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It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

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CHARITIES & CHARITY LAW

Isle of Man Government: consultation on charity law reform

For information and possibly for action if you have congregations in the Isle of Man

The Isle of Man Government is consulting on proposed new legislation to update and improve the effectiveness of the registration and regulation of charities in the Island.

Charities are currently registered and regulated under the Charities Registration Act 1989. The Government is of opinion that, over time, the provisions of that Act have become outdated and the system needs modernising in order for the public to retain confidence in the Manx charitable sector. It is also necessary to take account of recent changes to the meaning of "charity" in England and Wales so that *bona fide* charities that are established in that jurisdiction are not prevented from carrying on activities on the Island.

The Bill does not seek to make any changes to the nature of an organisation that can register as a charity in the Island, such as imposing an income threshold, nor does it alter the requirement that it have a substantial and genuine connection with the Island. Further, while the Bill extends the authority of the Attorney General as regards giving consent to certain steps to be taken by charities, it does not seek to exclude the jurisdiction of the High Court, which is provided by the Charities Act 1962.

The Bill has six main purposes:

- to update the meaning of "charity" in the Island so that it remains at least as broad as in England and Wales;
- to provide for a modern register of charities which are carrying out activities within the Island;
- to assist charity trustees (however described, eg as trustees, directors or committee members) in the proper delivery of their charity's objectives, by ensuring that charities have constitutional documents which are fit for purpose and that the process of responding to a changing environment is straightforward and inexpensive;
- to ensure more effective regulation of charities by increasing reporting requirements and ensuring accountability on the part of all charities carrying on activities in the Island, in addition to providing for the automatic disqualification of individuals for acting as trustees in certain circumstances and for consideration of the risk of a charity seeking registration to be used for money-laundering or financing terrorism;

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- to improve public service and administrative efficiency by combining the functions of registrar and regulator in HM Attorney General, thus mirroring the Charity Commission for England and Wales; and
- to provide a simplified mechanism for appealing decisions of the registrar/regulator by establishing a Charities Tribunal.

The Attorney General's Office has confirmed that the consultation closes on **5 October** (as it says on the web page – *not* as it says in the consultation document).

[Source: Isle of Man Government – 24 August]

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EMPLOYMENT

The Genuine Occupational Requirement again

For information

In *JQ v IR* [2018] EUECJ C-68/17, the applicant, a Roman Catholic, worked as Head of the Internal Medicine Department of a hospital managed by IR, a limited liability company established under German law and subject to the supervision of the Archbishop of Cologne. He divorced his first wife and remarried in a civil ceremony, but his first marriage was not annulled. When IR discovered this, it sacked him on the grounds that he had infringed the duty of loyalty arising under his employment contract. He challenged his dismissal on the grounds that a non-Roman Catholic employee would not have been treated in the same way. The German Federal Labour Court asked the CJEU for an advisory opinion as to the application to the case of the Equal Treatment Directive.

The Grand Chamber replied that the decision of a Church or other organisation with an ethos based on religion or belief and which manages a hospital (in the form of a private limited company) to require its employees performing managerial duties to act in good faith and behave in a way that differed depending on the faith or lack of faith of the individual employee was, in principle, reviewable by the national courts.

It was for the national court to satisfy itself that the religion or belief requirement was genuine, legitimate and justified in the light of the ethos in question.

The Grand Chamber added that, though it was for Germany's Federal Labour Court to judge the case on the facts, it did not believe that adherence to the Roman Catholic Church's teaching on marriage was necessary for the promotion of IR's ethos because of the importance of JQ's role in the hospital: giving medical advice and care and managing the internal medicine department. *It did not, therefore, appear to be a genuine occupational requirement for his job*.

Comment: The Court has reiterated what it said in *Egenberger*: in short, that employers must take care that any occupational requirement they seek to impose on a post is *genuine*.

[Source: CJEU – 11 September]

We have updated the CLAS note on religion and employment accordingly.

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FAITH & SOCIETY

Consultation on no-fault divorce

For information

The Secretary of State for Justice has announced a consultation on introducing "no-fault" divorce in England and Wales: *Reducing family conflict: Reform of the legal requirements for divorce*. The issue of contested divorce on the grounds of unreasonable behaviour came to public prominence as a result of the judgment in *Owens v Owens* [2018] UKSC 41, in which the Supreme Court unanimously rejected Mrs Tini Owens's appeal against the refusal of the lower courts to grant her a divorce that was opposed by her husband –and did so with obvious reluctance.

At present, divorcing couples are forced to blame each other for the marriage breakdown on the grounds of "unreasonable behaviour", adultery or desertion, or prove they have been separated for a minimum of two years – even if the separation is mutual. If the divorce is contested, and a spouse cannot prove "fault", then couples currently have to wait five years before a divorce is granted. In brief, the current law - s.1(2) Matrimonial Causes Act 1973 - requires those seeking a divorce to give evidence of one or more of five facts, based either on "fault" or on a period of separation, as follows:

> "(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
> (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
> (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
> (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition … and the respondent consents to a decree being granted;
> (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition."

The MoJ is proposing a new notification process that will allow people to notify the court of the intent to divorce while removing the opportunity for the other spouse to contest it.
Proposals detailed in the consultation include:

- retaining the irretrievable breakdown of the marriage as the sole ground for divorce;
- removing the need to show evidence of the other spouse's conduct or a period of living apart;
- introducing a new notification process where one, or possibly both parties, can notify the court of the intention to divorce; and
- removing the opportunity for the other spouse to contest the divorce application.

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The consultation also seeks views on the minimum period for the process between the interim decree of divorce (decree nisi) and the final decree of divorce (decree absolute). That will allow couples time to reflect on the decision to divorce and to reach agreement on arrangements for the future where divorce is inevitable.

As a caveat, the Government recognises that there may be exceptional circumstances in which it may be desirable to retain the ability for a spouse to defend a divorce petition: for example, if one party lacks mental capacity to make an informed decision to seek a divorce.

The consultation will run for 12 weeks and close on **10 December**. Responses may be made on-line here [scroll down].

[Source: MoJ – 15 September]

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IMMIGRATION & NATIONALITY

Home Office settlement scheme for EU citizens

For information

In June, the Home Office published the settlement scheme for EU citizens living in the UK and their family members to obtain their new UK immigration status. The transitional scheme will run from **29 March 2019** until **31 December 2020**.

There will be two types of status: settled and pre-settled. From 1 July 2021, all EU nationals other than Irish citizens must be either one or the other. *Irish citizens, those with indefinite leave to remain in the UK and those with indefinite leave to enter the UK – for example, someone who has a Returning Resident visa – do not need to apply*.

Settled status will allow those EU nationals who have lived in the UK for five or more years to obtain confirmation of their settled right in the UK. For settled status, EU nationals mustprove their identity, prove that they live in the UK, and confirm that they have no "serious criminal convictions".

The Home Office will liaise with other Government departments to check on employment and benefit records. There will be a fee of £65 for adults and £32.50 under-16s Any EU nationals who already have confirmation of their permanent residence will have their fee waived. The deadline for applications will be **30 June 2021**.

Pre-settled status will be granted to those who have not yet completed five years' residence in the UK; after completion of five years, settled status can be applied for.

Close family members will also be eligible for settled or pre-settled status.

If an applicant is not resident in the UK by **31 December 2020,** settled or pre-settled status may be refused. An application may also be refused on the grounds of a serious criminal conviction or for security reasons or fraud.

The scheme has not yet been approved by Parliament.

[Source: Home Office – 24 June]

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SAFEGUARDING

Government view on mandatory reporting of suspected abuse

For information

On 10 September, Baroness Walmsley (LD) asked an oral question in the Lords about how the Government plans to respond to the report of the Independent Inquiry into Child Sexual Abuse regarding safeguarding failures at Downside and Ampleforth schools, published in August 2018. In reply, the Parliamentary Under-Secretary of State, Department for Education, Lord Agnew of Oulton, said this:

> "The report of the independent inquiry into child sexual abuse regarding Downside and Ampleforth schools did not make specific recommendations to my department. However, a regulator of independent schools is carefully considering the inquiry's findings. We have asked inspectors to pay close attention to the matters in the report at the next inspection of Downside. Ampleforth is currently under regulatory action and must improve or face further action, which could include closure."

In response to a supplementary, he added:

> "My Lords, it is absolutely unacceptable for anyone to conceal abuse. The Government are committed to ensuring that legislation can adequately deal with this. We will scope this issue fully during the current Parliament. What individuals and organisations should do is already clear in statutory guidance. The guidance also makes it clear that there is a legal duty on employers to make a referral to the Disclosure and Barring Service in certain circumstances."

On mandatory reporting, however, he was less convinced:

> "I know that there are calls for mandatory reporting and the noble Baroness, Lady Walmsley, who asked the Question, is a keen advocate of it. All noble Lords will be aware that we have consulted on this matter. We had 760 responses from social workers, police officers and other connected parties. Some 70 per cent of them felt that mandatory reporting would have an adverse impact; 85 per cent said that it would not, in itself, lead to the appropriate action being taken."

[Source: Lords *Hansard* – 10 September]

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WALES

Chancel repair liability

For information

In reply to a written question from **Liz Saville Roberts** (Plaid Cymru: Dwyfor Meirionnydd) as to whether the Law Commission will make an assessment of the potential merits of reforming the law on chancel repair liability as it applies to Wales as part of its Thirteenth Programme of Law Reform project on registered land and chancel repair liability, **Lucy Frazer** said this:

> "Under its Thirteenth Programme, the Law Commission is to consider the legal status of chancel repair liability in England and Wales where that liability is not evident from the land register."

So it will apply to Wales as well. Significantly, however:

> "The Law Commission is not considering the wider question of whether chancel repair liability should be abolished and the Government has no plans to make a further assessment of the need for reform of the law in this area."

[Source: Commons *Hansard* – 11 September]

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