

CLAS CIRCULAR 2019/22 (20 December 2019)

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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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THE GENERAL ELECTION AND THE QUEEN'S SPEECH

For information

The outcome

The Conservative Party won a healthy 80-seat majority in the general election, up 48 seats on the 2017 election – results [here](#). The SNP also had a good election, winning an additional 13 seats and increasing their total of MPs to 48. Conversely, it was a bad night for Labour, who lost 59 seats, leaving their total at 203 MPs. Jeremy Corbyn stated that, while he will stay as leader for a “period of reflection”, he would not lead the party in the next election. The Liberal Democrats lost one seat (they now number 11 MPs) and Jo Swinson resigned as party leader after losing her seat. The Democratic Unionist Party lost two seats, reducing their total of MPs to 8. Green MP Caroline Lucas increased her majority in Brighton Pavilion but, like Plaid Cymru, the Greens were unable to win any additional seats.

The Queen's Speech

The content of [the Queen's Speech](#) was largely as predicted, beginning with a renewed commitment to leave the European Union on 31 January 2020. As usual, the Government issued comprehensive [background briefings](#) for each of the Bills proposed for the session and a “what it means for you” brief.

The Speech made much of a commitment to increased funding for the NHS and enshrining in law the multi-year funding settlement for the NHS agreed earlier in the year, and announced the introduction of a special fast-track visa for health-workers from overseas. It also committed the Government to end hospital parking-charges for “those in greatest need” – though whether that translates into free parking for those with outpatient appointments remains to be seen. Ministers will also continue work to reform the Mental Health Act. Perhaps most interesting was a commitment to seek a cross-party consensus on funding social care. The Government also confirmed its intention of raising the threshold for National Insurance Contributions and raising the National Living Wage, together with introducing leave for unpaid carers and measures to encourage flexible working.

On immigration generally, the Speech included a commitment, in effect, to introduce an Australian-style points-based system and “welcome skilled workers from across the world” to contribute to the UK economy – though without mentioning Australia.

On family law, the accompanying briefing notes confirm that the Divorce, Dissolution and Separation Bill and the Domestic Abuse Bill will be reintroduced. On housing, the Speech included a commitment to greater protection for tenancies and discounts for first-time buyers.

There was much in the Speech about crime, including longer sentences for violent offenders and support for victims. Perhaps most interestingly, the Government announced its intention of establishing a Royal Commission on the criminal justice process – though it should be said that a Royal Commission can be a fairly slow process: the background briefing reminds us that the last Royal

Commission on Criminal Justice was established in 1991, reported in 1993 and led to the establishment of the Criminal Cases Review Commission in 1995 – four years after the Commission's appointment.

On the environment, the Government confirmed its commitment to net-zero greenhouse gas emissions by 2050 and announced a proposal to ban the export of plastic waste to countries outside the OECD.

On the constitution, the Government reiterated its desire to see devolved government restored to Northern Ireland and announced that it will look to devolve responsibility for corporation tax to Stormont once the Assembly and Executive are restored and will consider devolving responsibility for short-haul Air Passenger Duty.

To no-one's surprise, the Speech proposes to repeal the Fixed-term Parliaments Act 2011. Curiously, given the media speculation, it confirmed its support for freedom of speech, human rights and the rule of law – and said that it would seek to establish a sanctions regime against states that committed human rights abuses. There was nothing specific in the Speech either about repealing or amending the Human Rights Act 2010 or about giving the lower courts that power to overturn decisions of the European Court of Justice – but "A Constitution, Democracy and Rights Commission will be established" which, says the accompanying briefing, will "consider the relationship between Government, Parliament and the courts and to explore whether the checks and balances in our constitution are working for everyone". So watch this space.

[Source: HM Government, 19 December]

CHARITIES & CHARITY LAW

Charity Commission: reporting a serious incident when it involves a partner

For information

The Charity Commission has published new guidance for charity trustees on [when to report incidents involving the charity's partners as a serious incident](#). It covers the situations where:

- [the incident involves the charity's funds, brand, people or an activity that it funds or is responsible for](#)
- [the incident does not involve the charity's funds, brand or people but could have a significant impact on the charity](#); or
- [the incident does not involve the charity's funds, brand or people and has little or no impact on the charity](#).

The Commission says that trustees should make a serious incident report when an incident has occurred involving one of the charity's partners, in the UK or internationally, which materially affects the charity, its staff, operations, finances and/or reputation such that it is serious enough to be reported. Partners in this context includes the following:

- a delivery partner or sub-contractor of the charity;
- a subsidiary trading company of the charity;
- an organisation that receives funding from the charity; and/or
- another charity or organisation that is linked to your charity, for example as part of a federated structure.

You can read the full guidance [here](#). It is unlikely to be of immediate concern to many members of CLAS, but trustees of charities with trading subsidiaries or which fund other organisations should certainly read it.

[Source: Charity Commission, 19 December]

EMPLOYMENT

Forstater employment tribunal

For information

In *Ms M Forstater v CGD Europe & Ors* [\[2019\] UKET 2200909/2019](#), Ms Forstater had been sacked as a consultant with the Center for Global Development, Washington DC, and its European arm because, she contended, she had expressed 'gender-critical' opinions: in outline, that sex is immutable, whatever a person's stated gender identity or gender expression. She further contended that her gender-critical views were a protected philosophical belief and that she had suffered direct discrimination as a result of them or, alternatively, indirect sex discrimination because her views were more likely to be held by women than by men. The principal issue was whether the belief that she relied on amounted to a philosophical belief within the terms of s.10 Equality Act 2010. Further, she relied on her *lack of belief* in the proposition that 'Some people believe that everyone has an inner 'gender', which may be the same as or different to their sex at birth, and that gender effectively trumps sex'.

In 2017, she had become concerned about proposed changes to the Gender Recognition Act 2004 and had begun to tweet about it –critically – in August 2018. In October 2018, some of the staff at CDG had raised concerns about some of her tweets, alleging that they were 'transphobic'.

Applying the criteria in *Grainger*,¹ Employment Judge Tayler accepted that Ms Forstater genuinely believed that sex at birth was immutable, it was 'more than an opinion or viewpoint based on the present state of information available' and it related to substantial aspects of human life and behaviour. Nor, on balance, did her belief failed to attain the necessary level of cogency, seriousness, cohesion and importance to be protected – 'even though there is significant scientific evidence that it is wrong'. However, the absolutist nature of her views was 'incompatible with human dignity and the fundamental rights of others'; and denying the right of someone with a Gender Recognition Certificate to be the sex to which he or she had transitioned was contrary to the Gender Recognition Act, which states that the change of sex applies *for all purposes*. 'Therefore, if a person has transitioned from male to female and has a Gender Recognition Certificate that person is legally a woman. *That is not something that the Claimant is entitled to ignore*' [emphasis added].

He concluded that her absolutist view was neither a protected belief for the purposes of the Equality Act nor 'worthy of respect in a democratic society'. As to the 'lack of belief' argument, though it did not face the same issue of incompatibility with human dignity and the fundamental rights of others, it failed to meet the *Grainger* criteria. Her claim therefore failed.

[Source: BAILII, 19 December]

¹ *Grainger plc v Nicholson* [2009] UKEAT 0219/09/0311.

FAITH & SOCIETY

Marriage and civil partnership in England and Wales

For information

The Government Equalities Office has [published](#) a table setting out the similarities and differences between civil partnership and marriage as they apply to same-sex and opposite-sex couples.

[Source: Government Equalities Office, 10 December]

FUNDING

Code of Fundraising Practice reminder

For information

Members are reminded that the Fundraising Regulator now names every organisation that it investigates – so charities should take extra care to comply with the regulations in order to avoid negative publicity.

Members should be particularly careful when handling the communication/marketing preferences of supporters, as not only can this be a matter of the Fundraising Regulator, but the ICO as well.

[Source: CLAS, 13 December]

NORTHERN IRELAND

Marriage of same-sex couples

For information

The Commons Library has published a [briefing paper](#) on the current law relating to marriage of same-sex couples in Northern Ireland and the relevant provisions in the Northern Ireland (Executive Formation etc) Act 2019.

Because the Northern Ireland Executive was not reformed on or before 21 October 2019, Section 8 of the Act came into force on 22 October 2019. The section requires the Secretary of State to make regulations, to come into force on or before **13 January 2020**, to provide that, in Northern Ireland, same-sex couples are eligible to marry, and opposite-sex couples are eligible to register a civil partnership. The Secretary of State may also make supplementary regulations.

The Government has stated its intention to consult on how to allow for religious same-sex marriage ceremonies and on the issue of conversion from civil partnership to marriage and *vice versa*. The Government has also said that it plans to have regulations in place providing for civil same-sex marriages and opposite-sex civil partnerships in Northern Ireland by the date stipulated in the Act.

Comment: All this – obviously – has been disrupted by the Dissolution and General Election. We will be keeping a careful eye out for the draft Regulations when they emerge.

[Source: House of Commons Library, 16 December]

PROPERTY & PLANNING

National Churches Trust

For information

The National Churches Trust [published](#) a manifesto for the 2019 election. Its main requests are for:

- a new Urgent Repair and Maintenance Grant Scheme;
- reform of the current law to make it clear that parish and town councils have the legal powers to fund church buildings;
- funding to help more churches to become community hubs through the installation of toilets and kitchens;
- stronger measures to stop heritage crime and lead theft; and
- an extension of the Listed Places of Worship Grant Scheme to March 2025.

[Source: National Churches Trust, 2 December]

SCOTLAND

Scottish Government: consultation on gender recognition reform

For information and possibly for action

The Scottish Government has [published](#) a consultation – closing on **17 March 2020** – on the draft Gender Recognition Reform (Scotland) Bill, which would change the way in which people in Scotland can obtain a Gender Recognition Certificate. The consultation follows the announcement to Parliament by the Cabinet Secretary for Social Security and Older People on 20 June 2019 and follows the earlier consultation on the principles of reforming the Gender Recognition Act 2004. The proposals include:

- removing the current requirement for people to apply to the UK Gender Recognition Panel. Instead, people seeking legal gender recognition would apply to the Registrar General for Scotland;
- removing the current requirement for applicants to provide medical evidence of their diagnosis of gender dysphoria;
- retaining the requirement that applicants must make a solemn statutory declaration that they have been living in their acquired gender for three months and intend to do so permanently;
- introducing a minimum three-month period of reflection between applying for a Gender Recognition Certificate and confirming the application – which means that the applicant must have lived in his or her acquired gender for a minimum of six months before a certificate is granted;
- retaining the position that a false statutory declaration is a criminal offence and introducing a new offence of false application – each with a potential punishment of up to two years' imprisonment; and
- reducing the minimum age of application from 18 to 16.

The accompanying statement says this:

'Nothing in what we are proposing will change the exceptions in the Equality Act 2010 which allow trans people to be excluded when this is a proportionate means of achieving a legitimate aim – for example single sex services, employment, health services. Those exceptions are very important and the Scottish Government would encourage any organisations and service providers to know their rights on this issue.

Obtaining a Gender Recognition Certificate will remain a serious and lifelong commitment. Trans people will still make a statutory declaration to this effect and people will still be subject to criminal proceedings for lying or making false applications.

What we are proposing in this draft bill, and seeking your views on, is for the Registrar General to issue the Certificate rather than the Gender Recognition Panel as per the current process, and to reduce the time where someone has to live in their acquired gender from 24 months to 6 months.

As you will see in the draft Bill we also do not propose to change public policy.'

Responses should be made online, via the Scottish Government's consultation hub, Citizen Space, at <https://consult.gov.scot/family-law/gender-recognition-reform-scotland-bill>. You can save and return to your responses while the consultation is still open.

This is almost certainly *not* a consultation to which CLAS could make a corporate response, but we should be interested to see any individual responses from members.

[Source: Scottish Government, 11 December]

WALES

Welsh local government settlement

For information

The Welsh Government has announced the local government settlement, published alongside the Welsh Government's Budget for 2020-21. Overall, local authorities will receive nearly £4.5bn in core revenue funding and non-domestic rates to spend on delivering key services – an increase of £184m from 2019-20 on a like-for-like basis. The non-hypothecated general capital funding for 2020-21 will be £198m (including £20m for public highways refurbishment grant) – an increase of £15m over that announced in the final Welsh budget last year.

CLAS members might be interested in some of the specific allocations:

- £2.4m on top of that provided through the 2019-20 settlement, for authorities to provide additional discretionary rates relief for local businesses and other ratepayers to respond to specific local issues;
- £244m for the Council Tax Reduction Scheme;
- continued funding for Ministers' proposals for new eligibility criteria for free school meals, to support local authorities in meeting the costs associated with the proposed threshold and transitional protection measures; and
- continued funding to support local government in eliminating charging for child burials.

[Source: Welsh Government, 16 December]

AND A HAPPY CHRISTMAS TO ALL!