

## CLAS CIRCULAR 2022/15 (9 November 2022)

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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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## CHARITIES & CHARITY LAW

### Campaigning and political activity by charities

For information

In principle, charities – including charities for the advancement of religion – must not engage in party political activity but, as we have no doubt said before, political campaigning by faith-groups is sometimes a difficult area. At what point does campaigning for (eg) a more equitable benefits system or world peace cross the line into party political activity?

The Charity Commission has addressed the issue in two sets of updated guidance for England and Wales. Its guidance on [Charities, Elections and Referendums](#) addresses the general issue as follows:

*“A charity’s policy position on a particular issue may coincide with, or be more or less similar to, that of one of the political parties. In this case it is entirely acceptable for the charity to continue to campaign on that issue and to advocate its policy *as long as it makes clear its independence from any political party advocating the same policy, and does nothing to encourage support for any political party*” [emphasis added].*

Its guidance on [Campaigning and political activity by charities](#) makes the following key points:

- a charity an organisation must be established for charitable purposes only and an organisation will not be charitable if its purposes are political;
- campaigning and political activity can be legitimate and valuable activities for charities to undertake; however,
- political campaigning or activity, as defined in the guidance, must be undertaken only in the context of supporting the delivery of the charity’s charitable purposes and must not be the continuing and sole activity of the charity;
- carrying out political activity may sometimes be the best way for trustees to support their charity’s purposes, but trustees must ensure that it is not, and does not become, the reason for the charity’s existence;
- charities can campaign for a change in the law, policy or decisions where such change would support the charity’s purposes and can also campaign to ensure that existing laws are observed; however
- a charity cannot exist for a political purpose, which is any purpose directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in this country or abroad;

- in the political arena, a charity must stress its independence and ensure that any involvement it has with political parties is balanced;
- a charity must not give support or funding to a political party, to a candidate or to a politician;
- a charity may support specific policies advocated by political parties if they would help achieve its charitable purposes; however,
- trustees must not allow their charity to be used as a vehicle for the expression of the political views of any individual trustee or staff member (in this context the Charity Commission means personal or party political views);
- when considering campaigning and political activity, charity trustees must carefully weigh up the possible benefits against the costs and risks in deciding whether the campaign is likely to be an effective way of furthering or supporting the charity's purposes;
- when campaigning, charity trustees must comply not only with charity law, but other civil and criminal laws that may apply and, where applicable, they should also comply with the Code of the Advertising Standards Authority;
- a charity can campaign using emotive or controversial material where it is lawful and justifiable in the context of the campaign – but it must be factually accurate and have a legitimate evidence base; and
- the principles of charity campaigning and political activity are the same, whether the activity is carried out in the United Kingdom or overseas.

[Source: Charity Commission, 7 November 2022]

### Charities Act 2022: first set of changes come into force

**For information and possibly for action**

The Charity Commission has [announced](#) that the first set of changes being introduced by the Charities Act 2022 for England and Wales have now come into force, introducing a range of provisions including new powers for trustees. They include:

- an extended power for charities to [pay trustees for providing goods to the charity](#) under certain circumstances (in addition to services, and goods connected to services);
- a reduction in the administrative complexities surrounding [fundraising appeals](#) that do not reach, or exceed, fundraising targets (often known as “failed appeals”); and

- a new statutory power for [Royal Charter charities](#) to change sections of their Royal Charters which they could not previously change, subject to approval by the Privy Council Office.

Updated guidance is available [here](#).

The Government has said that new provisions on *ex gratia* payments originally intended to be commenced in the first tranche are now under further consideration prior to commencement because it appears that sections 15 and 16 have the effect of enabling national museums for the first time to restore items from their collections on moral grounds (for example, cultural items obtained by way of looting). In answer to a [question](#) from Oliver Dowded (Conservative), Stuart Andrew MP (Parliamentary Under Secretary of State at the DCMS and Minister for Equalities at the Department for International Trade) responded as follows:

"The Government is deferring the commencement of sections 15 and 16 of the Charities Act 2022 until we fully understand the implications for National Museums and other charities. When Parliament debated the Charities Bill, enabling national museums to restitute [*sic*] items from their collections based on moral grounds was neither considered, nor agreed on. Deferring the commencement of these sections of the Act, which were initially planned to be in the first tranche of commencements in autumn 2022, will have no impact on the implementation of the other sections in the Charities Act 2022."

[Sources: Commons *Hansard*, 25 October, Charity Commission, 31 October and 1 November]

## Charities and terrorism

**For information and possibly for action**

The Charity Commission has updated its guidance on key aspects of the UK's counter-terrorism legislation and how it may affect charities and their work. The main guidance, [Compliance toolkit chapter 1: Charities and Terrorism](#), has been updated to signpost to new guidance from the Crown Prosecution Service on proscription offences and terrorist financing offences and cases involving humanitarian, development and peacebuilding work overseas.

[Source: Charity Commission, 9 November]

## EMPLOYMENT & VOLUNTEERING

### Carer's Leave Bill

For information

BEIS has [announced](#) the Government's support for the [Carer's Leave Bill](#), a Commons private Member's bill introduced by Wendy Chamberlain MP (Lib Dem). The bill, if enacted, will introduce a new entitlement of one week's unpaid leave per year for employees who are providing or arranging care. Carer's leave will be available to eligible employees from the first day of their employment. Staff will be able to take the leave flexibly to suit their caring responsibilities and will not need to provide evidence of how the leave is used or whom it will be used to support.

Employees taking their carer's leave entitlement will be subject to the same employment protections that are associated with other forms of family-related leave, meaning that they will be protected from dismissal or any detriment as a result of having taken time off.

[Source: BEIS, 21 October]

### Redundancy (Pregnancy and Family Leave) Bill

For information

BEIS has [announced](#) the Government's support for the Protection from [Redundancy \(Pregnancy and Family Leave\) Bill](#), introduced by Dan Jarvis MP (Lab). Under the current rules, before offering redundancy to an employee on maternity leave, shared parental leave or adoption leave, employers have an obligation to offer them a suitable alternative vacancy where one exists. The bill, if enacted will extend this protection to pregnant women as well as to new parents returning to work from a relevant form of leave.

[Source: BEIS, 21 October]

## NORTHERN IRELAND

### Consultation on changes to planning permitted development rights

For information **and possibly for action**

The Northern Ireland Department for Infrastructure has [published](#) a consultation – closing on **23 December** – on changes to planning permitted development rights. It seeks views on proposals to revise permitted development rights for the installation of domestic microgeneration equipment such as heat pumps and to provide new permitted development rights for reverse vending machines.

[Source: Northern Ireland Department for Infrastructure, 27 October]

### Independent Review of Charity Regulation

For information

The Northern Ireland Department for Communities has [updated](#) its post on the Independent Review of Charity Regulation, and its formal [response to the Review's 93 recommendations](#) has now been published. Implementation will redesign the existing regulatory framework to allow for a legislative framework that is intended to be “fit for purpose” and, it is hoped, a Commission that is better equipped for the regulatory tasks required of it.

[Source: Northern Ireland Department for Communities, 3 November]

### Miscarriage leave and pay

For information **and possibly for action**

The Northern Ireland Department for the Economy has [published](#) a consultation – closing **19 December** – on miscarriage leave and pay. The proposal includes changing the entitlement criteria for Statutory Parental Bereavement Pay to make it a “day one” right by removing the eligibility requirement for 26 weeks of continuous employment. It also includes the introduction of Miscarriage Leave and Pay as an amendment to the existing policy of Parental Bereavement Leave and Pay.

[Source: Northern Ireland Department for the Economy, 24 October]

**Northern Ireland: Positions of Trust**

**For information and possibly for action**

Between 27 October and 22 December, the Department of Justice is holding a [consultation](#) on the recent amendment made to the abuse of position of trust provision in the Sexual Offences (Northern Ireland) Order 2008 by section 5 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022. In brief, it adds to the statutory list of positions of trust the situation where “A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport *or a religion*”.

[Source: Department of Justice, 27 October]



## ODDS & ENDS

### Review of Government counter-terrorism strategy

For information

In an [announcement](#) on a counter-terror strategy review, the Home Office has confirmed its intention to introduce the Protect Duty, which, says the announcement, “will enhance the safety of public venues while avoiding placing additional burden on small businesses”.

We made a submission to the consultation and, since then, have been participating in regular online meetings of the Cathedral Security Group. The Home Office appears to have taken on board concerns that any new duties placed on congregations will need to be proportionate – particularly in relation to small congregations with ageing memberships – but we continue to monitor the situation very carefully.

[Source: Home Office, 30 October]

## PROPERTY & PLANNING

### Chancel repair liability

For information

In answer to a [question](#) from Daisy Cooper (Lib Dem) about the Law Commission's progress on its [Registered Land and Chancel Repair Liability](#) project, Mike Freer (Parliamentary Under Secretary of State, MoJ) said that the project was part of the Law Commission's 13th programme and will be conducted "as and when resources allow, and we understand that the project on Registered Land and Chancel Repair Liability has not yet begun".

[Source: Commons *Hansard*, 17 October]

### Energy bills rebate: religious buildings

For information

In reply to a written question from Catherine West MP (Lab) about the energy bills rebate and religious buildings, Graham Stuart MP [responded](#) as follows:

"The Energy Bill Relief Scheme will provide a price reduction to all UK businesses and other non-domestic energy users including faith centres and places of worship on eligible energy supply contracts. This will help ensure they are protected from excessively high energy bills over the winter period.

The exact value of the savings for each non-domestic customer will vary depending on their contract type, the tariff and the volume used, but the scheme is intended to ensure broad parity and fairness."

[Source: Commons *Hansard*, 18 October]

### Fire safety in places of worship

For information

A correspondent recently raised the issue of 2022 changes to fire safety requirements in England. The [Fire Safety \(England\) Regulations 2022](#) apply in England only and will be brought into operation on **23 January 2023**. The Government has said that it will publish guidance “later in the year”; however, it published an [overview fact sheet](#) that was last updated on 23 August 2022.

There is quite a lot of detailed material about fire safety on the web. [Ecclesiastical Insurance](#), for example, reminds churches that they need to complete a suitable and sufficient fire risk assessment in order to comply with the Regulatory Reform (Fire Safety) Order 2005 or the Fire (Scotland) Act 2005 and that it should be reviewed periodically in order to remain valid.

Unfortunately, almost all the material on the web predates the new Regulations, and the [Opinion](#) from the Legal Advisory Commission of the Church of England's General Synod is dated October 2007. ***If any reader knows of up-to-date guidance on the new Regulations, please let us know and we will help to disseminate it.***

[Source: CLAS, 9 November]

## SAFEGUARDING

### IICSA: Final Report

For information

IICSA has published its final [Report of the Independent Inquiry Into Child Sexual Abuse – October 2022](#). As well as the full report, there is a [Rapid Read](#) version and an [Executive Summary](#).

Recommendation 13 is on the introduction of mandatory reporting in England and Wales: that the UK and Welsh Governments should bring forward “legislation which places certain individuals – ‘mandated reporters’ – under a statutory duty to report child sexual abuse where they receive a disclosure of child sexual abuse from a child or perpetrator; or witness a child being sexually abused; or observe recognised indicators of child sexual abuse”.

Under the proposals, the following persons should be designated “mandated reporters”: any person working in regulated activity in relation to children (under the Safeguarding and Vulnerable Groups Act 2006, as amended), any person working in a position of trust (as defined by the Sexual Offences Act 2003, as amended) and police officers.

For the purposes of mandatory reporting, “child sexual abuse” should be interpreted as any act that would be an offence under the Sexual Offences Act 2003 where the alleged victim is a child under the age of 18. Where the child is aged between 13 and under 16 years old, a report need not be made where the mandated reporter reasonably believes that the relationship between the parties is consensual and not intimidatory, exploitative or coercive *and* the child has not been harmed *and* is not at risk of being harmed *and* there is no material difference in capacity or maturity between the parties engaged in the sexual activity concerned *and* there is a difference in age of no more than three years. *These exceptions should not, however, apply where the alleged perpetrator is in a position of trust within the meaning of the 2003 Act; and where the child is under the age of 13, a report must always be made.*

Reports should be made to either local authority children’s social care or the police as soon as is practicable and it should be a criminal offence for mandated reporters to fail to report child sexual abuse where they are in receipt of a disclosure of child sexual abuse from a child or perpetrator or where they witness a child being sexually abused.

The report notes that some core participants and witnesses argued for exemptions from any mandatory reporting obligation for some faith-based settings or personnel and, in particular, in the context of sacramental confession; however, the Inquiry firmly rejects that suggestion:

“As the Inquiry has already noted, the respect of a range of religions or beliefs is recognised as a hallmark of a liberal democracy. Nonetheless, neither the freedom of religion or belief nor the

rights of parents with regard to the education of their children can ever justify the ill-treatment of children or prevent governmental authorities from taking measures necessary to protect children from harm. The Inquiry therefore considers that mandatory reporting as set out in this report should be an absolute obligation; it should not be subject to exceptions based on relationships of confidentiality, religious or otherwise.”

The House of Bishops of the Church of England [announced](#) on 11 October that it had commissioned further work on the seal of the confessional, building on the [report and interim statement](#) from the previous working party published in 2018/2019. The announcement said that the new working group would take account of any relevant findings in IICSA's final Report. The Church of England's initial response to the Report is [here](#).

[Source: IICSA, 20 October]

## SCOTLAND

### Cost of Living (Tenant Protection) (Scotland) Act 2022

For information **and possibly for action**

The Scottish Government has [announced](#) that the [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022](#) has now become law. It gives Ministers temporary power to cap rent increases for private and social tenants and for student accommodation. It applies to in-tenancy rent increases, with the cap set at 0% from 6 September 2022 until at least 31 March 2023, effectively freezing rents for most tenants during this period.

It will prevent enforcement of eviction actions resulting from the cost crisis over the same period except in a number of specified circumstances, and damages for unlawful evictions have been increased to a maximum of 36 months' worth of rent.

[Source: Scottish Government, 28 October]

### National Planning Framework 4 - draft: consultation analysis

For information

The Scottish Government has [published](#) a consultation analysis on the draft National Planning Framework 4. The analysis gives an overview of some of the key themes to emerge from the analysis of responses to its consultation on the Fourth National Planning Framework.

[Source: Scottish Government, 8 November]

## TAXATION

### Religious Buildings: VAT

For information **and possibly for action**

In reply to a written question from Valerie Vaz (Lab) about VAT and religious buildings, Stuart Andrew [responded](#) as follows:

“The Government recognises that listed places of worship represent some of the nation's finest heritage, and that there are particular burdens to the upkeep of such spiritual architecture. The Government funded Listed Place of Worship Grant Scheme aims to support the works by giving grants that cover the VAT incurred in making repairs to listed buildings in use as places of worship. This supports the effective conservation of these sites.

In 2012, my Department and the Treasury became joint funders, with annual funding increased up to £42 million per annum. I am pleased to confirm this amount of funding has been secured for the current spending period until 31st March 2025. Whilst the government cannot confirm this funding permanently, my officials remain in close contact with the sector and are aware of the ongoing need for support for this scheme.”

The extension of the Scheme until March 2025 had already been announced, but the confirmation was welcome.

We have also learned that the new administrator of the Scheme, East Midlands Business Ltd, is to update the LPWGS [website](#) (which it badly needs: the current version is absolutely dire). EMB is currently conducting a short [online survey](#) of users of the current website and we have replied to the survey on behalf of CLAS, but *it would no doubt be helpful if members who have received reimbursements from the Scheme could make their own responses* (it's a very brief survey).

[Source: Commons *Hansard*, 31 October]

## WALES

### The future of Welsh-speaking Communities: call for evidence

For information **and possibly for action**

The Welsh Government has [published](#) a call for evidence – closing **13 January 2023** – on the future of Welsh-speaking communities. The call for evidence aims to:

- bring together information and evidence in relation to Welsh-speaking communities;
- collect ideas and views about how they might be strengthened; and
- assist the Commission for Welsh-speaking Communities in its work in drawing up recommendations to the Welsh Government.

[Source: Welsh Government, 8 November]

### Update on Building Regulations guidance for Parts F, L and O

For information **and possibly for action**

The Welsh Government has published updated building regulations guidance on Part F (ventilation), L (conservation of fuel and power) and O (overheating). The update documents can be accessed via the following.

- [Building regulations guidance: part F \(ventilation\)](#).
- [Building regulations guidance: part L \(conservation of fuel and power\)](#).
- [Building regulations guidance: part O \(overheating\)](#).

[Source: Welsh Government, 20 October]