity still seems to be rather wide.

CONSTITUTIONAL REFORM

The perennial question of the final shape of a reformed Second Chamber was not resolved either by the Blair or by the Brown administrations. The Coalition Agreement stated that the new Government would establish a committee 'to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation … by December 2010'.[6] Whether or not the Lords Spiritual will yet again survive the proposed reforms remains to be seen.

3 [2008] ECJ C-318/07.
4 Available at <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>, accessed 29 May 2010.
5 Available at <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>, accessed 16 August 2010.
6 HM Government, *The Coalition: our programme for government* (London, 2010) p 27, available at <http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf>, accessed 9 September 2010.

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COMMUNITY INFRASTRUCTURE LEVY

Readers will recall that the Planning Act 2008 made provision for the introduction of a Community Infrastructure Levy (CIL) on development. Readers with particularly long memories may even recall its predecessor and the Planning-gain Supplement (Preparations) Act 2007. Considerable efforts were made by the voluntary sector throughout the formulation of the policy to persuade ministers that charities and providers of social housing should be exempt from the levy; and the Community Infrastructure Levy Regulations 2010 which came into force on 6 April duly provided an exemption – though not as broad an exemption as the sector would have wished.

The saga continues. The Conservative Election Manifesto noted that the implementation of CIL had been delayed until April 2010 and pledged a Conservative Government to scrap CIL and non-site-specific planning obligations and instead 'introduce a single unified local tariff applicable to all residential and non-residential development (even a single dwelling), but at graded rates depending on the size of the development'. In a recent written exchange in the Commons, Andrew Stephenson (Pendle, Conservative) asked the Secretary of State for Communities and Local Government what plans he had for the future of CIL, to which Greg Clark, Minister of State at DCLG, replied that the Government was currently considering the future of CIL and would make a public announcement 'shortly'.[7]

It is not at all clear where the Coalition Government will go from here. If, however, the Conservatives' election pledge is pursued, the Churches and the charitable sector will have to rehearse the arguments for exemption all over again – and in a rather harsher economic climate than previously.

DEFAULT RETIREMENT AGE

To no-one's surprise, given that it was foreshadowed in the June Budget speech, the Government announced a consultation on *Phasing Out the Default Retirement Age* (DRA):[8] in effect, its forthcoming abolition from 1 October 2011. Although the Government is proposing to remove the DRA it will still be possible for individual employers to operate a compulsory retirement age provided that their policy can be justified objectively: examples where a compulsory retirement age could continue to be justifiable might include air traffic controllers and police officers.

The extent to which the change will impact upon the Churches is unquantifiable, not least because some ministers of religion are regarded as employees

7 HC Deb (2010–11) 1 July 2010 c 628W.
8 Available at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/p/10-1047-default-retirement-age-consultation.pdf>, accessed 16 August 2010.

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while others are regarded as office-holders to whom section 230(1) of the Employment Rights Act 1996 does not apply in any case. Some Churches give their clergy contracts of employment; others do not. What will certainly be affected, however, is the employment position of lay administrative staff.

ECCLESIASTICAL EXEMPTION (LISTED BUILDINGS AND CONSERVATION AREAS) ORDER 2010

As noted in the last Parliamentary Report, the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 2010[9] came into force on 1 October 2010. DCLG has now published updated *Guidance* on its operation.[10]

EQUALITY ACT 2010: SUMMARY GUIDES

Various elements of the Equality Act 2010 were due to come into operation on 1 October 2010.[11] The Government Equalities Office has published a series of summary guides to the Act[12] and the Advisory Conciliation and Arbitration Service has produced its own basic guide for employers.[13] The promised guidance from the Charity Commission finally appeared on 22 September.

UK LEGISLATION WEBSITE

Readers may be interested to know that the National Archives has launched a new website, 'legislation.gov.uk', which combines the functions of the previous website of the Office of Public Sector Information (OPSI) which included the text of legislation from 1987 onwards and the Statute Law Database (SLD). Its address, unsurprisingly, is <http://www.legislation.gov.uk/>. The OPSI and SLD websites are in the process of being decommissioned and users are being redirected to the new service.

VETTING AND BARRING SCHEME

The Vetting and Barring Scheme (VBS) for England and Wales had been widely criticised as disproportionate and interfering unduly with civil liberties. Voluntary registration with the VBS for new employees and those changing

9 Available at <http://webarchive.nationalarchives.gov.uk/20100407120701/http:/www.culture.gov.uk/reference_library/consultations/6605.aspx>, accessed 16 August 2010.
10 Available at <http://www.dcms.gov.uk/images/publications/OPSEEguidance.pdf>, accessed 16 August 2010.
11 See <http://www.equalities.gov.uk/equality_act_2010.aspx>, accessed 13 September 2010.
12 Available at <http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx>, accessed 16 August 2010.
13 Available at <http://www.acas.org.uk/index.aspx?articleid=3017>, accessed 16 August 2010.

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jobs who were going to work with children and vulnerable adults had been due to start on 26 July but on 15 June the new Home Secretary, Theresa May, announced that registration would be halted to allow the Government to remodel the scheme.[14]

At the time of writing, the scope of the remodelling process had yet to be announced; however, the following existing arrangements under the Scheme remain in place:

i. The Independent Safeguarding Authority (ISA) will continue to administer and maintain the two new lists (one for those barred from working with children, the other for those barred from working with vulnerable adults) which replaced the three previous barring lists. Since October 2009 it has been possible to make checks on these two lists as part of an Enhanced Criminal Records Bureau check.
ii. Existing requirements relating to CRB and Access Northern Ireland checks will remain in place and those entitled to such checks can continue to apply for them.
iii. Employers are still legally obliged to refer information to the ISA if they have moved or removed an individual who has harmed a member of a vulnerable group or there is a risk of harm to such a person.

It remains a criminal offence over a wider range of posts than previously for a barred individual to apply to work with children or vulnerable adults and it is also an offence knowingly to employ a barred individual in such a post.

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14 *Home Office Press Release* – 15 June 2010. The equivalent scheme in Scotland came into force on 30 November 2010.

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