

## CLAS CIRCULAR 2021/04 (27 January 2021)

### 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 & CHARITY LAW

### Charities: exception from Registration

For information

As members will be aware, the Regulations under which the congregations of certain denominations in England & Wales are not required to register with the Charity Commission if their income is below £100,000 is due to lapse on 31 March.

The [Charities \(Exception from Registration\) \(Amendment\) Regulations 2021](#), which were laid before Parliament on 19 January, extend the exception for a further ten years, until 31 March 2031. They will come into force on 31 March unless annulled by a Resolution of either House of Parliament – which is extremely unlikely to happen.

So the current exception is set to continue. The expectation is that, at some point, the Charity Commission will introduce phased registration of excepted congregations, presumably in tranches based on income. In an e-mail to CLAS, DCMS confirmed that the Charity Commission will be in touch with church representative bodies to design and develop the voluntary registration programme during 2021, and will publish guidance on the programme when it is ready to commence.

[Source: legislation.gov.uk, 18 January]

## FAITH & SOCIETY

### Church Action for Tax Justice Reports

For information

On 21 January, the Lord Bishop of St Albans [opened](#) a debate by asking 'Her Majesty's Government what assessment they have made of the reports by Church Action for Tax Justice (1) *Tax for the Common Good*, published in February 2019, and (2) *Fair Tax Now*, published on 4 January 2021.'

The debate centered around the Church Action for Tax Justice Reports.

[Source: *Hansard*, 21 January]

### Listed Places of Worship Grant Scheme

For information

Neale Hanvey MP [asked](#) the Secretary of State for Digital, Culture, Media and Sport, if he will extend the Listed Places of Worship Grant Scheme beyond 31 March 2021. In response, Nigel Huddleston said that:

'The Government is fully committed to supporting listed places of worship and has committed to the present level of funding until 31 March 2021. We recognise the importance of this scheme and the reliance which is placed on it. We are presently working through the implications of DCMS's Spending Review settlement with HMT and within DCMS. We will be able to provide an update shortly.'

[Source: Commons *Hansard*, 21 January]

## IMMIGRATION & NATIONALITY

### Employment of Tier 2 Ministers of Religion and Tier 5 Religious Workers post-Brexit

For information

As requested by some of our members, we asked the Home Office for clarification of the tests for employment of Tier 2 Ministers of Religion and Tier 5 Religious Workers post-Brexit. The reply is as follows.

'The changes made to the Immigration Rules on 1 December 2020 opened our routes to EEA nationals. There have been no substantial policy changes to our routes for those working in a religious capacity.

'The T2 Minister of Religion route is a long-term, dedicated provision for religious leaders, missionaries and members of religious orders. Those who wish to support the activities of religious institutions by undertaking non-pastoral work or working in a religious order in a supporting role, may apply on the T5 (Temporary Worker) Religious Worker route. Those on this route must not have core duties which fall under a role of a Minister of Religion such as leading a congregation in performing rites and rituals and in preaching the essentials of the creed.

'If a T2 Minister of Religion is sponsored on or after 1 December 2020, there is no requirement for a Resident Labour Market Test. If a T5 Religious Worker is being sponsored, a Resident Labour Market Test is required to ensure a settled worker is not displaced. A sponsor must advertise the job they wish to recruit for or conduct a search of national records they hold, to give settled workers a chance to apply. A Resident Labour Market Test is not required if the role is supernumerary or falls under the list of exemptions in MRW4.6. of the [sponsor guidance](#).'

If any members have any further concerns or queries, please do let us know.

[Source: CLAS, 26 January]

## NORTHERN IRELAND

### Programme for Government

For information **and possibly for action**

The NI Executive has [launched](#) a consultation – closing 22 March – on its Programme for Government draft Outcomes Framework. The draft Framework contains nine strategic Outcomes which, taken together, are intended to set a clear direction of travel for the NI Executive and provide a vision for the future of all citizens.

[Source: NI Executive, 25 January]

## ODDS & ENDS

### Independent Human Rights Act Review

For information **and possibly for action**

The Ministry of Justice has [published](#) a call for evidence ([terms of reference](#)) – closing 3 March – on the independent Human Rights Act Review. The call for evidence states that the Review is not considering the UK's membership of the Convention and proceeds on the footing that the UK will remain a signatory to the Convention. It is also not considering the substantive rights set out in the Convention. The review is set out in two themes:

1. The first theme deals with the relationship between domestic courts and the European Court of Human Rights (ECtHR).
2. The second theme considers the impact of the HRA on the relationship between the judiciary, the executive and the legislature.

[Source: Ministry of Justice, 13 January]

## PROPERTY & PLANNING

### COVID-19: rent arrears and eviction

For information

The Government has [tweaked the Regulations](#) to remove protection for tenants falling behind on rent as a result of the crisis for the first time. Previous legislation carried a provision that eviction notices could be served only for arrears where the amount owed to the landlord totalled equivalent to nine months' rent and that any unpaid rent arrears accrued after 23 March 2020 must be disregarded. The new Regulations (already in effect) lower the arrears threshold to six months' rent and remove any reference to disregarding debt built up during the pandemic.

[Source: CLAS, 26 January]

### Historic Building Annex

For information

The Government Property Agency has [published](#) *Historic Building Annex: A Technical Annex for Historic Buildings*. The Annex deals with 'historic buildings', which could be listed under the 1990 Act or are seen as of 'historic interest', even though they are not designated. The Annex contains the following.

1. What are heritage assets?
2. How heritage assets are protected?
3. How to approach change management
4. Frequent issues
5. Energy conservation
6. Building services
7. The RIBA stages – conservation actions

[Source: Government Property Agency, 26 January]



## SAFEGUARDING

### Response to an IICSA report on the sexual abuse of children outside the UK

For information

The Government has [responded](#) to the recommendations set out in the Independent Inquiry into Child Sexual Abuse report into institutional responses to the sexual abuse of children outside the UK, which was published on January 2020.

[Source: Home Office, 21 January]

### Tackling Child Sexual Abuse Strategy

For information **and possibly for action**

The Home Office has [published](#) the *Tackling Child Sexual Abuse Strategy*, which sets out its whole-system response to all forms of child sexual abuse. The strategy is based on the following three objectives:

- objective 1: tackling all forms of child sexual abuse and bringing offenders to justice
- objective 2: preventing offending and re-offending
- objective 3: protecting and safeguarding children and young people, and supporting all victims and survivors

[Source: Home Office, 22 January]

## SCOTLAND

### Supporting the wedding sector

For information

The Scottish Government has [announced](#) that a £25m fund to support the wedding sector and its supply chain will open to applications this week. The fund will be managed regionally by Scotland's three enterprise agencies - South of Scotland Enterprise, Scottish Enterprise and Highlands and Islands Enterprise.

From 28 January, the fund will provide one-off grants of up to £25,000 for eligible businesses in the sector impacted by the coronavirus (COVID-19) pandemic, including wedding venues, photographers, caterers and suppliers.

[Source: Scottish Government, 25 January]

## TAXATION

### Church caretakers and living accommodation

**For information and possibly for action**

We recently received a query from a local church about the tax and National Insurance position on accommodation for a part-time caretaker. The correspondent says that, in the past, accommodation provided to a caretaker was exempt from tax under an extra-statutory concession since 1977; however, it appears that the ESC expires in March 2021. It appears that, from April 2021, whether or not caretaker accommodation is exempt from the tax/NI charge will depend on the status of the employee and only seems to cover those employed full-time caretaking job who are on-call outside normal working hours.

We have never had occasion to raise this issue specifically relation to church caretakers, though the wider issue of housing for ministers of religion and benefits-in-kind has exercised us quite a lot over the years. (Though when we last discussed the matter with HMRC we did make specific reference to the position of Quaker resident meeting-house wardens.) We are still waiting to see the consultation on benefits-in-kind that was announced about two years ago and which, we suspect, has been delayed by a combination of Brexit and COVID-19.

It would be very helpful if anyone with any information or concrete examples of the tax/NI treatment of caretaker accommodation could get in touch.

[Source: CLAS, 26 January]

## WALES

### COVID-19: new requirement for risk assessments

For information **and possibly for action**

On 20 January, [The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) Regulations 2021 20](#) came into force. Regulation 2 makes it a legal obligation on the 'person' (or body) responsible for "regulated premises" (including places of worship, community centres, etc) to undertake a risk assessment prior to allowing public access to the premises for any purpose.

Gethin Rhys points out that, although media reports have focused on the effect on supermarkets, *the amended Regulations apply to all "regulated premises"* and, although it has been good practice since spring 2020 and most denominations/networks have produced templates designed for their own churches, *this is the first time that a risk assessment has become legally obligatory*. Further, the wording makes it a requirement to conduct a full risk assessment (covering general health and safety matters as well as those relating to coronavirus specifically) even if the building is open only occasionally (eg for funerals) or for much more limited purposes than usual (eg to host a food bank).

In order to assist member Churches to update their risk assessment and templates in accordance with the law, Cytûn has prepared a guide to what is now mandatory. In particular:

1. Cytûn's understanding is that the effect of the Regulations is to make conducting a full risk assessment – covering general health and safety risks as well as the coronavirus related issues – mandatory for all "regulated premises", *even for premises where that was not previously the case*.
2. The Regulations require a review of the risk assessment to be made each time the coronavirus Regulations are amended or the uses of the premises change (as this would be *a significant change in the matters to which it relates*) and also when the wider situation regarding the pandemic changes (as this would be *reason to suspect that it is no longer valid*).
3. The Regulations require the risk assessment to be in writing when *five or more persons are working at the premises*. As 'working' includes working voluntarily, this would cover nearly all circumstances likely to be relevant to faith communities.
4. There are special requirements relating to risk assessment for young people 'working' in the premises.

The guide will be posted on Cytûn's [website](#). Like CLAS, Cytûn stresses that its guidance is not legal advice, and professional advice should be sought if there is any doubt about how to apply the Regulations in your particular circumstances. [*With thanks to Gethin Rhys.*]

[Sources: legislation.gov.uk, 19 January: Cytûn, 25 January]