

PARLIAMENTARY REPORT

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Frank Cranmer^{1,2}

¹Fellow, St Chad's College, Durham, UK and ²Honorary Research Fellow, Centre for Law and Religion, Cardiff University, Cardiff, UK

Immigration, Rwanda and the ECHR

Probably the biggest legal news of the period under consideration was the judgment of the Supreme Court in *R (AAA (Syria) & Ors) v Secretary of State for the Home Department* [2023] UKSC 42, [2023] WLR 4433, in which it held unanimously that the Government's policy of sending asylum-seekers to Rwanda was unlawful. One critical issue was that under section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way that is incompatible with a right under the ECHR—and the Secretary of State is a public authority for that purpose.

This, on the face of it, has little to do with 'religion'; however, as readers of this *Journal* well know, the ECHR also protects freedom of thought, conscience and religion under Article 9—and at Question Time in the Commons on 15 November, the Prime Minister said that:

if it becomes clear that our domestic legal frameworks or international conventions are still frustrating plans at that point, I am prepared to change our laws and revisit those international relationships. The British people expect us to do whatever it takes to stop the boats, and that is precisely what this Government will deliver.¹

The resulting Safety of Rwanda (Asylum and Immigration) Bill began with the following disclaimer from the Home Secretary:

I am unable to make a statement that, in my view, the provisions of the Safety of Rwanda (Asylum and Immigration) Bill are compatible with Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.

Subsequently, *The Times* reported that the new Home Secretary was taking a much more pragmatic position on the ECHR than his immediate predecessor,

¹ HC Deb (2022–23) vol 740, c639.

Suella Braverman. In an interview, James Cleverly warned that leaving the ECHR would jeopardise the 'key cooperation' with international partners including France, Albania and Bulgaria which had helped drive down illegal migration, and that those advocating withdrawal were putting ideology before pragmatism. Leaving the ECHR, he suggested, could in fact *weaken* the Government's attempts to stop the boats, given the importance of international cooperation:

I do not want to do anything that might undermine the key cooperation we have with countries [*that*] are very wedded to the ECHR for understandable reasons. Nothing is cost free. Everything needs to be considered, the advantages and disadvantages.²

But if 'whatever it takes' *is*, in fact, withdrawal from the ECHR, what then?

Immigrant workers' visas

On 4 December, the Home Secretary unveiled a new package of measures to reduce immigration. One of the elements in his statement to the Commons was a decision to increase the earnings threshold for a Skilled Worker visa by a third to £38,700 from spring 2024 and to raise the minimum income for a family visa to the same threshold.

It was subsequently confirmed, however, that the increase will *not* apply to those from overseas who have a T2 Minister of Religion visa. It was also announced that the threshold for the Skilled Worker visa would be raised in stages: a rise to £29,000 in the spring of 2024 and to £38,700 in early 2025. Those who are here on a family visa within the five-year partner route or who apply before the minimum income threshold is raised will continue to have their applications assessed against the current income requirement.³

Levelling-Up and Regeneration Act 2023

On 26 October, the Levelling-up and Regeneration Bill was given Royal Assent as the Levelling-Up and Regeneration Act 2023.⁴ Section 82 (powers of parish councils) inserts a new section 19A into the Local Government Act 1894 (provisions as to small parishes), as follows:

19A. Powers under other enactments

- (1) Nothing in this Part affects any powers, duties or liabilities conferred on a parish council by or under any other enactment (whenever passed or made).

² S Swinford and M Dathan, 'James Cleverly: Rwanda plan is not the be all and end all' (*The Times*, 24 November 2023).

³ For full details of the proposals, see F Cranmer, 'How not to announce changes to the Immigration Rules?' (2024) 26 *Ecc LJ* (current issue).

⁴ See <<https://www.legislation.gov.uk/ukpga/2023/55/enacted>>; all references to websites in this report were accessed on 5 January 2024.

- (2) This section does not apply in relation to community councils (see section 179(4) of the Local Government Act 1972).

Inserted subsection (2) refers to community councils in Wales, which are therefore excluded from the operation of the new section.

According to my calculations, if the Bill was passed on 25 October, section 82 of the Act came into force on Christmas Day.

Draft Terrorism (Protection of Premises) Bill

The King's Speech included a commitment to introduce the Terrorism (Protection of Premises) Bill that had been published in draft and consulted upon in the previous Session—and which had been given what might be charitably described as a mixed reception from the Commons Home Affairs Committee.

The accompanying briefing notes state that the standard tier, which will include almost all places of worship, will apply to premises with a capacity between 100 and 799 people; however, 'The Government wants to ensure businesses and venues can deliver the standard tier duty rather than imposing conditions upon them that they will struggle to meet'. Before introducing the Bill, therefore, the Government 'will launch a consultation on the standard tier to ensure the Bill's measures strike the right balance between public protection and avoiding undue burdens on smaller premises such as village halls, churches and other community venues'.⁵

Church Representation Rules (Amendment) Resolution 2023

The Church Representation Rules (Amendment) Resolution 2023,⁶ which came into force on 1 August, provides in paragraph 2 that where, at an annual parochial church meeting, the number of candidates for the election of parochial representatives of the laity does not exceed the number of places to fill, anybody entitled to attend the meeting may seek a vote to confirm the election of each candidate. If the resolution is passed by a simple majority, a vote is held, in the case of each candidate, on whether that candidate should be elected.

Paragraph 3 requires a person elected as a parochial representative of the laity to make a declaration that he or she is not disqualified under the Church Representation Rules by virtue of being an employee of the National Church Institutions, being included in the barred list under the Safeguarding Vulnerable Groups Act 2006, being convicted of a violent offence against a child or being disqualified as a charity trustee. A failure to make such a declaration would result in that person losing his or her seat.

⁵ HM Government, 'The King's Speech: Background Briefing Notes' (Prime Minister's Office 7 November 2023), 72: <https://assets.publishing.service.gov.uk/media/654a21952f045e001214dcd7/The_King_s_Speech_background_briefing_notes.pdf>.

⁶ <<https://www.legislation.gov.uk/uksi/2023/863/contents/made>>.

Law Commission project on burial and cremation law

On 30 November, the Law Commission of England and Wales announced further details of its forthcoming project on burial and cremation law.⁷ The project is being split into three strands:

- i. New and currently unregulated methods of dealing with remains after death such as alkaline hydrolysis and human composting, consideration of which will start in early 2024;
- ii. Grave re-use and the necessary safeguards to be included in any proposals for reform, and what may be done with cremated ashes, on which there will be a consultation in autumn 2024; and
- iii. A project to address the lack of clarity about who has the right to decide about the remains of a deceased person's body and who is responsible for making arrangements after a death, to begin at the end of 2025.

As noted in our last report, the Scottish Government opened its own consultation on aspects of burials and burial law: it closed in November.

Forthcoming consultation on legal age of marriage in Scotland

In December, in reply to a written Question from Fulton MacGregor, MSP for Coatbridge and Chryston, asking the Scottish Government 'whether it will provide an update on its consideration regarding the legal age of marriage', the Minister for Victims and Community Safety, Siobhian Brown MSP, said that in view of the recent concluding observation of the United Nations Committee on the Rights of the Child that all marriages of under-18s in Scotland should be prohibited, the Scottish Government will consult formally on the issue in summer 2024.⁸ The consultation will also cover several other areas of family and succession law:

- i. The Scottish Law Commission's draft Bill to reform the law on a cohabitant's financial rights against his or her former partner when they separate;
- ii. Whether the simplified forms-based divorce and dissolution procedure should include cases where a couple have children under 16 and they are not in dispute about their welfare; and
- iii. A cohabitant's entitlement to financial provision from his or her deceased partner's estate where that partner has died intestate.

In addition, the Scottish Government has not yet made Regulations under section 13 of the Marriage and Civil Partnership (Scotland) Act 2014 to establish qualifying requirements for religious and belief bodies with celebrants who solemnise

⁷ Law Commission of England and Wales, 'Laws on Burial, Cremation and New Funerary Methods to be reviewed', 30 November 2023.

⁸ <<https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=56W-23651>>.

marriage and register civil partnerships, and that, too, will be included in the forthcoming consultation.

New Shadow Minister for Faith

The Leader of the Opposition, Sir Keir Starmer, has appointed Baroness (Maev) Sherlock as Shadow Minister for Faith. As well as having been a member of the House of Lords since 2010, she is also a priest in the Church of England.

Tynwald and the Bishop

As readers will know, under the current constitutional arrangements in the Isle of Man the Bishop of Sodor and Man sits and votes in the Legislative Council – the Upper House of Tynwald Court. Recently, this has been under scrutiny.⁹

In February 2018, Tynwald accepted the recommendation of the Select Committee on the Functioning of Tynwald ‘that the Lord Bishop of Sodor and Man should retain his vote in Tynwald, and have the same rights and duties as to voting as other members’.¹⁰ In a letter to the Committee, the then Archbishop of York expressed the opinion that ‘if the Lord Bishop’s vote were to be removed, in my view this would significantly undermine the case for Sodor and Man being a separate diocese’.¹¹

The bishopric is currently vacant following the retirement of the Rt Rev’d Peter Eagles in October. Perhaps with that in mind, the matter came before the House of Keys again in November, when Lawrie Hooper MHK introduced a private Member’s bill – the Isle of Man Constitution Bill 2023 – ‘to provide that the Lord Bishop shall remain a member of Tynwald and the Council but shall cease to have voting rights in Tynwald or in the Council’.¹² At the time of writing, the Keys had decided to adjourn further consideration of the Bill while a public consultation is carried out.

And finally ... disestablishing the Church of England?

The Disestablishment of the Church of England Bill – a private Member’s Bill ‘to disestablish the Church of England; to make provision for the protection of freedom of religion or belief; and for connected purposes’¹³ – was introduced in the House of Lords on 6 December by Lord Scriven and read a first time and ordered to be printed. At the time of writing, the date for the Second Reading was yet to be announced.

⁹ For the recent history, see P Edge and T Bondaroff, ‘Changes to Legislative Prayer in the Isle of Man’ in *Law & Religion UK*, 4 July 2022, <<https://lawandreligionuk.com/2022/07/04/changes-to-legislative-prayer-in-the-isle-of-man/>>.

¹⁰ House of Keys, Select Committee on the Functioning of Tynwald, *Third Report* PP 2018/0018, 7, <<https://www.tynwald.org.im/spfile?file=/business/pp/Reports/2018-PP-0018.pdf>>.

¹¹ *Ibid.*, 18.

¹² <<http://www.tynwald.org.im/spfile?file=/business/bills/Bills/Isle-of-Man-Constitution-Bill-2023.pdf>>.

¹³ <<https://bills.parliament.uk/publications/53286/documents/4125>>.

In brief, the Bill directs the Secretary of State to establish within six months of its passing a Committee which is to make recommendations 'to identify the legislative changes required to disestablish the Church of England'—in other words, to do the necessary spadework that the drafters of the Bill were either too inexpert or too lazy to do for themselves.

Its chances of becoming law are not very great.