

CLAS CIRCULAR 2018/22 (30 October 2018)

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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.

BUDGET 2018.....	3
Administrative burdens on charities	3
Business rates	3
Community Infrastructure Levy:.....	3
Expenses for unpaid office-holders	3
Fuel duty:	4
Income tax	4
National Living Wage	4
Social care	4
Universal Credit	4
VAT.....	4
Wedding venues	4
 CHARITIES & CHARITY LAW.....	 5
Charity Commission: changes to the update service.....	5
Charity Commission: updated guidance on reporting serious incidents.....	6
 FAITH & SOCIETY.....	 7
House of Lords debates religious intolerance and prejudice	7
Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill	8
 FUNDING	 9

HRBA: applying for grants.....	9
SAFEGUARDING.....	10
Charity Commission: updated guidance on safeguarding	10
TAXATION	11
HMRC: Introduction of Making Tax Digital delayed for some charities	11
WALES	12
Ecclesiastical exemption	12
Non-domestic rates: outcome of consultation.....	13

BUDGET 2018

The Chancellor delivered his Budget speech today, 29 October. As usual, some of the items of likely interest to CLAS members were in the accompanying Budget papers rather than in the speech itself. In brief:

Administrative burdens on charities: From April 2019, the Government will introduce a package of measures to reduce administrative burdens on charities. These will:

- allow charity shops using the Retail Gift Aid Scheme to send letters to donors every three years when their goods raise less than £20 a year, rather than every tax year;
- increase the individual donation limit under the Gift Aid Small Donations Scheme to £30.
- increase the upper limit for trading that charities can carry out without incurring a tax liability. A Tax Impact and Information note providing further information on this change can be read [here](#) and the new limits are below

Annual charity income	Maximum non-primary purpose trading
Under £32,000	£8,000
£32,000-£320,000	25% of income
Over £320,000	£80,000

Business rates: All retailers with a rateable value of £51,000 or below will have their business rates bills cut by one-third: the main impact will presumably be on charity shops – some of which are operated by CLAS members – but the move could also help shops operated by trading subsidiaries that are not currently protected by the mandatory/discretionary charity relief.

Community Infrastructure Levy: The Government has published a summary of responses document to its consultation on reforms to the system of developer contributions which includes a focus on the future of CIL. Importantly, the Government has confirmed that it “intends to retain current exemptions” which includes the charity exemption (despite calls from some stakeholders for this to be dropped), something CLAS called for in its joint [consultation response](#) with the Charity Tax Group and Charities' Property Association.

Expenses for unpaid office-holders: As announced at Budget 2018, the Government will legislate in Finance Bill 2019-20 to exempt from income tax expenses paid or reimbursed to unpaid office-holders when incurred because of their voluntary duties. This will put the existing concessionary treatment on a statutory basis, providing certainty for organisations (such as Churches and charities) that have unpaid office-holders. Corresponding legislation will be introduced to mirror the income tax

exemption for National Insurance Contributions. The change will have effect on and after Royal Assent to the Finance Bill 2019-20.

Fuel duty: remains frozen.

Income tax: The personal allowance will rise to £12,500 and the higher-rate threshold to £50,000 from April 2019 – a year earlier than planned.

National Living Wage: From April 2019, the NLW will rise by 4.9 per cent, from £7.83 to £8.21 per hour.

Social care: Local authorities in England will receive a further £650 million in social care funding next year. A Green Paper on social care is to be published shortly.

Universal Credit: An additional £1.7bn will be made available for Universal Credit over the next five years' transitional period which, says HM Treasury, will mean that working parents and people with disabilities claiming UC will be £630 better off each year. A further £1bn is to be made available to assist claimants transferring from their existing benefits to UC and there will be targeted support for people repaying debts.

VAT: The VAT registration threshold will remain unchanged for the next two years, but Government is working on lowering it.

Wedding venues: Paragraph 5.42 of the Budget [Red Book](#) says that "England and Wales have outdated laws about how and where couples can marry. The Government has asked the Law Commission to propose options for a simpler and fairer system to give modern couples meaningful choice. This will include looking at reducing unnecessary red tape and lowering the cost of wedding venues for couples." In short, this is probably about allowing couples to marry somewhere other than in a registered building (as is currently the law in Scotland and Northern Ireland). But it also, potentially, removes one of the Government's principal arguments against amending the law to permit humanist weddings: that humanists do not have any buildings that they could register as venues under the current law.

The full document is available [here](#).

CHARITIES & CHARITY LAW

Charity Commission: changes to the update service

For information

Members who have to submit annual returns to the Commission need to be aware that, **from 12 November 2018**, all charities will be required to check and update their details before they can access the annual return service. The Commission has produced a [guide explaining what information is covered by the service](#) – which you should read before you log in. It also explains which parts of that information the Commission will make available to the public.

From 12 November, on the first occasion that you sign in to submit your [annual return](#) or [update your charity details](#) the service will:

- guide you through several screens that show your charity details; and
- highlight where you have missing information that needs to be provided to the Commission (this will be tailored to your charity depending on how up to date your details are on the register).

You will be able to save your charity information and return back to the service if needed. When all the missing information has been provided you will be able to continue to submit your annual return.

You will only need to provide all the missing information the first time you sign in to submit your annual return or to update your charity details after 12 November.

[Source: Charity Commission – 26 October]

Charity Commission: updated guidance on reporting serious incidents

For information

In response to the publication of the [final report](#) from its safeguarding taskforce, the Charity Commission has [published updated guidance](#) on reporting serious incidents.

Much of its emphasis is on ensuring that the Commission is sent all the details it would need to be able to conduct an effective investigation as quickly as possible. This was highlighted in the report as a key area in need of reform.

The guidelines are also part of wider range of measures proposed by the Commission to improve reporting of serious incidents after under-reporting was cited as a major concern by the safeguarding taskforce.

[Source: Charity Commission – 17 October]

FAITH & SOCIETY

House of Lords debates religious intolerance and prejudice

For information

On 17 October, the House of Lords debated “the challenges posed by religious intolerance and prejudice in the United Kingdom”. Opening the debate for the Government, Lord Bourne of Aberystwyth said this:

“I want to make absolutely clear, as I have stated many times before: any abuse directed at someone because of their religion, race, sexual orientation, disability or because they are transgender, is totally unacceptable and will not be tolerated. The Government will do whatever it takes to unite our country around these values and to confront those who would deny our fellow countrymen and women these freedoms. These values are fundamental and anyone who spreads intolerance or hatred shames themselves and places themselves outside of our society.”

Perhaps the most telling point was made by the Archbishop of Canterbury:

“We must seek a society that is able to voice disagreement freely and to disagree well; where rich and deeply held beliefs and traditions can exist in mutual challenge and respect. Challenge may be tough, but limit it too much and freedom of expression suffers, and so, in the end, will freedom of belief. This is perhaps one of the most important and urgent challenges of our times ... Monopoly views, secular or religious, merely enable people to live in bubbles of mutual incomprehension, and even ignorance. Christian faith and values, or those of other faiths, are not threatened by diversity of faith, but by a failure of freedom of expression, provided it does not include incitement to hatred, however robustly used.”

You can read the full debate [here](#).

[Source: Lords *Hansard* – 17 October]

Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill

For information

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill completed its report stage on October 26. It was subsequently read a third time and passed. Amongst other things, the bill would require the Secretary of State to set in motion the necessary arrangements for a report "*assessing how the law ought to be changed to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships*" to be laid before Parliament. The Secretary of State would also be required to set out how the Government intend to achieve this aim.

There was an amendment to the Bill during the report stage when a new clause (NC1: Reform of civil partnership) was added. It reads as follows:

"(1) The Secretary of State must make regulations to change the law relating to civil partnership to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships.

(2) Regulations under this section must give effect to such equality within 6 months of this Act being passed.

(3) For the purposes of this section, 'other couples' means couples who but for the provisions of section 3(1)(a) of the Civil Partnership Act 2004 would be eligible to register as civil partners of each other."

For reference, S.3(1) of the 2004 Act reads: "*Two people are not eligible to register as civil partners of each other if—(a) they are not of the same sex*".

The Bill will now be examined in the Lords. The latest version - as amended in committee but without amendments on report - is [here](#).

[Source: Commons Hansard – 26 October]

FUNDING

HRBA: applying for grants

For information

Members may be interested in the following appeal for information from the Historic Religious Buildings Alliance:

Have you applied recently for a grant for a place of worship?

We are collecting information about people's recent experiences applying for grants for churches and other places of worship, whether or not they were successful.

We want to understand what is going well and what is going less well, especially where people's experience might generalise to other applicants.

Do you have a useful story you could share with us on a confidential basis? If so, just drop me a line at the email address below. It would be helpful if you could tell us about it within the next couple of days (and my apologies for the short notice). But if it will take longer, don't worry.

Obviously we will not reveal your identity or that of the place of worship concerned without your explicit permission. Brief responses will be fine – we can always come back for more detail.

Thanks as always.

Trevor

hrbchair@theheritagealliance.org.uk

Trevor Cooper, Chair, HRBA

[Source: HRBA – 25 October]

SAFEGUARDING

Charity Commission: updated guidance on safeguarding

For information

The Charity Commission has published [additional advice](#) within its guidance on Safeguarding following a series of summits and policy announcements.

The additions to the guidelines focus on protecting staff and volunteers in a charity, working with children and adults at risk and working overseas. The move is part of a series of reforms, such as the updated [serious incident reporting guidance](#), designed at reforming the sector's approach to safeguarding in the light of high profile scandals earlier in the year.

Further comment from Jane Hobson, Head of Guidance and Practice, [here](#).

In that connexion, the Government has [announced](#) a series of measures designed to improve safeguarding in the charity sector in England, following the [2018 Safeguarding Summit](#). Tracey Crouch, Minister for Sport and Civil Society, has announced up to £2 million for projects to raise awareness of safeguarding and improve incident handling. The plans also include developing digital solutions to allow charities to report concerns confidentially, better access to consistent and simple guidance on reporting and whistle-blowing and free training (supported by the Big Lottery Fund) so that charities can implement the highest possible safeguarding standards.

The cross-sector Safeguarding Programme Group will be chaired by Professor John Drew CBE (former Chief Executive of the Youth Justice Board of England and Wales) and will oversee the implementation of the new measures.

[Source: DCMS: Charity Commission – 22 & 25 October]

TAXATION

HMRC: Introduction of Making Tax Digital delayed for some charities

For information

HMRC [has announced](#) that it will delay mandation of MTD VAT for a small minority of VAT-registered businesses with more complex requirements until **1 October 2019**. Currently, all other organisations who do not qualify for this extension will be obliged to keep records digitally and use software to submit their VAT return from April 1 2019. They should be able to access a pilot scheme in early 2019 but are not eligible for the current pilot process (announced 16 October 2018). *The qualifying categories include trusts and 'not for profit' organisations that are not set up as a companies.*

HMRC has confirmed that there is no change to the 'soft landing' regarding digital links requirements (which covers VAT periods commencing between 1 April 2019 and 31 March 2020). This will mean that charities with deferred status, that do not participate in the pilot process, will have less time to adapt to the new rules.

Very few CLAS members will be registered for VAT – because they do not, on the whole, make VATable supplies – but there may be some religious charities that do so. If in doubt, check the announcement above.

[Source: HMRC – 17 October]

WALES

Ecclesiastical exemption

For information

The Welsh Government has [published](#) its response to feedback on its consultation on proposed changes to ecclesiastical exemption in Wales. The respondents' main concerns appear to have been over the monitoring of the system and consistency of its application. To address this, the Government has updated the new guidance, which will contain a code of practice and set out arrangements for monitoring and annual reporting to the Welsh Government. Further clarification was also added in relation to matters such as the scheduled monument consent process.

The Government concluded that “the guiding principles and code of practice embodied in *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption* [see the explanatory memorandum [here](#)] will strengthen the mechanisms for the management of change for all the listed places of worship of the exempt denominations. The Welsh Government will take cognisance of the evidence gathered in this consultation in its future monitoring of the ecclesiastical exemption regime”.

[The Ecclesiastical Exemption \(Listed Buildings and Conservation Areas\) \(Wales\) Order 2018](#) comes into force on 1 January 2019: it revokes and replaces the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 in relation to Wales.

Under s.60(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, buildings that are for the time being used for ecclesiastical purposes are not subject to sections 3A, 4, 7 to 9, 47, 54 and 59 of that Act: the exemptions are from various elements of listed building control: building preservation notices; restrictions on works of demolition, alteration or extension; compulsory acquisition of buildings in need of repair; urgent preservation works by a local authority and the Welsh Ministers; and offences in relation to intentional damage. S.75 of the 1990 Act provides that such ecclesiastical buildings are not subject to s.74 of the 1990 Act, relating to the control of demolition of buildings in conservation areas: the conservation area consent ecclesiastical exemption.

The new Order removes the listed buildings ecclesiastical exemption in the case of all ecclesiastical buildings other than for those cases falling within Article 4. Article 4 retains the exemption for church buildings of the Church in Wales, the Church of England, the Roman Catholic Church, the Methodist Church, the Baptist Union of Great Britain and the Baptist Union of Wales provided that the primary use of the building in question is as a place of worship and subject to the restrictions set out in that article. The Order also removes the conservation area consent ecclesiastical exemption from all ecclesiastical buildings.

For the purposes of the new Order, a church building includes any object or structure fixed to the church building and any object or structure within the curtilage of a church building which, although not fixed to that building, forms part of the land. This is now the case whether or not that object or structure is listed in its own right.

Article 1(3) provides that the loss of ecclesiastical exemption does not affect any works which have commenced, or in respect of which a contract has been made, before the Order comes into force. Similarly, Article 6 provides that if an application for listed building consent in relation to any object or structure within the curtilage of a church building which, though not fixed to that building, forms part of the land (as defined in article 4(1)(b)) has already been made before the Order comes into force, it will not apply to that application and the local planning authority will continue to determine it.

[Source: Welsh Government, legislation.gov.uk – 15 & 16 October]

Non-domestic rates: outcome of consultation

For information

The Welsh Government has published a [summary of responses](#) to its consultation document, [Tackling Avoidance of Non-Domestic Rates in Wales](#). The consultation included specific sections exploring the extent to which avoidance activities might be associated with charitable relief and whether any changes could be made to the rates charged on unoccupied properties, including eligibility for exemptions. It also explored whether the level of relief was fit for its intended purpose.

In a [Written Statement](#), Mark Drakeford, Cabinet Secretary for Finance, said this in respect of charities:

“I have considered the issue of falsely claiming charitable status for the purpose of avoiding rates and other liabilities. These ratepayers are not genuine charities but are seeking to use charitable status to avoid paying rates. I have listened to the concerns of the sector and do not, at this stage, propose making any changes to the arrangements for mandatory and discretionary charitable relief in this context. However, I will work with local authorities, the third sector and the Charity Commission to explore what can be done to reduce the abuse of charitable status.

In respect of the changes to the arrangements for empty property relief, this will include lengthening the period of temporary occupation – which leads to repeated cycles of relief – from 42 days to six months. The Welsh Government will also remove zero-rating on empty properties if it appears that when next in use they may be used for a charitable purpose. The Welsh Government will provide local authorities with local discretion to grant zero rating in genuine cases where a charity needs to own or lease an empty building and not make use of it.

Over a longer timeframe, we will further develop proposals for a general anti-avoidance rule (GAAR) for non-domestic rates, which will require separate legislative provision – a similar provision exists for land transaction tax in the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act. This will ensure the relevant authorities can challenge behaviour as avoidance methods adapt to future circumstances.”

So, for the moment, no great change – but the issue of “empty properties if it appears that when next in use they may be used for a charitable purpose” needs to be monitored.

[Source: Welsh Government – 23 October]