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PARLIAMENTARY REPORT

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CARE OF CATHEDRALS RULES 2006

The Care of Cathedrals Rules 2006[1] are made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 for carrying into effect the provisions of the Care of Cathedrals Measure 1990 (the 1990 Measure) as amended. They revoke and replace the Care of Cathedrals Rules 1990 (the 1990 Rules). As well as making some changes to the provisions of the 1990 Rules and making more detailed provision for some of the existing procedures under the 1990 Measure, they carry into effect a number of additions and other amendments made to the 1990 Measure by the Care of Cathedrals (Amendment) Measure 2005.[2] In particular:

i. Rules 3 and 4 deal with the procedure for certain preliminary determinations under the 1990 Measure as amended;
ii. Rules 5 and 6 deal with applications for approval of proposals made by the cathedral chapter to the fabric advisory committee (FAC) established under the 1990 Measure;
iii. Rules 7 to 9 deal with applications for approval of proposals made by a cathedral chapter to the Cathedrals Fabric Commission for England (CFCE) established by the 1990 Measure, and with appeals to the CFCE from decisions of an individual FAC or failure by an FAC to determine an application within the time-limit under the 1990 Measure;
iv. Rule 10 involves the Church Commissioners in certain types of proposals affecting cathedral clergy housing;
v. Rule 11 provides for notice to the CFCE of any application by a cathedral chapter for listed building or scheduled monument consent in respect of a building or monument within the cathedral precinct, while Rules 12 to 16 provide a framework for dealing with applications for approval of

1 SI 2006/1941.
2 The full text is available on-line at <http://www.opsi.gov.uk/si/si2006/20061941.htm>, accessed 29 January 2007.

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proposals relating to objects of architectural, archaeological, artistic or historic interest; in addition, Rule 16 and schedule 1 implement the provisions relating to treasure in the amended 1990 Measure;

vi. Rules 17 to 21 provide for a review by a Commission of Review of a decision (including a decision on appeal) by the CFCE or for determination by a Commission of Review in the event of non-determination by the CFCE within the statutory time-limit; and

vii. Rules 22 to 26 make general provision regarding procedure and evidence for the proceedings of FACs, the CFCE and any Commission of Review.

CHARITIES ACT 2006

The Charities Act 2006 (c 50), which applies to England and Wales, received Royal Assent in November 2006 and will be brought into force in stages.[3] The Act defines a charity as a body or trust that is for a charitable purpose and for the public benefit. The Act replaces the old heads of charity from the Preamble to the Statute of Charitable Uses 1601 with a much more comprehensive series of thirteen main purposes that are regarded as charitable,[4] included the prevention or relief of poverty, the advancement of education, the advancement of religion, and any other purposes charitable in law.[5] The Charity Commission states on its website that 'the last category means that everything which is currently charitable is included'.[6]

The Act is far too long and complex to summarise here;[7] however, the following may be of particular interest to churches and religious charities.

New thresholds for registration

The income level for registration will be increased to £5,000 by Order under section 10, replacing the previous regime, under which small charities with an annual income of £1000 or less did not have to register unless they had a permanent endowment or the use or occupation of land. The permanent endowment of land requirement is abolished. Existing charities under this threshold will be able to ask to be removed from the register but will still remain charities and have to abide by charity law.

3 The current timetable for implementation is available at <http://www.cabinetoffice.gov.uk/third_sector/documents/charity_reform/implementation_plan.pdf>, accessed 5 January 2007.

4 S 2(2).

5 S 2(2) (a), (b), (c), (m).

6 <http://www.charitycommission.gov.uk/spr/ca2006prov.asp#o>, accessed 4 January 2007.

7 And there is, in any case, an excellent short guide to its provisions on the Charity Commission website at <http://www.charitycommission.gov.uk/spr/ca2006prov.asp#o>, accessed 4 January 2007. See also M Blanco, 'Religion and the law of charities', (2006) 8 Ecc LJ 246.

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Exempt charities

By virtue of section 11 and schedule 2, a previously exempt charity (a category that includes many churches and religious charities), that is already regulated by a body other than the Charity Commission which has agreed to take responsibility for ensuring that it fulfils the provisions of charity law, will continue to be exempt and will be regulated by its current regulator, now known as a 'principal regulator'. If no suitable regulator exists, then a previously exempt charity ceases to be exempt and will have to register with the Commission.

Excepted charities

Excepted charities with an annual income of £100,000 or over will have to register with the Commission. Those under that threshold will not have to register, but will come under the Commission's jurisdiction.[8]

Cy-près, flexibility for transferring assets, and more effective use of permanent endowments

Sections 15 to 18 of the Act provide for a more flexible approach to the cy-près principle, allowing the Commission and the courts to take account of current social and economic circumstances when approached by charities seeking more freedom in the ways that they can use any donated funds that they are unable to use as originally intended, because the class of beneficiary for whom the money was originally intended has ceased to exist – for example, lamplighters. Section 43 allows a wider range of smaller charities to spend permanently endowed capital and, with the agreement of the Commission, permits larger charities to spend capital in certain circumstances.

Mergers

One of the obstacles to charity mergers can be uncertainties about what will happen to legacies and donations which were left to those charities, which 'disappear' as the result of a merger. Under section 44, the Commission will now keep a public register of charity mergers. Registration will be voluntary; but when a merger is registered, gifts and legacies to the previously separate charities will in most circumstances be transferred automatically to the new, merged charity.

Accounting thresholds

Sections 28 and 32 simplify the rules about when a professional audit is required and set similar thresholds both for charities that are companies and for those

8 Parts of s 9, ss 11–14, and schedule 5. These provisions are not expected to come into force before 2008, in order to allow the charities, their proposed principal regulators and the Commission adequate time to prepare for the changes.

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that are not. A non-company charity's accounts will have to be professionally audited if it has a gross annual income over £500,000 or assets of an aggregate value of over £2.8 million and gross annual income over £100,000. Below this threshold, for non-company charities, an independent examiner can be used instead of an auditor (though if the charity's income exceeds £250,000 then the independent examiner must have an appropriate accountancy qualification). An independent examination will not be required for a charity whose income is below £10,000.

As well as establishing the Charity Commission on a new statutory footing,[9] the Act creates a new Charity Tribunal to deal with reviews of legal decisions by the Commission and appeals against the Commission's findings, replacing the current appellate jurisdiction of the High Court.[10] The Tribunal will also take referrals from the Commission or from the Attorney General that involve the operation or application of charity law. What the Tribunal will not deal with is customer service complaints, which will continue to be handled by the Commission's internal complaints system and the Independent Complaints Reviewer. It is expected that it will take at least a year for the Department for Constitutional Affairs to set up the new Tribunal.

Finally, it should be made clear that the 2006 Act amends the Charities Acts 1992 (c 41) and 1993 (c 10) and repeals them only in part – so there are now three principal Acts instead of two. The Government has signalled that it intends to bring forward a Consolidation Bill at some point in Session 2007–2008.

CHARITY LAW REFORM IN IRELAND

Reform of charity law is on the agenda in both jurisdictions on the island of Ireland. In Northern Ireland, the Department for Social Development has completed a consultation on draft legislation that would provide a definition of 'charity' and 'charitable purpose', establish a Charity Commission for Northern Ireland and a Charity Tribunal for Northern Ireland, create a register of charities, provide for the establishment of charitable incorporated organisations, and regulate charities and public charitable collections – in short, a Northern Irish version of the Charities Act 2006.[11] The draft Regulations were laid before Parliament on 26 January 2007.[12]

9 Ss 6 and 7 and schedule 1.
10 S 8 and schedules 3 and 4.
11 The consultation document is available at <http://www.dsdni.gov.uk/dsd_charities_review.pdf>, accessed 10 January 2007.
12 Available at <http://www.opsi.gov.uk/si/si2007/draft/ukdsi_9780110800677_en.pdf>, accessed 31 January 2007.

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In the Republic, the Department of Community, Rural and Gaeltacht Affairs published in March 2006 a *General Scheme for the Charities Regulation Bill 2006*,[13] again containing proposals for definitions and regulation very similar to the new English legislation.

CHURCHES CONSERVATION TRUST

The Churches Conservation Trust (formerly The Redundant Churches Fund) was set up in 1969 to care for Church of England churches no longer needed for parochial use. The object of the Trust, as set out in the Pastoral Measure 1983, is 'the preservation, in the interests of the nation and the Church of England, of churches and parts of churches of historic and archaeological interest or architectural quality vested in the Trust . . . together with their contents'. The Trust has moved towards a funding arrangement under which two-thirds of its funds come from the Department for Culture, Media and Sport and one-third from the Church Commissioners – in the latter case, largely from the sale of sites of demolished redundant churches – and, for the first time, the DCMS, the Commissioners and the Trust have concluded a tripartite Funding Agreement, covering the period to March 2008. The Agreement target areas are *access*, with the Trust aiming for 95 per cent of its estate being open to the public, *tourism* and the development of a joint marketing strategy across the sector, *volunteering and local involvement*, and *conservation and repair*. The Trust intends to make available £2.2 million during the period 2006–2009 for repair and conservation of newly vested church buildings. Annual funding from DCMS is likely to run at £3 million in each year until 2007–2008, with the Commissioners contributing an additional £1.3 million.

EQUALITY ACT (SEXUAL ORIENTATION) REGULATIONS

The Government is in the process of bringing forward detailed secondary legislation implementing the sexual orientation provisions of the Equality Act 2006 (c 3). The first such legislation was the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006[14] which came into force on 1 January 2007. The key provision is in Regulation 3(1), which provides that 'a person ("A") discriminates against another person ("B") if – (a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons'.

13 Available at <http://www.pobail.ie/en/CharitiesRegulation/HeadsofBill/file,6875,en.pdf>, accessed 10 January 2007.

14 Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, SR(NI) 2006/439.

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The Regulations caused considerable Parliamentary controversy. Several religious groups argued that Regulation 16 (organisations relating to religion or belief) gave insufficient protection to those conscientiously opposed to same-sex relationships; and, on a prayer to annul the Regulations in the House of Lords, the voting was 199 in favour of the Regulations and 68 against.

At the time of writing, the Regulations for Great Britain were still at the drafting stage. Their likely content became a *cause célèbre* when Roman Catholic adoption agencies decided that, rather than being obliged to place children with same-sex couples, they would close; and the Cardinal Archbishop of Westminster wrote individually to each Cabinet Minister expressing his concern. On 29 January 2007, the Prime Minister announced that the Regulations would not give any exemption on religious grounds to faith-based adoption agencies offering publicly funded services, but that they would provide for a transitional period until the end of 2008, coupled with a statutory duty obliging any adoption agency that does not process applications from same-sex couples to refer them to another agency that does.[15]

FIRE SAFETY

The Regulatory Reform (Fire Safety) Order 2005[16] came into force on 1 October 2006. The rules cover all non-domestic premises in England and Wales – *including churches and church halls*. The main effect of the changes is a move towards greater emphasis on fire prevention in all non-domestic premises, including premises in the voluntary sector.

Fire certificates have been abolished; instead, responsibility for compliance is placed on the 'responsible person'. In premises other than workplaces, that duty will fall on the person or persons in control of the premises. The Order requires precautions to reduce fire risk and to ensure that adequate means of escape be put in place 'where necessary' and to the extent that is reasonable and practicable in the circumstances of the case. The responsible person will have to carry out a fire-risk assessment, focusing on the safety in case of fire of all 'relevant persons', paying particular attention to those at special risk, such as disabled people.

The Department for Communities and Local Government has produced a series of guides to the Order, of which the most useful for churches are *Guide 6 – Small and medium places of assembly* and *Guide 7 – Large places of assembly*.[17] The Churches Main Committee and the Resourcing Mission Office of the Methodist Church have also produced a guide, specifically

15 See <http://www.pm.gov.uk/output/Page10869.asp>, accessed 29 January 2007.
16 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.
17 Available at <http://www.communities.gov.uk/index.asp?id=1162115>, accessed 4 January 2007.

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for churches, which can be accessed from the Churches Main Committee website.[18]

LISTED PLACES OF WORSHIP AND VAT

The Department of Culture, Media and Sport's Listed Places of Worship scheme, under which VAT in excess of 5 per cent levied on repairs to listed buildings used for worship is returned to the churches in question, has now been running for five years and some £50 million has been repaid as grant-in-aid. In the 2006 Budget, the Chancellor extended the scheme until 2011 and widened its scope to include VAT on investigative works leading to repairs, on professional fees (for architects, surveyors, planning supervisors, Health and Safety advisers, archaeologists, and professional fundraisers), and on repairs to clocks, pews, bells and pipe organs. Although five years old, the scheme is still a temporary one pending negotiations in Europe as to whether church repairs can be made eligible for a 5 per cent VAT rate to be levied at source, and will run until 2011 unless agreement in Europe is reached earlier. Guidance on making claims under the scheme is available on the Internet.[19]

STATUTE LAW ONLINE

Those who do not have access to LEXIS might be interested to learn that the long awaited Statute Law Database at last became available online, free of charge, on 20 December 2006. The database includes UK Public General Acts, UK Local Acts, Acts of the Scottish Parliament, Acts of the Northern Ireland Assembly, Statutory Instruments, Welsh Statutory Instruments, Scottish Statutory Instruments, Statutory Rules of Northern Ireland and General Synod Measures.

However, the database is not yet complete. The Department for Constitutional Affairs says that the database contains primary legislation that was in force on 1 February 1991 and primary and secondary legislation that has been produced since that date. The primary legislation has been revised to 2002 and is expected to be fully revised and completely up to date by the end of 2008. New legislation will be published on the SLD website as soon as possible after it has been issued. It should also be said that the system is, as yet, far from perfect. A brief test revealed that the Churches (Scotland) Act 1905 had been indexed as the *Church* (Scotland) Act 1905 (which was enough to render it invisible to the system) and the search engine could not cope with short titles such as 'Act of

18 At <http://www.cmainc.org.uk>, accessed 16 January 2007.
19 At <http://www.lpwscheme.org.uk>, accessed 16 January 2007.

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Settlement' or 'Bill of Rights'. But no doubt the bugs will be ironed out in due course.

The database can be found at <http://www.statutelaw.gov.uk>.[20] The Statutory Publications helpdesk e-mail contact is <spohelpdesk@dca.gsi.gov.uk>.

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20 Accessed 29 January 2007.

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