

## **CLAS CIRCULAR 2019/4 (19 March 2019)**

### **Disclaimer**

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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 AND CHARITY LAW

### *For the public benefit?*

For information

The National Secular Society has recently published a report, *For the public benefit? The case for removing 'the advancement of religion' as a charitable purpose*, that is highly critical of the advancement of religion as a charitable purpose. The report claims that some religious charities promote controversial views, including several Christian ministries which promote so-called "gay conversion therapy" and charities that promote the non-stun slaughter of animals for kosher and halal meat. It also has some criticisms of sharia courts and *batei din* that are also registered charities, claiming that 'they may undermine the principle of "one law for all," ie British [sic] law, resulting in parallel legal systems and further segregation between different communities'. The report argues that religious organisations that wish to be registered as charities should be required to demonstrate that they provide public benefit under another charitable head: for example, because they alleviate poverty.

The NSS's Chief Executive Officer, Stephen Evans, has written to the Chair of the Charity Commission, Baroness Stowell, calling for a rethink on whether or not religious organisations should continue to qualify for charitable status simply on the ground of advancing religion. According to *The Guardian*, a spokeswoman for the Charity Commission said:

'We are aware of the National Secular Society's report on charity and will review it carefully. As a general principle: like all charities, a small proportion of religious charities are misused by others and used in ways the public would not expect. The Commission deals with these issues robustly where they arise.'

### **Comment**

The advancement of religion is recognised in statute as a charitable purpose in all three jurisdictions and to change the position in any of them would require primary legislation. The more basic question is that 'public benefit' is not defined in any of the legislation, on the principle (presumably) that the regulators will recognise it when they see it. In 2013, the House of Commons Public Administration Committee was extremely scathing about the effects of the Charities Act 2006 and recommended that the previous presumption of public benefit be restored. The Committee criticized the fact that the Charities Act 2006 required the Charity Commission to produce public benefit guidance without specifically defining 'public benefit' and concluded:

*'86. In our view, it is for Parliament to resolve the issues of the criteria for charitable status and public benefit, not the Charity Commission, which is a branch of the executive. In this respect the Charities Act 2006 has been an administrative and financial disaster for the Charity Commission*

*and for the charities involved, absorbing vast amounts of energy and commitment, as well as money'* [emphasis in original].

But nothing has happened since that recommendation was made; and we cannot imagine legislation being brought forward in the immediately-foreseeable future.

[Source: CLAS and *The Guardian* – 17 March]

## EMPLOYMENT

### Consultation on extending off-payroll working to the private sector

As announced in the Autumn Budget 2018, the Government is continuing its plans to reform the off-payroll working rules in the private sector. HMRC has now launched a [consultation](#) which considers the detailed design of its planned reform. Existing rules will continue to apply for public sector organisations. The rules (known as IR35) ensure that individuals who work like employees pay broadly the same employment taxes as directly-engaged employees, even where they work through their own personal service company (PSC).

Having already made public-sector bodies and agencies responsible for determining whether the off-payroll rules apply to engagements, the reforms from April 2020 will mean that large- and medium-sized organisations, agencies, and third parties paying an individual's PSC will take on the responsibility for operating the rules.

The consultation into the detailed operation of the reform asks for views on a number of subjects, including:

- the scope of the reform and impact on non-corporate engagers;
- information requirements for engagers, fee-payers and PSCs; and
- addressing status determination disagreements.

Using the definitions provided under the Companies Act, *small companies will be exempt*. The Act defines small companies as those which meet two of the following conditions:

1. Annual turnover must not be more than £10.2m.
2. The balance-sheet total must not be more than £5.1m.
3. The average number of employees must not be more than 50.

The consultation closes at 11:45pm on **28 May**.

[Source, HMRC 5 March]

## FAITH AND SOCIETY

### Civil Partnerships, Marriages and Deaths (Registration etc.) Bill

For information

On 15 March, the Commons agreed to the [amendments](#) made by the Lords to the Civil Partnerships, Marriages and Deaths (Registration etc.) Bill and it is awaiting Royal Assent. We will publish a full update when we see the Act and the Explanatory Notes.

[Source: CLAS – 18 March]

### Electoral law and 'hustings'

Possibly for action

The Commons Public Administration and Constitutional Affairs Select Committee is conducting an inquiry into electoral law. The [terms of reference](#) state that the Committee will *not* be looking at, *inter alia*, 'the regulation of; national political parties, national political campaigns, national referendums, political fundraising, or political broadcasting and advertising (including online)'.

With our Secretary Frank Cranmer having once been a Commons committee clerk himself, and not wishing to lumber the clerks with an irrelevant submission, CLAS wrote to them asking if the issue of local hustings and Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 would be within the scope of the inquiry – and they replied that it would.

The operation of Part 2 of the Act has, we understand, caused a certain amount of difficulty, or at least uncertainty, for local congregations wishing to hold hustings at the time of a general election. CLAS has already been in contact with the Recording Clerk at Friends House, who replied that the Quakers would wish to contribute to a submission on the operation of Part 2. **Does any other denomination have any views that we could include in a short submission to the Committee?**

**The closing date for submissions to the Committee is 20 May. It would be helpful to have any responses by the end of April.**

[Source: CLAS – 14 March]

**Non-stun slaughter and organic labelling**

**For information**

The CJEU Grand Chamber has handed down its judgment in *Oeuvre d'assistance aux bêtes d'abattoirs* (Protection of animals at the time of killing) [\[2019\] EUECJ C-497/17](#).

The Court ruled that EU law does not permit putting the EU organic production logo on products derived from animals that have been ritually slaughtered without pre-stunning because 'such a practice fails to observe the highest animal welfare standards'. There is a long note on the judgment [here](#).

[Source: CJEU – 26 February]

## FUNDING

### Fundraising Regulator

For information

The Fundraising Regulator has announced [changes](#) to the fundraising levy which will affect charities spending over £100,000 a year on fundraising. As of September 2019, for Levy Year 4 the Regulator will:

- continue to base the levy on total funding expenditure;
- decide which banding a charity falls into based on information pulled from its most recently filed accounts (previously the Regulator just used 2014 accounts);
- introduce two extra bandings at the lower end of the levy to help smaller charities move up the scale more gradually.

This means that charities with an annual fundraising spend of £200,000-£350,000 will pay £500 and charities with a spend of £500,000-£750,000 will pay £1,000. Registration for charities below the levy amount will remain at £50. Further information and a full breakdown of the new bands can be found [here](#).

Coincidentally, the Regulator has [referred 59 charities](#) to the Information Commissioner's Office for failure to act on suppression requests within the required period or to reply to warnings from the Fundraising Regulator.

[Source: Fundraising Regulator – 6 & 7 March]



## PROPERTY & PLANNING

### The ChurchCare website

For information

CLAS was very amused when a recent e-mail from the Historic Buildings Religious Alliance included a link to a post on *Law & Religion UK* about the ChurchCare website and attributed it to CLAS. (At the risk of being accused of vulgar self-advertisement, we should explain that *Law & Religion UK* is an entirely separate exercise from CLAS: it's an open-access, entirely unofficial website which our Secretary Frank Cranmer co-writes with David Pocklington.) David produced a series of links to the ChurchCare material on the Church of England's website which we thought might be worth reproducing here. The material is obviously written with Church of England buildings – and the faculty jurisdiction – in mind, but a good deal of it might be of interest to those responsible for the care of the places of worship of other denominations.

What follows provides a series of links to the **Main Headings** on the C of E website (eg Accessibility, Alterations and Extensions, &c) which take the reader to the full range of *advice* on the topic. The **Guidance Note** links are for those who wish to access specific documents directly.

#### Accessibility

- [Guidance Note: Accessibility and Disabled People](#), September 2012.

#### Alterations and extensions

- [Guidance Note: Reordering – Alterations and Extensions](#), May 2013
- [Guidance Note: Fonts](#), undated.

#### Archaeology

- [Guidance Note: Archaeology in Churches](#), April 2016.

#### Audio visual and electrical wiring

- [Guidance Note: Audio Visual Equipment in Church Buildings](#), undated.
- [Guidance Note: Electrical Wiring Installations in Churches](#), April 2013.

#### Bats in churches

- [Guidance Note: Bats in Churches: undertaking works](#), updated August 2016.

#### Bells and bell ringing

- [Guidance Note: Maintenance and Restoration of Church Bells](#), September 2015
- [Code of Practice: Conservation and repair of bells and bellframes](#), web-based edition, 2007.

[There is also a wealth of helpful guidance notes on bells and tower maintenance on the website of the Central Council of Church Bell Ringers, [here](#).]

### Biodiversity.

### Books and manuscripts

- [Guidance Note: Deposit of Books and Documents](#), undated.

### Building maintenance and repair

- [Guidance Note: Calendar of Care](#), undated.

**Building performance:** under construction.

### Church plate

- [Guidance Note: Maintenance of Church Plate](#), undated.

### Clocks

- [Guidance Note: Turret Clocks](#), undated.

### Conservation management plans

- [Guidance Note: Conservation Management Plans](#), updated August 2016

### Conservation reports

- [Guidance Note: Post-Conservation Treatment Reports](#), undated.
- [Guidance Note: Conservation Reports](#), undated.

### Crime and security prevention

- [Guidance Note: Heritage Crime impact statement](#), undated.
- [Impact statement example](#)
- [Protecting Your Church's Treasures](#), undated.
- [Guidance Note: Cycle parking and security in churchyards](#), September 2016.

### Disaster prevention and management

- [Guidance for Churches: Disaster Management Plans, May 2012](#).
- [Disasters: Prevention and management Report of Conservation Forum](#), 22 September 2011.
- [Example page of Risk Assessment Form](#).

### Display cases

- [Guidance Note: Display cases in church buildings](#), September 2016.

### Disposals and loans

- [Guidance Note: Treasures](#), Revised 31 March 2016.

- [Deed of Gift: Template](#).

#### Flags and military colours

- [Guidance Note: Flags, Military Colours and historic banners](#), undated.

#### Glass screens

- [Guidance Note: Glass Screens](#), August 2016.

#### Heating

- [Guidance Note: Choosing the right heating system](#), undated.
- [Guidance Note: Under-Floor Heating](#), undated.

#### Historic floors

- [Guidance Note: Historic Floors](#), Joint guidance with SPAB, undated.

**Human remains**, principles and applications to churches and cathedrals.

#### Insurance, health and safety

- [Guidance Note: Working at Height](#), September 2012.
- [Guidance Note: CDM Regulations 2015](#), September 2016.

#### Introducing new art in churches

- [Guidance Note: New glass for your church](#), August 2016.
- [Commissioning new art for churches](#) (High resolution version)

#### Lighting

- [Guidance Note: Lighting](#), August 2016.
- [Guidance Note: Floodlighting](#), September 2012.

#### Local Authority Investment

- [Local Authority Investment in Church Property](#), Views of the Church Buildings Council, March 2018.

#### Managing conservation projects

- [Guidance Note: Managing Conservation Projects](#), undated.

**Metalwork**, information on: Signs of Damage; Causes of Damage; Maintenance; and Conservation.

#### Monumental brasses

- [Guidance Note: Re-mounting loose monumental brasses in churches](#), undated.
- [Guidance Note: Maintenance of Brasses](#), undated.

**Monuments**: under construction.

### New burials and memorials

- [Guidance Note: Memorials in Churchyards](#), September 2016.
- [Guidance Note: Burials](#), September 2016.

### Noticeboards

- [Oxford Diocesan Guidance Note: Advertisement or signage in churchyards](#), February 2018.
- [Guidance Note: Noticeboards](#), May 2013.

### Organs

- [Guidance Note: Repair or replace?](#), undated.
- [Guidance Note: Organ Maintenance and Restoration](#), November 2015.
- [Guidance Note: Organ Case Conservation](#), undated.
- [Guidance Note: Amplification of organs](#), May 2017.
- [Guidance Note: Pipe organs](#), undated.
- [Guidance Note: Electronic Organs](#), undated.
- [Guidance Note: Redundant Organs](#), undated.
- [Guidance Note: Play the Organ](#), undated.
- [Guidance Note: Organ Builders Reports](#), undated.

[Painting](#), under construction.

### Procurement

- [Guidance Note: Procurement](#), September 2016.
- [Procurement Stages](#), undated.

### Quinquennial inspections

- [Guidance Note: Commissioning Quinquennial Inspection Reports](#), undated.
- [Guidance Note: Model Diocesan Scheme for the Inspection of Churches](#), undated.
- [Case study: St Mary Edgeley quinquennial report](#), November 2018.

[Renewable energy](#): General guidance on energy sources, funding and faculty applications.

### Roodscreens

- [Guidance Note: Recommendations for the care of rood screens](#), January 2014.

### Roofs

- [Guidance Note: Roofs](#), August 2016.

- [Guidance Note: Rainwater Goods and Drainage](#), August 2016.
- [Guidance Note: Alternative roofing materials to lead](#), August 2016.

#### Ruined churches

- [Guidance Note: Ruined Churches](#), undated.

**Safety and security in church buildings:** Advice from a number of publicly available resources to help prevent and minimise the impact of attacks or hate crimes.

- [Keeping our churches, cathedrals and abbeys safe](#), June 2017.

#### Seating

- [Guidance Note: Seating](#), October 2018.

#### Sharing your building and finding partners

- [Open and Sustainable Churches: Legal options for complementary use of church buildings](#), undated.

#### Stained glass

- [Guidance Note: Recording stained glass windows](#), undated.
- [Guidance Note: Protective window guards](#), undated.

#### Statements of significance and needs

- [Guidance Note: Statements of Significance and Statements of Needs](#), January 2014.
- [Guidance Note: Statements of Significance and Statements of Needs Major Projects](#), January 2014.

**Textiles**, under construction.

#### Trees

- [Guidance Note: Summary of Guidance to works to trees](#), August 2016.
- [Guidance Note: Guidance to parochial church councils on trees](#), August 2016.
- [Application for Tree Works in Wales](#), undated.
- [Guidance Note: Advice on trees for Archdeacons](#), undated.

**Wall paintings**, under construction.

**Woodwork and wooden objects**, under construction.

*Some aspects of the guidance are 'under construction'. The above links represent the situation when this post was first published on **7 March 2019**.*

[Source: *Law & Religion UK* – 7 March]

## NORTHERN IRELAND

### Fees for criminal record checks

For information

The Department of Justice has announced that fees for basic and standard criminal record checks in Northern Ireland are set to be reduced. The current fee of £26 for record checks through AccessNI will be reduced to £18 from **1 April**. Over 30,000 applications are made each year for basic and standard checks.

[Source: CLAS – 8 March]

## SCOTLAND

### OSCR

For information

The Scottish Government announced that Lindsay Montgomery has been appointed as its new Chair. She was a board member of OSCR from 2006 to 2014 and Deputy Chair for her last six years on the board. She will take her new role on 1 March 2019, in succession to the Very Revd Dr Graham Forbes, who came to the end of his second four-year term.

Lindsay Montgomery was Chief Executive of the Scottish Legal Aid Board from 1999 until 2015, has previously been Chair of Keep Scotland Beautiful, Chair of the Scottish Government Digital Foundation Board, and Vice-Chair of the International Legal Aid Group.

Subsequently, OSCR announced the launch of a new online registration service for those wishing to apply to become a charity. The service is intended to be more user-friendly than the current system.

The update also notes that the current PDF upload system will no longer be valid as from **1 April 2019**.

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

[Source: Scottish Government – 28 February; OSCR – 5 March]

## TAXATION

### Employer-provided living accommodation benefit-in-kind rules

For information

Employer-provided living accommodation does not create a taxable benefit in kind where it is provided:

- for the better performance of the duties of the employment; and
- it is customary for employers to provide accommodation to employees where they carry out that particular kind of employment.

KPMG reports that HMRC has written to higher education and further education employers notifying them of a change in practice concerning employees' living accommodation. HMRC has reportedly recently stated a belief that the 'majority' of HE and FE employers do not provide accommodation to their employees and therefore that the 'customary' part of this test is no longer met. Further details can be found [here](#).

HMRC does not normally regard the occupation of a parsonage houses as a taxable benefit-in-kind though, in some exceptional cases where the occupant does not have duties tied to a particular locality, HMRC might apply the general benefit-in-kind rules in the ground that the 'better performance' test cannot be met. The operation of the rules is obviously critical for CLAS members and we shall be watching the situation very closely: for the moment, however, the promised (threatened) more general review of employer-provided living accommodation seems to have stalled.

[Source: KPMG – 20 February]

### Spring Statement 2019

For information

The Chancellor presented the Spring Statement to the House of Commons on 13 March. Made against the backdrop of the Government's defeat over the meaningful vote and the uncertainty as to how MPs would vote over rejecting no-deal and the extension of Article 50, there remains an air of uncertainty over some of the forecasting provided in the statement. For example, the Chancellor



confirmed that the Government intends to launch a full three-year Spending Review before the summer recess (to be concluded alongside an Autumn Budget) but that is dependent on avoiding a no-deal Brexit.

A [Written Ministerial Statement](#) set out details of forthcoming policies as well as providing more detail on some of the announcements made in the Spring Statement. This included a number of re-announcements of policies introduced in Budget 2018, but also details of future consultations. Areas which may be of interest to readers include:

**Apprenticeship Levy** – Budget 2018 announced that the co-investment rate will be halved from 10% to 5%, and the amount employers can transfer to their supply chains would increase to 25%. These changes will now take effect from April 2019.

**National Living Wage (NLW)** – The Government confirmed the Low Pay Commission's remit for 2019 and will set a new remit beyond 2020 later in the year. It also published the Terms of Reference for Professor Arindrajit Dube's review of the latest international evidence on minimum wages. His review will report to HM Treasury and the Department for Business, Energy and Industrial Strategy and he will engage closely with the Low Pay Commission, drawing on their expertise and knowledge of the UK labour market.

**Making Tax Digital** - The Government has confirmed a light touch approach to penalties in the first year of implementation. Where businesses are doing their best to comply, no filing or record-keeping penalties will be issued. The focus will be on supporting businesses to transition and the Government will therefore not be mandating MTD for any new taxes or businesses in 2020.

In the coming months the Government will publish:

**Response to consultation on Planning Reform** –A package of reforms including allowing greater change of use between premises, and a new permitted development right to allow upwards extension of existing buildings to create new homes.

**Draft Regulations on the National Insurance Contributions (NICs) Employment Allowance**, inviting technical comments on the implementation the reform of the NICs Employment Allowance announced at Budget 2018 to restrict it to businesses with an employer NICs bill below £100,000.

**A call for evidence on the Insurance Premium Tax operational review**, on where improvements can be made to ensure that Insurance Premium Tax operates fairly and efficiently.

**A call for evidence on the VAT Partial Exemption and Capital Goods Scheme: Simplification**, on potential simplification and improvement to ensure that they are as simple and efficient for taxpayers as possible: this follows on from the recommendations of the Office of Tax Simplification, which has looked in detail at the VAT system and identified possible areas for improvement.

[Source: HM Treasury – 13 March]