

CLAS CIRCULAR 2020/3 (7 February 2020)

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.

NEW CLAS WEBSITE.....	3
CHARITIES AND CHARITY LAW	4
New safeguarding digital portal for charities	4
EMPLOYMENT.....	5
Parental Bereavement Leave Regulations 2020.....	5
FAITH & SOCIETY	6
Divorce, Dissolution and Separation Bill [HL]	6
IICSA - Child Protection in Religious Organisations Investigation	6
Marriage and Civil Partnership (Minimum Age) Bill	7
IMMIGRATION & NATIONALITY	8
Migration Advisory Committee report	8
NORTHERN IRELAND.....	9
Same sex religious marriage and conversion entitlements: consultation.....	9
PROPERTY & PLANNING	10
Building safety update	10
Taylor Review pilot	10
TAXATION	11

Changes to the Employment Allowance from April 2020	11
Fifth Money Laundering Directive consultation	11
Off-payroll working reform.....	12
WALES.....	13
Welsh Government: increasing the minimum notice period for a no-fault eviction	13

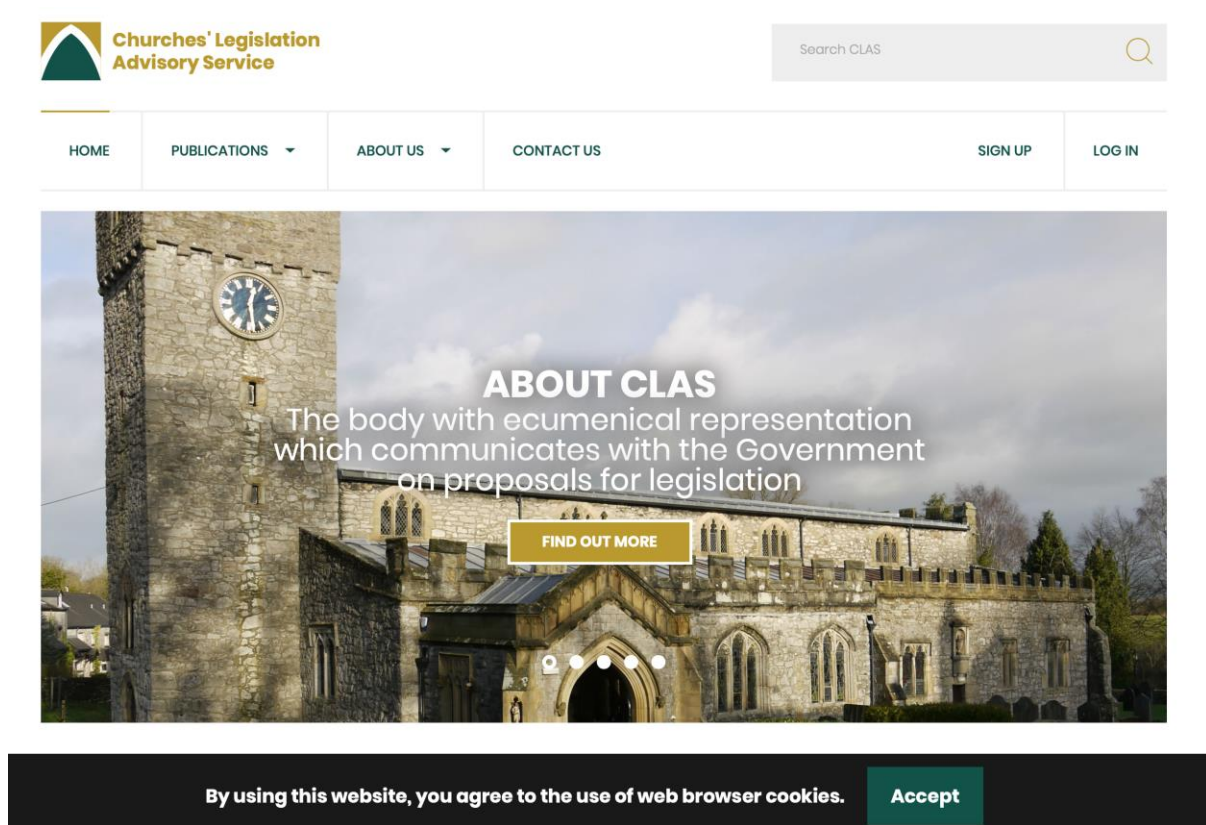
NEW CLAS WEBSITE

For action

CLAS has moved to a new website! Members must register on the new website [here](#) (even if you were registered on the old website) to access future Circular articles, as the old website will not be updated.

When on the new website's homepage (see image below), members should register via the "sign up" button in the top right. One thing to note on the registration process is that the **"contact name" field will also be used as the username for the account.**

After completing the registration process and applying for membership, CLAS' Secretariat will activate applications as soon as possible.



CHARITIES AND CHARITY LAW

New safeguarding digital portal for charities

For information

DCMS has [launched](#) a new online portal, aimed at strengthening its support to charities handling safeguarding concerns or allegations. The [portal](#) offers a step by step guide to help charities correctly manage their concerns, identify the right people to contact if needed and access helpful resources and advice.

[Source: DCMS, 22 January]

EMPLOYMENT

Parental Bereavement Leave Regulations 2020

For information

The [Parental Bereavement Leave Regulations 2020](#) have been published in draft. They are expected to apply – on or after **6 April 2020** – to the situation in which a child under the age of 18 dies or a child is stillborn after the 24th week of pregnancy.

The Regulations take a generous approach to the definition of 'parent'. Biological and adoptive are covered, but the provisions also extend to intended parents in a surrogacy arrangement, to a biological parent's partner and to "parents in fact", such as foster-parents.

Employees are entitled either to one or two weeks' leave, which must be taken within 56 weeks of a child's death. An employee does not have to take two weeks' leave consecutively.

Minimal notice requirements apply to leave taken in the eight-week period immediately after a child's death. The employee has to inform the employer that he or she is taking parental bereavement leave, and for how long, before s/he is due to start work on the day that s/he want the leave to start. An employee who wants to take leave outside that eight-week period must give the employer one week's notice.

During leave, an employee is entitled to all their existing terms and conditions of employment except in relation to remuneration. Generally, an employee will be entitled to return to the same job after any period of bereavement leave and the usual rights not to be subjected to a detriment or to be dismissed for taking family related leave apply.

The draft Explanatory Memorandum is [here](#).

[Source: CLAS, 3 February]

FAITH & SOCIETY

Divorce, Dissolution and Separation Bill [HL]

For information

The [Divorce, Dissolution and Separation Bill \[HL\]](#) had its [Second Reading debate](#) in the House of Lords on 5 February.

The Advocate-General for Scotland, Lord Keen of Elie, opened the debate by stating that the Bill's purpose is to seek to 'reduce the conflict that can arise from the current requirements for obtaining a divorce'. He said that It does not 'seek to change other aspects of divorce law where the evidence in support of reform has yet to be gathered and for which a consensus on the nature of the reform needed has yet to emerge. Those are quite separate issues on which we are open to be led by evidence'. The Bill 'keeps the two-stage process that will be familiar to your Lordships as the decree nisi and decree absolute. In a modernisation of language to help couples, these will be called "conditional orders" and "final orders", in line with civil partnership law. However, we are introducing for the first time the option for an application for divorce to be made jointly by both parties where the decision to divorce is a mutual one. The need to confirm to the court that it may make the conditional order as well as to apply to the court for the final order means that a divorce or dissolution is never automatic but remains intentional at each stage and within the control of the party, or the parties where an application is made jointly'.

The Bill received a mixed response, with several speakers expressing concerns about some of its provisions. Some of the principal reservations were the fear that it would tend to downgrade the status of marriage, the provisions relating to the spousal veto in relation to couples where one partner had changed sex, the continued absence of legal aid for divorce cases. The Bill was read the second time and committed for detailed scrutiny to a Committee of the whole House – which is scheduled to take place on 3 March.

[Source: Parliament, 5 February]

IICSA - Child Protection in Religious Organisations Investigation

For information

Farrer & Co has [published](#) a note summarising the key issues from the recent preliminary hearing (14 January 2020) held in relation to IICSA's investigation into 'Child protection in religious organisations and settings'.

[Source: Farrer & Co, 22 January]

Marriage and Civil Partnership (Minimum Age) Bill

For information

On 27 January, Baroness Hussein-Ece introduced the [Marriage and Civil Partnership \(Minimum Age\) Bill](#), 'A Bill to revoke parental or judicial consent which permits the marriage or civil partnership of a child and to criminalise child marriage or civil partnership under the age of 18; and for connected purposes.'

The Bill was read the first time and ordered to be printed.

This Bill only applies to England and Wales. One would imagine that its chances of becoming law are virtually zero, not least because wedding law is a devolved matter – and in Scotland one can marry at the age of 16 without parental consent.

[Source: House of Lords, 27 January]

IMMIGRATION & NATIONALITY

Migration Advisory Committee report

For information

The Migration Advisory Committee has published its latest report, [A Points-Based System and Salary Thresholds for Immigration](#). On salary thresholds for immigrants, it recommends the following:

'On salary thresholds we recommend retaining the current structure where the relevant threshold is the higher of a general and an occupation specific salary threshold with the exception of some public sector occupations mentioned earlier. We recommend that the occupation specific threshold should be set at the 25th percentile of the fulltime annual earnings distribution as now. **We recommend that the general threshold should be set at the 25th percentile of annual earnings for full-time eligible occupations (at [RQF level 3](#) and above). This is similar to the principle currently used, but the expansion of the route to include medium-skilled jobs reduces the current general threshold by around £4,400, to around £25,600.** Both the occupation specific and general threshold should be updated annually using data, rather than just a percentage increase on the previous year.'

[Source: Migration Advisory Committee, 28 January]

NORTHERN IRELAND

Same sex religious marriage and conversion entitlements: consultation

For information **and possibly for action**

The Northern Ireland Office (*not*, it should be noted, the Northern Ireland Executive) is consulting on the UK government's proposals on two separate but linked issues

- [implementing same-sex religious marriage in Northern Ireland](#) (alongside the appropriate protections); and
- [marriage and civil partnership – conversion entitlements](#): allowing opposite-sex couples to convert their civil partnerships into marriage, and *vice versa*.

The consultation closes at 11.45 pm on **23 February**.

Given the sensitivity of the subject-matter, these are not consultations to which CLAS could corporately respond.

[Source: Northern Ireland Office, 20 January]

PROPERTY & PLANNING

Building safety update

For information

MHCLG has published a number of announcements on the topic of building safety, as follows:

- a [consultation](#) – **closing 13 April** – on the use of combustible materials in and on external walls of buildings;
- a [call for evidence](#) – **closing 17 February** – on how to assess and prioritise fire safety risks and how better to understand the complexity of building risk;
- [guidance](#) on the measures building owners should take to ensure their buildings are safe; and
- an [announcement](#) on plans to create a new regulator to give “effective oversight” over the design, construction and occupation of “high-risk” buildings: the new regulator will be established as part of the Health and Safety Executive.

[Source: MHCLG, 20 January]

Taylor Review pilot

For information

On 13 January, DCMS published the [interim report of the Taylor Review Pilot](#) on building a sustainable future for the UK's historic places of worship. The report covers evidence from the first seven months of the scheme (September 2018 to March 2019) and identifies some valuable lessons learned during this time.

The Pilot is due to end in March. The final report is expected to be published in summer 2020.

[Source: DCMS, 13 January]

TAXATION

Changes to the Employment Allowance from April 2020

For information **and possibly for action**

The Employment Allowance is a helpful relief that currently entitles most charities to a reduction in their secondary Class 1 NICs liabilities of up to £3,000 per year. A policy paper [published](#) by HMRC confirms that the (Draft) Employment Allowance (Excluded Persons) Regulations 2020 will restrict access to the Employment Allowance for a tax year to employers with secondary Class 1 NIC liabilities below £100,000 in the previous tax year. As a result of this restriction, from 6 April 2020, the Employment Allowance will be operated as *de minimis* State Aid, which means that employers must have space to accommodate the full Employment Allowance within their relevant *de minimis* limit.

In summary, **CLAS members with secondary Class 1 NIC liabilities above £100,000 will no longer benefit from this relief**. For those churches still able to benefit from the relief, they will in future need to consider their overall State Aid limit, particularly if they are in receipt of other reliefs subject to State Aid.

[Source: HMRC, 24 January]

Fifth Money Laundering Directive consultation

For information

The Fifth Money Laundering Directive (5MLD) expands the scope of the Trust Registration Service (TRS) register by requiring trustees or agents of all UK and some non-EU resident express trusts to register those trusts with the TRS, whether or not the trust has incurred a UK tax consequence. The original consultation indicated that although charitable trusts were low risk, they were likely to fall within the definition of an express trust and therefore would have to register.

Responding to a consultation document on the implementation of 5MLD, CLAS noted that its effect would be to require a considerable number of small congregational and charitable property trusts, (hitherto unregistered because they are excepted charities), to register for the first time with HMRC's Trust Registration Service (TRS) rather than with any of the three charity regulators. CLAS expressed concern that registration with the TRS might be unduly onerous: many such excepted congregations have only the most minimal trust deeds and we noted that few of them have a properly-drafted and considered Governing Document. CLAS expressed support for the overall aims of the consultation –

to tackle money laundering and terrorist financing – but called for proportionality, arguing that small denominational property trusts were very low-risk in this respect.

Following the consultation, the Government has now proposed that “**charitable trusts are not in scope to register because the risk of these kinds of trusts being used for money laundering or terrorist financing activity is low**”. This is a very welcome development for churches.

[Source: HMRC, 24 January]

Off-payroll working reform

For information and possibly for action

The Government has launched a [review](#) into the changes to the IR35/off-payroll working rules from April 2020. The review will determine if the Government can do anything further to ensure a smooth and successful implementation of the reforms.

To recap, changes to [off-payroll working](#) mean that medium or large-sized private organisations, including some charities, will now be responsible for ensuring that their workers pay the right amount of tax and National Insurance Contributions (NICs). The change does not introduce a new tax, rather it is designed to improve compliance with existing payroll tax rules. The central premise is to ensure that similar amounts of tax are paid for individuals who are contracted through (for example) a personal services company, as when they are employed more traditionally. The organisation, agency or other third party paying an individual's intermediary will now be responsible for deducting and paying any tax and NICs. The Charity Tax Group has produced a helpful [summary](#).

The rule changes will only apply if an organisation has:

- a turnover of more than £10.2m;
- a balance sheet total of £5.1m and/or;
- more than 50 employees.

If your organisation meets the above criteria, CLAS advises that you seek professional advice in order to comply with the requirements by 6 April. That being said, **most individual churches will not be affected by the changes, but it is crucial that members check.**

[Source: HMRC, 7 January and Charity Tax Group, 30 January]

WALES

Welsh Government: increasing the minimum notice period for a no-fault eviction

For information

The Welsh Government has [published](#) its response to its consultation on increasing the minimum notice period for a no-fault eviction. The consultation received 855 responses, with the majority of responses from individual landlords (82%) or letting agents (6%). In summary:

- 94% of landlords and 98% of letting agents who responded were against the proposal;
- 70% of private tenants and 50% of social tenants who responded were supportive of the proposal;
- 73% of local authorities who responded were behind the proposal; and
- 56% of social landlords who responded disagreed with the proposal.

[Source: Welsh Government, 28 January]