

CLAS CIRCULAR 2023/07 (5 April 2023)

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 Act 2022: information on the changes being introduced in Spring 2023

For information

The [Charities Act 2022](#) amends the [Charities Act 2011](#). The Commission has published short summaries of the changes that are due to come into effect in Spring 2023 and links to its updated guidance for the changes that came into force on 31 October 2022. The final set of changes are due to come into effect in Autumn 2023.

Following are short summaries of the changes due to come into effect in Spring 2023. The Commission will publish the updated guidance on these topics on the day the provisions are implemented.

Selling, leasing or otherwise disposing of charity land

Charities must comply with certain legal requirements before they dispose of charity land. Disposal can include selling, transferring or leasing charity land. The Act will simplify some of these legal requirements. The changes will include:

- widening the category of designated advisers who can provide charities with advice on certain disposals;
- confirming that a trustee, officer or employee can provide advice on a disposal if they meet the relevant requirements;
- giving trustees discretion to decide how to advertise a proposed disposal of charity land;
- removing the requirement for charities to get Commission authority to grant a residential lease to a charity employee for a short periodic or fixed term tenancy;
- clarifying the legal requirements that apply when a charity is selling, leasing or otherwise disposing of land to another charity; and
- updating the statements and certificates that must be included in disposal or mortgage documents for charity land.

Using permanent endowment

Put simply, permanent endowment is property that the charity must keep rather than spend. The Act will introduce new statutory powers to enable:

- charities to spend, in certain circumstances, from a “smaller value” permanent endowment fund of £25,000 or less without Commission authority; and

- certain charities to borrow up to 25% of the value of their permanent endowment fund without Commission authority.

Charities that cannot use the statutory powers will still require Charity Commission authority.

A new statutory power will enable charities that have opted into a total return approach to investment to use permanent endowment to make social investments with a negative or uncertain financial return, provided any losses are offset by other gains.

Charity names

The Commission can currently direct a charity to change its name if it is too similar to another charity's name or is offensive or misleading. The Act will enable the Commission:

- to direct a charity to stop using a working name if it is too similar to another charity's name or is offensive or misleading. A working name is any name used to identify a charity and under which the activities of the charity are carried out. For example, "Comic Relief" is the working name of the charity "Charity Projects";
- to delay registration of a charity with an unsuitable name or delay entry of a new unsuitable name onto the Register of Charities; and
- to use its powers in relation to exempt charities in consultation with the principal regulator.

Other provisions

The definition of a connected person will be updated to remove outdated language.

An overview of the full changes can be found here: [Charities Act 2022: implementation plan](#).

[Source: Charity Commission, 3 April 2023].

EMPLOYMENT

Government review of the law on whistleblowing

For information **and possibly for action**

“Whistleblowers” in England, Scotland and Wales are entitled to protections under the [Public Interest Disclosure Act 1998](#), which amending the Employment Rights Act 1996. They include protection from detriment or dismissal for blowing the whistle and a route of redress through the Employment Tribunals if those protections are infringed. To qualify for protection, the worker usually has to have made the disclosure to his or her employer, legal adviser or to a prescribed person.

The Department for Business & Trade has [announced](#) a review of the whistleblowing framework. Its purpose is to examine the effectiveness of the whistleblowing framework in meeting its original objectives and to assemble an up-to-date evidence base to inform Government about policy choices to develop and improve the whistleblowing framework. It is expected that the research will be concluded by Autumn 2023.

[Source: Department for Business & Trade, 27 March]

FAITH & SOCIETY

Increased security measures to protect Jewish communities

For information

Synagogues and faith schools will be given £15 million for protective security measures in 2023 to 2024 as part of the Jewish Community Protective Security grant, a £1 million increase on last year. This will fund increased protective security, including security guards and other security measures such as CCTV and alarm systems to protect against persistent hate crime, anti-social behaviour, terrorism and state threats.

In addition, senior policing leaders, ministers, the Community Security Trust (CST) and other stakeholders will form a new Jewish Community Police, Crime and Security Taskforce. The first meeting is likely to consider whether it is necessary to review operational policing guidance in light of concerns shared by the Jewish community. This could include guidance on specific chants, banners and emblems which are antisemitic, and ensuring that the police and Crown Prosecution Service are using their powers to arrest and charge criminals who pose a threat to the Jewish community.

The measures follow the latest Home Office hate crime statistics which show that despite making up less than 1% of the population, almost a quarter of recorded religiously-motivated hate crimes in the UK were against Jewish people in 2021 to 2022.

[Source: Home Office, 30 March]

More on mandatory reporting of child sexual abuse

For information

Writing about the final report by the Independent Inquiry into Child Sexual Abuse (IICSA) in the *Mail on Sunday*, Home Secretary Suella Braverman [committed](#) the Government to introducing mandatory reporting of child sexual abuse in England in unequivocal terms:

'The inquiry found repeated individual and institutional failures to report child sexual abuse. It recommended that the Government should introduce a mandatory duty for professionals with safeguarding responsibilities to report any signs or suspicions of such abuse. Had this duty been in place already, countless children would have been better protected against grooming gangs and against sexual abusers more widely. That is why I have committed to introduce Mandatory Reporting across the whole of England.'

She also said that the Prime Minister would be setting out further measures to tackle the problem.

What this means for the seal of the confessional remains to be seen.

[Source: *Mail on Sunday*, 1 April]

Registration of Births and Deaths in England and Wales

For information

The [Data Protection and Digital Information \(No. 2\) Bill 2022-23](#) was introduced in the House of Commons on 8 March and is scheduled to have its second reading on **17 April**. A House of Commons Library Briefing will be published in time for the debate.

In a [Written Ministerial Statement](#) on 8 March, Michelle Donelan, Secretary of State for Science, Innovation and Technology, outlined the scope of the Bill, which would *inter alia* 'reform the way births and deaths are registered in England and Wales, enabling the move from a paper-based system to registration in an electronic register' – for which see Clauses 94 to 98.

[Source: House of Commons, 28 March]

Reforming surrogacy law in Great Britain

For information and possibly for action

The Law Commission of England and Wales and the Scottish Law Commission have published a joint report on surrogacy: *Building families through surrogacy: a new law*. They recommend a comprehensive range of reforms to make the law of surrogacy work better for children, surrogates and intended parents and ensure that surrogacy continues to operate on an altruistic rather than a commercial basis. There is a summary of their conclusions [here](#). In brief, the two Commissions recommend:

- **A new pathway to legal parenthood** under which intended parents would become parents from birth, rather than wait for months to obtain a parental order, subject to the surrogate having the right to withdraw consent.
- **A regulatory route overseen by non-profit surrogacy organisations** where individual surrogacy agreements under the new pathway will be overseen and supported by non-profit Regulated Surrogacy Organisations (RSOs).

- **Reforms to parental orders** including allowing the court to make a parental order where the surrogate does not consent, provided that the child's welfare requires this. thereby bringing surrogacy law into line with other family law.
- **A new Surrogacy Register** to add greater transparency and give surrogate children the opportunity to trace their origins when they are older.
- **New rules on payments** to provide clarity over which payments intended parents are permitted to make to the surrogate, including medical and well-being costs, those to recoup lost earnings, pregnancy support, and travel. Prohibited payments would include those made for carrying the child, compensatory payments, and living expenses such as rent. These payment rules are intended to ensure that the surrogate is not left worse off through surrogacy while protecting against the risk of exploitation.
- **A prohibition on commercial surrogacy** to ensure that surrogacy continues to operate on an altruistic, rather than a commercial basis. Surrogacy arrangements will also remain unenforceable.
- **International surrogacy agreements** should also have legal and practical measures to safeguard the welfare of those children, for example by assisting them in acquiring UK nationality and recording relevant information on the Surrogacy Register. However, due to the potential for exploitation of women and children under international agreements, the commission advised seeking to make domestic agreements more appealing.

[Source: Law Commission and Scottish Law Commission, 29 March]

FUNDING

Benefact Trust: new Building Improvement Grants Programme

For information and possibly for action

The Benefact Trust gives grants to provide essential support to protect and enhance churches and Christian charity buildings, ensuring their continued use, viability, and the safeguarding of their heritage. The programme is open to applications from churches, cathedrals, denominational bodies and Christian charities and will support direct capital costs of:

- essential, one-off repairs or other capital works;
- minor capital works or equipment purchases to meet operational or accessibility requirements;
- conservation or restoration of historic features;
- improvements to indoor or outdoor space for users; and
- energy efficiency/renewable energy measures.

For full details go to the [Benefact Trust website](#).

[Source: Benefact Trust, nd]

Grants and adviser support for co-locating a community business in a place of worship

For information and possibly for action

The Benefact Trust has also funded the Plunkett Foundation to enable it to extend its programme of funding until the end of 2023. It offers free business support and grants to help community groups and active Christian places of worship across the UK to explore co-location. They can provide free adviser support on everything from engaging with your community to legal structures.

More information about the grants, together with case-studies, can be found on [Plunkett's website](#).

[Source: Plunkett Foundation, nd]

NORTHERN IRELAND

Private Tenancies (Northern Ireland) Act 2022

For information **and possibly for action**

The Department for Communities has issued a reminder to private landlords that the [Private Tenancies \(Northern Ireland\) Act 2022](#) came into effect on 1 April. The Act requires that private landlords take the following actions from 1 April 2023:

- they must provide tenants with a notice containing tenancy information – which includes current tenants who have not already received this type of tenancy information;
- they must provide tenants with a notice of variation when any changes are made to their tenancies;
- they must provide receipts for any cash payment in relation to a tenancy; and
- they are only permitted to take or hold on to a tenancy deposit of no more than one month's rent unless the agreement to do so was made before 1 April.

There will be increased time periods for protecting and providing information on tenancy deposits and failure to protect a tenancy deposit will become a continuing offence, because the previous six-month time barrier to prosecution of tenancy deposit offence has been removed.

All private landlords who let a property under a private tenancy should also be registered under the [Landlord Registration Scheme](#). (Tenants are not required to take any action but are advised to be aware of how the new law will affect them and their tenancies.)

[Source: NI Department for Communities, 4 April]

Review of the Race Relations (NI) Order 1997

For information **and possibly for action**

The Northern Ireland Executive Office has announced a [review](#) of the [Race Relations \(NI\) Order 1997](#) intended to ensure that “racial equality legislation fully reflects and responds to the needs of our minority ethnic communities and offers them the best protections from racism and discrimination in the environments in which they live and work”. The review has been informed by examining the differences between the Northern Ireland Order, the relevant provisions of the Equality Act 2010 in Great Britain, and the parallel provisions in Ireland. The consultation closes on **18 June**.

[Source: NI Executive Office, 27 March]

PROPERTY & PLANNING

Business rates and places of worship

For information

In answer to a rather obscure [question to the Chancellor of the Exchequer](#) from Rachael Maskell (York Central, Lab) asking what assessment he has made of the adequacy of the Valuation Office Agency's requirements for signage in designating places of worship, the Financial Secretary to the Treasury, replied as follows:

'[Schedule 5 of the Local Government Finance Act 1988](#) sets out what conditions must be met for a religious building to be exempt from business rates. The main requirements are that the building should be a place of public religious worship which either belongs to the Church of England, the Church in Wales, or is certified as a place of religious worship by the General Register Office. It must also be used for the conduct of public religious worship.

The Valuation Office Agency (VOA) recognises that not all places of public religious worship will be in buildings that have traditionally been considered places of worship, such as purpose-built churches, temples, or chapels. **The assessment of whether a property is used for the conduct of public religious worship is considered on a case-by-case basis, according to the facts. This includes consideration of any signage that is in place inviting public worship.**

Should a ratepayer be unhappy with the VOA's assessment of their property, they can formally challenge the decision through the Check, Challenge, Appeal (CCA) process." [emphasis added].

[Source: Commons *Hansard*, 28 March]

Fuel costs: reliefs for charities: further update

For information **and possibly for action**

The Charity Commission has updated its Guidance, [Manage financial difficulties in your charity arising from cost of living pressures](#), as follows:

'5. Managing fuel costs: reliefs for charities

The Government put in place automatic energy bill relief for non-domestic customers until 31 March 2024. The levels of support were updated in the Spring budget: see [Spring Budget 2023 \(publishing.service.gov.uk\)](#) at 2.19-2.28. Further details on how the discounts are calculated and

applied can be found in guidance from the Department for Business, Energy & Industrial Strategy ([Energy Bill Relief Scheme](#)).

Additionally the charity can check whether it is presently paying the correct rate of VAT on the fuel it purchases – see [VAT for charities: What qualifies for VAT relief](#). You should contact your supplier if you believe a refund may be appropriate.”

[Source: Charity Commission, 24 March]

Landlord and tenant

For information

The Government has updated its [How to rent](#) guide for tenants – which might be of interest to property officers.

Subsequently – and possibly of interest to members who commercial rent property as part of their operations, whether as landlords or tenants – the Law Commission [announced](#) a wide-ranging review of how the right to renew business tenancies under [Part 2 of the Landlord and Tenant Act 1954](#) is working, and options for reform.

Under Part 2 of the Act, business tenants have the right to renew their tenancies when they would otherwise come to an end, allowing businesses to remain in their premises. Most business tenants automatically have the right to renew under the Act unless, before any lease is granted, they agree with the landlord that the right to renew should not apply. In order to do that – by a process known as “contracting out” – various formalities must be followed.

The legal framework is nearly 70 years old and there is concern that it is not working well either for landlords or for tenants. According to the Commission, those affected by the Act report that aspects of the law are burdensome, unclear and out-of-date. There is also concern that parts of the Act are standing in the way of modern commercial practices, causing unnecessary cost and delay for both landlords and tenants and preventing commercial space such as high streets from being occupied quickly and efficiently.

The project was referred to the Commission by the Department for Levelling Up, Housing and Communities in March 2023, having been announced as part of the [Government's Anti-Social Behaviour Action Plan](#). The Commission aims to publish a consultation paper **by late 2023**.

[Source: DLUHC, 23 March; Law Commission, 28 March]

TAXATION

Finance (No. 2) Bill

For information **and possibly for action**

The [Finance \(No.2\) Bill](#) has been published.

[Source: House of Commons, 23 March]

AND A HAPPY EASTER TO ALL OUR READERS