

PARLIAMENTARY REPORT

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This report covers the period from October 2005 to February 2006

EQUALITY

The Equality Act 2006 (c 3) established a new Commission for Equality and Human Rights with the duties, set out in section 3, of

- encouraging and supporting the development of a society in which—
- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
 - (b) there is respect for and protection of each individual's human rights,
 - (c) there is respect for the dignity and worth of each individual,
 - (d) each individual has an equal opportunity to participate in society, and
 - (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

The new Commission subsumes and replaces the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. Specifically, Part 2 of the Act outlaws discrimination on the grounds of religion or belief (or, indeed, the lack of religion or belief) but in sections 57 to 60 provides savings for religious organisations themselves, for religious charities and for faith schools. For a more detailed appraisal, see the Comment of Russell Sandberg at page 470 of this Issue.

MARRIAGE BETWEEN IN-LAWS

Under the Marriage Act 1949 (12 & 13 Geo 6, c 76), as amended by the Marriage (Prohibited Degrees of Relationship) Act 1986 (c 16), marriage between parent-in-law and child-in-law is prohibited unless both parties are at least 21 and both former spouses are dead.

A father-in-law, B, and daughter-in-law, L (who had a child by her former husband), divorced their previous spouses and some time later began cohabiting. When they decided that they wished to put their relationship on a regular footing the male partner asked the Superintendent Registrar of Deaths and Marriages at Warrington Register Office whether they

could marry—only to be told that this was impossible. The applicants subsequently sought legal advice on whether there was any remedy against the registrar's decision but were told that marriage in such circumstances was barred by statute.

But there has always been an alternative route: to promote a personal Bill in Parliament which, when enacted, would confer upon the petitioners the right to marry irrespective of the bar. The problem with this approach, however, is that it is both tortuous and expensive;¹ nor can there ever be a cast-iron guarantee that Parliament will enact the Bill that the petitioners seek. The result is that no personal Bill of this nature has been sought or enacted since 1987.² It was also suggested during the House of Lords second reading debate on the Marriage (Prohibited Degrees of Relationship) Bill in 1985 that the personal Bill procedure was in any case rather unseemly.³

Refusing to take 'no' for an answer, B and L went to the European Court of Human Rights. In *B and L v The United Kingdom*⁴ the Fourth Section of the Court held, unanimously, that the statutory bar was contrary to Article 12 of the European Convention on Human Rights (relating to the right to marriage). Although the bar pursued the legitimate aim of protecting the integrity of the family, it did not prevent such relationships, since there was no criminal sanction against extramarital relations between parent-in-law and child-in-law. The court rejected the government's claim that the existing law was proportionate 'having regard to the complexity of relationships, the harm to others that was potentially involved in such marriages and the requirements of the protection of morals'.⁵ On the contrary, said the court: the fact that an individual marriage between former parent-in-law and child-in-law could be sanctioned by a personal Act of Parliament merely underlined the arbitrariness of the current law:

there is no indication of any detailed investigation into family circumstances in the Parliamentary procedure and ... a cumbersome and expensive vetting process of this kind would not appear to offer a practically accessible or effective mechanism for individuals to vindicate their rights.⁶

The Department of Constitutional Affairs subsequently announced the government's intention to amend the Marriage Act 1949 by way of a Remedial Order to allow marriages between parent-in-law and child-in-law. It was also announced that the parallel provisions in the Civil Partnership

¹ The current *Parliamentary* fees for promoting a personal Bill total £800, to which must be added the cost of appointing one of the handful of firms of Parliamentary Agents qualified to draft and promote such Bills.

² George Donald Evans and Deborah Jane Evans (Marriage Enabling) Act 1987 (c 2).

³ See, for example, Viscount Davidson: HL Deb (1985–86) 9 December 1985, c 59.

⁴ *B and L v United Kingdom* (2006) 42 EHRR 11 (Application No. 36536/02), E Ct HR: see <http://www.worldlii.org/eu/cases/ECHR/2005/584.html>.

⁵ *B and L v United Kingdom*, para 31.

⁶ Para 41.

Act 2004 (c 33)⁷ would not be commenced, so that same-sex couples in a similar relationship who wished to form a civil partnership would have parity of treatment.⁸

RACIAL AND RELIGIOUS HATRED

The Racial and Religious Hatred Bill that was introduced after the General Election (see (2006) 8 Ecc LJ 349) sought to amend Part 3 of the Public Order Act 1986 (c 64) by replacing references to 'racial hatred' with references to 'racial or religious hatred' and defined religious hatred as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief'.

The Racial and Religious Hatred Act 2006 (c 1)⁹ as finally enacted adopts a rather more nuanced approach. Instead of amending the existing Part 3, the Act (which extends to England and Wales only) inserts into the Public Order Act 1986 a new Part 3A. Section 29A of the new Part retains the definition of religious hatred in the original Bill; but sections 29B to 29F create a series of new offences relating specifically to stirring up religious hatred by threatening words, behaviour or the display of written material, or the dissemination of such material by publication or distribution, broadcasts, recordings or the performance of plays.

Under section 29G, possession of such material is also an offence; and section 29I empowers a court to order forfeiture. Crucially, however, section 29J provides the kind of saving that was sought by many commentators and was not in the original Bill; the new Part 3A shall not:

be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

⁷ *Ie* Sch 1, paras 3, 9, and Sch 27, para 13 and para 17 (in part).

⁸ HC Deb (2005–06) 21 Nov 2005, c 94 WS.

⁹ See <http://www.opsi.gov.uk/acts/acts2006/20060001.htm>.