

CLAS CIRCULAR

2017/26 (7 November 2017)

Disclaimer

CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though we take every care to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertakes any liability for any error or omission in the information supplied.

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

Accounts formatting update will not affect eligible charities

For information and possibly for action

HMRC's latest [Agent Update](#) includes notice that, from 1 November 2017, HMRC will reject all accounts which are not submitted as an iXBRL file, unless a dispensation by HMRC has already been granted to the organisation making the submission.

Under [Chapter 6](#) of HMRC's guidance, many churches fall into a category for which there is a dispensation from having to submit accounts in this format and, as such, they will not be affected by this change. However, *charitable companies that fall outside of the agreed dispensation will need to be aware of the requirement.*

[Source: HMRC – 25 October]

Charity Commission to consult on charging for regulation

For information

CEO of the Charity Commission Helen Stephenson has published a [blog post](#) in which she has set out the Commission's case to Government for increased funding to help it deal with the significant increase in demand for its services.

She has also announced that the Commission intends to begin consulting on a charging scheme for regulation, though at the moment the discussion would focus on "larger charities making a modest contribution to the cost of parts of their regulation". She has indicated that the Commission would first look at a flat fee, for only the largest 2,000 charities, which should raise around £7m. A variable rate may also be under consideration.

[Source: Charity Commission – 3 November]

Survey on charities and insider fraud

For information and possibly for action

As part of Charity Fraud Awareness Week 2017 the Charity Commission published a [survey](#) aiming to find out more about insider fraud in charities. Insider fraud is committed by someone involved with the charity, whether a trustee, an employee or volunteer. The primary aims of this survey are to identify common themes across the sector, highlight good practice in charities, help charities learn lessons from each other and, ultimately, to improve Commission guidance on the subject.

The survey is not the appropriate place formally to report a recent fraud. For this, charities should read and must follow the Commission's guidance on [reporting serious incidents](#).

Responses to the survey should be made before **8 December 2017**.

[Source: Charity Commission – 30 October]

EMPLOYMENT

One-year delay in abolition of class 2 National Insurance Contributions

For information

On Thursday 2 November, the Exchequer Secretary to the Treasury, Andrew Jones MP, released the following [Written Statement](#) in the Commons:

“The Government are announcing today that they will introduce the National Insurance Contributions (NICs) Bill in 2018. The measures it will implement will now take effect one year later, from April 2019. This includes **the abolition of class 2 NICs**, reforms to the NICs treatment of termination payments, and changes to the NICs treatment of sporting testimonials.

The Government have decided to implement a one-year delay to allow time to engage with interested parties and parliamentarians with concerns relating to the impact of the abolition of class 2 NICs on self-employed individuals with low profits. The Government have committed to abolishing class 2 NICs to simplify the system, so it is therefore right to take the time to ensure that there are no unintended consequences for the lowest paid.”

If the inference to be drawn from the statement is that there is going to be a further round of consultation, we may need to remind the Treasury of the possible impact of the change on clergy on very low stipends.

[Source: *Commons Hansard* WS220 – 2 November]

Payroll software update for Benefits in Kind

For information **and possibly for action**

In the October 2017 edition of its [Employer Bulletin](#), HMRC has clarified that upcoming changes to the way Benefits in Kind (BiKs) are valued where there is an optional remuneration arrangement (OpRA) mean that employers will need to update payroll software for P11D and P46 (Car) reporting.

Where there is an OpRA, the taxable value is now the higher of the cash foregone or the taxable value under the normal BiK rules. This applies to all BiKs, including those that are

currently exempt. Arrangements entered into before 6 April 2017 retain their old treatment, but arrangements entered into since 6 April 2017, or arrangements which have been varied or renewed, will be taxed under the new rules.

[Source: HMRC – 26 October]

Sleep-in shift pay compliance scheme for social care workers

For information and possibly for action

We do not know to what extent members provide social care, but we thought it helpful to flag up the fact that HMRC and the Department of Health have [published](#) a new pay compliance scheme for social care providers that may have incorrectly paid workers below legal minimum wage hourly rates for sleep-in shifts.

In 2016, HMRC came to the view that the National Minimum Wage (NMW) is payable for every hour worked of a sleep-in shift and has carried out audits of NMW compliance of social care providers since then. HMRC has the discretion to consider underpayments going back six years, to levy fines and to require employers to pay back pay of outstanding salary going back up to six years. In addition, employees can bring claims in the Employment Tribunal for back pay of up to six years.

Social care providers will now be able to opt-in to the new Social Care Compliance Scheme (SCCS), to avoid being subject to orders for back pay and fines for non-compliance after 26 July 2017.

Under the scheme, providers will have up to a year to identify what they owe to workers. Employers who identify arrears at the end of the self-review period will have up to three months to pay workers. While the scheme does not mention back pay of 6 years, it does state that providers "must pay workers at least the National Minimum Wage for time worked during sleep-in shifts from the point you discover you've underpaid". Tax and NI contributions also have to be paid and providers must commit to paying sleep-in shifts in the future.

Employers that choose not to opt into the scheme will be subject to HMRC's normal enforcement approach.

[Source: HMRC – 1 November]

FAITH & SOCIETY

Review of marriage law to be postponed

For information

Members will know that in December 2014 the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. The question underlying the review was whether the current law provided a fair and coherent legal framework for enabling people to marry. The Commission held meetings with interested groups, one of which was attended by the Secretary; and we submitted a paper calling for various technical changes to the current law and, at the very least, for proper, systematic consolidation as the absolute minimum reform that is necessary to make the law fit for purpose. The Commission completed the initial phase at the end of 2015 and published a [scoping paper](#), with the aim of identifying the issues that needed to be addressed and providing an initial analysis.

On 11 September, Dominic Raab, the Minister of State for Justice, [wrote](#) to the Commissioner in charge of the project, Professor Nick Hopkins, to say that the Government was not taking the project forward because priority was being given to reforms to address the increase in public and private family law cases that is currently putting pressure on the justice system; however, he had not ruled out the option of further Law Commission work on marriage law in the future and was keeping the situation under review.

The Commission has now published its [reply](#). It notes that this is a complex area of the law that needs wide consultation and any law reform options would take time to formulate. But it also suggests – correctly, in our view – that it is not an issue that is going to go away. This is a disappointing if not wholly unsurprising outcome; but CLAS will maintain a watching brief until the topic returns to the agenda.

[Source: Law Commission – 26 October]

ODDS & ENDS

Copyright and photographs on websites

For information **and possibly for action**

Churches Together in England reports that a new website for a local Churches Together group has accidentally used a photograph that looked like one of their own but was, in fact, from a photographic stock library. The stock library in question has an automatic mechanism (called a 'bot') which trawls the Internet looking for an electronic tag on the individual stock image. If the image is not covered by a copyright licence, a letter will arrive from the stock library agent to the local web manager requesting payment. In this case, the Churches Together group was sent a letter claiming copyright infringement and an invoice for £305.

We have mentioned this issue before, but it bears repeating. Anyone using web images on a blog, website, image gallery, online PowerPoint presentation or in any other way must ensure that their use does not infringe someone's copyright. Either the images used must be covered by the [Creative Commons Licence](#) – as, for example, the images on Wikimedia Commons – or the appropriate fee must be paid to the copyright holder.

Alternatively, if you need, eg, pictures of your church building, take them yourself.

[Source: Churches Together in England – 6 November]

GDPR: Data profiling and guidance helpline

For information **and possibly for action**

The ICO has [highlighted](#) new guidance, published by the European Commission's Article 29 Working Party (the group of EU data protection authorities charged with agreeing European-wide guidance on GDPR), which clarifies that under the GDPR, organisations should not use fully automated ways of processing personal data (profiling).

The new guidance on profiling defines it as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person". Human involvement must also not be fabricated, with human oversight of a decision giving the authority and competence to change the algorithm's decision if necessary.

Exceptions to this include when it is necessary for the performance of or entering into a contract; when authorised by the EU or the member state of which the data controller is a member; or when it is based on the data subject's explicit consent. Data controllers should also be aware of their transparency obligations, including by ensuring that information about the profiling is brought to the data subject's attention and made easily accessible.

The ICO has also launched a dedicated [advice line](#), aimed at those running small businesses or charities, to assist them with the particular problems they face getting ready for the General Data Protection Regulation (GDPR).

There are already resources on the ICO website to help organisations employing fewer than 250 people prepare for the GDPR but the new phone line will offer additional, personal advice to small organisations that still have questions. The ICO helpline can be called on 0303 123 1113, selecting option 4 to be diverted to staff who can offer support.

The GDPR comes into force on 25 May 2018. A [Data Protection Bill](#) was introduced to the House of Lords on 13 September 2017: it will repeal the Data Protection Act 1998 and bring UK data protection law into line with the GDPR.

[Source: ICO – 26 October & 1 November]

PROPERTY & PLANNING

Charities and leasehold extension

For information

Shadow Minister for Business, Energy and Industrial Strategy Chi Onwurah has used a Commons [adjournment debate](#) to urge the Government to tackle a specific "unfair loophole" in the leasehold system relating to charities and to call for the Charity Commission to provide improved guidance for charities on their role as "good citizens".

A number of her constituents in Newcastle are unable to sell their properties without extending their leases; and the charity owning the freehold – the St Mary Magdalene & Holy Jesus Trust – refuses to extend the leases. In this instance, a specific amendment to the Leasehold Reform Act 1967 states that if a charity owns a freehold it is not obliged either to sell or to extend the leases of houses on its land. Indeed, Chi Onwurah noted that as well as receiving legal advice about this lack of obligation, the Trust "feared repercussions from the Charity Commission" if it chose to do so.

In his response, Housing Minister Alok Sharma highlighted the recent consultation on [Tackling unfair practices in the leasehold market](#), to which the Government intended to publish a response before the end of the year. He noted that the Department also considers issues on the disposal of charitable leasehold homes, with the aim of showing fairness to the needs both of the freeholder and the leaseholder, as well as striking a balance with the needs of charities to remain on a sustainable footing and to act in the interests of their beneficiaries and in pursuit of their charitable purposes.

[Source: House of Commons – 1 November]

SCOTLAND

Role of Income Tax in Scotland's Budget

For information

The Scottish Government has published a [discussion paper](#) to initiate debate about income tax policy ahead of the draft budget in December, with suggestions that it may be planning to make use of devolved powers to raise rates or change thresholds.

The paper sets out the powers the Scottish Parliament has over income tax - namely, to set rates and bands for non-savings, non-dividend income tax only - the contribution income tax makes to the budget, who pays tax and the benefits of taxation for individuals and businesses. First Minister Nicola Sturgeon has previously stated that income tax in Scotland should meet four tests: to protect low earners, be progressive, be proportionate to the ability to pay and support the economy.

The Scottish government's tax and spending decisions for 2018/19 will be published in the draft budget on 14 December 2017.

[Source: Scottish Government – 2 November]

TAXATION

Trusts Registration Service FAQs

For information

The Trusts Registration Service (TRS) is a new service provided by HMRC that will provide a single online route for trusts and complex estates to comply with their [registration obligations](#) and to obtain their Self-Assessment Unique Taxpayer Reference.

The TRS replaces the current paper 41G (Trust) form and the *ad hoc* process for trustees to notify HMRC of changes in their circumstances. Trusts that are required to register with HMRC are now required to do so through the TRS. The benefits of this single, online route include:

- no more forms lost or delayed in the post
- only seeing those questions relevant to your particular type of trust or complex estate
- the ability to print a copy of the summary page for record keeping purposes

HMRC has also published a helpful series of [FAQs](#), which clarify that a charitable trust will need to register when the trustees have incurred a liability to any of the relevant UK taxes in a given tax year, in relation to the trust income or assets. Therefore, a charitable trust will only need to comply with the legislation if its activities generate a tax liability that falls outside the scope of the charity exemptions, for example, where a charity incurs non-charitable expenditure and/or is in receipt of non-exempt income. While we thought it would be sensible to flag this Service up to members for their general information, we suspect that its application to charities is likely to be very limited.

[Source: HMRC – 20 October]