

CLAS CIRCULAR

2017/29 (21 December 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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CHARITIES & CHARITY LAW

Charity Commission regulatory alert – safeguarding

For information and possibly for action

The Charity Commission has issued a [regulatory alert](#) to charities under section 15(2) of the Charities Act 2011, following a number of serious incidents reported to the Commission and recent public interest about accusations of harassment in the work place. This includes media reports about some safeguarding incidents which have affected charity beneficiaries, charity workers or other persons coming into contact with charities. This also follows the Commission's recent updating of its [guidance](#) on charity safeguarding strategies.

The alert reminds charities of the importance of:

- providing a safe and trusted environment which safeguards anyone who comes into contact with it including beneficiaries, staff and volunteers
- setting an organisational culture that prioritises safeguarding, so that it is safe for those affected to come forward and report incidents and concerns with the assurance they will be handled sensitively and properly
- having adequate safeguarding policies, procedures and measures to protect people
- providing clarity as to how incidents and allegations will be handled should they arise, including reporting to the relevant authorities, such as the Commission.

[Source: Charity Commission – 19 December]

DCMS response to Lords Charities Committee report

For information

The Department for Digital, Culture, Media and Sport has published its [response](#) to the House of Lords Committee on Charities report, [Stronger charities for a stronger society](#), which was published in March this year and made a series of 42 recommendations.

The DCMS response covers each of the individual recommendations, which cover a wide range of topics from trustee training and development, reporting requirements and demonstrating impact, public sector contracts and ensuring that Gift Aid is fit for the future.

While the response does not formally commit to any action, it welcomes the majority of the Committee's recommendations, as well as highlighting where some recommendations are another body's responsibility or where work is already being undertaken to tackle the issue. The Foreword by Minister for Civil Society Tracey Crouch also notes the importance of the recommendations as DCMS looks to publish its civil society strategy early next year.

[Source: DCMS – 19 December]

Independent examiner's report template for charity accounts

For information

The Charity Commission has [published](#) the template to be used by independent examiners for charity accounts, as part of its receipts and payments accounts pack (CC16).

[Source: Charity Commission – 14 December]

FAITH & SOCIETY

Law Commission 13th Programme of Law Reform

For information

The Law Commission has launched its [13th programme of Law Reform](#), which includes fourteen project areas on which it intends to propose reform over the next two to three years. This list has been chosen following a public consultation to which CLAS responded in 2016. The full report can be read [here](#).

The programme includes a project to create a future-proof legal framework that **brings the existing law on disposing of the dead into line with modern practices** and enables safe and dignified new processes to be made available in England and Wales. While it is often considered that this is a choice between burial and cremation, new methods of disposal are being developed and are being used in other countries, including resomation and promession/cryomation. These methods are completely unregulated in England and Wales – an unsatisfactory position that acts as a disincentive to innovation and investment and potentially takes away choice. Further, the legislation governing more traditional methods of disposal is outdated, piecemeal and complex and does not ensure that a person's own wishes as to the disposal of his or her remains are carried out, leading to disputes where family members disagree. The project would seek to tackle these issues.

The programme also includes a small project to close a loophole in the Land Registration Act 2002, in order to provide certainty regarding the liability of certain landowners to pay for chancel repairs to the parish church.

However, as with all things, the Law Commission will not have the resources to progress all of the projects in the 13th programme at the same time. Both of these projects will be taken forward as and when resources allow, with priority to be given to projects considering residential leasehold reform and automated vehicles. The Commission will also not be taking forward the proposed project on the registration of births.

[Source: CLAS Summary – 14 December]

Organ donation – presumed consent

For information

We have previously reported that, speaking at the Conservative Party Conference on 4 October 2017, the Prime Minister announced plans to move to a system of presumed consent for organ donation in England, under which everyone would be presumed to agree to the removal and reuse of body parts after death unless opted out, rather than the present situation in which it is necessary to opt in to organ donation. Wales has already adopted an approach of presumed consent and Scotland plans to introduce a similar scheme.

The Department of Health has now published a [consultation](#) on proposed changes, under which people will be considered willing to be an organ donor *unless they have opted out*. The intention would be for this to increase the number of organs donated. The questions include a section, which acknowledges that a person's faith or background can play an important part in deciding whether to be an organ donor. It asks if respondents think that an opt-out system of consent could have a negative impact on people from some religious or ethnic backgrounds, and what could be done to ease those concerns.

Responses should be submitted via the [online survey](#) before **6 March 2018**. We feel that this is not an area on which CLAS members are likely to come to a broad consensus and, therefore, it is not our intention to respond. However, we should be interested to read any individual responses from members.

[Source: Department of Health – 12 December]

Rural post offices

For information

The Government has [announced](#) a further round of £370 million funding for the Post Office, with the intention that it should further modernise its network. £210 million will be invested in continuing to modernise the network, including extending opening hours and cutting queueing, and a further £160 million will help to protect 'last shop in the village' community branches and ensure that people can continue to have access to their local branch.

Figures published today reveal the network has grown for the second year running, with 99.7% of people living within three miles of their local post office and the number of rural branches rising to 6,185.

The funding agreement, which will run from April 2018 to March 2021, comes as the Post Office moved into profit in 2017 for the first time in 16 years. Unsurprisingly, the news was welcomed by the Chief Executive of the Post Office, Paula Vennells (who, as it happens, is a non-stipendiary priest in the Church of England).

[Source: BEIS – 20 December]

ODDS & ENDS

Data protection

For information **and possibly for action**

The Information Commissioner's Office has posted the latest (December) version of its [Guide to the General Data Protection Regulation \(GDPR\)](#). The updated version includes expanded guidance on the lawful basis for processing. The ICO has also added new sections on legitimate interests, special category data and criminal offence data, and updated the section on consent. In addition, the Article 29 Working Party has published guidance, which is now included in the Guide, on consent and transparency.

[Source: ICO – 19 December]

Legal Entity Identifiers – reminder

For information **and possibly for action**

We remind members that charities with investment managers trading in investments or acting on their behalf may need to obtain a Legal Entity Identifier (LEI) code **before 3 January 2018**. As reported in [Circular 2017/20](#), an LEI is a unique 20-character alphanumeric code that identifies distinct legal entities that engage in financial transactions, including transactions in listed investments. The code is entered on a global database and enables any legal entity that is party to a financial transaction to be identified in any jurisdiction. *From 3 January 2018 UK investment managers will not be able to execute investment transactions on behalf of clients who do not have an LEI.*

If you require an LEI code, you can apply to the [London Stock Exchange](#), which is allocating codes on a cost-recovery basis of an initial £115 + VAT and an annual maintenance cost of £70 + VAT. At the very least, this means that there is no element of profit in the exercise and the costs to charities have been kept to an absolute minimum.

At our CLAS meeting in September, Louise Bralsford (Farrer & Co) gave a helpful presentation on LEIs and their implications for charities, the slides for which can be found [here](#).

[Source: CLAS Summary – 19 December]

New requirements for lotteries

For information and possibly for action

The Gambling Commission has [introduced](#) new requirements for lotteries aimed at making it easier for consumers to understand where the money raised is going. From 4 April 2018 all lotteries will have to:

- make it clear to consumers before they buy a lottery ticket exactly which society or charity the lottery proceeds are going to, and
- publish what proportion of money raised from lottery ticket sales in the previous year was returned directly for the purposes of the society.

The changes have been made following a consultation on new codes for society and local authority lottery operators to improve transparency for players. The Commission's response can be found [here](#).

[Source: Gambling Commission – 12 December]

PROPERTY & PLANNING

Deterring lead theft

For information

Parliamentary Under-Secretary at the Home Office Victoria Atkins has responded to a [written question](#) from James Cartlidge MP (Con, South Suffolk) regarding steps taken to encourage churches to install alarm equipment to deter lead theft:

James Cartlidge: “To ask the Secretary of State for the Home Department, what steps her Department is making to encourage churches to install alarm equipment to deter lead theft; and if she will make a statement.”

Victoria Atkins: “We recognise the cost and disruption that arises from these crimes and we would therefore support churches in taking all reasonable precautions to prevent them.

While data published by the Office for National Statistics on 6 December 2017 shows that police recorded metal theft has fallen from nearly 63,000 in 2012/13 to under 13,000 in 2016/17, we will continue to work with the police and others through the police-led National Metal Theft Working Group, which includes representatives from the heritage sector, to see what more can be done to prevent all types of metal theft.”

The ONS data referred to can be found [here](#). At its peak, metal theft was estimated to cost the economy more than £220 million per year, prompting the introduction of the Scrap Metal Dealers Act 2013. The Act imposed strict new licensing requirements for scrap metal dealers, identity checks for those selling scrap metal and the creation of a new offence for dealers to purchase scrap metal for cash.

[Source: ONS – 6 December; House of Commons – 11 December]

SCOTLAND

Charities and lobbying

For information and possibly for action

The Lobbying (Scotland) Act 2016 became law in April 2016. Debate on the Bill acknowledged lobbying as a legitimate and valuable part of the democratic process, whilst agreeing that the creation of a public Lobbying Register was appropriate to enhance public transparency, for certain types of lobbying.

The acting Lobbying Registrar has now published a [blog](#) summarising what charities should expect if they are involved in face-to-face lobbying of MSPs, members of the Scottish Government, junior Ministers, Special Advisers or Permanent Secretaries. It sets out the 5 Key Steps, which describe concisely what regulated lobbying is. If any of the following 5 Key Steps do not apply to a charity's circumstances then it will not be engaged in regulated lobbying.

[Source: OSCR – 13 December]

Scottish Draft Budget 2018-19

For information

The Scottish Government has [published](#) its Draft Budget for 2018-19, which includes proposals to set new Scottish rates of income tax. Proposals should mean that those earning under £33,000 will pay less income tax in 2018-19 than in 2017-18, with higher earners paying proportionately more.

The new scheme will have five bands instead of three, as follows:

Band	Band name	Rates (%)
£11,850 – £13,850	Starter	19
£13,850 – £24,000	Basic	20
£24,000 – £44,273	Intermediate	21

£44,273 – £150,000	Higher	41
Above £150,000	Top	46

HMRC has confirmed yet again that Gift Aid claims in respect of donors resident in Scotland will be paid at **the UK rate** rather than the Scottish one.

The Scottish Government has also [accepted](#) all the remaining recommendations from the Barclay review of non-domestic rates, with the exception being the removal of charity relief entitlement for certain university properties (and, as has already been announced, for Arms' Length External Organisations). This will mean that charitable business rates relief will be removed for private schools in Scotland, though the review makes no comment on their overall charitable status.

[Source: Scottish Government – 14 December]

And a Happy Christmas to all our readers.