

CLAS CIRCULAR 2021/15 (6 July 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

Charity Commission: COVID-19 and charity AGMs

For information **and possibly for action**

The Charity Commission has updated its [Coronavirus \(COVID-19\) guidance for the charity sector](#) in England & Wales in relation to Annual General Meetings disrupted by the pandemic. Specifically:

'We recognise that for some charities virtual meetings are not a viable solution, nor are socially distanced face-to-face meetings. In such instances, trustees may consider they have no choice but to cancel or postpone their AGMs and other critical meetings.

If you do consider such a decision is necessary, you should follow any rules in your charity's governing document that allow for postponement, adjournment or cancellation. If there are no such rules, but you decide that this is still the best course of action for your charity in the current circumstances, you should record the reasons for this decision to demonstrate good governance of your charity. This is particularly important if it is not possible to hold your AGM which may make it difficult for you to finalise your annual reports and accounts.'

[Source: Charity Commission, 2 July]

Charities and terrorism

For information

The Government has updated its advice and information on [charities and terrorism](#), covering key aspects of the UK's counter-terrorism legislation and how it may affect charities and their work. The guidance:

- provides advice and information on key aspects of the UK's counter-terrorism legislation;
- highlights how particular provisions are likely to affect charities and their work;
- explains the various 'terrorism lists' that exist; and
- advises trustees what to do if they discover their charity may be working with or connected to people or organisations on terrorism lists.

[Source: HM Government, 12 June]

Charities Bill [*Lords*]

For information

The Charities Bill was introduced in the House of Lords on 26 May. The Bill and Explanatory Notes are available [here](#). The Law Commission has produced a marked-up copy of the Charities Act 2011 (known in the trade as a Keeling Schedule) showing the changes that would be made to the Act by the Charities Bill. It is available [here](#). [*With thanks to Bates Wells.*]

The Government has published a [factsheet](#) for the Bill which provides more information. The following key points have been reproduced from the factsheet.

What the Bill does

The Charities Bill implements the majority of recommendations made by the Law Commission in its report [Technical Issues in Charity Law](#), published in 2017. It addresses a variety of technical issues in the law governing charities. It does so primarily by amending the [Charities Act 2011](#) but also by amending other legislation such as the [Universities and College Estates Act 1925](#) and the [Trusts of Land and Appointment of Trustees Act 1996](#).

Overview of the Bill

The Charities Bill will:

- give charities wider or additional powers and flexibility to amend their governing documents, to decide on how they procure goods and services, and to make “ex gratia” payments (which charities have a moral obligation, but no legal power, to make)
- clarify when property can be applied cy-près (Cy-près means “as near as possible”. When a charitable purpose cannot be carried out, the Charity Commission can direct under a scheme that the funds should be used for other similar charitable purposes), including the proceeds of failed fundraising appeals
- produce a clearer and less administratively burdensome legal framework for buying, selling, leasing and mortgaging charity land
- clarify and expand the statutory regime that applies to permanent endowment
- introduce a power – with appropriate safeguards – for charities to borrow from their permanent endowment and to make certain social investments using permanent endowment
- facilitate, where appropriate, charity mergers and incorporations
- confer additional powers on the Charity Commission to authorise charities to pay an equitable allowance, to require charities to change or stop using inappropriate names, and to ratify the

appointment or election of charity trustees where there is uncertainty concerning the validity of their appointment or election

- improve and clarify certain powers of the Charity Tribunal.

Main measures in the Bill

- *Amending governing documents:* reduce inconsistency by more closely aligning the amendment mechanisms for incorporated and unincorporated charities a new, clearer statutory power for all unincorporated charities to amend their governing documents by resolution consistent criteria for the Charity Commission to consider before consenting to a change of purpose, regardless of whether the charity is a company, CIO, or unincorporated charity.
- *Improving land transactions:* greater flexibility to obtain advice on disposals of land from a greater range of professional advisers removing certain overly prescriptive and burdensome statutory requirements creating certainty for purchasers when they buy land from charities, with a reliable, straightforward and practically workable process for certifying compliance with the Charities Act requirements.
- *Making use of permanent endowment:* a new definition of permanent endowment which is clear, consistent and aligns with the sector's understanding of the term a new power to borrow from permanent endowment as a useful alternative to the existing rules for trustees who have opted in to total return investment, the ability to use permanent endowments for loss-making social investments when they expect those losses to be offset elsewhere, which will promote long-term investments for social good.
- *Helping incorporations and mergers:* allowing legacies in wills to be transferred to a merged charity, which will remove a need for "shell charities" to be maintained, which results in wasted money through admin costs giving corporate charities "trust corporation status" automatically if they administer charitable trusts providing trustees with certainty about costs before the Charity Tribunal new "authorised costs orders" which would provide advanced assurance that the costs incurred by trustees can properly be paid from the charity's funds.
- *Other measures in the Bill:* fundraising appeals: expanding and rationalising the circumstances in which funds from a failed fundraising appeal can be applied to other purposes of the charity, with appropriate oversight by the Charity Commission remuneration for supply of goods from trustees: enabling trustees to be paid for goods provided to a charity, subject to appropriate safeguards - this aligns with the current law which allows trustees to be paid for services, creating consistency and enabling charities to access goods which may be offered at more favourable terms by a trustee than elsewhere.
- *Equitable allowances:* enable the Charity Commission to authorise trustees to be paid for exceptional skill and effort with which they have carried out work for their charity in circumstances where it would be unjust not to do so ex gratia payments: enabling charities to make relatively small ex gratia payments without seeking Charity Commission permission, and to delegate the power to make those payments to an appropriate person within the charity

charity names: expansion of the Charity Commission's powers in respect of misleading, offensive or duplicative charity names to remove anomalies and to prevent the registration of a charity with an inappropriate name (or prevent the registration of a change of name)
identifying charity trustees: creation of a new power for the Charity Commission to ratify a trustee's appointment or election which is, or is potentially, invalid.

Will these measures apply across the United Kingdom?

The provisions extend and apply to England and Wales only, subject to a couple of minor provisions which extend as far as the enactments to which they apply. Charity law is devolved in Scotland and Northern Ireland. The Charity Commission will work with its counterparts in the devolved administrations, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland under existing protocols to agree how the changes will affect their regulation of charities which operate UK-wide.

[Sources: Bates Wells, 15 June: DCMS, 22 June]

EMPLOYMENT

Home Office: Illegal working penalties codes of practice for employers 2021

For information

The Home Office has published [DRAFT Code of practice on preventing illegal working: Civil penalty scheme for employers](#). The draft Code covers the changes to the Right To Work (RTW) checks for EEA / Swiss nationals and any third-country family members that came into effect on **1 July 2021**. (The deadline for applications to be submitted under the EU Settlement Scheme to enable EEA / Swiss nationals and family members to remain living and working in the UK legally was **30 June 2021**.)

The draft Code indicates that an RTW check undertaken under the current Code of Practice will not have to be repeated retrospectively. However, if an RTW check was undertaken before 1 July 2021, it is the current Code of Practice that will apply to the check, *even if the individual is due to commence their employment on or after 1 July 2021*.

[Source: Home Office, 15 June]

EUROPE

European Commission adopts adequacy decision for UK data protection

For information

The European Commission has [adopted an adequacy decision](#) for the UK under the General Data Protection Regulation. Personal data can now flow freely from the EU to the UK because it benefits from an equivalent level of protection to that guaranteed under EU law. Unusually, the decision includes a “sunset clause”, meaning that it will automatically expire 4 years after its entry into force. After that period, the adequacy findings may be renewed if the UK continues to ensure an adequate level of data protection.

[Source: European Commission, 28 June]

FAITH & SOCIETY

Clergy Newsletter Issue 13

For information

HM Passport Office has [published](#) the *Clergy Newsletter* Issue 13. This Issue includes some 'helpful hints and tips' in response to queries that have arisen since the introduction of the marriage schedule system in May and further guidance has been published on checking an individual's status under the EU Settlement Scheme in particular for Certificate's of Application.

[Source: HM Passport Office, 30 June]

Divorce, Dissolution and Separation Act 2020

For information

Jane Stevenson [asked](#) the Secretary of State for Justice, 'what progress he has made on implementing the provisions of the Divorce, Dissolution and Separation Act 2020; and if he will make a statement.' Chris Philp responded as follows.

'The Act provides for the biggest reform of divorce law in fifty years and will reduce conflict between couples legally ending a marriage or civil partnership. At Commons Third Reading of the Bill the Lord Chancellor explained the need to allow time for careful implementation and that, at that early stage, the Government was working towards an indicative timetable of autumn 2021. This was an ambitious timetable.

Following Royal Assent on 25 June 2020, the Ministry of Justice has worked closely with the Family Procedure Rule Committee to identify the significant changes needed to Family Procedure Rules and supporting practice directions, and to devise some key new procedures. Those procedural changes are critical as they will shape amendments to family court forms, the online digital divorce service, and information on gov.uk. The Family Procedure Rule Committee has now consulted on draft rule amendments and is working to finalise these rules post consultation.

In parallel, officials have begun work to identify, design and build the necessary amendments to court forms and, importantly, amend the new online digital divorce service while the procedural rules themselves are being finalised. This work includes consideration of commitments made during the passage of the Act through parliament to improve the information and signposting for couples when they navigate the legal process of divorce, dissolution or separation.

The Ministry of Justice is committed to ensuring that the amended digital service allows for a smooth transition from the existing service which has reformed the way divorce is administered in the courts and improved the service received by divorcing couples at a traumatic point in their lives. Following detailed design work, it is now clear that these amendments, along with the full and rigorous testing of the new system ahead of implementation, will not conclude before the end of the year.

The Government recognises the need for clarity on when these important reforms will come into force. This will now be on the common commencement date of 6 April 2022. While this delay is unfortunate it is essential that we take the time to get this right. The new divorce process will work to reduce conflict, which is especially damaging for children, and will reflect work the Government are undertaking through the Reducing Parental Conflict programme. That programme will build the evidence on what works to reduce harmful levels of parental conflict below the threshold of domestic abuse, working with local areas to help them embed support in their local services for families. We will also use this opportunity to strengthen signposting to family mediation as a means to resolve arrangements for children and the division of assets on divorce.'

[Source: *Commons Hansard*, 7 June]

Guidance on weddings, civil partnerships, funerals, wakes and commemorations

For information and possibly for action

The Government published two updated guidance notes, with effect from 21 June:

- [how to safely plan a wedding or civil partnership, or funeral, wake or commemoration](#) and
- [wedding and civil partnership ceremonies, receptions and celebrations](#).

The former advises on how to safely plan such events, whilst the latter provides updated guidance on risk assessments, social distancing measures, singing and dancing, serving food and drink, and enforcement.

[Source: MHCLG, 28 June]

Guidance on outdoor civil marriage and civil partnership ceremonies in England & Wales

For information

The Ministry of Justice has [published](#) guidance for couples and venues on outdoor civil marriage and civil partnership ceremonies. The note is reproduced below:

Can I get married or register a civil partnership outdoors at all types of venue?

Civil marriages or civil partnerships which take place on Approved Premises, such as hotels, can be held in the outdoor grounds of the premises from 1 July 2021, providing that the venue agrees to conduct outdoor ceremonies and can comply with various conditions. Religious premises which are already approved for civil partnership registration will be able to hold the civil partnership ceremony within the grounds of the premises, if they wish to offer this option. In either case you will need to discuss what is possible with the venue.

Civil marriages which are held at a Register Office and religious marriages conducted in a place of worship cannot be held outdoors at the current time.

I'm considering having an outdoor ceremony at an Approved Premises venue but I'm not sure which venues offer this option. Is there a register or list which shows which venues in my area will be providing outdoor ceremonies?

There is no central list of Approved Premises offering outdoor ceremonies because this is a new change and those venues will need to decide whether they wish to offer this option. There is no requirement for them to do so. There is, however, a list of [Approved Premises](#) and you can make enquiries of individual venues in the same way you would in order to determine whether other facilities may be available.

I have an existing wedding ceremony booked at an Approved Premises. Can I now have that ceremony outdoors?

You should discuss this with the venue as soon as possible. The Government has made changes to the law to allow a civil wedding ceremony (or civil partnership registration) on Approved Premises to take place in the grounds of the venue. However, whether you can change your ceremony from a room inside the Approved Premises to a location in the grounds depends on whether the venue is offering outdoor ceremonies. The venue must also first obtain prior confirmation from the local authority that the proposed location for your outdoor ceremony is seemly and dignified. It is important that you discuss your wishes with the venue before making any firm plans.

Will I need to change my notice of intention to marry if I have my ceremony in the grounds of the Approved Premises?

No – this will not be necessary unless you are changing to a different venue (for example, if your current venue has decided not to offer outdoor ceremonies).

Will my ceremony be cancelled if it rains?

You should discuss and agree in advance with the Approved Premises venue the use of an alternative room within the premises, or a partially enclosed structure in the grounds, so that your ceremony can still take place in the event of bad weather. Venues have been advised to consider contingency plans so that a ceremony can still take place on the day.

Can I have an unlimited number of guests at my ceremony if it is to be held outdoors?

The maximum number of guests who can attend your ceremony will depend on a number of factors, including any legal restrictions or [guidelines on Covid-19](#) and social gatherings, health and safety and fire precautions (especially in relation to any partially enclosed structure within which the outdoor ceremony will take place), and any planning restrictions which may be in place or which may be imposed by the local authority on the venue.

Approved Premises will also need to consider how the guests can be accommodated indoors in the event of bad weather, whilst meeting any current Covid-19 and health and safety requirements, which may differ for indoor gatherings depending on the size of the room(s) available.

Guidance is available which provides further information about the Covid-19 requirements in place for weddings and civil partnership ceremonies, receptions and celebrations at [Coronavirus \(COVID-19\): Wedding and civil partnership ceremonies, receptions and celebrations](#) on GOV.UK.

[Source: MoJ, 1 July]

NORTHERN IRELAND

Bill for Parental Bereavement Leave and Pay

For information

NI Economy Minister Diane Dodds has [introduced](#) a Bill to the Assembly to legislate for statutory Parental Bereavement Leave and Pay. Under the proposals, employees who suffer the loss of a child under the age of eighteen or a stillbirth after 24 weeks of pregnancy will have a statutory entitlement to two weeks' leave and, in most cases, working parents will also be entitled to a statutory payment.

[Source: Northern Ireland Executive, 1 June]

Northern Ireland business rates revaluation

For information

Northern Irish Finance Minister, Conor Murphy, has [announced](#) a revaluation of all 74,750 non-domestic properties. Known as 'Reval2023', this process will result in a new non-domestic Valuation List being used to calculate business rate bills from April 2023.

[Source: NI Department of Finance, 16 June]

ODDS & ENDS

Access to Cash consultation

For information **and possibly for action**

HM Treasury has [published](#) a consultation – closing on 23 September - seeks views on the Government's legislative proposals for protecting access to cash. The consultation seeks views on:

- establishing geographic requirements for the provision of cash withdrawal and deposit facilities
- the designation of firms for meeting these requirements
- establishing further regulatory oversight of cash service provision.

[Source: HM Treasury, 1 July]

COVID-19: Prime Minister announces easing of restrictions in England

For information **and possibly for action**

The Prime Minister has [announced](#) that from 19 July (*subject to a final review of the data on 12 July*) legal restrictions are set to end in England. The easing of restrictions is as follows.

- Limits on social contact will end other than in specific places, such as at the border, to help manage the risks of new variants coming into the country.
- Weddings, funerals and other life events able to take place without limits or restrictions.
- All venues currently closed will be allowed to reopen, and there will be no legal requirement for table service in hospitality settings.
- Face coverings will no longer be legally required although guidance will be in place to suggest where people might choose to wear one.
- There will be no legal requirement on the use of COVID-status certification as a condition of entry for visitors to any domestic setting.
- The guidance to work from home where possible will also end, to allow employers to start planning a safe return to workplaces.

- The Prime Minister also signalled the Government's intention to move to a new regime whereby fully vaccinated people would no longer need to self-isolate if identified as being in contact with someone who tests positive for COVID.
- Proof of vaccination or a negative test will still be required for international travel.

In **Scotland**, the use of face masks in shops and on public transport will be encouraged following its easing of restrictions on 9 August, when all other legal restrictions are set to be dropped. In **Wales** and **Northern Ireland** a date has not yet been set to lift restrictions, though the restrictions will be reviewed on 15 July (Wales) and 8 July (Northern Ireland).

[Source: 10 Downing Street, 5 July]

PROPERTY & PLANNING

Building Safety Bill

For information

The Building Safety Bill has been [published](#) ([explanatory notes](#)). The Bill takes forward the Government's commitment to reform the building safety system and changes to the Architects Act 1997, the Housing Act 1996, and will establish a National Regulator for Construction Products and a New Homes Ombudsman. The summary of the Bill is as follows.

- "Part 1 provides an overview of the Bill.
- "Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive.
- "Part 3 deals with amendments to the Building Act 1984 as it applies to England and Wales, and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.
- "Part 4 is concerned with higher-risk residential buildings in England when they are occupied, and defines the scope of the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the dutyholder in occupation) in relation to building safety risks in their building.
- "Part 5 details other provisions, including provisions relating to service charges and redress, and changes to the Fire Safety Order. It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK. It allows disciplinary orders made against architects by the Professional Conduct Committee of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.
- "Part 6 contains the technical clauses related to the Bill, including Crown application and provision for liability of officers."

[Source: Parliament, 5 July]

Responsible Person or Duty Holder under the Fire Safety Order

For information

The Home Office has [published](#) a guidance note to help identify whether you are a Responsible Person or Duty Holder under the Fire Safety Order and what responsibilities that comes with, in terms of fire safety.

[Source: Home Office, 5 July]

SCOTLAND

Opposite-sex civil partnerships

For information

It has become possible to register a mixed-sex civil partnerships, following the [Civil Partnership \(Scotland\) Act 2020](#) receiving Royal Assent.

In line with usual practice for marriage and civil partnership, there is a requirement for a clear 28-day notice period (though the Registrar General has the discretion to waive it in exceptional cases) and couples were able to submit notice of intention to enter a mixed-sex civil partnership in Scotland from 1 June. The earliest date on which a mixed-sex civil partnership could be registered was therefore 30 June 2021.

[Source: Scottish Government, 30 June]

OSCR: George Walker appointed as Interim Chair

For information

The Scottish Government has [announced](#) that George Walker has been appointed as the interim Chair of the Scottish Charity Regulator (OSCR). This appointment will be for one year in order to allow the organisation to appoint a permanent replacement for Lindsay Montgomery CBE, who resigned as OSCR Chair in March this year.

[Source: Scottish Government, 1 June]

OSCR: Reporter, June edition

For information

OSCR has published the June edition of the *Reporter*. It includes a [short guide on restarting fundraising](#).

[Source: OSCR, 4 June]

Short Term Lets: consultation on draft Licensing Order

For information

The Scottish Government has [published](#) a consultation – closing **13 August** – on its short-term lets draft Licensing Order and Business and Regulatory Impact Assessment. It intends to lay the Licensing Order at the Scottish Parliament in September 2021.

[Source: Scottish Government, 25 June]

Strengthening Scottish Charity Law

For information

The Scottish Government has published its [Analysis of Responses to Engagement on Strengthening Scottish Charity Law](#). It has also published some of the [individual responses](#) to the consultation.

[Source: Scottish Government, 22 June]

TAXATION

Fundamental Review of Business Rates in England: more frequent revaluations

For information **and possibly for action**

HM Treasury has [published](#) a consultation – closing **24 August** – on more frequent revaluations, as part of the wider fundamental review of business rates. The consultation questions are as follows.

1. Does the proposed package of measures represent a fair and balanced trade-off for ratepayers between new benefits and new requirements? If not, please detail what adjustments you would like to see, to ensure a balanced package of measures that would support a 3-yearly cycle while taking account of deliverability constraints. (2000 words)
2. What steps could be taken to support ratepayers to comply with the new duties? For example, elements to reflect in the design of the reporting portal, or content that would be helpful to include in the supporting guidance. (500 words)
3. Are you supportive of the proposed approach to Transparency? Are there further elements you think should be made available as part of a Transparency offer? (500 words)
4. What steps could the Government, stakeholders, or industry take to support a smooth move to a 3-yearly cycle? (1000 words)
5. Do you have any other comments on the proposed approach to the move to a 3-yearly cycle? (1000 words)
6. Do you agree that that moving to a three-year cycle should be the Government's priority for this stage of reform, and that going further should remain an option for the future? (1000 words)
7. Would you support a move to an annual revaluations cycle or a shorter AVD in the future, accompanied by the necessary enabling reforms set out in this chapter? (1000 words)

It is not intended to submit a response on behalf of CLAS.

[Source: HM Treasury, 29 June]