

## **CLAS CIRCULAR 2017/06 (20 February 2017)**

### **Disclaimer**

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## CHARITIES & CHARITY LAW

### Law Commission Bill on charity regulation

For information

Parliamentary Under-Secretary at the DCMS Lord Ashton of Hyde has responded to a [written question](#) from Lord Hodgson of Astley Abbots regarding the timeframe for the introduction of the Law Commission Bill on charity regulation.

**Lord Ashton of Hyde:** "The Law Commission expects to publish its report on technical issues in charity law, together with a draft bill, this summer. The Government will need to consider the report and its recommendations carefully."

In due course, so shall we...

[Source: Lords *Hansard* – 9 February]

## EMPLOYMENT

### Gender pay-gap reporting

Possibly for action

A reminder that the [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) come into force on **6 April**. Under the Regulations, employers with 250 or more employees will have to report on the gender pay inequalities in their organisations. The first report is not due until **4 April 2018**; but it will be based on the number of employees on **5 April 2017** and on pay data and bonuses paid in the tax year ending **5 April 2017** – so data must be collected now.

For the purposes of the Regulations, 'employment' is defined in section 83 of the Equality Act 2010, and includes employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.

*Any CLAS member that may have to report under the Regulations should start planning now.* ACAS has published some helpful [guidance](#).

[Source: Legal Update for Voluntary Organisations – 19 February]

### Resident labour market test for Tier 2 (Minister of Religion)

For information

We recently received an inquiry relating to the issuing of a certificate of sponsorship for a visa under Tier 2 (Minister of Religion). The Church in question wanted to organise a visa for a US citizen who was to undertake a supernumerary role. The individual had previously held a Tier 5 (Temporary Religious Worker) visa, which could not be further renewed, but had an application for a Tier 2 (Minister of Religion) rejected. The Home Office's reasoning was that the occupation was "not classed as a [shortage occupation](#)" and that "the sponsor was therefore required to conduct a Resident Labour Market Test [RLMT]." The Church questioned this decision, as it was under the impression that supernumerary positions did not need to comply with the RLMT and, in any case, the "shortage occupation" provision had no application to clergy.

So far as we have been able to tell, the [guidance](#) for sponsors of Tier 2 and Tier 5 visas states in section 31: Tier 2 (Minister of Religion):

*“Resident labour market test for Tier 2 (Minister of Religion) and Tier 5 (Temporary Worker) Religious Workers:*

31.7 When recruiting a person who will be sponsored under Tier 2 (Minister of Religion) or Tier 5 (Religious Workers) **you must carry out a resident labour market test**. Although not all religious occupations are ‘jobs’ in the traditional sense, this does not mean that the test does not apply. Any migrant you sponsor must not displace a suitable settled worker.”

*When a resident labour market test is not required:*

31.10 A resident labour market test is not required where the ... **role is supernumerary**; this means it is over and above normal requirements and if the person filling the role was not there, it wouldn't be filled by anyone else - one example might be where the migrant offers pastoral support to members of a church community as part of their own development, but the work would stop if they were not there and you wouldn't replace them”.

Taken together, those two statements suggest that the “shortage occupation” provision does apply to clergy generally – and ministers of religion are not on the shortage occupation list, therefore the resident labour market test also applies – but that the RMLT does not apply to supernumeraries.

However, to escape the RMLT:

“31.12 **You must justify that a role is supernumerary**. When assigning a CoS for a supernumerary role, you must fully explain in the ‘Details of labour market test’ box (Tier 2) or by adding a sponsor note (Tier 5), why the role is supernumerary. Stating ‘the role is supernumerary’ is not enough, you must explain why. [...] If there is no explanation or we are not sure about any explanation you have given, we may ask you for more information and it is possible that the migrant’s application for leave may be refused.”

Our conclusion is that in this case there should be no need for the RLMT, always provided you can clearly justify that the role is supernumerary. We suspect, however, that officials are applying more rigorous criteria than before as to whether a particular post is genuinely supernumerary or not. Where a Church failed to provide adequate justification, the Home Office would be acting within its discretion to deny the visa.

[Source: CLAS – 9 February]

## PROPERTY

### Church property, tax relief and EU law on State aids

For information

An agreement between Spain and the Vatican dating from before Spain's accession to the EU provides for various tax exemptions for the Roman Catholic Church. In *Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe* [C-74/16](#), the Church, relying on that agreement, seeks repayment of municipal tax amounting to €23,000 levied in respect of building work on *La Inmaculada* school, near Madrid. The school building is used predominantly for compulsory education – which is equivalent to the education provided by State schools and the major part of which is financed by the State – but it is also used for voluntary education, for which the Church charges a fee.

The domestic court asked the CJEU for an opinion on the following question:

“Is the exemption of the Catholic Church from the tax on constructions, installations and works contrary to Article 107(1) of the Treaty on the Functioning of the European Union, where the exemption relates to work on buildings intended to be used for economic activities that do not have a strictly religious purpose?” [19].

Advocate General Kokott has now issued her [Opinion](#) on the reference, concluding that a tax exemption of that kind does not necessarily contravene the prohibition on State aid. She concludes that:

“it is not for the Court but for the national court to determine the extent of obligations under international law imposed on Spain by the 1979 Agreement. The referring court will therefore have to examine whether it necessarily follows from Article IV(1)(B) of the 1979 Agreement that the Catholic Church must *generally be exempt* from the tax on constructions, installations and works in respect of *all* its buildings in Spain, even those which are devoted, either wholly or in part, to an economic activity. Only then would there be conflict with the prohibition on State aid under Article 107(1) TFEU, and only then would Article 351(1) TFEU allow the referring court to depart from Article 107(1) TFEU in resolving the dispute in the main proceedings” [98-99].

Therefore:

“In the light of the foregoing considerations, I propose that the Court answer the question referred ... for a preliminary ruling as follows:

An exemption from the tax on constructions, installations and works to which the Catholic Church is entitled under the Agreement of 3 January 1979 between the Spanish State and the Holy See concerning economic matters does not contravene the prohibition on State aid under

Article 107(1) TFEU, where it affects a school building which is used by the Catholic Church, *not for the commercial provision of educational services, but for the provision of education services in the context of its social, cultural and educational mission*" [102: emphasis added].

### Comment

*It should be noted that an Advocate General's Opinion is advisory only and does not bind the Court.* However, quite apart from the its obvious relevance to members of CLAS that operate church schools, the outcome of the case may possibly have wider implications for State aids in relation to charity property generally. We await the judgment of the Court.

[CLAS summary – 19 February]

### Land Registry consultation on digital conveyancing and registration: update

**For information**

In Circular 2017/05 we drew attention to the Land Registry [consultation](#), closing on **5 April**, on proposed changes to the Land Registration Rules 2003 to allow it to offer customers digital alternatives to paper conveyancing and registration and asked to be copied in to any responses.

It has already been pointed out to us that where a charitable trust is obliged by its governing document to affix its corporate seal to a conveyance or other legal document, the possibility of digital filing evaporates. Digital seals are still an invention waiting to happen.

[Source: Land Registry – 9 February]

## SCOTLAND

### OSCR: *Being a Charity in Scotland*

**For information: but do read it**

OSCR has just unveiled [\*Being a Charity in Scotland\*](#). It uses simple graphics and straightforward language to help those who run Scottish charities to understand their responsibilities. The guide is intended for charity trustees of existing charities or people working in charities, especially smaller ones, for people who want to set up a charity and for professionals who advise charities and organisations that want to become charities.

The new guide combines and condenses *Meeting the Charity Test: Guidance* and *Guidance and good practice for Charity Trustees*. It sets out the key points charities that need to know about Scottish charity law. Within it there are links to detailed guidance pages contained on OSCR's website and it also has information on other organisations that can provide help and advice to charities.

We say this with a considerable degree of diffidence, but trustees of religious charities – particularly where the charitable trust is the governing body for their local congregation – sometimes tend to forget that *they are, in fact, charity trustees with legal obligations* as well as being members of the church council, congregational board or whatever. *All trustees should read the guidance.*

[Source: OSCR – 20 February]

## TAX

### Gift Aid: have your donors paid enough tax?

For information

HMRC is very keen to ensure that Gift Aid donors are paying enough tax to cover their donations, having come under pressure from the National Audit Office and the Commons Public Accounts Committee to take steps to reduce the amount of Gift Aid claimed incorrectly. *Donors therefore need to know if they can or cannot make charitable donations with Gift Aid added.*

The tax landscape has changed; and HMRC estimates that around 50% of adults in the UK no longer pay any income tax *at all* – up from around 42% only a few years back – for various reasons:

- the increase in the personal allowance from £6,475 in 2010/11 to £11,000 in 2016/17 (with a promise of further increases to £12,500 before the end of the current Parliament in 2020);
- the fact that pension contributions can act further to reduce taxable income;
- the increasing popularity of ISAs, from which investment income is tax free;
- the introduction from 2016/17 of allowances under which the first £5,000 of dividend income is not taxed; and
- the introduction from 2016/17 of a tax-free allowance for basic rate taxpayers on savings interest of up to £1,000.

The result is that it is becoming increasingly possible for a donor – particularly a donor in part-time work – to sign a Gift Aid declaration without giving any consideration to whether or not s/he is actually paying sufficient tax to cover the donation.

*We strongly urge church treasurers and Gift Aid officers to remind donors of the rules. Someone who donates under Gift Aid and pays insufficient tax is personally liable for the shortfall.*

[*This is a shortened version of an article by Kevin Russell, of Stewardship: [Have you paid enough tax to 'cover' your Gift Aid donations?](#), which you are encouraged to read in full.*]



**Payroll rates and thresholds for 2017-18**

**For information**

HMRC has published [guidance](https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2017-to-2018) setting out the rates and thresholds for organisations to use in Tax Year 2017-18 when operating payroll or providing expenses and benefits to employees. The URL is: <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2017-to-2018>.

The figures quoted apply between 6 April 2017 and 5 April 2018.

HMRC has also announced a series of webinars throughout February, March and April about the changes affecting payroll from April 2017, as follows:

**“What’s new for 2017**

Find out about the new rates for National Insurance, National Living Wage/National Minimum wage and statutory payments. Plus the changes to expenses and benefits and more.

**Thursday 23 February – 1pm to 2pm**      [Book now](#)

**Friday 24 February – midday to 1pm**      [Book now](#)

**Thursday 2 March – 10am to 11am**      [Book now](#)

**Wednesday 8 March – 11am to midday**      [Book now](#)

**Monday 20 March – 10am to 11am**      [Book now](#)

**Thursday 30 March – 1pm to 2pm**      [Book now](#)

**Monday 3 April – 2pm to 3pm**      [Book now](#)

**Wednesday 5 April – 11am to midday**      [Book now](#)

**Wednesday 12 April – 1pm to 2pm**      [Book now](#)

**Tuesday 25 April – 1pm to 2pm**      [Book now”](#)

[Source: HMRC – 9 & 19 February]

## WALES

### Community Infrastructure Levy review: update on implications for Wales

For information

In our last Circular, we noted the outcome of the review of the operation of the Community Infrastructure Levy and the conclusion of the review group that any replacement should have very few exemptions.

Gethin Rhys, Policy Officer at Cytûn, subsequently reminded us that, since the review was completed, the Wales Act 2017 had been amended to exclude the reservation of CIL to Westminster: in other words, *CIL is now devolved to Wales*. He points out that any future legislation on this matter should in principle apply to England only – unless a new levy, configured differently, engages one of the other reservations in the Act relating to planning and/or taxation.

In addition, if Westminster proceeds with England-only legislation on a new-format infrastructure levy, the *existing* England & Wales legislation – ie the current CIL regime – will continue to apply in Wales until the National Assembly amends it. The timetable and process for arguing for a charity exemption would, therefore, be different in the two jurisdictions.

[Source: Cytûn – 15 February]

### Welsh Revenue Authority

For information

The Welsh Government has made a [Written Statement](#) on the establishment of the Welsh Revenue Authority (WRA) to manage and collect the taxes that are being devolved to Wales from April 2018: Stamp Duty Land Tax (which will become Land Transaction Tax) and Landfill Tax (which will be renamed Landfill Disposals Tax). The WRA will be the first Welsh non-ministerial government department and, over the course of the next three years, should collect around £1bn in tax revenues. It will be a relatively small organisation employing around 40 staff. It will also have a strong digital agenda, which will require WRA staff to work directly with stakeholders across Wales to support the move from paper-based systems to online payment and filing. *Charities will continue to benefit from relief for Land Transaction Tax as they did under Stamp Duty Land Tax.*

[Source: Welsh Government – 3 February]