

CLAS CIRCULAR 2021/09 (24 March 2021)

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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

Government response to Law Commission report on Technical Issues in Charity Law

For information

DCMS has [published](#) its response to the Law Commission report on [Technical Issues in Charity Law](#), three and a half years after its publication. The report analyses various issues in charity law and makes recommendations that the law should be reformed. The Commission's report looked at:

- Financial thresholds
- Changing purposes and amending governing documents
- Charities governed by statute or Royal Charter: changing purposes and amending governing documents
- *Cy-près* schemes and the proceeds of fundraising appeals
- Acquisitions, disposals and mortgages of charity land
- Permanent endowment
- Remuneration for the supply of goods and the power to award equitable allowances
- *Ex gratia* payments out of charity funds
- Charity and trustee insolvency
- Charity names
- The identity of a charity's trustees
- The Charity Tribunal and the courts.

The Government has accepted the majority of the Law Commission's recommendations. Out of 43 recommendations, the Government did not accept the following:

- Recommendation 8: That the Privy Council Office establish a user group to allow those who engage with the process of amending Charters and bye-laws to propose and discuss improvements to the procedures.
- Recommendation 18: That the requirements in section 121 of the Charities Act 2011 concerning advertising proposed disposals of designated land and considering any responses received should be abolished.

- Recommendation 27: That the basis on which decisions of the Charity Commission can be challenged, including in particular the right of challenge to the Charity Tribunal, should be reviewed.
- Recommendation 40: That it should be possible to obtain authorisation to pursue “charity proceedings” under section 115 of the Charities Act 2011 from either the court or the Charity Commission in circumstances where the Charity Commission would face an actual or apparent conflict of interests if asked to give such authorisation.
- Recommendation 43: That the Charity Commission should not be required to obtain the Attorney General’s consent before making a reference to the Charity Tribunal, but that the Charity Commission and the Attorney General should be required to give the other four weeks’ advance notice of any intended reference.

Additionally, the Government only partially accepted Recommendation 16, that:

- the connected persons regime in Part 7 of the Charities Act 2011 be retained;
- the definition of connected persons should: (a) exclude employees where the disposal is the grant of a short residential tenancy; (b) exclude wholly-owned subsidiaries; (c) be capable of amendment by secondary legislation; and (d) omit the reference to “illegitimate child”;
- disposals of land to wholly-owned subsidiaries should be notified to the Charity Commission; and
- the Charity Commission’s guidance for trustees disposing of land, and guidance for designated advisers, should make clear that disposals to wholly owned subsidiaries should be for the best terms that can reasonably be obtained for the charity.
- It did not agree that wholly-owned subsidiaries should be excluded from the definition of connected persons.

Comment:

Possibly the most important feature of the response from CLAS (and one which we argued for in our response to the consultation) was the Government’s agreement to review registration thresholds at least every 10 years, and we welcome the Government’s commitment, subject to resources, to undertake a review of the financial thresholds in 2022. The Government has accepted that fixed financial thresholds can create additional administrative burdens for small charities as their value is eroded by increased inflation over time.

The Government’s review will be conducted with a view to increasing thresholds in line with inflation according to the appropriate index of inflation used by the Government and/or the Office for National Statistics (ONS) at the time of the review. It is to be hoped that the outcome given some breathing-space to small congregations currently excepted from registration.

[Source: DCMS, 22 March]

EMPLOYMENT

National Living Wage increase

For information **and possibly for action**

A [reminder](#) that from 1 April 2021, the national minimum wage (NMW) and national living wage (NLW) will increase by 2.2 per cent from £8.72 to £8.91, *and will be extended to 23 and 24 year olds for the first time.*

For pay periods starting on or after 1 April, the hourly rates for NMW and NLW are:

- NLW for workers aged 23 and over: £8.91 (2.2% increase from £8.72).
- NMW for workers aged 21 to 22: £8.36 (2% increase from £8.20).
- NMW for workers aged 18 to 20: £6.56 (1.7% increase from £6.45).
- NMW for workers aged under 18 but above school leaving age and are not apprentices: £4.62 (1.5% increase from £4.55).
- NMW for apprentices aged under 19, or 19 or over and in the first year of their apprenticeship: £4.30 (3.6% increase from £4.15).

[Source: Low Pay Commission, 25 November 2020]

FAITH & SOCIETY

Draft Registration of Marriages Regulations 2021

For information

On Tuesday 23 March, the House of Lords [approved](#) the [draft Registration of Marriages Regulations 2021](#), which amend the Marriage Act 1949 to enable the introduction of a schedule-based system for the registration of marriages in England and Wales.

During the debate, **Baroness Sherlock** (Lab) said that she had had representations from clergy worried about the lack of notice. One had said: "We feel a bit stunned about the timing of these changes. We were told some time ago that they were planned and then everything went quiet, and it seems like a strange time to be introducing them now, with a very short lead-in time, with many churches just reopening and the Covid guidance on weddings (and other things) likely to change again soon."

Another had said that it was proving difficult, as he was "trying to tell brides what their ceremonies will look like now as we have a bulge of weddings in the middle of the passage of this legislation. Not enough time for transitional arrangements."

She asked when clergy could expect to see the necessary guidance. She also noted that only clergy could watch the training videos, "even though in many parishes, lay people are involved in taking wedding bookings; that is from the GRO".

Lord Hussain (LD) noted the issue of *nikah* wedding ceremonies held at a mosque, a wedding hall or at a private residence where an imam would lead a ceremony and issue a certificate but the registrar was not aware of those weddings and they were not registered with them—hence, those weddings had no legal status. He asked what steps the Government was taking to work with Muslim faith leaders and local registrars to ensure that all marriages taking place in the UK were formally recognised.

Lord Lucas (Con) urged the Government to look again at the restrictions on where a wedding could take place, suggesting that allowing weddings to be held in the open air "would provide creative venues and a much-needed increased capacity for ceremonies" to cope with the expected rise in ceremonies at the end of the COVID pandemic."

Lord Paddick (LD) asked why an exemption was being made for the Church of England and the Church in Wales under which a member of the clergy would issue a marriage document instead of the marriage schedule issued by the superintendent registrar.

In response, **Baroness Williams of Trafford** said that the reason why the Regulations had taken so long to appear was because the Home Office had been considering options for updating the marriage entry to include the mother's name, but that had not proved straightforward.

As to the timeline, if the schedule or the document is not returned to the register office within the specified timescale, the superintendent registrar will contact the relevant person to advise that the marriage must be registered and to make arrangements for that to happen. It will be an offence not to return the signed schedule or document to the register office. If it gets lost or damaged in the post and it is damaged before it has been registered by the Registrar General, if they are satisfied that the marriage has been solemnised they will authorise the schedule document to be reproduced and arrangements will be made with the couple, their witnesses and the person or persons who officiated at the marriage to sign another schedule or document, so that the marriage can be registered and the marriage certificate issued.

On the issue of unregistered ceremonies, the Regulations were only about marriage registration and not about wider marriage law.

As to Lord Paddick's point about the difference in systems, the Regulations did not remove the "Anglican ecclesiastical preliminaries": 'The marriage document will contain the same information as the marriage schedule, and we are not introducing universal civil preliminaries; we are just keeping in place what is already in place for the Church of England.'

[Source: Lords *Hansard*, 23 March]

Weddings and civil partnerships in England: latest guidance

For action

On 22 March, the Government updated two pieces of guidance on weddings and civil partnerships in England to reflect the terms of [COVID-19 Response - Spring 2021](#), which sets out the roadmap out of the current lockdown for England:

- [COVID-19: Guidance for small marriages and civil partnerships](#) and
- [COVID-19: Guidance for wedding and civil partnership receptions and celebrations](#).

In brief:

Step 1 – until 29 March: weddings and civil partnership ceremonies of **six people only** can take place, but they should only be in exceptional circumstances. *Receptions are not permitted*.

From 29 March: weddings and civil partnership ceremonies can continue to take place for up to **six people only** but will no longer be limited to exceptional circumstances. *Receptions are not permitted*, but small gatherings can take place in line with social contact limits – they may take place outdoors in a group of six, or in two households (including support bubbles, if eligible to form one).

Step 2 – no earlier than 12 April: weddings and civil partnership ceremonies will be permitted for **up to 15 people** in COVID-19-secure venues that are permitted to open or where a broader exemption applies. Receptions can take place **with up to 15 people** in the form of a sit-down meal and in any

COVID-19-secure *outdoor* venue that is permitted to open. *Receptions must not be held in people's private gardens or public outdoor spaces.*

Step 3 – no earlier than 17 May: weddings and civil partnership ceremonies will be permitted **for up to 30 people** in COVID-19-secure venues that are permitted to open. Receptions will be permitted **with up to 30 people** in COVID-19-secure indoor venues, or outdoors.

Step 4 – no earlier than 21 June: at this point, the Government aims to remove all limits on weddings, civil partnership ceremonies and receptions; however, *the decision to do so will be subject to the outcome of the scientific Events Research Programme, which will include a series of pilots using enhanced testing approaches and other measures to run events of larger sizes.*

At each step:

- anyone working is not included in the limit for ceremonies or receptions.
- weddings and civil partnership ceremonies and receptions can only take place in venues that are permitted to be open at each Step. For further information, see the [guidance on closing certain businesses and venues in England](#).

[Source: BEIS/MHCLG, 22 March]

ODDS & ENDS

COVID-19 regulations laid in Parliament

For information

The Government has formally laid the [regulations](#) that will pave the way to the easing of all COVID-19 restrictions from 21 June, alongside a [one-year review of the Coronavirus Act](#).

Subject to Parliamentary approval, a total of 12 provisions will be removed completely from the Coronavirus Act. The removal of Section 84 postponement of General Synod elections, will be of particular interest to some members.

- Sections 8 to 9 (applies to UK): emergency volunteers. These provisions were intended to come into force should the delivery of health services be at risk as a result of the pandemic. Despite the significant workforce pressure in health and social care, other measures such as NHS Professionals, other agency and bank staff and the Bring Back Staff (BBS) scheme have been more appropriate to address the need for trained clinical staff. As such, these powers have not yet come into force.
- Section 15 (applies to England and Wales and will be expired for England): Care Act easements (DHSC). Some duties to local authorities are relaxed under this section, allowing them to streamline assessment and charge for care retrospectively. There is strong stakeholder support to remove this provision. Eight local authorities in England have used the powers but the power has not been used since 29 June 2020.
- Section 24 (applies to UK) (Home Office): extension of time limits for retention of fingerprints and DNA profiles, allowing them to be held for an additional 6 months beyond normal deadlines. This power cannot be extended beyond the point the regulations expire in March without primary legislation.
- Sections 25 to 29 (applies to UK) (Defra): requiring information from businesses and persons involved in the food supply chain. Gives the power to require information such as food supply disruption if there is refusal to provide it voluntarily. The information has been provided voluntarily and is not needed.
- Section 71 (applies to UK) (HMT): signatures of Treasury Commissioners; allows a single Commissioner of HMT to sign instruments and act on behalf of Commissioners, instead of requiring a signature from all Commissioners.
- Section 79 (applies to England) (MHCLG): extension of Business Improvement Districts (BID) arrangements. BIDs, local business partnerships established by voting, have now successfully completed ballots and 43 are due to introduce ballots before the expiry in March 2021.

- Section 84 (applies to England) (MHCLG): postponement of General Synod elections. Allows the Queen to postpone the dissolution of the General Synod of the Church of England and so to postpone elections to the General Synod.

In addition, the following three provisions will also be suspended:

- Section 22 (applies to UK): appointment of temporary Judicial Commissioners (JCs).
- Section 23 (applies to UK): time limits in relation to, for example, urgent warrants under Investigatory Powers Act.
- Section 58/schedule 2, part 2 (applies to UK and will be suspended in England): allows directions to be issued under part 2 if it was believed that death management was not being organised correctly.

[Source: DHSC, 22 March]

PROPERTY & PLANNING

Introducing a performance-based policy framework in large commercial and industrial buildings

For information

BEIS has [published](#) a consultation – closing **9 June** – on the Government's proposals to introduce a national performance-based policy framework for rating the energy and carbon performance of commercial and industrial buildings above 1,000m² in England and Wales, with annual ratings and mandatory disclosure as the first step.

[Source: BEIS, 17 March]

Improving broadband for Very Hard to Reach premises

For information

DCMS has [published](#) a consultation – closing 11 June – on improving broadband for Very Hard to Reach premises in the UK. Through this call for evidence, DCMS wants to hear views and experiences of consumers' broadband connectivity in rural and remote areas of the UK. In addition, DCMS would also like to receive information on both the known benefits of broadband services and the current barriers to deployment and take-up.

[Source: DCMS, 19 March]

Project Gigabit Phase One Delivery Plan

For information

DCMS has [published](#) its plan for the £5 billion gigabit broadband rollout, in response to the recent consultation across the telecoms industry and local government. The Government is targeting a minimum of 85% gigabit-capable coverage by 2025 but will seek to accelerate rollout further to get as close to 100% as possible.

[Source: DCMS, 19 March]

Unlimited fines for those who breach fire safety regulations

For information

The Home Office has [announced](#) new regulations to improve building safety and £16 million for fire and rescue authorities – *including unlimited fines for building owners who breach fire safety regulations*. The Government's intention is that new measures announced will:

- “improve the quality of fire risk assessments and competence of those who complete them
- ensure vital fire safety information is preserved over the lifespan of all regulated buildings
- improve cooperation and coordination amongst people responsible for fire safety and making it easier to identify who they are
- strengthen enforcement action, with anyone impersonating or obstructing a fire inspector facing unlimited fines
- strengthen guidance issued under the Fire Safety Order so that failure to follow it may be considered in court proceedings as evidence of a breach or of compliance
- improve the engagement between Building Control Bodies and Fire Authorities in reviewing plans for building work
- require all new flats above 11 metres tall to install premises information boxes”.

[Source: Home Office, 17 March]

TAXATION

Tax Day announcements

For information **and possibly for action**

The Chancellor announced at Budget 2021 that a raft of tax announcements and consultations would be published later, on a separate "Tax Day". The full range of announcements and consultations can be found in the published collection, [here](#), with details below.

Closing on 1 June

- [Clamping down on promoters of tax avoidance](#) - consultation on proposals to tackle promoters and enablers of tax avoidance schemes and to support taxpayers to avoid, and exit, tax avoidance.
- [Transfer pricing documentation](#) - consultation on the case for clarifying and strengthening transfer pricing documentation requirements.
- [Notification of uncertain tax treatment by large businesses \(second consultation\)](#) - consultation on the government's new policy to require large businesses to notify HMRC where they have adopted an uncertain tax treatment.

Closing on 3 June

- [Reform of the taxation of securitisation companies](#) - consultation on the taxation of securitisation companies and on the Stamp Duty loan capital exemption as it applies to securitisations and to insurance-linked securities.

Closing on 15 June

- [Raising standards in the tax advice market](#) - consultation on the proposal that everyone who provides tax advice should hold professional indemnity insurance, as well as views on a definition of tax advice.
- [Helping taxpayers get offshore tax right](#) - consultation on how HMRC can help taxpayers get their offshore tax right by using data, raising taxpayer awareness and reducing errors.
- [Preventing and collecting international tax debt](#) - consultation on how HMRC can better understand, prevent, and collect international tax debt.
- [Consultation on aviation tax reform](#) - consultation on reforms to Air Passenger Duty.
- [Proposals on the treatment of aggregate removed during construction works](#) - consultation on proposed changes to the treatment of aggregate extracted in connection with some types of construction.

Closing on 5 July

- [Hidden economy conditionality \(Northern Ireland and Scotland\)](#) - consultation on how new tax checks for taxi, private hire car and metal dealer licensing are implemented in Scotland and Northern Ireland.

Closing on 13 July

- [The tax administration framework: supporting a 21st century tax system](#) - consultation on how the tax administration framework could be reformed to support a trusted, modern tax administration system.
- [Timely payment](#) - consultation on the opportunities and challenges of in-year calculation and payment for Income Tax Self Assessment and Corporation Tax for small companies.

Other documents

- [HM Treasury fundamental review of business rates \(interim report\)](#)
- [HM Treasury Review of the Office of Tax Simplification \(Terms of Reference\)](#)
- [The taxation of trusts \(summary of responses\)](#)
- [Carbon Emissions Tax \(summary of responses\)](#)
- [Tackling disguised remuneration tax avoidance \(summary of responses\)](#)
- [Simplification of partial exemption and the Capital Goods Scheme \(summary of responses\)](#)
- [Social Investment Tax Relief \(summary of responses\)](#)
- [Notification of uncertain tax treatment by large businesses \(summary of responses\)](#)
- [Tackling promoters of tax avoidance draft guidance](#)
- [Exploring voluntary sign-up to Making Tax Digital for VAT](#)
- [Exploring the costs and benefits of Making Tax Digital for VAT experienced by smaller businesses](#)

[Source: HMRC, 23 March]