

CLAS CIRCULAR 2019/14 (23 September 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

Charity Commission: campaigning at election time

For information

With expectations growing of a general election before the end of the year, Helen Stephenson, CEO of the Commission, has published a [blog post](#) to remind charities of their responsibilities and of the Commission's guidance on [campaigning and political activity for charities](#), and [supplementary guidance on campaigning and political activity during an election period](#):

'I know that many charity leaders will see this as a critical moment to speak up for the cause they serve, and that is legitimate and healthy for our country. I want to assure you that we have no wish to narrow the space in which charities can engage.

I am conscious however that the political context for this likely election is very different from that which people have experienced in the past. Opinion on the key issues around the UK's departure from the EU does not divide along party lines, and these issues will continue to feature prominently over the coming weeks...

If charities appear to the public to be engaged in political debate not because they are representing their beneficiaries or bringing expertise, but because they are taking a position on one side of a political divide, this undermines public confidence in charity as something special, which can inspire trust where other institutions do not.'

[Source: Charity Commission, 13 September]

Charity Commission: guidance

For information

Recently, the Charity Commission has issued a spate of updates. As noted in the Circular 2019/13, in August it updated its guidance on [Independent examination of charity accounts: guidance for trustees \(CC31\)](#). Shortly after that, it published published new guidance on how to operate its online services for charities: contents as follows:

1. [Log in to the Charity Commission online service](#)
2. [Get a new password](#)
3. [Log in to the registration service](#)
4. [Other services and online forms for charities.](#)

It has also published new guidance on [Managing your charity](#), including the following:

1. [Reporting to the Charity Commission](#)
2. [Manage your charity's information with the Charity Commission](#)
3. [Charity trustees](#)
4. [Running your charity](#)
5. [Financial reporting and accounts](#)
6. [Change what your charity does](#)
7. [Land, property and assets](#)
8. [Work with other organisations](#)
9. [Public benefit and charitable purposes.](#)

Finally, it has published a useful consolidated list, with hyperlinks, of its current publications, with dates of publication or last major revision, as follows:

Guidance publications ordered by 'CC' reference number:

- [The essential trustee: what you need to know, what you need to do \(CC3\)](#): 3 May 2018
- [Charity trustee: what's involved \(CC3a\)](#): 3 May 2018
- [What makes a charity \(CC4\)](#): 1 September 2013
- [Ex gratia payments by charities \(CC7\)](#): 1 May 2014
- [Internal financial controls for charities \(CC8\)](#): 1 July 2012
- [Campaigning and political activity guidance for charities \(CC9\)](#): 1 March 2008
- [Trustee expenses and payments \(CC11\)](#): 1 March 2012
- [Managing a charity's finances \(CC12\)](#): 29 January 2016
- [The Official Custodian for Charities' 'land holding' service \(CC13\)](#): 1 September 2004
- [Charities and investment matters: a guide for trustees \(CC14\)](#): 1 August 2016
- [Charity reporting and accounting: the essentials \(CC15b\)](#): 1 January 2013
- [Charity reporting and accounting: the essentials March 2015 \(CC15c\)](#): 27 March 2015
- [Charity reporting and accounting: the essentials November 2016 \(CC15d\)](#): 1 November 2016
- [Use of church halls for village hall and other charitable purposes \(CC18\)](#): 1 July 2001
- [Charity reserves: building resilience \(CC19\)](#): 29 January 2016
- [Charity fundraising: a guide to trustee duties \(CC20\)](#): 7 June 2016
- [How to set up a charity \(CC21a\)](#): 4 November 2014
- [How to register a charity \(CC21b\)](#): 2 February 2015
- [Charity types: how to choose a structure \(CC22a\)](#): 4 November 2014
- [How to write your charity's governing document \(CC22b\)](#): 11 December 2014
- [Exempt charities \(CC23\)](#): 9 August 2019
- [Users on board: beneficiaries who become trustees \(CC24\)](#): 1 March 2012
- [Charity finances: trustee essentials \(CC25\)](#): 16 March 2017
- [Charities and risk management \(CC26\)](#): 1 June 2010
- [It's your decision: charity trustees and decision making \(CC27\)](#): 10 May 2013
- [Sales leases transfers or mortgages: what trustees need to know about disposing of charity land \(CC28\)](#): 31 March 2012
- [Conflicts of interest: a guide for charity trustees \(CC29\)](#): 1 May 2014
- [Finding new trustees \(CC30\)](#): 3 May 2018
- [Independent examination of charity accounts: guidance for trustees \(CC31\)](#): 28 August 2019

- [Independent examination of charity accounts: examiners \(CC32\)](#): 4 September 2017
- [Acquiring land \(CC33\)](#): 1 April 2001
- [Collaborative working and mergers: an introduction \(CC34\)](#): 1 November 2009
- [Trustees trading and tax: how charities may lawfully trade \(CC35\)](#): 24 February 2016
- [Changing your charity's governing document \(CC36\)](#): 5 August 2011
- [Charities and public service delivery: an introduction \(CC37\)](#): 1 March 2012
- [Charities and litigation: a guide for trustees \(CC38\)](#): 3 August 2016
- [Disaster appeals: Charity Commission guidance on starting, running and supporting charitable disaster appeals \(CC40\)](#): 1 August 2012
- [Appointing nominees and custodians \(CC42\)](#): 1 February 2001
- [Incorporation of charity trustees \(CC43\)](#): 1 March 2012
- [Statutory inquiries into charities: guidance for charities \(CC46\)](#): 1 December 2013
- [Complaints about charities \(CC47\)](#): 11 October 2018
- [Charities and meetings \(CC48\)](#): 1 March 2012
- [Charities and insurance \(CC49\)](#): 1 May 2012.

Public benefit 'PB' guides:

- [Public benefit: the public benefit requirement \(PB1\)](#): 16 September 2013
- [Public benefit: running a charity \(PB2\)](#): 16 September 2013
- [Public benefit: reporting \(PB3\)](#): 16 September 2013.

Eagle-eyed readers will notice that the Commission's advice on religion and public benefit – which is still on the Government website – does not appear on the list.

[Source: Charity Commission, 11 September]

FAITH & SOCIETY

UK Special Envoy for Freedom of Religion or Belief

For information

The Prime Minister has [appointed](#) Rehman Chishti MP as his Special Envoy for Freedom of Religion or Belief, succeeding the Lord Ahmad of Wimbledon.

The role's responsibilities include:

- bringing together the efforts of Government, faith actors and civil society to promote the UK's stance on religious tolerance abroad;
- to continue to lead the implementation of the recommendations from the recent independent review into FCO support for persecuted Christians, led by the Bishop of Truro; and
- to be a dedicated champion on the issue of religious freedom.

Rehman Chishti is a barrister: he has been Conservative MP for Gillingham and Rainham since 2010. His father, Abdul Rehman Chishti, became Federal Adviser on religious affairs to the Prime Minister of Azad Kashmir in 1976; however, in 1978 he left Pakistan to take up a post as an Imam in the UK, soon after the Bhutto government had been overthrown in a military coup. Rehman Chishti, his mother and elder sister joined his father in the UK in 1984, when he was six.

[Source: FCO – 12 September]

FUNDING

Fundraising Regulator: named investigation summaries

For information

The Fundraising Regulator has issued the first set of ten named investigation summaries. In October 2018, the Board agreed to name all organisations that it investigates from 1 March 2019. The Regulator has included more detail than previously in these investigation summaries with the aim of making them more useful for the public and the organisations that it regulates:

‘We think it’s right that we name all the organisations we investigate, so that we promote and support a culture of ethical fundraising, allow the public, donors and potential donors to make informed decisions when they choose to donate to charity, and ensure we are transparent in our investigations process.

This brings our investigation work in line with that of other regulators such as the Charity Commission which names the organisations that it investigates.

Where a charity or third-party agency has breached the Code of Fundraising Practice, there is an opportunity for organisations to learn from the recommendations we have made. We will state clearly where organisations have agreed to comply with our recommendations for improvement. Where we find that a breach has not occurred, we want to show this in positive light and share examples of good practice.’

[Source: Funding Regulator – 18 September]

Gift Aid

For information

HMRC has updated its [guidance](#) on the types of fundraising donations on which charities and community amateur sports clubs (CASCs) can claim Gift Aid, as well as the exceptions. The tables under sections titled ‘The Benefit Rule’, ‘Charity Auctions’ and ‘Educational School trips’ have been updated.

Thursday 3 October will be Gift Aid Awareness Day: it is intended to raise the profile of Gift Aid and target the estimated £560m that goes unclaimed each year.

[Source: HMRC – 3 September]

Spending Round 2019

For information

On 4 September, the Chancellor made his statement to Parliament setting out Government spending plans for 2020-21. Sajid Javid announced £13.8bn of departmental spending, mostly to boost the budgets of public services. The announcements gaining the most (immediate) media attention are the increased funding for the Home Office and for health and social care. All documents relating to the Spending Round 2019 can be found [here](#), HM Treasury has published a summary of the headline announcements [here](#), and the Chancellor's speech can be read [here](#).

This Spending Round focuses on day-to-day resource spending as Departments and the devolved administrations already have capital budgets for 2020-21, which were set at the Spending Review in 2015. A full multi-year spending review will be conducted in 2020 for capital and resource budgets beyond 2020-21. The review will take into account the nature of Brexit and set out further plans for long-term reform.

Spending Review and Charities: While charities should take note of the departmental settlements and announcements of particular application to their own areas of operation, the announcement as a whole was not of great consequence to charities. Key points are noted below.

Charity Commission: The annual budget for the Charity Commission for England and Wales is due to increase from £24.9m in 2019-20, to £27.3m in 2020-21.

DHSC: The Department of Health and Social Care's resource budget will rise by 3.1% in real terms. Furthermore, the Local Government settlement contains an additional £1bn for adult and children's social care.

International Aid: The International Aid budget has been protected as 0.7% of GNI.

MHCLG: The Ministry of Housing, Communities and Local Government settlement includes a 2.7 per cent real terms increase to the department's resource budget from 2019-20 to 2020-21.

[Source: HM Treasury – 4 September]

NORTHERN IRELAND

Business rates in Northern Ireland: consultation

**For information and possibly for
action**

The Department of Finance has [published](#) a consultation on business rates which the announcement states will be a 'full and comprehensive review'. The consultation questions include:

- How can revenues from district and regional rates be raised in a way that is fair and equitable and without placing an unacceptable burden on business ratepayers?
- What ways can be found to widen the tax base that could facilitate a lower level of business rates?
- How can a fair distribution between district rates and regional rates be sustained?
- How can a fair distribution between non-domestic and domestic rates be sustained?
- What reliefs and supports are necessary and might be introduced, changed or ended, targeted in line with Executive priorities and recognising ability to pay?
- What alternative taxation options should be considered to complement or partially replace property based non-domestic rates and to allow for lower levels of revenue from business rates?

To respond to the consultation, click [here](#). The consultation closes on **11 November**.

[Source: Department of Finance – 16 September]

Charity Commission for Northern Ireland: consultation on Annual Return and registration

**For information and possibly for
action**

The Charity Commission for Northern Ireland is consulting on additional questions to be included in the online application for registration (OLAR) and the Annual Return Regulations 2019

The Commission believes that the information provided by charities to these questions will increase the transparency around the areas, contributing to public confidence in charities. The Commission will

also use the information to adapt its work processes, ensuring that its limited resources are used in the most proportionate, transparent and effective way possible.

Annual monitoring return

The annual monitoring return (AMR) is a key tool used by CCNI to regulate charities after registration. The Commission is proposing to add a number of new, mandatory questions to the Annual Return Regulations 2019, which will gather data on charities and the sector on issues such as:

- data protection;
- fundraising;
- governance; and
- spending on charitable purposes.

The Annual Return Regulations 2019 will apply to charities whose financial period begins on or after 1 January 2020.

Registration application

In brief, the proposed changes to the online application for registration include a number of new questions which centre on safeguarding, related parties and an expansion of the Classification section of the application. The Commission believes that the new questions will bring a number of benefits to individual charities, the charity sector as a whole and to the Commission. They include:

- supporting registration applicants in completing sections of the application (such as Classification) which have been identified as causing some confusion
- assisting the Commission in overseeing and providing guidance on areas which have been highlighted as of particular importance, for example safeguarding
- gathering data which can then be used to assist charities in completing their annual monitoring return in the years ahead
- gathering trustee contact details to support trustees in ensuring their charity is in compliance with their legal obligations.

Further information on the new questions, and why they have been proposed, is detailed in the consultation document, [here](#).

The consultation will close at **5 pm on Tuesday 22 October**.

[Source: CCNI – 28 August]

CCNI: suspension of new charity registrations

For information

The Northern Ireland Council for Voluntary Action [reports](#) that the Charity Commission for Northern Ireland is currently not registering charitable organisations because of a High Court ruling handed down on 16 May.

In *McKee & Ors v The Charity Commission for Northern Ireland* [2019] NICh 6, McBride J held that the Charities Act (Northern Ireland) 2008 did not grant the Commission an express power to delegate to staff and, further, that there was no implied power of delegation: 'Accordingly, the only way in which the Commission can carry out its decision making functions is either when it meets as a complete body or acts in accordance with the powers set out in paragraph 9 of Schedule 1 [of the Act]'.

It is not known when this situation will be resolved. The Commission will appeal, but if the Court of Appeal upholds the decision it may need further legislation in order to resume registration – and that would probably require a functioning Northern Ireland Executive.

NICVA notes that where a trust needs charitable status urgently, it can apply direct to HMRC for charitable tax recognition without first having to register with CCNI: see '[how to register your charity for tax purposes](#)'. Charitable organisations can also [apply for rates exemption](#) without first having to be registered with the Commission.

[Source: NICVA – 4 September]

PROPERTY & PLANNING

'Right to rent' checks

For information

MHCLG has [published a tool](#) to enable landlords check if a person can rent a private residential property in England. Checks must be carried out on those aged 18 or over who pay to use a property as their main home, eg tenants, sub-tenants and paying house guests.

If a property is bought that already has tenants, further proof will be needed to confirm that the last landlord did the check and [further checks on tenants](#) will become the buyer's responsibility in future.

[Source: MHCLG – 12 September]

SAFEGUARDING

Fees for DBS checks

For information

Fees for Disclosure and Barring Service checks [are being reduced](#) with effect from **1 October**. The key changes are as follows:

Type of DBS check	Current fee	Fee from 1 October 2019
Basic DBS check	£25.00	£23.00
Standard DBS check	£26.00	£23.00
Enhanced DBS check	£44.00	£40.00

The fee for the Update Service will remain the same, at £13 per year.

[Source: BWB – 17 September]

SCOTLAND

Programme for Government 2019-20

For information

Nicola Sturgeon has announced her [Programme for Government for 2019-20](#). Her plans include:

- a 'Green New Deal', harnessing the power of the Scottish National Investment Bank, a £3 billion Green Investment Portfolio and a Green Growth Accelerator – what the Climate Change Emergency Response Group (CERG) has termed a 'Green City Deal' – to attract green finance to Scotland;
- investing over £500 million in improved bus priority infrastructure to tackle the impacts of congestion on bus services and raise bus usage;
- decarbonising Scotland's railways by 2035 and making the Highlands and Islands the world's first net zero aviation region by 2040;
- developing regulations so that new homes from 2024 must use renewable or low carbon heat;
- targeting a minimum of £30 million of support for renewable heat projects;
- bringing forward the date for the first Scottish Child Payments to Christmas 2020;
- making the first Job Start Payments in spring 2020;
- announcing the first wave of new or refurbished schools under the £1 billion school investment programme;
- providing £15 million of funding for more services and staff for additional support for learning;
- putting in place a Women's Health Plan to tackle women's health inequalities;
- providing an additional £20 million of funding to help tackle the drugs emergency;
- continuing to support mental health, with a 24/7 crisis support service for children and young people and their families, a community wellbeing service enabling self-referral for children and young people and a £5 million investment in a community perinatal mental health service across Scotland; and
- taking forward planning to mitigate the worst consequences of a 'no deal' Brexit.

The following bills will be introduced:

- Animal Health and Welfare (Amendment) Bill

- Budget Bill
- Circular Economy Bill
- Civil Partnership Bill
- Continuity Bill Redress (Survivors of In Care Abuse) Bill
- Defamation and Malicious Publication Bill
- Forensic Medical Services (Victims of Sexual Offences) Bill
- Good Food Nation Bill
- Hate Crime Bill
- Heat Networks Bill
- Rural Support Bill
- Transient Visitor Levy Bill
- UEFA European Championship Bill.

[Source: Scottish Government – 3 September]

TAXATION

HMRC: updates for employers

For information

HMRC has published several calculators on its website to help make pay-related topics simpler for employers. They include:

- [Maternity, Adoption and paternity calculator for employers](#)
- [Calculate your employee's statutory sick pay](#)
- [National Minimum Wage and Living Wage calculator for employers](#)
- [Calculate your employee's statutory redundancy pay](#)
- [Calculating holiday pay for workers without fixed hours or pay.](#)

[Source: HMRC – 21 August]

WALES

Smoking in domestic premises used as places of work

For information

The Welsh Government consulted some time ago on the Smoke-free Premises and Vehicles (Wales) Regulations 2018.

CLAS and Cytûn did not take any position on the policy questions concerned but responded to two questions, specifically, because of their possible effect on clergy of member Churches. In particular:

- We noted that ministers of religion may smoke in private away from parishioners, but that the law could be engaged if their private quarters were regarded as part of the workplace under the rules (including for tax reasons) – in this respect there appeared to be a contradiction between the consultation document and the Regulations. The Welsh Government's published response to the consultation failed to address either the apparent contradiction between the consultation document and the draft Regulations or the disproportionate effect on clergy due to the terms surrounding their occupation of tied properties.
- We also noted that the Equalities Impact Assessment failed to acknowledge the specific effect on faith workers, despite the fact that we pointed this out to Welsh Government in 2015, and we suggested that the claim that *proactive work has taken place to engage groups representing people with protected characteristics* had not been borne out by our experience as faith groups. The Government response did not address our concerns, and we noted that the Equalities Impact Assessment on the website had not been updated.

Gethin Rhys wrote to the Welsh Government with the following questions:

1. Whether the Regulations are being amended to resolve the contradiction noted by us between the draft regulations and the consultation document?
2. Whether there has been any consultation with HMRC regarding the effect of the definition of "workplace" in these Regulations being different in scope from that used by HMRC in handling the tax affairs of Ministers of Religion, and what the outcome of such consultation may have been?
3. What is the timetable for laying the Regulations before the Assembly?
4. How does the Government propose to engage with faith groups that are specifically and disproportionately affected by the proposed changes in order to meet the Government's Public Sector Equality Duty?

The responsible Minister has now replied as follows:

“Dear Revd Rhys,

Thank you for your email of 13 August concerning the impact of the draft Smoke-free Premises and Vehicles (Wales) Regulations 2018 (‘the draft Regulations’) on the rights of clergy in Wales to smoke in their own home. I have been passed your email as Minister responsible for the Public Health (Wales) Act 2017.

You will be aware from our previous correspondence during the Bill’s passage that section 7 of the Public Health (Wales) Act 2017 (‘the 2017 Act’) defines ‘workplaces’ for the purposes of that Act as premises that are:

- used as a place of work by more than one person (even if the persons who work there do so at different times, or only intermittently), or
- used as a place of work by no more than one person but where members of the public might attend for the purpose of seeking or receiving goods or services from the person working there (even if members of the public are not always present).

The requirement for workplaces to be smoke-free is limited to only those parts of the premises that are used as a place of work and are enclosed or substantially enclosed. Furthermore, dwellings that are also workplaces are only required to be smoke-free when being used as a place of work.

This definition applies only to determine whether premises in Wales are smoke-free for the purposes of the 2017 Act. It does not have any inter-relationship with the definition of a workplace for HMRC purposes and the question of whether premises in Wales constitute a ‘workplace’ for the purposes of the 2017 Act will have no bearing on any tax exemptions or status.

If made, the draft Regulations would set exemptions to the application of the smoke-free requirements at section 7 of the 2017 Act. Dwellings that would otherwise be smoke-free by virtue of being used as a place of work by more than one person will only be smoke-free if one or more of the persons who work at the premises do not live in the dwelling or if all of the persons who work there live in the dwelling but members of the public might attend to receive goods or services.

In accordance with section 7 of the 2017 Act, even if a particular workplace dwelling is not captured by the proposed exemption in the draft Regulations, the dwelling is required to be smoke-free only in the parts that are used for work and only for the duration that they are so used; there are no restrictions on smoking in the parts of the dwelling not being used for work purposes. Smoking will be permitted in all parts of the dwelling when it is being used for social, domestic or other private purposes, but not when it is not being used as a place of work.

The 2017 Act as read with the draft Regulations aims to strike an appropriate balance between protecting members of the public or other workers attending a workplace dwelling from the harms of second-hand smoke and the rights of any smokers living in a dwelling that is used as

a workplace. As set out above, it does so by providing that all workplace dwellings are only ever smoke-free when actually being used as a place of work for the purposes of the 2017 Act. We do not, therefore, consider that a specific exemption for clergy houses is required as the effect here is the same as other home workers. Welsh Government officials would be happy to meet with yourself and other faith groups to discuss this matter if the effect of the draft Regulations remains unclear.

It is our current intention that the draft Regulations will come into force in 2020. There will be a communications campaign to maximise media activity prior to the new smoke-free requirements coming into effect to ensure the public are aware of the changes to the law.

Guidance to support implementation of these new requirements will be produced and published on the Welsh Government website.

I hope you find this response helpful.

Yours sincerely,

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol/Minister for Health and Social Services”

Cytûn and CLAS are publishing this response to make sure that, should the matter ever come to court, the Minister's views are readily available for quotation.

[Source: Cytûn – 17 September]