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PARLIAMENTARY REPORT

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CHARITY LAW

Lower financial thresholds for accounting and reporting requirements for small charities were brought into effect on 1 April under the terms of the Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009.[1] The changes include raising the threshold above which charities must prepare accruals accounts from £100,000 to £250,000; raising the threshold for external scrutiny of accounts from £10,000 to £25,000; and increasing the threshold for submission by registered charities of annual accounts and trustees' annual reports to the Charity Commission from £10,000 to £25,000. The Association of Church Accountants and Treasurers particularly welcomed the higher threshold for accruals accounts, the preparation of which requires a considerable degree of expertise, since the prospect of having to master the mysteries of accruals accounting has been a considerable discouragement to potential treasurers.

In Ireland the major churches have to cope with the problems of operating across two jurisdictions. In Northern Ireland, the Charities (2008 Act) (Commencement No. 1) Order (Northern Ireland) 2009[2] brought some of the basic provisions of the Charities Act (Northern Ireland) 2008[3] into operation on 27 March, including the establishment of the Charity Commission for Northern Ireland and the obligation on the Commission to issue guidance about the operation of the public benefit requirement. In Dublin, the Charities Act 2009[4] has at last been signed into law by the President – though, like its sister legislation in the United Kingdom, it will be brought into force in stages as the various pieces of administrative machinery are put in place.

1 SI 2009/508, available at <http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090508_en.pdf>, accessed 11 June 2009.
2 Available at <http://www.opsi.gov.uk/sr/sr2009/nisr_20090138_en_1>, accessed 3 April 2009.
3 Available at <http://www.opsi.gov.uk/legislation/northernireland/acts/acts2008/pdf/nia_20080012_en.pdf>, accessed 3 April 2009.
4 Available at <http://www.oireachtas.ie/documents/bills28/acts/2009/a0609.pdf>, accessed 31 March 2009.

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Unsurprisingly, the new Irish Act bears a strong family resemblance to its United Kingdom cousins, with a list of charitable purposes, a formal public benefit requirement and overall supervision by a Charities Regulatory Authority and a Charity Appeals Tribunal. 'Religion', however, gets rather more detailed treatment in the Irish legislation than in the United Kingdom statutes. Subsection 3(1)(c) declares 'the advancement of religion' to be a charitable purpose and 3(2) adds the proviso of public benefit. Furthermore, the Act makes special provision in relation to gifts for the advancement of religion as follows:

> 3.—(4) It shall be presumed, unless the contrary is proved, that a gift for the advancement of religion is of public benefit.
>
> (5) The [Charities Regulatory] Authority shall not make a determination that a gift for the advancement of religion is not of public benefit without the consent of the Attorney General.
>
> (6) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.[5]
>
> . . .
>
> (9) There shall be no appeal to the [Charity Appeals] Tribunal from a determination of the Authority to which *subsection (5)* applies.

However, subsection 3(10) then proceeds to restrict that concession to 'mainstream' religion:

> (10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—
>
> (*a*) the principal object of which is the making of profit, or
>
> (*b*) that employs oppressive psychological manipulation—
>
> (i) of its followers, or
>
> (ii) for the purpose of gaining new followers.

Additionally, subsection 3(11) lists twelve purposes 'of benefit to the community' that are to be regarded as charitable – but the list is not exactly in alignment with those in the various United Kingdom Acts.[6]

5 Which, to a canonist, looks remarkably like a formal secular recognition of at least some of the internal canonical norms of the various faith communities.

6 In addition, section 99 of the Act deals with a matter that simply would not come within the purview of charity law in the United Kingdom: the sale of Mass cards. For a recent analysis of the likely effects of cross-border regulation, see OB Breen, P Ford and GG Morgan: 'Cross-border issues in the regulation of charities: experiences from the UK and Ireland', (2009) 11(3) *International Journal of Not-for-Profit Law* 5–37.

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CHURCH OF ENGLAND PENSIONS (AMENDMENT) MEASURE 2009

The Church of England Pensions (Amendment) Measure, which was given Royal Assent on 2 April, amends the Church's pension legislation by extending to 31 December 2018 the current power of the Church Commissioners to apply capital in the discharge of their pension liabilities.

COMMUNITY INFRASTRUCTURE LEVY

As previously noted,[7] section 210 of the Planning Act 2008[8] provides for the exemption of charities and similar not-for-profit organisations from Community Infrastructure Levy in certain unspecified circumstances. At the time of writing, although the Government had begun a series of informal consultations on the scope of the exemption there was no sign of any draft Regulations to flesh out the detail of the concession.

CONSTITUTIONAL AFFAIRS

As mentioned in the last Parliamentary Report,[9] Dr Evan Harris's Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill was duly given a second reading debate on 27 March but made no worthwhile progress. The Bill was talked out and the debate was ordered to be resumed on Friday 16 October, which means that Bill has no chance whatsoever of becoming law.

Replying to that debate, the Lord Chancellor took the rather unusual step of quoting the Prime Minister's remarks on that morning's *Today* programme on Radio 4, to the effect that the issue was a very complex one and that nothing must be done that would affect 'the position of the Queen as head of the established Church, the Church of England'.[10] Moreover, Mr Straw laid considerable stress on the 'huge moral force'[11] behind the duty under the Preamble to the Statute of Westminster 1931 to consult the Heads of Government of those countries of which Her Majesty is Head of State. The provision in clause 4(2) of Dr Harris' Bill, under which no order could be made under the Act before the Commonwealth Heads of Government had been consulted, was deemed

7 (2009) 11 Ecc LJ 208.
8 Available at <http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1>, accessed 22 January 2009.
9 (2009) 11 Ecc LJ 208–209.
10 HC Deb (2008–09) 27 March 2009, c 620.
11 Ibid, c 628. He also quoted in support of that assertion the judgment of Rouleau J in *O'Donohue v Canada* [2003] CanLII 41404 (ON SC), available at <http://www.canlii.org/en/on/onsc/doc/2003/2003canlii41404/2003canlii41404.html>, accessed 30 March 2009. The Ontario Court of Appeal concurred in a single paragraph: *O'Donohue v Canada* [2005] CanLII 6369 (ON CA).

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insufficient: 'The members of the Commonwealth would be right to be offended if . . . we were to bounce them into a take-it-or-leave-it position which had already become the law.'[12]

Mr Straw resisted the Bill largely on the grounds that it was premature and that any reform should be preceded by thorough consultation. However, no-one seemed willing to attempt any reasoned defence of the status quo – not even Mr Straw himself – and, responding to some degree of pressure, he agreed to take soundings of the Commonwealth Heads of Government.[13] Nevertheless, one received little impression that the issue was very high on the Government's agenda.

More generally, the Government continues to work through its programme for wider constitutional reform. In March 2009, the Ministry of Justice published its latest consultation document, *Rights and Responsibilities: developing our constitutional framework*,[14] in which it floated the idea of a 'Bill of Rights and Responsibilities' – a proposal that has already been the subject of a certain amount of discussion, not all of it particularly well informed.[15]

The Government's intention is to give prominence to the fact that rights also involve responsibilities:

> Responsibilities have not been given the same prominence as rights in our constitutional architecture. This is despite the fact that many duties and responsibilities already exist in statute, common law and our ethical framework, and despite the fact that the text and case law of the European Convention on Human Rights, given recognition in our law through the Human Rights Act 1998, require a balance to be struck between the two . . . The challenge is how best to remind people of the importance of individual responsibility and to give this greater prominence. The Government is clear that the rights in the European Convention cannot be legally contingent on the exercise of responsibilities. However, it may be that responsibilities can be given greater resonance in a way which does not necessarily link them to the adjudication of particular rights.[16]

The Green Paper makes it clear that ministers do not intend to bring forward legislation on the issue before the next general election.[17] Given that the

12 HC Deb (2008–09) 27 March 2009, c 628.
13 Ibid, c 629.
14 Cm 7577, available at <http://www.justice.gov.uk/publications/docs/rights-responsibilities.pdf>, accessed 27 March 2009.
15 For a recent history of the debate, see F Cranmer, 'Human rights and the Christian tradition: a Quaker perspective' in N Doe and R Sandberg (eds), *Law and Religion: new horizons* (Leuven, forthcoming 2009).
16 *Rights and Responsibilities*, p 8.
17 Ibid, p 10.

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Conservative Party has made rather similar proposals, albeit without going into any great detail,[18] the likelihood is that the matter will be taken forward in some form or other, whoever forms the next Government.

ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE 2009

The Ecclesiastical Offices (Terms of Service) Measure[19] was given Royal Assent on 2 April. The Measure, which has been the subject of a degree of controversy, puts in place the legislative framework for the introduction of new terms and conditions of service, to be known as 'common tenure', for clergy and stipendiary lay ministers. Together with subordinate legislation (yet to be finally approved by the General Synod) in the form of regulations and an Amending Canon, the Measure establishes conditions of service that will, so far as possible, apply across the board. It retains the established office-holder status of clergy while, for the first time, conferring upon them many of the rights enjoyed by employees, including rights to stipend and housing, a statement of particulars of office, annual and other leave, regular development reviews and continuing ministerial education. The legislation specifies the circumstances in which an office can be terminated and defines certain particular cases where an appointment can be made for a fixed or limited term. It also introduces a capability procedure that will enable problems of underperformance to be addressed.

THE EQUALITY BILL AND RELIGION

The Equality Bill[20] was introduced into the Commons on 24 April 2009 and the Second Reading took place on 11 May. Subject to successful passage through Parliament, the Bill, which is intended both to strengthen the law on equality and to consolidate and simplify existing legislation, is expected to come into force from autumn 2010. One of the major changes in the Bill, under Clause 143 and Schedule 19, is the extension of the equality duty laid on public authorities to the characteristics of age, religion or belief and sexual orientation, requiring them to have due regard to the need to eliminate discrimination and other prohibited conduct, to advance equality of opportunity and to foster good relations between different groups.

18 See, for example, David Cameron's speech to the Centre for Policy Studies, 'Balancing freedom and security – a modern British Bill of Rights' (London, 26 June 2006), available at <http://www.guardian.co.uk/politics/2006/jun/26/conservatives.constitution>, accessed 27 March 2009.

19 Available at <http://www.opsi.gov.uk/uk-church-measures/2009/ukcm_20090001_en_1>, accessed 22 May 2009.

20 Available at <http://www.publications.parliament.uk/pa/cm200809/cmbills/085/09085_iw/09085_iw_en_1.htm>, accessed 5 June 2009.

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The potential problem is the balance between rights and duties. Generally speaking, churches are not 'public authorities';[21] however, they do undertake duties of a public nature (such as registering marriages). Moreover, churches sometimes work in collaboration with public-sector bodies that will themselves be obliged to have regard to the equality duty – and that fact might oblige a church to act in a manner contrary to its own ethos in some circumstances.[22] In addition, the Church of England has expressed concern that that the scope of the exemption currently available under the Employment Equality (Sexual Orientation) Regulations 2003 in relation to employment for the purposes of an organised religion is proposed to be re-enacted in a form that is considerably more restrictive than it is at present.

Concern about these provisions was fuelled by a statement by Maria Eagle MP, Parliamentary Under-Secretary of State in the Ministry of Justice, at a recent conference in London on Faith, Homophobia, Transphobia and Human Rights, to the effect that, while the Government would not intervene in narrowly ritual or doctrinal matters within faith groups,

> these communities cannot claim that everything they run is outside the scope of anti-discrimination law. Members of faith groups have a role in making the argument in their own communities for greater LGBT acceptance, but in the meantime the state has a duty to protect people from unfair treatment.[23]

At the time of writing, the Bill had begun its committee stage in the Commons.

PROPOSAL FOR AN END OF LIFE CHOICES (SCOTLAND) BILL

The operation in England and Wales of section 2(1) of the Suicide Act 1961, which provides that it is an offence to aid, abet, counsel or procure the suicide or attempted suicide of another, has become increasingly controversial. The provision has recently been the subject of judicial review in relation to the policy of prosecution (or not) of persons who help those who wish to commit suicide to travel to countries, such as Switzerland, where assisted suicide is legal.[24]

21 *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546, HL.

22 See *Catholic Care (Diocese Of Leeds) v Charity Commission for England and Wales* [2009] Charity Tribunal CA/2008/0003, noted in this issue at pp 369–370.

23 'Faith, Homophobia, Transphobia, & Human Rights Conference 2009 media release', 20 May 2009, available at <http://www.lgcm.org.uk/fhthrconference2009/FAITH_EXEMPTIONS.pdf>, accessed 4 June 2009. When I rang the Ministry of Justice to request a copy of the Minister's speech, the Press Office told me that it was not being made available.

24 See *R (on the application of Purdy) v Director of Public Prosecutions & Ors* [2009] EWCA Civ 92 (19 February 2009), available at <http://www.bailii.org/ew/cases/EWCA/Civ/2009/92.html>,

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In Scotland, to assist the suicide of another is not a statutory offence; instead, it would be proceeded with under the criminal law relating to homicide, and the consent of the victim would not be a defence to any charge. On 8 December 2008, Margo MacDonald MSP, herself a sufferer from Parkinson's disease, lodged a proposal in the Scottish Parliament for a bill 'to permit physician assistance to persons who wish to end their own lives'. The principles of the bill were put out to a consultation that ended on 9 March 2009.[25] The Bill has not yet been introduced.[26]

PUBLIC ORDER ACT 1986

Readers will recall that Schedule 16 of the Criminal Justice and Immigration Act 2008 extended Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds) to cover incitement to hatred on the grounds of sexual orientation; however, in the dying days of the parliamentary Session, the Government accepted a proviso in the form of inserted section 29JA (protection of freedom of expression (sexual orientation)) that,

> for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.[27]

Ministers returned to the matter in the Coroners and Justice Bill, clause 61 of which seeks to remove the proviso inserted into the Public Order Act 1986.

The Bill was going through Parliament at the time of writing. During the second reading debate in the Lords, the Bishop of Southwell and Nottingham voiced his misgivings about 'the potential application of the law to restrict legitimate discussion and expression of opinion about sexual ethics and sexual behaviour' and expressed his intention of opposing the repeal of the existing provision.[28] The proposed repeal may well meet widespread opposition in the Lords – where the Government does not have a majority.

accessed 20 February 2009. At the time of writing, Ms Purdy's appeal was in progress in the House of Lords.

25 The consultation document is available at <http://www.scottish.parliament.uk/s3/bills/MembersBills/pdfs/EndOfLifeChoicesConsultation.pdf>, accessed 27 March 2009.

26 Unlike at Westminster, where an individual MP or peer can introduce a private Member's bill merely by giving notice, at Holyrood, in order to introduce what the Scots term a 'Member's bill', an MSP must first produce a proposal for consultation and then gather the support of at least 18 other MSPs, drawn from at least half the parties or groups represented on the Parliamentary Bureau.

27 Criminal Justice and Immigration Act 2008, Schedule 16, para 14.

28 HL Deb (2008–09) 18 May 2009, c 1220.

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SCHOOL ADMISSIONS CODE

In December 2008, the Department for Children, Schools and Families published a revised School Admission Code[29] and a revised School Admission Appeals Code.[30] Paragraph 1.86 of the School Admission Code provides that faith schools will continue to be allowed to use a supplementary form that asks parents or children about their membership of, or relationship with, the relevant church or religious denomination.

VAT AND THE LISTED PLACES OF WORSHIP GRANT SCHEME

At its meeting on 10 March, the European Council of Finance Ministers (ECOFIN) reached political agreement on reduced VAT rates. All member states will have the option to apply reduced rates on a permanent basis to a series of goods and services; however, the repair and renovation of listed places of worship was not on the list, despite the efforts of the United Kingdom Government to include it. The Treasury's reaction was one of regret that certain other members of ECOFIN had taken such a rigid position on reduced rates.

The Listed Places of Worship Grant Scheme, under which a matching grant is made in respect of VAT paid on eligible works, is currently due to run until 2011; and the Treasury and the Department for Culture, Media and Sport have said that the Government will review the current arrangements and take a view, in due course, on whether or not they should be extended. The current Scheme accords with European law because it provides grants rather than applying a reduced rate – so, presumably, any continuation of grant aid would also conform. However, *because* the Scheme provides grants, the sums involved are reckoned as public expenditure for accounting purposes; and it remains to be seen whether, given the present economic climate, the next Government will be prepared to extend it in its present form beyond 2011.

IRELAND, THE CONSTITUTION AND BLASPHEMOUS LIBEL

In Ireland there is no specific statutory offence of blasphemy, even though Article 40 of the Constitution declares that 'The publication or utterance of blasphemous, seditious, or indecent material is an offence which shall be punishable in accordance with law'. Shortly after the common law offence of blasphemous libel had been abolished in England and Wales,[31] the Irish

29 Available at <http://www.dcsf.gov.uk/sacode/downloads/RevisedSchoolAdmissionsCode041208.pdf>, accessed 11 June 2009.

30 Available at <http://www.dcsf.gov.uk/sacode/downloads/RevisedSchoolAdmissionAppealsCode041208.pdf>, accessed 11 June 2009.

31 Criminal Justice and Immigration Act 2008, s 79.

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Minister for Justice announced the Government's intention to amend the Defamation Bill currently before *Dáil Éireann* so as to create such a crime in statute.[32]

In *Corway v Independent Newspapers (Ireland) Ltd & Anor*,[33] the Supreme Court concluded that the law was not clear as to the elements of the offence of blasphemy and upheld the refusal of the High Court to authorise a private prosecution under Article 40. The last prosecution for blasphemy had been in 1909[34] and, assuming that the offence was now a dead letter, in 2008 the Joint Committee of the *Oireachtas* on the Constitution recommended amending Article 40 so as to remove all references to blasphemy.[35] The Government, however, is proposing the precise opposite: an amendment to the Bill to make the publication of 'blasphemous matter' an indictable offence, subject to a maximum fine of €100,000.[36]

The proposal has attracted considerable criticism, not least from Miklos Haraszti, the Representative on Freedom of the Media at the Organization for Security and Co-operation in Europe, who warned that the proposal ran counter to the commitment to media freedom under Item 2 of the OSCE Final Act[37] to which Ireland is a signatory.

AND FINALLY . . .

Amid media speculation that the Prime Minister would like to recommend a life peerage for Cardinal Murphy-O'Connor on his retirement as Archbishop of Westminster,[38] it was pointed out that the Cardinal would only be able to accept a peerage by special dispensation of the Pope because Roman Catholic canon law normally forbids clergy from occupying positions that involve the exercise of political power. But there is very little in Parliamentary history that is completely without precedent. When Baroness Vaux of Harrowden died in

32 See, for example, Carol Coulter, 'Crime of blasphemous libel proposed for Defamation Bill', *The Irish Times*, 29 April 2009, <http://www.irishtimes.com/newspaper/frontpage/2009/0429/1224245599892.html>, accessed 11 June 2009.

33 [1999] 4 IR 484, [2000] 1 ILRM 426, available at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/1999/5.html&query=Independent+Newspapers+&method=all>, accessed 18 May 2009. See especially Barrington J at paras 37 and 38.

34 Joint Committee on the Constitution, *First Report: Article 40.6.1.i – Freedom of Expression* (Dublin, 2008), para 2.106.

35 Ibid, para 5.22.

36 Defamation Bill 2006 Committee Amendments 28 April 2009, Amendment 40.

37 See 'OSCE media freedom representative welcomes Irish draft law decriminalizing libel, asks to drop "blasphemous libel"', OSCE Press Release, 19 May 2009, available at <http://www.osce.org/item/37737.html>, accessed 11 June 2009. The *Conference on Security and Co-operation in Europe Final Act* (Helsinki, 1975) is available at <http://www.osce.org/documents/mcs/1975/08/4044_en.pdf>, accessed 23 May 2009.

38 See for example, Catherine Pepinster's interview with Gordon Brown, 'Our common cause', *The Tablet*, 28 March 2009, <http://www.thetablet.co.uk/article/12733>, accessed 11 June 2009.

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1958 she was succeeded as the 9th Baron by her son, Peter Hubert Gordon Gilbey. Better-known as The Revd Dom Gabriel Gilbey OSB, the 9th Baron happened to be a choir-monk of Ampleforth. Nevertheless, he duly took his seat – the first Benedictine to do so since the Reformation – and occasionally spoke in the House. He died in 1977.

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