

CLAS CIRCULAR 2019/18

(30 October 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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POLITICAL UPDATE

For information

The Government [published](#) the new Withdrawal Agreement and Political Declaration that was agreed with the European Union. The Withdrawal Agreement sets out the terms of the UK's exit from the European Union, including that the EU's rules on VAT would apply in Northern Ireland.

The Prime Minister was required by the European Union (Withdrawal) (No. 2) Act 2019 (aka the Benn Act) to ask for an extension to Brexit and the EU Council accepted the Prime Minister's request: the new Brexit date is **31 January 2020**, though membership can be terminated sooner if the UK agrees a deal with the EU.

Following a series of parliamentary votes on the new Withdrawal Agreement and Political Declaration, the Government was required to introduce the [EU \(Withdrawal Agreement\) Bill](#) to Parliament to allow for full scrutiny. MPs did approve the bill at second reading but in a vote straight afterwards they rejected the programme motion for debating it after a number of MPs criticised the pace of the legislation.

The Prime Minister has therefore 'paused' the Brexit Bill and is instead pushing for a general election. The [Early Parliamentary General Election Bill](#) was read the third time in the Commons on Tuesday and is currently in the Lords. The election looks set to take place on **12 December** and the intention is to dissolve Parliament immediately at 00.01 on 6 November (presumably there was no enthusiasm for dissolving Parliament on Guy Fawkes Night). If that happens, for lack of Parliamentary time the Government may not be able to lay the necessary Regulations either for changing the system of registering marriages or for introducing opposite-sex civil partnerships in England & Wales or for same-sex marriage in Northern Ireland. *Obviously, we will keep you posted.*

Additionally, on 25 October the [Chancellor wrote](#) to the Treasury Select Committee to confirm that the planned Budget will not take place on 6 November.

[Sources: DEXEU, 18 October; House of Commons, 22 October; HM Treasury, 25 October; Commons *Hansard*, 29 October]

CHARITIES & CHARITY LAW

Charity Commission report on charity fraud

For information

The Charity Commission has [published](#) a report on the biggest fraud risks to charities, following a study in which over 3,300 charities took part. Over two thirds of charities (69%) think fraud is major risk to the charity sector and internal (insider) fraud is recognised as one of the biggest threats. However, the findings also show that charities are not always recognising their vulnerability and are not consistently putting basic checks and balances in place. The research also found that:

- over a third (34%) think their organisation is not vulnerable to any of the most common types of charity fraud;
- over half (53%) of charities affected by fraud in the past 2 years knew the perpetrator;
- 85% of charities think they are doing everything they can to prevent fraud, but almost half do not have any good-practice protections in place; and
- the gap between awareness and practical action poses a threat to charities' valuable funds, and to public trust and confidence in the sector.

The report suggests that charities:

- introduce and enforce basic financial controls (for example have at least two signatories to bank accounts and cheques, undertaking regular bank reconciliations);
- make sure no single individual has oversight or control of financial arrangements; and
- encourage staff, volunteers and trustees to speak out when they see something they feel uncomfortable about.

[Source: Charity Commission, 21 October]

Commons Committee on sexual exploitation and abuse in the aid sector

For information

The House of Commons International Development Committee has [published](#) a report on sexual exploitation and abuse in the aid sector.

The Committee found that they have 'not yet seen sufficient attention being given to improving the effectiveness of whistle-blowing policies and we are concerned that the importance of protecting

whistle-blowers has so far been downplayed.' They more generally thought that the speed of response has been rather slow.

[Source: International Development Committee, 16 October]

Updated accounting rules for larger charities

For information

Regulators behind the Statement Of Recommended Practice (SORP) have [published](#) Information Sheet Three, which explains how charitable companies need to respond to changes to the Companies Act.

There are three new requirements, of which two apply to charities with over £36m in gross annual income, gross assets over £18m or more than 250 employees, and the other applies to charities with more than 250 employees. The new requirements look at the duties of directors to promote the charity's purpose, as well as employee engagement and stakeholder engagement.

[Source: *Civil Society*, 25 October]

EMPLOYMENT

BEIS: enhanced protections for workers facing workplace discrimination

For information

BEIS has [announced](#) proposals for enhanced protections for workers facing workplace discrimination, including consulting on whether employers should be required to provide references for former employees and cracking down on rogue employers using references as a 'bargaining chip'.

The proposals are part of a wider package (announced in July) covering the misuse of non-disclosure agreements and workplace discrimination.

[Source: BEIS, 29 October]

EHRC: Non-Disclosure Agreements

For information

The Equality and Human Rights Commission has launched [new guidance for employers](#) on the use of confidentiality/non-disclosure agreements (NDAs) in discrimination cases, pursuant to s.13 Equality Act 2006

It clarifies the law on confidentiality agreements and when and how they can be used and sets out good practice on the use of NDAs in order to encourage greater transparency and improved understanding of different types of discrimination at work, so that systemic problems can be identified and tackled by employers and employees alike. The guidance lists some important dos and don'ts:

- don't ever ask workers to sign a confidentiality agreement as part of their employment contract which would prevent them from making discrimination claim against you in the future;
- don't use a confidentiality agreement to prevent a worker from discussing a discriminatory incident that took place in the workplace unless, for example, the victim has requested confidentiality around the discriminatory experience;
- don't ever use a confidentiality agreement to stop employees from whistleblowing, reporting criminal activity or disclosing other information as required by law;
- do always give your workers time to read and fully understand the terms of a confidentiality agreement;
- do always give your workers a copy of the confidentiality agreement;
- do make sure the confidentiality agreement spells out the details of exactly what information is confidential; and
- do monitor the use of confidentiality agreements in your workplace.

Charles Wynn-Evans and Emma Byford of Dechert LLP have published a useful short note on the guidance [here](#).

[Source: *Lexology*, 22 October]

Office-holders and whistleblowers: *Gilham*

For information

On 16 October, the Supreme Court handed down judgment in *Gilham v Ministry of Justice* [\[2019\] UKSC 44](#), in which it held unanimously that a district judge qualified as a 'worker' or a 'person in Crown employment' for the purposes of the protection given to whistle-blowers under Part IVA of the Employment Rights Act 1996. It decided that the Act (and the parallel provisions in the Employment Rights (Northern Ireland) Order 1996, as amended) should be read and given effect so as to extend whistle-blowing protection to the holders of judicial office.

Comment: As readers will know, for the purposes of employment law, a significant proportion of clergy – for example, Church of England incumbents with freehold tenure and Methodist ministers – are, like judges, office-holders rather than workers or employees. So in light of *Gilham*, if the issue were to arise in future, would whistle-blowing protection be extended to the holder of an ecclesiastical office?

The judgment has generated a considerable amount of comment in the employment law press and social media, and the consensus seems to be that office holders would almost certainly be protected if dismissed or disciplined for whistle-blowing. Amaya Hobby, of Veale Wasbrough Vizards LLP, for example, suggests in an article in *Lexology* that the judgment 'has wide implications by extending whistleblowing protection to individuals who were previously beyond its scope. "Office holders" does not just include judges, and it is likely to apply to many other professions, such as the clergy and statutory appointments such as company directors and board members'. One or two commentators have gone even further and suggested that the judgment will trigger a gradual move towards greater employment rights generally for office holders.

[Source: *BAILII*, 16 October]

IMMIGRATION

Commons Library: future UK immigration system

For information

The House of Commons Library has [published](#) a briefing on the UK's future immigration system. According to the Government, the future immigration system is intended to be implemented from 1 January 2021. The briefing sets out the current proposals for the future immigration system – although many of the details remain unknown.

[Source: House of Commons Library, 18 October]

Migration Advisory Committee: call for evidence

For information **and possibly for action**

The Migration Advisory Committee has issued a [call for evidence](#) on salary thresholds for Tier 2 (General) immigrants and the possibility of establishing an Australian-style points-based immigration system (PBS). The consultation closes at **9 am on 5 November**.

It is very difficult to see how we could make a corporate response on behalf of CLAS. The major concern for CLAS members, of course, is the criteria for Tier 2 (Ministers of Religion) – which do not appear to be part of this consultation. Where there *may* be an issue is with laypeople recruited from overseas as church administrators of various kinds – but we don't have the necessary information to make a coherent response on that.

In the circumstances, *we suggest that any CLAS member who has had problems with Tier 2 (General) visa applications should respond individually*. It would very be helpful if we could be copied in to any such response.

[Source: Migration Advisory Committee, 10 September]

PROPERTY AND PLANNING

Building Safety Regulator to be appointed

For information

MHCLG is to appoint a Building Safety Regulator and it has [announced](#) that Dame Judith Hackitt will provide independent advice to the Government on how best to establish the new post. The appointment follows Dame Judith's [Independent Review of Building Regulations and Fire Safety](#), in which the Government committed to take forward all of her recommendations and go further, by establishing a new national Building Safety Regulator.

The Regulator will oversee the design and management of buildings, with a strong focus on ensuring that the new regime for higher-risk buildings is enforced effectively and robustly. It will also have the power to apply criminal sanctions to building owners who do not obey the new regime.

[Source: MHCLG, 28 October]

Historic England on terne-coated stainless steel

For information

Historic England has published a new Guidance Note: [Church Roof Replacement Using Terne-coated Stainless Steel](#). As many CLAS members will be aware, replacing a lead roof that is failing or has been vandalised is extremely controversial, and Historic England normal expectation is like-for-like replacement.

The Note merely sets out the pros and cons without coming to any firm conclusions as to its desirability or otherwise – though it does suggest that 'Replacement like-for-like with lead roofing is the best technical remediation, although where there is a means of access the risk of further theft remains'.

[Source: Historic England, 28 October]

Listed Places of Worship Grant Scheme: 1-year extension

For information

The Listed Places of Worship Grant Scheme has been extended for a further year until **March 2021**. There is no confirmation to that effect on the Government's website (too busy with Brexit, maybe?); however, the extension has been welcomed by the Church of England (which has the lion's share of listed places of worship) so it must be 'official'.

[Source: LMSC, 29 October]

MHCLG: new heritage conservation programme announced

For information

MHCLG has [announced](#) funding for a new heritage conservation programme. The intention is to invite every local authority in England to draw up a list of buildings of significant historical and cultural value in its area. Local people will be able to nominate heritage assets which are important to them and reflect their local area and identity.

The initiative will be supported by a team of heritage experts and funded by £700,000 to help ten English counties identify areas which need protecting. (One might well ask, 'why only ten?')

[Source: MHCLG, 23 October]

SAFEGUARDING

For information

Charity Commission: updated safeguarding guidance

The Charity Commission has updated its guidance on [Safeguarding and protecting people for charities and trustees](#). The updates include when to consider DBS checks and how to put into practice policies and procedures, along with new sector resource signposting.

[Source: Charity Commission, 22 October]

SCOTLAND

Scottish Government: initial response to short-term lets consultation

For information

The Scottish Government has [published](#) its initial response to its [consultation](#) on short-term lets. The response states that more than 1,000 replies from communities, landlords and businesses raised a number of concerns about the effects of short-term lets, including anti-social behaviour, safety fears and the impact on the housing market.

The Scottish Government is considering the analysis of the consultation responses, which also highlighted the economic benefits brought by short-term lets.

[Source: Scottish Government, 28 October]

TAXATION

Making Tax Digital: more time to comply with digital links requirements

For information and possibly for action

To help businesses meet their digital link requirements, HMRC has allowed them a 1-year soft-landing period from their original mandation date (VAT period starting on or after 1 April 2019 or 1 October 2019 for deferred businesses) for Making Tax Digital (MTD).

Through HMRC's engagement with stakeholders, officials are aware that some businesses (including charities) with complex or legacy IT systems may require a longer period to put digital links in place across their MTD software to meet their legal MTD for VAT requirements. HMRC has therefore opened the process for businesses to apply for additional time, if needed, to put digital links in place in order to comply with the requirements of MTD. This additional time will be provided for businesses with complex or legacy IT systems that are unable to comply with MTD digital links requirements by the end of the initial soft-landing period.

The criteria for making an application and how to apply are set out in the [VAT Notice 700/22, section 4.2.1.3](#). Applications must be received by HMRC by the end of a business's soft-landing period and charities would have to actively contact HMRC to benefit from this extension.

Charities should note that they must explain why it is unachievable and not reasonable to have digital links in place by the MTD VAT digital links mandation date: for example, 'why does commercially available software not meet the digital link requirement for your business?'

Lack of preparedness or simple cost concerns will not be accepted as a sufficient reason for delay.

[Source: HMRC, 24 October]