



PARLIAMENTARY REPORT

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YET ANOTHER PRIME MINISTER

In the June to September report, I noted that Boris Johnson had announced his resignation as leader of the Conservative Party on 7 July and had been replaced as Prime Minister by Liz Truss on 6 September. Little did anyone imagine that she, in turn, would be replaced by Rishi Sunak on 25 October after only 50 days in office and a disastrous mini budget presented by her Chancellor, Kwasi Kwarteng, which Sunak's replacement as Chancellor, Jeremy Hunt, then repudiated almost in its entirety.

The result was a bewildering ministerial version of musical chairs: Suella Braverman, for example, who had been Attorney General under Boris Johnson, was appointed Home Secretary by Liz Truss on 6 September, resigned on 19 October 2022 and returned to the back benches—only to be reappointed by Sunak on 25 October when her replacement as Home Secretary, Grant Shapps, was moved to the Department for Business, Energy and Industrial Strategy.

BILL OF RIGHTS BILL UNDEAD

One issue that has resurfaced after the change of administration is the Bill of Rights Bill introduced by Dominic Raab in his first manifestation as Justice Secretary under Boris Johnson. It had been due for its Commons second reading debate on 12 September; but Truss dropped Raab from the Government when she took over from Johnson, the second reading debate did not take place, and it was thought that the Bill had been quietly shelved. Nevertheless, the Bill was still before the House when Sunak reinstated Raab as Lord Chancellor, Justice Secretary and Deputy Prime Minister.

Raab's antipathy to the European Court of Human Rights is well known, so it was little surprise when on 5 November he tweeted that 'The Bill of Rights will return to Parliament in the coming weeks. It builds on the UK's proud tradition of liberty by strengthening freedom of speech, reinjecting a healthy dose of

common sense to the system and ending abuse of our laws'. Whether or not it will become law, however, depends very much on how it fares in the Lords.

THE PROTECT DUTY

In December, the Home Secretary announced 'the foundational policy elements that will form the basis of this Government's upcoming Protect Duty Bill' developed in response to feedback received to the Government's 2021 consultation.¹ Its two primary objectives will be to clarify who is responsible for security activity at locations within the scope of the duty and to improve outcomes so that security activity is delivered to a consistent level. An inspection and enforcement regime will seek to educate, advise and ensure compliance. Enforcement will be predominantly via civil rather than criminal sanctions, although a limited number of criminal offences will be available in the case of the worst breaches.

The Government appears to have accepted that requirements under the legislation should be proportionate, and there will be two tiers of compliance: a standard tier for locations with a maximum occupancy of greater than 100 people at any time, and an enhanced tier for venues with an occupancy of over 800. Venues with a maximum occupancy at any time of fewer than 100 will not be within scope, although they will be encouraged to adopt good security practices voluntarily. Crucially, the Home Secretary said that *all places of worship will be placed in the standard tier except for a small cohort of locations that charge for entry*. It was subsequently confirmed that it will not apply to those with a maximum occupancy of fewer than 100.

COVID-19 INQUIRIES

The UK Inquiry got under way on 4 October with a minute's silence for the victims of the pandemic. At the first preliminary hearing, the Chair, Lady Hallett, said that she would do everything in her power to explore what happened and what lessons needed to be learned, and that the inquiry would be thorough and fair—as one would hope and expect.

In Scotland, Lady Poole, who had been appointed Chair of the independent Scottish COVID-19 public inquiry in December 2021, stepped down from the role for personal reasons. Deputy First Minister John Swinney confirmed in a statement to the Scottish Parliament that Lord Brailsford would replace her. He also confirmed that an amendment would be made to the Inquiry's terms of reference to include a clear reference to a human rights-based approach.

1 HC Deb, vol 725, 19 December 2022, c11WS, <<https://questions-statements.parliament.uk/written-statements/detail/2022-12-19/hcws462>>, accessed 10 February 2023.

CHARITIES ACT 2022: COMMENCEMENT

The Charities Act 2022 (Commencement No. 1, Consequential and Saving Provision) Regulations 2022 (SI/2022/1109), made on 26 October, brought into force the first tranche of the Act's provisions on 31 October. On 13 October, however, the then Minister for Heritage, Lord Kamall, announced that commencement of sections 15 and 16 (on *ex gratia* payments by charity trustees) would be deferred, pending consideration of the claim that, as drafted, they had the unintended effect of allowing national museums to restore items from their collections to their countries of origin on moral grounds.²

CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) BILL

In November, the Scottish Government published the Charities (Regulation and Administration) (Scotland) Bill, which will increase the powers of the Office of Scottish Charity Regulator (OSCR). It will give OSCR wider powers to investigate charities and charity trustees and amend the rules on who can be a charity trustee or a senior office-holder in a charity. As part of the Bill's proposals, OSCR will publish annual accounts for every charity, include the names of all charity trustees in the Scottish Charity Register, create a record of charities that have merged, and create a publicly searchable record of removed charity trustees.

The legislation will also give OSCR new powers to issue positive directions to a charity to take an action, such as managing a conflict of interest, where it has identified a risk and to remove charities that fail to provide accounts and do not respond to OSCR's communications.

POLITICAL ACTIVITY AND CAMPAIGNING BY CHARITIES

On 12 October, the Charity Commission of England and Wales published updated short-form guidance on political activity and campaigning by charities.³ At the same time, the Commission's Chair, Orlando Fraser KC, warned that 'Charities must never stray into party politics—must never promote, or be seen to promote, a political party or candidate'. The short-form guidance did not prove uncontroversial, however, and the Commission subsequently had to issue a denial that it was changing the rules and that the new guidance did not imply any new duty on trustees: 'Our longer form

² HL Deb, 13 October 2022, vol 824, col 180 GC.

³ See <<https://www.gov.uk/guidance/political-activity-and-campaigning-by-charities>>, accessed 10 February 2023.

guidance still stands, and we do not consider the shorter guidance is inconsistent with it'.⁴

The current definition of 'campaigners' is in section 34 of the Elections Act 2022; however, the point at which campaigning crosses over into support for a political party can sometimes be extremely difficult to determine. The rules apply as much to religious charities as to secular ones and can sometimes be particularly difficult for them: at what point, for example, does a faith-based critique of economic inequality or the treatment of asylum-seekers shade into partisan support for one political party as against another?⁵ The Commission's full guidance, 'Charities, Elections and Referendums', updated in November, addressed the general issue as follows:

A charity's policy position on a particular issue may coincide with, or be more or less similar to, that of one of the political parties. In this case it is entirely acceptable for the charity to continue to campaign on that issue and to advocate its policy as long as it makes clear its independence from any political party advocating the same policy *and does nothing to encourage support for any political party*.⁶

In parallel to the Commission's guidance, the Electoral Commission opened a consultation on 24 November on a draft Code of Practice on the law relating to non-party campaigner spending, including what qualifies as expenses, reporting controlled expenditure and donations, and joint campaigning. The Code, which was produced pursuant to the new sections 100A and 100B of the Political Parties, Elections and Referendums Act 2000 inserted by section 29 of the Elections Act 2022, will apply to general elections to the Westminster Parliament and to the Northern Ireland Assembly. The consultation closed on 20 January.

THE CHARITY COMMISSION AND CHRIST CHURCH, OXFORD

In November, the Charity Commission issued an Official Warning to Christ Church, Oxford, after finding that the trustees had failed to manage the

4 R Preston and S Wait, 'Charity Commission rejects concerns that it has changed campaigning rules' (*Civil Society* 13 October), <<https://www.civilsociety.co.uk/news/charity-commission-rejects-concerns-that-it-has-changed-campaigning-rules.html>>, accessed 10 February 2023.

5 For example, at the time of writing the Charity Commission had announced an inquiry into the activities of the Saint George Educational Trust, a Roman Catholic charity based in Andover, 'including material it had posted online and political activity or campaigning': Charity Commission, 'Charity Commission launches inquiry into religious charity over serious regulatory concerns' 1 November 2022.

6 'Charities, Elections and Referendums' [emphasis added], available at: <<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-ccg/charities-elections-and-referendums>>, accessed 10 February 2023.

charity's resources responsibly during the dispute with its former Dean, Martyn Percy, who resigned earlier in 2022 following a mediation process. The Commission determined that those failures and omissions amounted to misconduct and/or mismanagement in the charity's administration and warned that failure to take steps to remedy the misconduct and/or mismanagement might lead to further regulatory action against the charity's trustees.⁷

INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE: FINAL REPORT

On 11 October, the House of Bishops of the Church of England announced that it had commissioned further work on the seal of the confessional, building on the report and interim statement from the previous working party published before the pandemic, and said that the new working group would take account of any relevant findings in the final report of the Independent Inquiry into Child Sexual Abuse (IICSA) in England and Wales.

On 20 October, IICSA's final report was published.⁸ The then Home Secretary, Grant Shapps, said that the Government would respond in full within six months, 'when proper consideration has been given to all of the recommendations',⁹ and announced a further £4.5 million for organisations supporting victims and survivors of child sexual abuse at a national level. The then Justice Secretary, Brandon Lewis, said that the Government would 'continue to transform the justice system's response to these heinous crimes—locking up child abusers for longer to protect the public, making sure predators cannot use sports or religious roles to harm young people, and hugely increasing funding for support services so that no victim is left to suffer alone'.¹⁰

Possibly the most controversial proposal in the report from the point of view of faith communities is Recommendation 13, on the introduction of mandatory reporting. The authors propose that the UK and Welsh Governments bring forward:

legislation which places certain individuals—'mandated reporters'—under a statutory duty to report child sexual abuse where they:

- 7 Charity Commission, 'Charity regulator issues Official Warning to Christ Church, Oxford', 10 November 2022, available at: <<https://www.gov.uk/government/news/charity-regulator-issues-official-warning-to-christ-church-oxford>>, accessed 10 February 2023.
- 8 A Jay et al, *The Report of the Independent Inquiry into Child Sexual Abuse—October 2022*. As well as the full report, there is a Rapid Read version and an Executive Summary.
- 9 Home Office, 'Home Secretary pledges new chapter to end child sexual abuse', 20 October 2022.
- 10 Ibid. Subsequently, Rishi Sunak moved Shapps to the Department for Business, Energy and Industrial Strategy as Secretary of State, and Lewis returned to the back benches. Whether the Government will go so far as to legislate for mandatory reporting, as IICSA recommends, remains to be seen.

- receive a disclosure of child sexual abuse from a child or perpetrator; or
- witness a child being sexually abused; or
- observe recognised indicators of child sexual abuse.

The following persons should be designated ‘mandated reporters’:

- any person working in regulated activity in relation to children (under the Safeguarding and Vulnerable Groups Act 2006, as amended);
- any person working in a position of trust (as defined by the Sexual Offences Act 2003, as amended); and
- police officers.

For the purposes of mandatory reporting, ‘child sexual abuse’ would be interpreted as any act that would be an offence under the Sexual Offences Act 2003 where the alleged victim was under the age of 18. Further, as noted in my last report, the Police, Crime, Sentencing and Courts Act 2022 has inserted a new section 22A into the Sexual Offences Act 2003 that expands the definition of ‘positions of trust’ in relation to sexual offences to include someone giving religious instruction.

In January, the National Safeguarding Steering Group, the House of Bishops and the Archbishops’ Council published a joint response to recommendations of the report in relation to the safeguarding work of the Church of England.¹¹

CHANCEL REPAIR LIABILITY

In answer to a written question from Daisy Cooper (Lib Dem, St Albans) about the Law Commission’s progress on its Registered Land and Chancel Repair Liability project, Mike Freer (Parliamentary Under Secretary of State, Ministry of Justice) said that the project was part of the Law Commission’s 13th programme and would be conducted as and when resources allow, ‘and we understand that the project on Registered Land and Chancel Repair Liability has not yet begun’.¹²

OUTDOOR RELIGIOUS WEDDINGS IN ENGLAND AND WALES?

In answer to a Written Question in the Lords from Lord Pickles (Con) as to why the Government had committed to legislating for outdoor religious marriages outside of wholesale reform of marriage law [HL4172], Lord Bellamy,

11 See <<https://www.churchofengland.org/sites/default/files/2023-01/IICSA%20-%20Joint%20Response%20to%20Final%20Report%20Recommendations.pdf>>, accessed 10 February 2023.

12 See <<https://questions-statements.parliament.uk/written-questions/detail/2022-10-17/64346>>, accessed 10 February 2023.

Parliamentary Under-Secretary of State at the MoJ replied that, following a recent consultation, the Government had made permanent the temporary provision for outdoor civil weddings and civil partnership registrations to take place within the grounds of existing approved premises during the COVID-19 pandemic. In addition, respondents had been ‘overwhelmingly in favour of the proposal to permit outdoor religious ceremonies in the grounds of places of worship, as long as this is permitted by the respective religious bodies. The Government will therefore take these proposals forward in due course.’

RENTING HOMES (WALES) ACT 2016

The Renting Homes (Wales) Act 2016 came into force on 1 December. Under its provisions, every landlord is required to provide a written copy of an ‘occupation contract’ to the tenant setting out the rights and responsibilities of both parties and ‘no-fault’ notice periods are extended from two months to six months for new tenants.¹³ It will no longer be possible to issue a notice to quit in the first six months of a tenancy, meaning that all contract-holders will have a minimum 12 months of security at the start of their tenancy. The implications of this change in the law for parsonage houses and short-term lets of church property remain to be seen.

NORTHERN IRELAND: POSITIONS OF TRUST

Between 27 October and 22 December, the Department of Justice held a consultation on the recent amendment made to the abuse of position of trust provision in the Sexual Offences (Northern Ireland) Order 2008 by section 5 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022. In brief, its effect would be to add to the statutory list of positions of trust the situation where ‘A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion’,¹⁴ thereby bringing the law in Northern Ireland into line with the law in England and Wales under the Sexual Offences Act 2003, as amended.

RELIGIOUS AFFILIATIONS IN ENGLAND AND WALES

On 29 November, the Office for National Statistics released some of the main findings from the religious affiliation question in the 2021 Census for England and Wales. The data revealed that for first time in a census of England and Wales fewer than half the population (46.2 per cent or 27.5

¹³ For existing tenants, the extension comes into effect on 1 June 2023.

¹⁴ Emphasis added.

million people) described themselves as ‘Christian’, although Christianity did remain the largest religious affiliation. The second most common response was ‘no religion’, and the largest non-Christian religious group was Islam, with 3.9 million adherents.¹⁵

AND FINALLY: REFORMING THE HOUSE OF LORDS?

In December, the Labour Party announced a programme for constitutional reform based on a series of proposals by a commission chaired by Gordon Brown that includes replacing the House of Lords with an elected ‘Assembly of the Nations and Regions’ that would be ‘markedly smaller than the present Lords, chosen on a different electoral cycle—with the precise composition and method of election matters for consultation’¹⁶ and which would have no places for the Lords Spiritual.

We have been here before on several occasions, and perhaps those of us old enough to remember the unlikely coalition between Enoch Powell and Michael Foot to oppose Lords reform in 1968 may be forgiven for suspecting that nothing much may have changed.

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- 15 Office for National Statistics, ‘Statistical bulletin, Religion, England and Wales: Census 2021’ (29 November 2022), available at: <<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/bulletins/religionenglandandwales/census2021#religion-in-england-and-wales>>, accessed 10 February 2023.
- 16 G Brown et al, *A New Britain: Renewing our Democracy and Rebuilding our Economy* (David Evans on behalf of the Labour Party, December 2022), 143, available at: <<https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf>>, accessed 10 February 2023.