

## RECENT SECULAR LEGISLATION

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Many of us have had to wrestle with the complexities of the data protection legislation as it applies to parishes and dioceses. What, for example, is a 'relevant filing system' for the purposes of the Data Protection Act 1998? The enactment of the Freedom of Information Act 2000 threatened another dose of the same. There is even an amendment to the 1998 Act about 'the right of access to unstructured personal data' which looks as if it might apply to any heap of papers lurking in an office, filed or unfiled. But there is good news: no church body appears anywhere in the list of 'public authorities' in Schedule 1 to the Act (though the governing bodies of church colleges of education will be caught by paragraph 53), and the Act is designed to give a right of access only to information held by such authorities.

So this survey of the legislation of the final phase of the Parliament of 1997–2001 can focus on two very short, but nonetheless very significant, pieces of legislation.

### **Census (Amendment) Act 2000**

The first Act of slight stature but considerable interest is the Census (Amendment) Act 2000, which amended the Census Act 1920 to allow the inclusion of a question on religion in the census due in April 2001. The inclusion of such a question was suggested in the Government's White Paper on the 2001 census published in March 1999 and was supported by such bodies as the Commission for Racial Equality, the Board of Deputies of British Jews, and the Religious Affiliation Sub-Group of Churches Together in England. The last identified six benefits which inclusion of a question on religious affiliation would bring: it would help deal with the background to some questions of discrimination; it would be useful in terms of health and community care planning; it would help form the basis for planning in respect of religious education; it would have some relevance in the regeneration of inner cities; it would be extremely helpful in connection with voluntary sector religious groups; and it would provide some business benefits in terms of marketing strategies for some companies.

Two issues were debated during the passage of the Bill. One, raised especially by Churches Together in England, was the desirability of seeking information which was more specific than the Government intended. The question on religion proposed, and included in the eventual census form, invited Christians so to declare themselves; but they could not declare themselves 'Anglican', 'Catholic', or 'Methodist'. The Government successfully resisted the inclusion of a more detailed question.

The other matter, raised first in the House of Lords by the Earl of Northesk, was a concern that the question should be a 'voluntary' one, in that the penalties for failing to answer census questions should not apply to the enquiry about religion. The Bill was amended to meet this point in the Lords' Committee, and a provision to that effect is in section 1(2) of the Act.

It will of course be some considerable time before the results of the 2001 Census become available.

### House of Commons (Removal of Clergy Disqualification) Act 2001

On 9 November 1982 the then Archdeacon of Derby moved a Private Member's Motion in the General Synod: 'This Synod believes that clergymen of the Church of England should be free like other citizens to take their seats as elected Members of Parliament and, in accordance with the recommendation of the Church and State Report 1970, asks the Standing Committee to request Her Majesty's Government to introduce appropriate legislation to enable them to do so'. The motion was carried by 181 votes to 147.<sup>1</sup> Nearly twenty years later, legislation to address the wider question of clergy disqualification was introduced into Parliament and was enacted as the House of Commons (Removal of Clergy Disqualification) Act 2001.

As the law stood before the new Act, many episcopally-ordained clergy were debarred from membership of the House of Commons<sup>2</sup> by the House of Commons (Clergy Disqualification) Act 1801 and, so far as Roman Catholic priests were concerned, by section 9 of the Roman Catholic Relief Act 1829. A clergyman of the Church of England (but no-one else) could in effect disclaim his orders and become eligible for election to Parliament under the Clerical Disabilities Act 1870. Clergy of the Church of Wales became eligible as a result of the Welsh Church Act 1914, but it was established in *Re MacManaway*<sup>3</sup> that other episcopally-ordained clergy, in that case a priest of the Church of Ireland, were disqualified.

The issue was raised in a report of the Home Affairs Committee on Electoral Law and Administration, which recommended in September 1998<sup>4</sup> that 'all restrictions on ministers of religion standing for, and serving as, Members of Parliament be removed; [with an exception] in respect of all serving bishops of the Church of England who, for so long as places are reserved for the senior bishops in the House of Lords, should remain ineligible to serve as Members of the Commons'.

A Private Member's Bill was introduced in the House of Commons late in the 1998–1999 Session to give effect to this recommendation, but made no progress. The Government, after consulting the main churches, introduced its own Bill in what turned out to be the final session of the Parliament. A certain urgency was added to the legislation by the adoption of Mr David Cairns, a former Roman Catholic priest, as prospective Labour candidate for Greenock and Inverclyde. Roman Catholic Canon Law in fact forbids anyone who has been ordained from becoming a member of a legislature,<sup>5</sup> but the Government took the view that its legislation should be in general terms, leaving it to the authorities in the churches to make whatever rules as to the exercise of the new liberty they thought fit.

So far as the Church of England is concerned, Canon C 26(2) prohibits a minister from giving himself 'to such occupations, habits or recreations as do not befit his sacred calling'; presumably membership of the House of Commons will not be deemed unbefitting. Canon C 28 allows a bishop to authorise a minister holding ecclesiastical office to engage in an occupation which might affect the performance of his duties.

<sup>1</sup> See the Synod's *Report of Proceedings*, vol 13, pp 797–815.

<sup>2</sup> There is no clergy disqualification rule in respect of the European Parliament, the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly.

<sup>3</sup> [1951] AC 161.

<sup>4</sup> See its report, HC 768, vol 1, para 127.

<sup>5</sup> See Canon 285 of the 1983 Code, para 3: 'Clerics are forbidden to assume public office whenever it means sharing in the exercise of civil power'; and Canon 287(2): 'They are not to play an active role in political parties or in directing trade unions unless, in the judgment of the competent ecclesiastical authority, this is required for the defence of the rights of the Church or to promote the common good'.

The new Act simply declares that ‘a person is not disqualified from being or being elected as a member of the House of Commons merely because he has been ordained or is a minister of any religious denomination’.<sup>6</sup> However, a person is disqualified ‘if he is a Lord Spiritual’.<sup>7</sup> This latter provision means that suffragan or retired bishops are eligible for election to the Commons, the Government taking on this point a view which differed from the Home Affairs Committee’s 1998 recommendation.

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<sup>6</sup> Section 1(1).

<sup>7</sup> Section 1(2).