

CLAS CIRCULAR 2017/07 (8 March 2017)

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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CLAS HOUSEKEEPING

Policy on advice & queries

For information

We occasionally receive requests for advice from members – both clergy and lay – of the member Churches of CLAS and, where possible, we have tried to respond as helpfully as we can. However, *we do not carry professional indemnity insurance that would cover us should someone suffer financial loss as a result.*

We consulted the Governors about the issue, and at their last meeting they came to the conclusion that a statement should be put on the CLAS website stating that advice could not be given and that queries should be directed to the central administration of the enquirer's denomination.

We are very happy, where possible, to direct enquirers to relevant published sources, such as advice on the HMRC and ACAS websites: what we *cannot* do, however, is to provide tailored answers to individual queries.

SPRING BUDGET 2017

For information

Landfill Communities Fund

The value of the [Landfill Communities Fund \(LCF\)](#) for 2017-18 will remain unchanged at £39.3 million and the cap on contributions by landfill operators will be increased to 5.3 per cent. The Government will also consult on extending the scope of Landfill Tax to illegal waste disposal. The objects of the fund allow money to go towards, among other things, restoring places of religious worship or of historic or architectural interest and improving public parks or other public amenities.

Making Tax Digital for business: concession for small businesses etc

The Government had already announced that, as part of the Making Tax Digital for Business (MTDfB) policy initiative, businesses, self-employed people and landlords would be required to start using the new digital service from:

- April 2018 if they have profits chargeable to Income Tax and pay Class 4 National Insurance contributions (NICs) and their turnovers are in excess of the VAT threshold;
- April 2019 if they have profits chargeable to Income Tax and pay Class 4 NICs and their turnovers are below the VAT threshold;
- April 2019 if they are registered for and pay VAT;
- from April 2020 if they pay Corporation Tax (CT).

Businesses, self-employed people and landlords with turnovers under £10,000 are exempt from these requirements.

The Chancellor [announced](#) at Spring Budget 2017 a one-year deferral from mandating MTDfB for unincorporated businesses and landlords with turnovers below the VAT threshold. This means that only those businesses, self-employed people and landlords with turnovers above the VAT threshold with profits chargeable to Income Tax and that pay Class 4 NICs will be required to start using the new digital service from April 2018.

In addition, the Tax Information Note states that "Those who genuinely cannot get online due to their individual circumstances such as disability, geographical, or other reasons, will be exempted from these obligations".

National Insurance Contributions for the self-employed

The Chancellor made a point of stating that differences in tax treatment between employed and self-employed persons distorted the employment market and said that the Government will consult in the summer on one of the principal disparities in treatment: the payment of child benefits.

He rejected the option of retaining Class 2 NICs, but from April 2018, Class 4 NICs for the self-employed will be increased, from 9 per cent to 10 per cent in April 2018 and rising to 11 per cent by 2019. However, he stated that only self-employed individuals with profits above £16,250 will have to pay more in NICs and *those earning less than £16,000 will see a reduction in their total bill.*

National Living Wage

The NLW is to rise to £7.50 an hour in April.

Personal Income Tax allowances

The Government has recommitted to increasing the basic-rate income tax allowance to £11,500 and the higher rate threshold to £45,000 from 6 April 2017. The Chancellor said that by the end of the Parliament the thresholds would rise to £12,500 and £50,000 respectively.

Taxation of benefits in kind

As we previously intimated, the Government is to publish a call for evidence on exemptions and valuation methodology for the treatment of benefits in kind for purposes of income tax and employer NICs, to see whether their use in the tax system can be made fairer and more consistent.

Members will be aware that we have been here before on more than one occasion; we shall be following this very carefully and we will no doubt submit a response to the call for evidence.

Transitional relief on business rates

The Chancellor announced that the Government proposes to consult on the process for conducting the business rate revaluation process in advance of the next revaluation. Three transitional measures were announced:

- any business coming out of small business relief will be given a transitional cap;
- local authorities will be given a £3 million discretionary hardship fund from which, the Treasury has confirmed, charities may benefit; and
- there will be a £1,000 discount for pubs with a Rateable Value of below £100,000 (which is probably of no great interest to the majority of CLAS members, except insofar as rural pubs are generally regarded as a contributing factor to community cohesion).

The first two transitional measures may, however, be of some relevance: registered places of worship in England and Wales are exempt from business rates, but associated buildings owned and run by

churches are not – though they should qualify for the 80 per cent charitable exemption, which the Government has recently reaffirmed will not be changed.

VAT thresholds

From 1 April 2017 the VAT registration threshold will increase from £83,000 to £85,000 and the deregistration threshold from £81,000 to £83,000.

[Source: HM Treasury – 8 March]

CHARITIES & CHARITY LAW

The Information Commissioner and the Data Protection Act 1998

For information

Elizabeth Denham, the Information Commissioner, made a trenchant [speech](#) at the Fundraising and Regulatory Compliance Conference on 21 February – which was jointly organised by the ICO, the Charity Commission and the Fundraising Regulator – reminding charities of the need to operate within the constraints of the Data Protection Act 1998. She told charities that the Act did not stop charities from doing their jobs:

"It simply obliges you to do it in such a way that respects the fundamental privacy rights of each and every one of your donors, your supporters, and your volunteers."

Over the last 18 months, the ICO had undertaken a series of investigations into the fundraising practices of numerous charitable organisations which had uncovered serious contraventions of the Act. Two of those charities – the RSPCA and the British Heart Foundation – received monetary penalties in December and she said that she would be making a final decision on sanctions for another eleven charities over the coming weeks. The ICO's investigations were now complete and she was not looking at any other charities as part of the investigation into fundraising practices that were sparked by media reports in 2015. However:

"By now, charities and other fundraising organisations should be under no illusion that the activities we investigated – data sharing, data and tele-matching, and wealth screening – breached data protection rules."

She told delegates that the Data Protection Act was principles-based and did not address the legality of particular activities. So:

"You won't find a clause that says wealth screening is against the law, for example. But you will find principles that say data must be processed fairly and lawfully. Some of the activities that we investigated charities for will never be accepted as being fair. It's hard to imagine, for example, a circumstance where searching out phone numbers or addresses that have not been shared could be fair. Wealth screening, as least how we have seen it being done, is not fair either."

There might also be circumstances in which telling people was not enough:

"If the processing is unfair, telling people you're going to do it won't instantly make it fair. Fairness applies whether the information is given to you directly by an individual or obtained from other, publically available sources. Publicly available information is not fair game. I also know lots of

organisations – not just fundraisers – use publicly available information, but just because you've always done it that way doesn't make it right."

She concluded by emphasising that people have a fundamental right to privacy and that donors have the right to make choices about how their data is used.

Failing to observe the law is not an option and we cannot emphasise too strongly how important it is to have a proper and robust data protection policy that is fully compliant with the Data Protection Act 1998. The legislation has now been in place for almost twenty years and – understandably – the ICO seems increasingly inclined to play hardball.

[Source: ICO – 21 February]

FAITH & SOCIETY

Opposite-sex civil partnerships? Not just yet

For information

S 1(1) of the [Civil Partnership Act 2004](#) stipulates that only a same-sex couple may conclude a civil partnership: "A civil partnership is a relationship between two people of the same sex...". Rebecca Steinfeld and Charles Keidan wanted to register a civil partnership at Chelsea Town Hall registry office but were refused. They sought a declaration that, as a result of the enactment of the Marriage (Same Sex Couples) Act 2013, the bar in the Civil Partnership Act 2004 had become incompatible with Articles 14 (discrimination) and 8 (respect for private and family life) of the European Convention on Human Rights. They lost in the Administrative Court and appealed.

In *Steinfeld & Anor v The Secretary of State for Education* [\[2017\] EWCA Civ 81](#), the Court of Appeal agreed that the bar constituted a potential violation of their human rights under the ECHR but declined to make a "declaration of incompatibility". Lord Justice Beatson (with whom Lord Justice Briggs concurred) agreed that Article 8 applied and that the couple did not have to show that there was an adverse impact on them beyond the lack of respect caused by preventing opposite-sex couples from entering into civil partnerships [137]. However, the difference of treatment of same-sex and opposite-sex couples was justified by the Secretary of State's policy of "wait and evaluate" [158] and it was proportionate, and therefore lawful, for the Secretary of State to have further time to make a proper, considered assessment on an important matter of social policy. Beatson LJ did, however, feel that it was "clear that the Government will need to make a decision to eliminate the current discriminatory position and to do so within a reasonable timescale" and acknowledged "the appellants' frustration with the uncertainty surrounding when the Government will make its decision" [161].

Lady Justice Arden dissented, finding that, on the evidence, the Secretary of State had been unable to justify the discrimination [18]. There is a summary of the majority judgment [here](#).

Comment: Rebecca Steinfeld and Charles Keidan lost – but by the narrowest of margins. They have announced that they intend to appeal to the Supreme Court (which, given the 2:1 split, will probably give them leave if the Court of Appeal itself does not do so). Even the two judges in the majority clearly thought that the present situation could not carry on for much longer, so it will have to be resolved in the fairly near future – whichever way it goes.

[Source: BAILII – 21 February]

ODDS & ENDS

Food safety consultation

For information

The Food Standards Agency is consulting on [Regulating our Future](#), which is looking for a less resource-intensive (and, hopefully, more proportionate) way of maintaining food safety. There has already been at least one scare-story in the media – [Could the much-loved charity cake bake be under threat?](#) – and we cannot believe that it is any more than that. However, we still haven't forgotten the Great Jam-Jar Controversy, so we have e-mailed the FSA in the following terms:

"The Churches' Legislation Advisory Service (CLAS) has noted with interest the FSA's proposal to redesign its regulatory role, and welcomes the intention to ensure that food is safe for consumers in all sectors. We also welcome the FSA's commitment to moving away from a 'one-size-fits-all' approach, which we do not believe provides the best regulatory environment for such a diverse sector.

However, while we do not dispute the importance of regulating food businesses, we believe that it is neither fair nor practical for a system to include every volunteer baker making a dozen cookies for a church fete within that definition. This is not about protecting churches and charities at the expense of other businesses, but rather about common sense and creating a system that is practical – both for those supplying food and for those enforcing the rules. Having struggled through a very similar problem in the past, on the re-use of jam jars, we would be keen to see proposals made from the outset that take this question of practicalities into account, to avoid penalising suppliers which are clearly in no way food businesses.

We are very happy to discuss the situation further with representatives of the FSA, and hope to be made aware of concrete proposals as and when they are made."

Individual comments can be e-mailed to FutureDelivery@foodstandards.gsi.gov.uk: if you do so, please copy us in.

[Source: FSA website – 21 February]

PROPERTY & PLANNING

DCMS review of Heritage Lottery Funding

For information **and possibly for action**

DCMS has launched a review and [an online call for evidence](#) on the efficiency, effectiveness and governance of the National Heritage Memorial Fund and the Heritage Lottery Fund as part of the normal five-yearly review cycle. It will look at how NHMF and HLF carry out their role in supporting the heritage sector, and how HLF operates in distributing National Lottery funding to heritage projects across the UK. There is more information on the [HLF website](#): it appears that it would close on **6 April** – though we cannot find official confirmation of the closing-date.

CLAS cannot respond corporatel because some members apply for lottery funding and others do not do so on grounds of principle. However, ***those that have benefited from lottery grants might wish to respond individually.***

[Source: DCMS – 27 February]

TAXATION

OTS VAT review – interim report

For information and possibly for action

The Office of Tax Simplification (OTS) has published an interim report on its review of the UK's VAT system, in which it presents the areas of complexity identified during the first phase of the review. It has also opened a call for evidence (deadline **30 June**) to help develop its ideas on how to create a sustainable VAT system for the future that imposes minimal burdens on business. In particular, it is looking for:

- evidence of how these areas cause difficulties and complexities (quantified if possible);
- ideas for how to improve matters; and
- any areas for simplification that have been missed.

The review mentions certain specific sectors in which it is considering the scope for simplification: this includes a section on charities. Further information is available [here](#).

[Source: OTS – February]