

CLAS CIRCULAR 2019/2 (11 February 2019)

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 AND CHARITY LAW

BAPTIST UNION OF GREAT BRITAIN: TRUSTEE VACANCY

For information

The Baptist Union has been conducting a skills audit of its trustees and has concluded that it would be prudent to appoint a trustee with legal experience. The Trustee Board holds the governance responsibilities for the Baptist Union of Great Britain as a charitable organisation. This includes ensuring that the Baptist Steering Group (BSG) is able to meet its strategic direction and that Council and BSG remain accountable to the churches, as well as the financial and risk management obligations of BUGB as a charitable organisation. The Trustee Board is made up of the Moderator, the General Secretary, the Treasurer, and nine other trustees from across the Baptist family, and includes representation from churches, associations and colleges.

BUGB is looking for someone with a wide range of experience to bring to the Board, and is particularly seeking someone with a legal background to complement and augment the skills of the whole trustee group. In terms of time, it expects the role to require at least one day each month. The appointment is for a three-year term.

If you would like to express your interest in the trustee role, please send a letter outlining your interest by e-mail to Rachel Stone, BUGB's HR Manager – who will be coordinating the appointment process on behalf of the Key Roles Nominations Group – at opportunities@baptist.org.uk. Click here for a [full information pack](#). **Closing date is 09:00 on Friday 22 February.** We understand from Caroline Sanderson that, ideally, the Baptist Union would wish to appoint a practising Baptist with the appropriate legal expertise; however, legal expertise is the key issue, and non-Baptists in sympathy with the aims of the Union are not discouraged from applying.

Charity Commission News

For information

The Commission has published the latest [Charity Commission News](#), with articles on checking and updating charity details before submitting the annual return, changes to public display names on the charity register, quality and transparency (or their absence) in charity accounts, Making Tax Digital for VAT, and safeguarding.

[Source: Charity Commission, 25 January]

EMPLOYMENT

Law Commission: consultation on simplifying the Immigration Rules

For information

The Law Commission is seeking views on its proposals and questions on its consultation paper, [Simplification of the Immigration Rules](#). The project does not consider any issue of substantive immigration policy but is focused on how the Rules are drafted and presented. Since their introduction in 1973, the Immigration Rules have grown to around 1,100 pages.

The Rules have become highly prescriptive and have been criticised for being too long, complicated and difficult to follow. This has an adverse effect not only on applicants, but also on Home Office caseworkers. The proposals aim to simplify the Rules and make them clear, comprehensible, and organised in a way which is suitable to the needs of users. The proposals include:

- an audit of overlapping provisions within the Rules. Where possible, a standardisation of wording could be introduced to reduce the possibility of confusion;
- considering the frequency of changes: whether, except in urgent cases, changes to Rules should be made on two common commencement dates a year;
- a uniform approach to the organisation of the Rules and drafting style, including with regard to headings, the inclusion of definitions and section numbering;
- ensuring that simplification is maintained in years to come by keeping the Rules under review and improving how amendments are presented and earlier versions of the Rules archived; and
- investigating whether technology could improve an applicant's experience: for example, through the online presentation of the Rules including an initial route map, hyperlinks and signposting; and by using interactive tools to guide them through the application process and alert them if the application is defective in any way. Online tools might be created to sequence the exact set of Rules which apply to an applicant.

The Commission also asks for views on whether and where a less-prescriptive approach in the Rules, or parts of the Rules, would aid simplification by creating a structure of shorter, more general Rules supported by non-exhaustive or illustrative guidance which is not mandatory. This would give caseworkers more discretion. The objective is for a set of Rules that are clear, accessible, and organised in a way which meets the needs of users. The consultation closes on **26 April**.

Comments may be sent using an online form available [here](#); but the Commission is happy to accept comments in other formats. If you would like a response form in Word format, e-mail to request one.

Please respond by e-mail to immigration@lawcommission.gov.uk or by post to: Immigration Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London SW1H 9AG.

The Commission asks that if you send your comments by post, it would be helpful if, whenever possible, you could also send them by e-mail.

This is probably not a matter on which CLAS can offer a useful corporate opinion, except, perhaps, to say that the basic proposal to simplify and clarify the Rules appears to us to be basically sound.

[Source: Law Commission, 21 January]

Modern slavery

For information

Early in January, Cabinet Office Minister Oliver Dowden [wrote](#) to the Chair of the Commons Environmental Audit Committee to confirm the Government's commitment to working with its suppliers to tackle modern slavery in public sector supply chains. He said that Cabinet Office officials are working with the Home Office Modern Slavery Unit to develop policy, guidance and tools to support Government departments, which will be published in early 2019. He also set out a number of other steps being taken by the Government to 'galvanise' business action on this issue.

Later in the month, the [Independent Review of the Modern Slavery Act \(2015\)](#) published its [second interim report](#), which focuses on transparency in supply chains. Its first report focused on the [Independent Anti-Slavery Commissioner](#). The Review is also set to report on the legal application of the Act and the Independent Child Trafficking Advocates scheme.

The latest report of the Review looks at 'how best to ensure compliance and drive up the quality of slavery and human trafficking statements produced by eligible companies' and suggests that a lack of penalties and insufficient enforcement and confusion surrounding reporting requirements have resulted in poor compliance. It proposes greater clarity on the scope of anti-slavery statements and the removal of the provision that allows companies to comply with the Act simply by stating that they have taken no action.

A final report is scheduled for the end of March 2019.

[Source: House of Commons, 8 January; IRMSA, 22 January]

Pregnancy and parental leave: consultation

For information

The Government has [announced](#) a consultation on proposals to strengthen employment rights. The proposals include extending the current period of protection for women on maternity leave during which they are given priority over any suitable alternative vacancies should their role be made redundant. (An employer's failure to offer any such available vacancies renders the consequent redundancy dismissal automatically unfair.) The main proposal is to extend this right of priority over vacancies to apply from the point at which the employee notifies her employer of her pregnancy in writing, through to six months after a new mother returns to work. The consultation seeks views on how this should work where an employee takes some other form of leave immediately after her maternity leave (such as annual leave or a career break).

The Government is also seeking views on extending this protection to parents returning from adoption leave or shared parental leave.

The consultation follows [research](#) which shows that many mothers feel that they were discriminated against on returning to work after maternity leave. The deadline for response is **5 April 2019**.

[Source: BEIS, 25 January]

Job Evaluation Systems: Feedback Requested

Feedback requested

One of our members has approached us with a query regarding job evaluation systems and incorporating the spiritual elements of certain roles into them. In the interest of ensuring fairness between roles (and also to avoid any potential discrimination that might unwittingly occur) the member is keen to adapt its current evaluation system, which does not specifically address the spiritual element of the roles in question and therefore makes fair evaluation rather more difficult.

Do other members of CLAS have any systems within their own organisations use to evaluate such roles? If so, please send us your feedback to info@clas.org.uk.

FAITH AND SOCIETY

Becoming registered advisors to EU citizens when they apply to settle in the UK

For information

The Office of the Immigration Services Commissioner (OISC) has launched a new scheme for charities and other organisations to apply more quickly to become advisors to EU citizens when they apply to settle in the UK. Aimed at smaller, community-based charities (including faith-based and local advice groups) the streamlined process will allow applicants to be considered more quickly (decision expected 4-6 weeks after receipt).

Successful applicants will be able to provide basic 'level 1' advice (solely on EU settlement), without needing to complete the written exam, which is usually part of the application process.

It is a criminal offence for a person to provide immigration advice or services in the UK unless their organisation is [regulated by the OISC or meets certain other specific criteria](#).

Details about what assistance can be given to migrants without the requirement to be regulated can be found in the [OISC immigration assistance document](#).

Further guidance for the Community and Voluntary Sector about registering with the OISC, as well as information on the new EU settlement scheme registration is available on the [OISC website](#).

[Source: Charity Commission, 4 February]

Civil Partnerships, Marriages and Death: Second Reading and Committee Stage

For information

The [Civil Partnerships, Marriages and Death \(Registration etc.\) Bill](#) has had its [second reading in the House of Lords](#). During the debate Lord Lexden attempted to prise some further details as to the scope of the Government's consultation (following the ambiguity of the [written response to his question](#) from Baroness Williams); however, he was told that officials were still working through policy issues at this stage and that no further information was yet available.

The Bill was subsequently read a second time and committed to a Committee of the whole House, during which two amendments were withdrawn following indications that neither would receive Government support. The first of these ([amendment 2](#)) proposed removing the exemption of the

Church of England and Church in Wales under the Marriage (Same Sex Couples) Act 2013. The second ([amendment 3](#)) concerned marriage of same sex couples in Northern Ireland.

[Source: House of Lords, 18 January and 1 February]

FUNDING

HM Courts & Tribunals Service: legacy notification

Susan Acland-Hood, the Chief Executive HM Courts & Tribunals Service, has written to charities about changes to the charity legacy notification service:

“I am writing to alert you to our work to involve the charity sector in helping us design and establish a new service to notify charities when they have been left money in wills.

This follows our decision today to end HMCTS's current arrangement with Smee & Ford, a company, which, as I am sure you know, has provided a paid-for notification service to participating charities for several years. While this was established in good faith, we have since found that it is not consistent with the department's legal duties, and, with the help of charities themselves, we want to design new arrangements for the future.

We are very conscious of the important part that legacies play in funding essential charitable work across the country. More than 122,000 charitable bequests were contained in wills in 2017 alone, and we are committed to ensuring a notification system continues.

We will therefore work closely with Smee & Ford to seek to ensure that there is as little disruption as possible arising out of these changes over the six months' notice period, and we will seek their views, based on their knowledge of the current service, about future options. During this time, we will also work with the charity sector and others to create a new and sustainable arrangement for providing a notification service to charities.

I have therefore invited representatives of ACEVO, NCVO, the Institute of Fundraising and Institute of Legacy Management to join a working group to bring together the views of the sector. I hope this goes some way to reassuring you that we want to create an arrangement that works for charities.

We will ensure that all decisions are communicated as widely as possible to keep all charities informed of developments on this important issue and you can find more information on www.gov.uk/hmcts.

Please do let me know if you have any questions or concerns by emailing me on changesomethingthatmatters@justice.gov.uk.”

[Source: HM Courts Service, 31 January]

ODDS & ENDS

Guidance on Data Protection and Brexit

For information

The Information Commissioner's Office has issued [guidance](#) to help businesses and charities continue to comply with data protection law after 29 March. The guidance will be of relevance to organisations which share personal data with organisations in the European Economic Area (EEA) because they will need to ensure that they continue to comply with data protection laws if the UK leaves the EU without a deal. *(It is important to note that for UK businesses that only share data within the UK **there will be no change.**)*

There is currently no intention of imposing additional requirements for the transfer of personal data *from the UK to the EEA*, so organisations will be able to continue to send that data to organisations in the EEA as they do currently. Once the UK has left the EU however, there will be restrictions on transfers of personal data *from the EEA to the UK*. This means that if your organisation receives personal data from organisations in the EU you should consider, with your EEA partners, what changes you may need to make to ensure that the flow of personal data can continue after the exit date.

The ICO's [six-step checklist](#) is a user-friendly guide on how to start preparing for data protection compliance if the UK leaves the EU without a deal. The steps cover:

1. Continuing to comply.
2. Transfers to the UK.
3. Transfers from the UK.
4. European operations.
5. Documentation.
6. Organisational awareness.

Further information can be found [here](#).

[Source: ICO, 28 January]

PROPERTY & PLANNING

Building Regulations and Safety: review and reforms after Grenfell Tower

For information

Following the Grenfell Tower fire, the Government asked Dame Judith Hackitt to lead a review of building regulations and fire safety, which reported in May 2018.

The House of Commons Library has published [Building Regulations and Safety: Review and Reforms](#), a helpful short overview of the building regulation and fire safety review and the proposed reforms following the Grenfell Tower fire. It outlines the main recommendations of the Hackitt Review and the subsequent Implementation Plan published by the Government in December 2018. It also covers the 'cladding ban' and changes to building regulations in Autumn 2018.

[Source: House of Commons, 25 January]

Galleries: Health and Safety issues

For information

Historic England has forwarded the following from Methodist Insurance. We reckon that it is worth wider circulation because it can be applied to any church building with galleries.

Methodist Insurance encourages a proportionate/risk based approach. A key concern is the possibility for injuries from falls or falling objects. Attention is needed to the following:

- Are the existing controls in place adequate to reduce the risk of a fall, etc?
- Depending on the circumstances of the church, possible controls may be as follows:
 - front gallery/balcony rails;
 - locking unused galleries;
 - roping off the front row to prevent use;
 - using stewards;
 - ensure supervision of children; and
 - displaying appropriate warning notices.

The church may also need to comply with health and safety law.

Methodist Insurance strongly recommends that churches seek further information and guidance from www.hse.gov.uk/pubns/books/l24.htm.

Historic England: advice finder

For information

Historic England has just launched a helpful [Advice Finder](#) page on its website. The page is a portal to a range of options:

- an A-Z list of HE advice and guidance;
- latest advice and guidance published in the last six months;
- the ten most frequently downloaded advice and guidance documents;
- the archived guidance list; and
- a search facility.

[Source: Historic England, 19 January]

Lightning protection for historic churches and buildings: consultation

For information

Historic England is [updating](#) its guidance on lightning protection in a new publication that will update and replace its former publications and is requesting feedback. Lightning Protection for Churches (2000) and Surge Protection Equipment: A guide to selection and installation in historic buildings (2006), and A summary of key differences between BS 6651: 1999 and BS EN 62305: Protection against lightning and the new standard's key requirements (2008) will all be updated.

Historic England welcomes comments and advice on its draft [Lightning Protection: Design and Installation for historic churches and buildings](#). Please send comments by **22 February 2019**. [*With thanks to Heritage Alliance*]

[Source: Historic England, 16 January]

Memorial (headstone) safety

For information

The Commons Library has produced a briefing paper on [Unsafe memorials in cemeteries](#) and the action taken to address the risk of accidents caused by unstable memorials in cemeteries. Below is a summary of the paper (the full version of which can be accessed here). Except where otherwise stated the paper deals with the position in England and Wales.

The report outlines the perceived issues surrounding memorial safety beginning with accidents in cemeteries and highlighting some recent political history in this area. It then moves on to questions concerning responsibility for maintaining memorials. Generally, responsibility for maintaining individual memorials remains primarily with those who erected them. Local authorities, acting as burial authorities, have [general powers of management](#) in relation to public cemeteries. This includes [power to take any action necessary](#) to remove a danger which arises because of the condition of a vault, tombstone or memorial. Burial authorities also have a duty of care under [health and safety legislation](#) and under the principles of occupier's liability.

In the light of concerns about public safety, many local authorities started to carry out an inspection programme in order to identify unsafe memorials, and to ensure that they were made safe by whichever method they considered appropriate. In many cases this involved the use of a mechanical test instrument. The inspections resulted in some memorials being laid flat or cordoned off, and relatives were notified that they must pay to make them safe. This sometimes caused distress to bereaved relatives who felt that the graves were being desecrated and some argued that the tests themselves were making the memorials unsafe.

In 2006, the Local Government Ombudsman and the Public Services Ombudsman for Wales expressed the view that '[it should not be necessary for burial authorities to lay down grave memorials on any large scale](#)'. The Ministry of Justice reiterated the need for great sensitivity and careful planning in the way that work relating to memorials was undertaken.

In January 2009, the Ministry of Justice published guidance, [Managing the safety of Burial Ground Memorials](#), which sets out good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private. It points out that the risk of any injury is extremely low and that any precautions should be proportionate to the level of risk. The routine use of mechanical test instruments is not recommended.

The Institute of Cemetery and Crematorium Management (ICCM) has also published [guidance](#) and a revised British Standard 8415, [Memorials within burial grounds and memorial sites, specification](#), was published on 26 July 2018.

The briefing paper also covers how to lodge a complaint. The Local Government and Social Care Ombudsman has published a factsheet, [Safety testing in cemeteries and graveyards controlled by councils](#), together with details about how to complain for people who believe that there has been some fault in the way the council has acted.

Scotland

Legislation and policy for burial matters in Scotland are devolved to the Scottish Government. At present there are no general regulations in Scotland specifically governing the erection of headstones. The [Burial and Cremation \(Scotland\) Act 2016](#) gives Scottish Ministers power to make regulations for or in connection with the management, regulation and control of a burial ground by a burial authority.

In 2018, following a Fatal Accident Inquiry into the death of an eight-year-old boy who died after a headstone fell on him at a Glasgow cemetery, Sheriff Ruxton recommended that the Scottish Government should develop and publish national guidance on memorial safety in cemeteries for use by local authorities in Scotland. This guidance is being developed in advance of the burial ground regulations to be made under the 2016 Act. It is expected that the guidance will be published early in 2019 (an indicative timescale only).

[Source: Commons Library, 7 February]

TAXATION

Chancellor's Spring Statement

For information

The Chancellor of the Exchequer has confirmed that he will make the Spring Statement on Wednesday 13 March.

[Source: House of Commons, 29 January]

Gift Aid Small Donations Scheme increase laid before Parliament

For information

As announced in the [Autumn Budget 2018](#), the maximum donation upon which a charity can claim a Gift Aid style top-up payment under the Gift Aid Small Donations Scheme (GASDS) is to be increased from £20 to £30. The draft [Parliamentary Order](#) for this increase was laid before the House of Commons on 14 January and specifies that it will take effect from 6 April 2019. It is important to note, however, that the draft Order must be approved by an affirmative resolution of the Commons and, as of yet, no date for a debate has been set.

[Source: House of Commons, 14 January]

Making Tax Digital for charities: update

For information

Updated VAT Notice

HMRC has published an updated version of [VAT Notice 700/22: Making Tax Digital for VAT](#). This includes updates on digital record keeping requirements and should be read by all VAT-registered charities. A specific update on volunteer-run charity events (such as fêtes and tombolas) is expected to follow shortly.

Importantly, *HMRC has accepted calls for the soft-landing period to be extended to 12 months after the mandated start date*. In practice, this means that charities that have a deferred start date of October 2019 (read more about the deferred mandation date [here](#)) will not have to implement full

digital links at the back-end of their VAT processes until **October 2020**, six months later than the original April 2020 implementation date. This will give these charities more time to test processes and review the software available from third party providers. **Charities with a mandated start of April 2019 will still need to have digital links implemented by April 2020.**

Third party software options

MTD for VAT requires VAT Returns to be filed using third-party software capable of communicating with HMRC's API platform. Software which has been recognised by HMRC is now available and other suppliers still have products in development – see the full lists [here](#).

[Source: HMRC, 21 January]

Gift Aid claims and Full Forenames

HMRC has amended its proposition that charities should collect full forenames in order for there to be a valid Gift Aid Declaration (which was initially due to take effect in April 2019).

The proposal, raised at a recent Charity Tax Forum meeting, was part of HMRC's efforts to reduce the 'tax gap' that occurs when Gift Aid claims are made where the donor has not paid sufficient tax to cover the claim made by the charity. The Charity Tax Group [reports](#) that HMRC has agreed not to introduce this new requirement but instead:

HMRC is looking to see a gradual improvement in claims including full forenames. This will help HMRC to match donors to ensure their eligibility to claim Gift Aid. There will be no retrospective action taken i.e. current Gift Aid Declarations will remain valid.

It will be sufficient for charities to accept names that donors could reasonably be ordinarily known by, rather than needing to check whether it is the donor's legal name. A full forename would be sufficient, but could include shortened names, e.g. Chris rather than Christopher and even Lottie for Charlotte. No changes to the wording on the Gift Aid Declaration would therefore be needed to accommodate these changes, although charities should try to request full names where possible on future declarations.

Where charities hold donors' full names they should submit this data.

Charities are encouraged to document any actions undertaken to improve collection of first name information.

[Source: Charity Tax Group, 14 January]