

CLAS CIRCULAR 2019/9 (14 June 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

Charity Commission: report on Oxfam inquiry

For information

The Charity Commission has [published](#) a critical report on Oxfam GB, in response to allegations of misconduct in Haiti in 2011, and confirmed that it has taken regulatory action. The report found that aspects of the charity's record on safeguarding amounted to mismanagement and describes a culture of "tolerating poor behaviour" before concluding that the charity "failed to meet promises made".

In summarising the wider lessons for the sector, the Commission has also issued a warning that "no charity is bigger than the people it serves or the mission it pursues". Further details on the specific findings of the inquiry can be found in the Commission's press release [here](#).

As a result of the inquiry, the Commission has used its powers to issue Oxfam GB with an Official Warning and Directions under Section 84 of the Charities Act 2011. This directs trustees to undertake specific actions including the submission of an action plan for the Commission's approval by 30 June 2019.

In the 'wider lessons' section of the report, the Commission encourages trustees to understand the risks to their charity and to make sure that those risks are properly managed. In particular, it stresses that trustees must be willing and able to hold the executive of their charity to account, regardless of the size or complexity of the charity. The section concludes:

"Charities must never lose sight of why they exist and must demonstrate how their charitable purpose drives everything they do, and most especially how they respond when things go wrong".

[Source: Charity Commission – 11 June]

Transposition of the EU 5th Money Laundering Directive

For information

The Government has issued a consultation document on the transposition of the 5th Money Laundering Directive: its current proposals would require every express (ie non-statutory) trust to register with HMRC's Trust Registration Service – with no carve-out for small charities and excepted charities that currently do not have to register with the Charity Commission.

The Baptist Union is particularly concerned that the current proposal, if implemented, will entail an immense amount of work for no obvious benefit.

CLAS has responded to the consultation, arguing that to require every tiny charity to register would be “disproportionate to the object pursued” and that there should be some *de minimis* threshold for small charities.

[Source: CLAS – 10 June]

FAITH & SOCIETY

Law Commissions: surrogacy law

For information

The Law Commission for England & Wales and the Scottish Law Commission have launched a joint Consultation Paper on surrogacy: [Building families through surrogacy: a new law](#). The two Commissions

"think that there is a strong case for reform to the law. We believe that the current law is out of date, unclear and not fit for purpose. We think that the law needs to be updated to make it workable and to bring it up to date, and ensure that it protects the welfare of all the participants to the arrangement including, most importantly, the welfare of the child."

The consultation closes on **27 September 2019**.

[Source: Law Commission – 6 June]

Regulation of pre-paid funeral plans: consultation

For information

HM Treasury is [seeking views](#) on the Government's proposed regulatory framework for bringing funeral plans within the remit of the Financial Conduct Authority (FCA). The move comes in response to the Government's call for evidence in June 2018, following concerns about the risk of consumer detriment in the market.

The consultation closes **25 August 2019**.

[Source: HM Treasury – 1 June]

FUNDING

Fundraising Regulator: revised Code of Fundraising Practice Aid

For information

The Fundraising Regulator has published the final version of the new [Code of Fundraising Practice](#), which will come into effect from October. The code sets the standards for fundraising by charitable institutions and third-party fundraisers in the UK.

In the final version of the new Code, the 20 sections, three separate rulebooks and the legal appendices have been compiled into a single document, comprised of:

- Introduction
- Part 1: Standards which apply to all fundraising
- Part 2: Standards which apply to working with others
- Part 3: Standards which apply to specific fundraising methods
- Glossary.

The new code uses "must" and "must not" in **bold text** to indicate a standard based on legal requirements. Standards where "must" and "must not" are *not* in bold text are regulatory and not based on legal requirements.

[Source: Fundraising Regulator – 6 June]

PROPERTY & PLANNING

Tenant Fees Act 2019

For information

CLAS members who let property to tenants should note that the [Tenant Fees Act](#) has now come into effect. The reforms under the Act include a cap on deposits of five weeks' rent for most properties (although exceptions do apply) and a ban on necessary fees.

Read the Government's [guidance](#) for further details on the Act.

[Source: MHCLG – 1 June]

Toilets for disabled people

For information

The Government is consulting on [proposals](#) that all large new public buildings should provide "Changing Places" toilets for severely disabled people in newly-built large buildings commonly used by the public *or where such a building undergoes an extension, material alteration or change of use*. The list of such buildings includes "cultural centres, including museums, concert halls, art galleries *and faith centres* with over 300,000 visitors expected per year". The consultation notes that building works in Listed Buildings would have to satisfy both building control and the separate procedures of listed building consent. Listed buildings within scope (ie above the 300,000 visitor threshold) would be required to make "reasonable provision" to provide a Changing Places toilet. Guidance is already given on "reasonable provision" in relation to listed buildings for other aspects of the Building Regulations. Where a requirement goes beyond a "reasonable provision", for example in a historic setting, building control bodies can decide that it is not "reasonable". Historic England provides [guidance](#) on how to make sympathetic access arrangements in a historic setting.

On the face of it, the proposal is unlikely to affect very many church buildings. For a cathedral or major church with a high visitor footfall, however, the construction of (eg) a new visitor centre might conceivably trigger the requirement.

The consultation document can be found [here](#). The consultation closes on **21 July**.

[Source: MCHLG – 12 May]

SCOTLAND

Scottish Government: response to consultation on funeral cost guidance

For information

The Scottish Government has published its response to the consultation on guidance over funeral costs. The guidance forms part of a series of actions which the Scottish Government hopes will encourage people to talk about, plan and provide for their funerals. You can read the full guidance [here](#).

[Source: Scottish Government – 13 May]

TAXATION

HMRC & Charity Commission: Guidance on charities and trading

For information

HMRC and the Charity Commission have updated the [Guidance on charities and trading](#) in relation to the small trading tax exemption, as follows:

“When your charity’s trading does not relate to your charity’s primary purpose, it may still be exempt from tax if the turnover is below the small trading tax exemption.

Some of your charity’s profits may already be exempt from tax because they’re from a trading activity that is part of your [primary purpose](#) trading.

You can still claim an additional exemption for other trading profits if they are below the small trading tax exemption limits.

If your charity’s small trading turnover is higher than the exemption limits then you’ll have to pay tax on all of your profits from that trade.

Your charity’s gross annual income is the total turnover before deducting tax and expenses.”

This table shows how the small trading tax exemption limits are applied:

Charity’s gross annual income	Maximum permitted small trading turnover
Under £32,000	£8,000
£32,001 to £320,000	25% of your charity’s total annual turnover
Over £320,000	£80,000

[Source: HMRC – 6 June]