

GOVERNMENT AND PARLIAMENTARY REPORT

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BREXIT

On 23 March, the European Council agreed the terms of a Brexit transition period under which the United Kingdom's phased departure will last for 21 months, ending in December 2020. The European Union (Withdrawal) Bill completed its consideration in the House of Lords with Government defeats on several issues, perhaps the most controversial of which were amendments requiring the Government to explore the option of staying in a customs union (by a majority of 123), limiting the ability to use secondary legislation to change existing EU rights after they have been transposed into domestic law (by a majority of 97) and retaining most of the EU Charter of Fundamental Rights on the statute book after Brexit (by a majority of 71).¹

CHARITY COMMISSION

The Charity Commission for England and Wales has a new chair, in succession to William Shawcross. The appointment was not uncontroversial: after a pre-appointment hearing with Baroness Stowell (the Government's preferred candidate and a former Conservative Leader of the House of Lords), the Chair of the Commons Digital, Culture, Media and Sport Committee wrote formally to the Culture Secretary to say that the committee's unanimous conclusion was that it could not support her nomination. The committee had doubts about Baroness Stowell's neutrality, was concerned that she had negligible experience of the charity sector and none whatsoever of working for a regulator, and had been unimpressed by her performance at the committee's hearing. It also suggested that the recruitment process had lacked transparency. Baroness Stowell was appointed nevertheless.

1 The Lords Amendments to the Bill are available at <<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0212/18212.pdf>>, accessed 30 May.

CHURCH MEASURES

On 10 March, Royal Assent was given to:

- i. The Ecclesiastical Jurisdiction and Care of Churches Measure 2018, which consolidates with corrections and minor improvements certain enactments relating to ecclesiastical jurisdiction and the care of churches and other places of worship;²
- ii. The Legislative Reform Measure 2018, which is an enabling Measure to allow the Archbishops' Council to make provision, by order, for removing or reducing burdens resulting from ecclesiastical legislation and for facilitating consolidation;³
- iii. The Mission and Pastoral etc. (Amendment) Measure 2018, which amends and simplifies certain provisions of the Mission and Pastoral Measure 2011, the Endowments and Glebe Measure 1976 and the Patronage (Benefices) Measure 1986 and makes minor clarificatory amendments;⁴
- iv. The Pensions (Pre-consolidation) Measure 2018, which amends the provisions on Church of England pensions in advance of consolidation of the pensions legislation;⁵ and
- v. The Statute Law (Repeals) Measure 2018, which repeals a raft of redundant legislation, ranging from section 5 of the Suffragan Bishops Act 1534 to part of the Mission and Pastoral Measure 2011.⁶

The Legislative Reform Measure came into effect at Royal Assent; the operative provisions of the other four will be brought into force on such day as the Archbishops of Canterbury and York may by order jointly appoint.

DATA PROTECTION

The Data Protection Act 2018 was given Royal Assent on 23 May and the EU General Data Protection Regulation came into effect on 25 May. Most of the provisions of the Act will be brought into force by statutory instrument.

2 Available at <<http://www.legislation.gov.uk/ukcm/2018/3/contents/enacted>>, accessed 11 May 2018.

3 Available at <<http://www.legislation.gov.uk/ukcm/2018/5/contents/enacted>>, accessed 11 May 2018.

4 Available at <<http://www.legislation.gov.uk/ukcm/2018/4/introduction/enacted>>, accessed 11 May 2018.

5 Available at <<http://www.legislation.gov.uk/ukcm/2018/2/contents/enacted>>, accessed 11 May 2018.

6 Available at <<http://www.legislation.gov.uk/ukcm/2018/1/contents/enacted>>, accessed 11 May 2018.

SHARIA AND COMMUNITY INTEGRATION IN ENGLAND AND WALES

The independent review of sharia

On 1 February, the Home Office published 'The independent review into the application of sharia law in England and Wales', the report of a group chaired by Professor Mona Siddiqui.⁷ In brief, the report makes three recommendations: for legislative change, for awareness campaigns and for regulation.

The report proposes amending the Marriage Act 1949 and the Matrimonial Causes Act 1973 to require a civil marriage to be conducted before or at the same time as an Islamic marriage ceremony, bringing Islamic marriage into line with Christian and Jewish marriage. The Marriage Act 1949 would be amended to make it an offence for the celebrant of *any* religious marriage to fail to ensure that the marriage was also registered under the secular law.

The panel believes that Muslim communities require a cultural change to acknowledge the rights of women in civil law, especially in relation to marriage and divorce, and recommends awareness campaigns and educational programmes to educate women about their rights and responsibilities, including the legal protection provided by civilly registered marriage. The panel also wants sharia councils to operate within the law and comply with best practice, non-discriminatory processes and existing regulatory structures. In particular, it believes that an arbitration that applies sharia in respect of financial remedies and/or child arrangements is a breach of the Arbitration Act 1996.

A majority of the panel also made a third recommendation designed to prevent discrimination: the creation of a body to design a code of practice for sharia councils to accept and implement. The recommendation on self-regulation was not unanimous; one member dissented, for reasons detailed in the report. The report notes, however, that none of the sharia councils was opposed to some form of regulation and some positively welcomed it.

The integration Green Paper

On 14 March, the Government published for consultation its *Integrated Communities Strategy Green Paper*.⁸ On the issue of relationships, it reminded readers that, despite persistent myths, there is no such thing as a 'common law marriage' in England and Wales (nor, for that matter, in Scotland or Northern Ireland). Crucially:

Other relationships, such as unregistered religious marriages, are also not recognised under marriage law in England and Wales, leaving individuals

7 Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678478/6.4152_HO_CPGF_Report_into_Sharia_Law_in_the_UK_WEB.pdf>, accessed 6 May 2018.

8 Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696993/Integrated_Communities_Strategy.pdf>, accessed 6 May 2018.

without full legal rights upon divorce should the marriage break down. This can particularly leave women vulnerable both to financial hardship upon divorce and to unfair treatment by some religious councils.

As identified by the recently-published independent review into the application of sharia law in England and Wales, this can be a particular problem for Muslim women. There is some evidence that some sharia councils may be working in a discriminatory and unacceptable way – for example by seeking to legitimise forced marriage and making arrangements on divorce that are unfair to women.⁹

Under the heading ‘What are we going to do?’, the Green Paper welcomed the Siddiqui report and shared its concerns about couples who marry in a way that does not give them legal protection and about reports of women being discriminated against by some religious councils. In principle, ministers supported the requirement that civil marriages should be conducted before or at the same time as religious ceremonies but rejected the review’s proposal for a state-facilitated or endorsed regulation scheme for sharia councils on the grounds that it ‘would confer upon them legitimacy as alternative forms of dispute resolution’.¹⁰ The Green Paper stated that the Government will

explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings . . . [and] support awareness campaigns in partnership with voluntary sector organisations . . . to educate and inform couples and their children of the consequences of not having a civilly-registered marriage.¹¹

In short, the Government will consider making a civil marriage ceremony a necessary prerequisite to a religious ceremony (though not, presumably, to a marriage solemnised in the Church of England or Church in Wales) but firmly rejected the proposal of the Siddiqui report to introduce state regulation of sharia councils.

The Green Paper also proposes further work on forced marriages, further measures to strengthen the governance of minority faith institutions (by which, one must assume, they mean mosques), expanding the Strengthening Faith Institutions programme ‘to help a wider range of faith institutions to upskill their staff and strengthen their governance structures’ and supporting training

9 *Integrated Communities Strategy Green Paper*, p 56.

10 *Ibid.*, p 58.

11 *Ibid.* For a critique of the Government’s proposals on Islamic weddings, see R Probert and R Akhtar, ‘Integration: seeing the bigger picture’, *Law & Religion UK*, 21 March 2018, <<http://www.lawandreligionuk.com/2018/03/21/integration-seeing-the-bigger-picture/#more-42758>>, accessed 8 May 2018.

of faith leaders ‘to support ministering in the British context’.¹² On the last point, the Government wants places of worship to have ‘well-qualified, informed and confident faith leaders, who are outward-looking, involve all parts of the community . . . and are capable of resisting, and helping their congregations to resist, intolerant or extremist arguments’.¹³ The consultation was due to close on 5 June.

Out-of-school educational settings

In November 2015, the Department for Education consulted on proposals to regulate and inspect out-of-school education settings.¹⁴ In April 2018, however, the Government announced that it had decided not to proceed with the idea; instead, it intends to identify any gaps in existing powers with a view to legislation ‘when opportunity allows’ and, later in the year, to consult on a voluntary code of practice for providers.¹⁵ In the meantime, as previously noted, Ofsted published its first Annual Report since Amanda Spielman became HM Chief Inspector of Education, Children’s Services and Skills, in which it commented adversely on the existence of narrowly conservative religious schools and the creation of illegal ‘schools’ that avoided teaching the National Curriculum, concluding that ‘Current legislation is inadequate to tackle unregistered schools. It limits our powers to tackle them and allows institutions to exploit loopholes about definitions of education.’¹⁶

Subsequently in February, in a speech to the Church of England Foundation for Education Leadership, Ms Spielman observed that it was

a matter of regret that the Church [of England] has resisted changes in the law to allow Ofsted to inspect these settings. This is not about infringing religious freedom: no one is proposing a troop of inspectors turning up at Sunday schools.

Unfortunately, however, that was not how it appeared to respondents at the time: concerns were raised that, for example, intensive choir practices before a major festival might attract inspections.

12 *Integrated Communities Strategy Green Paper*, p 61. On the Strengthening Faith Institutions programme, see <<http://faithsforum.com/strengthening-faith-institutions-3/>>, accessed 6 May 2018.

13 *Integrated Communities Strategy Green Paper*, p 61.

14 The consultation document is available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480133/out_of_school_education_settings_call_for_evidence.pdf>, accessed 6 May 2018.

15 ‘Out-of-school education settings: report on the call for evidence conducted November 2015 to January 2016’, available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698250/Out-of-school_education_settings-Report_on_the_call_for_evidence.pdf>, accessed 6 May 2018.

16 Ofsted, ‘Annual report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2016/17’, 2017, p 16, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666871/Ofsted_Annual_Report_2016-17_Accessible.pdf>, accessed 6 May 2018

The Government returned to the matter in the *Integrated Communities Strategy Green Paper*, which includes references to out-of-school educational settings – though there appears to be no suggestion that it is reviving its previous proposal for inspections by HMI.

LISTED PLACES OF WORSHIP

On 31 March the Heritage Minister, Michael Ellis, announced a pilot scheme for minor repairs to listed buildings of all faiths and denominations in Manchester and Suffolk ‘to increase community engagement and vital heritage management skills’. Eligible places of worship in the pilot areas will be able to access a £500,000 minor repairs fund.

The pilot is the first outcome of ‘The Taylor Review: sustainability of English churches and cathedrals’, and the projects, expected to begin in the early autumn, will receive a total of £1.8 million over the next two years. Community support advisers based in Manchester and Suffolk ‘will work with the custodians of listed places of worship to identify and strengthen relationships within their local area and develop greater community partnerships’. At the time of writing, the precise geographical extent of the pilots was still under consideration.

PLANNING LAW AND ECCLESIASTICAL EXEMPTION IN WALES

In April, Cadw issued a consultation on the draft Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018 and two pieces of draft best-practice guidance: ‘Managing change to historic places of worship in Wales: the ecclesiastical exemption’ and ‘Managing scheduled monuments in Wales’.¹⁷

The main changes proposed to the ecclesiastical exemption are the removal of the exemption for conservation area consent, the removal of the United Reformed Church from the list of exempt denominations (which is being done at the URC’s request) and clarification about the buildings covered by the exemption in order to eliminate occasions on which both secular and denominational consents are needed. The new guidance has been prepared to support denominations in their use of the exemption and may also be useful for local planning authorities and congregations and for denominations and faith groups interested in seeking the ecclesiastical exemption in the future. It should also be noted that, if the Law Commission’s proposal in its Consultation Paper published in November 2017, *Planning Law in Wales*, for a unified system of listed building consent, conservation area consent and

¹⁷ All available at <<https://beta.gov.wales/ecclesiastical-exemption-and-guidance-scheduled-monuments>>, accessed 6 May 2018.

planning permission becomes law, the existing mechanism for ecclesiastical exemption will be rendered inoperative and will need to be replaced.

'Managing scheduled monuments in Wales' has been produced as a further element in the series published in conjunction with the Historic Environment (Wales) Act 2016. Aimed primarily at owners, occupiers and managers of scheduled monuments, it explains what it means to own a scheduled monument and how to care for it, and sets out the general principles to consider when managing and making changes to scheduled monuments. It also explains how to apply for scheduled monument consent, including the respective roles and responsibilities of owners and Cadw, and provides details about where to get further help and assistance. The consultation was to close on Friday 13 July 2018.

RELIGION AND BELIEF IN THE WORKPLACE

In May, the Advisory Conciliation and Arbitration Service published new guidance on religion and belief in the workplace and compliance with the religion and belief provisions of the Equalities Act 2010.¹⁸ In particular, the guidance highlights recruitment and dress codes as key areas in which employers should take care to ensure that they avoid discrimination. The Government Equalities Office is expected to produce its own guidance on dress codes after what appeared to be an informal press briefing by the Minister for Women, Victoria Atkins, which was subsequently welcomed by the Church of England.

TYNWALD AND THE BISHOP

Tynwald, the Isle of Man legislature, has been conducting a comprehensive review of its operations and the Third Report of the Select Committee on the Functioning of Tynwald included consideration of the position of the Bishop of Sodor and Man as a voting member of the island's Legislative Council.¹⁹ After a lengthy debate on 21 February, Tynwald voted 5–3 in the Legislative Council and 13–11 in the Keys in favour of retaining the bishop's right to sit and vote in the Legislative Council. An amendment calling for the bishop to be stripped of all voting powers and another that would have granted him a right of abstention²⁰ were both narrowly defeated.

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18 Available at <<http://www.acas.org.uk/media/pdf/a/p/Religion-or-belief-discrimination-key-points-for-the-workplace.pdf>>, accessed 30 May 2018.

19 Available at <<http://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020162018/2018-PP-0018.pdf>>, accessed 7 May 2018.

20 The rule in Tynwald is that any member who is in the chamber when the question is put must vote. Abstention is not permitted.