

CLAS CIRCULAR 2020/1 (13 January 2020)

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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DATA PROTECTION

ICO consultation on direct marketing

For information

The Information Commissioner's Office has [published](#) a consultation – closing on **4 March** – on its draft direct marketing code of practice. The [draft code of practice](#) aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules.

[Source: Information Commissioner's Office, 8 January]

EMPLOYMENT

National Living Wage increase

For action from 1 April

On New Year's Eve (seriously), the Government [announced](#) that, starting on **1 April 2020**, the National Living Wage (NLW) will be increased. The rise comes as part of the Government's target for the NLW to reach 60 per cent of median earnings by 2024. The National Minimum Wage will rise across all age groups, including:

- a 6.2% increase from £8.21 to £8.72 for over 25 year olds.
- a 6.5% increase from £7.70 to £8.20 for 21-24 year olds.
- a 4.9% increase from £6.15 to £6.45 for 18-20 year olds.
- a 4.6% increase from £4.35 to £4.55 for Under 18s.
- a 6.4% increase from £3.90 to £4.15 for Apprentices.

The Government has also [published](#) its response to the Low Pay Commission's Autumn 2019 recommendations.

[Source: HM Government, 31 December]

FAITH & SOCIETY

Divorce, Dissolution and Separation Bill

For information

The [Divorce, Dissolution and Separation Bill](#), first introduced into Parliament in June 2019 after a public consultation – and which fell at the Dissolution – was reintroduced in the House of Lords on 7 January. Its purpose is to amend the law of England and Wales so as to allow one spouse, or the couple jointly, to make a statement of irretrievable breakdown – in effect, ‘no-fault’ divorce. It will also prevent one partner contesting a divorce if the other wants one – a situation which, the Government says, has in some cases allowed domestic abusers to exercise further coercive control over their victims. Specifically, the Bill will:

- replace the current requirement to evidence either a conduct or separation ‘fact’ with the provision of a statement of irretrievable breakdown of the marriage (couples can opt to make this a joint statement);
- remove the possibility of contesting the decision to divorce, as a statement will be conclusive evidence that the marriage has irretrievably broken down; and
- introduce a new minimum period of 20 weeks from the start of proceedings to confirmation to the court that a conditional order of divorce may be made, allowing greater opportunity for couples to agree on practical arrangements for the future where reconciliation is not possible and divorce is inevitable.

Parallel changes will be made to the law governing the dissolution of a civil partnership, which broadly mirrors the legal process for obtaining a divorce.

The proposed legislation will not cover other areas of matrimonial law such as financial provision. The documentation relating to the Bill is [here](#).

[Source: Parliament website, 9 January]

Gender recognition

For information

The House of Commons Library has published a [briefing paper](#) on the current process for legal gender recognition and the Government's [consultation](#) on reforming the Gender Recognition Act 2004. It considers the process for trans people to gain legal recognition in their acquired gender. It does not deal with medical treatment or NHS services for trans people.

[Source: House of Commons Library, 8 January]

Opposite-sex civil partnerships

For information

The first opposite-sex civil partnerships in England and Wales took place on Christmas Eve. The House of Commons Library has published a useful briefing on [Civil partnership for opposite sex couples](#).

[Source: Government Equalities Office, 31 December and House of Commons Library, 6 January]

Second Church Estates Commissioner

For information

The Queen has [approved](#) the appointment of Andrew Selous MP as Second Church Estates Commissioner, succeeding the Rt Hon Dame Caroline Spelman. Andrew has been the Member for South West Bedfordshire since 2001 and is a confirmed member of the Church of England, attending St Mary the Virgin, Studham.

The role of the Second Church Estates Commissioner is to provide a link between Government, Parliament and the Church – including answering oral and written questions from MPs about the Church of England and membership of Parliament's Ecclesiastical Committee.

[Source: Prime Minister's Office, 10 January]

NORTHERN IRELAND

Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples)

For information

The [Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019](#), made on 19 December, have now been published. They make it possible to enter into a same-sex marriage or an opposite-sex civil partnership in Northern Ireland under Northern Ireland law. In brief:

- Part 2 removes the current legal impediments to same-sex marriage in Northern Ireland and makes overall provision that the effect of the introduction of same-sex marriage in Northern Ireland is recognised throughout Northern Ireland law;
- Part 3 amends the eligibility criteria for registering as civil partners in Northern Ireland by removing the current same-sex requirement. It permits certain opposite-sex relationships formed in other countries, which are not marriages, to be treated as civil partnerships in Northern Ireland;
- Part 4 amends legislation relating to children and parenthood to provide opposite-sex parents in a civil partnership with generally the same rights as opposite-sex married parents in a number of areas relating to parenthood;
- Part 5 amends the Gender Recognition Act 2004 to allow applicants to obtain a full gender recognition certificate without the need first to divorce or dissolve their civil partnership, provided their spouse or civil partner consents; and
- Parts 6, 7 and 8 make consequential changes to pensions and social security legislation, both primary and secondary, in Northern Ireland, particularly in relation to survivor benefits, and to public sector pension schemes.

[Source: leg.gov.uk, December]

Regulation of gambling

For information and possibly for action

The Northern Irish Department for Communities has [published](#) a consultation – closing on **21 February** – on the regulation of gambling in Northern Ireland. The consultation focuses on whether changes are necessary to ensure a more flexible and modern licensing framework that is capable of responding to the many societal and technical changes which have occurred in the industry.

[Source: Department for Communities, 16 December]

Review of hate crime legislation

For information and possibly for action

Northern Ireland's [Independent Hate Crime Legislation Review](#), which is led by Judge Desmond Marrinan, has published a [consultation paper](#). It was established in response to a recommendation by the Chief Inspector of Criminal Justice in Northern Ireland that the Department of Justice should review hate crime legislation to establish whether change was required and whether the introduction of statutory offences, similar to those in England and Wales, would be beneficial. Its remit is:

‘To consider whether existing hate crime legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online.’

[Source: *Irish Legal News*, 9 January]

ODDS & ENDS

Budget 2020

For information

The Treasury has [announced](#) that Budget 2020 will take place on **Wednesday 11 March 2020**. The [Budget 2020 representations portal is now open](#). HM Treasury is accepting representations until **7 February 2020**, at which point the portal will be closed. Submissions can also be made via BudgetSubmissions@hmtreasury.gov.uk.

[Source: HM Treasury, 7 January]

Gambling Commission: Society lottery reforms

For information **and possibly for action**

The Gambling Commission has [published](#) a consultation – closing 12 March 2020 – on society lottery reform, particularly potential changes to sales and prize limits for large and small society lotteries.

In July 2019, the Government announced that it intends to amend section 99 (3) of the Gambling Act 2005 to raise the per draw limit on lottery proceeds (ticket sales) from £4 million to £5 million, with the result that the maximum individual prize will raise from £400,000 to £500,000. In addition, the annual aggregate proceeds limit will rise from £10 million to £50 million. The Gambling Commission is required by section 99 of the Act to attach conditions to lottery operating licences for the purposes of achieving the requirements of section 99. So the current limits, which are reflected in licence conditions attached to all society lottery operating licences, will also need to be amended to reflect the changes.

The Commission is also reviewing the current regulatory requirements to ensure that issues related to the fair and open licensing objective regarding transparency to consumers are addressed. It is seeking views on strengthening some aspects of the Licence conditions and codes of practice and producing guidance related to information available to consumers.

It is not proposed that CLAS should respond corporately to the consultation, but member Churches might wish to do so individually.

[Source: Gambling Commission, 19 December]

PROPERTY & PLANNING

Law Commission: leasehold enfranchisement project

For information

The Law Commission has [published](#) a report exploring methods to reduce the cost for leaseholders to enfranchise property, whilst ensuring landlords receive sufficient compensation. This report does not express a view on which scheme and which options for reform should be adopted, as the Commission believes it is ultimately a decision for Government and Parliament. A summary paper is also available [here](#) (including a helpful flowchart on page 23).

Leasehold enfranchisement is the process in which people who own property on a long lease can extend the lease or buy the freehold. In order to exercise enfranchisement rights, leaseholders must pay a sum of money to their landlord and it is this sum of money that the report aims to reduce. The Report sets out three alternative schemes (below) for a new regime to calculate premiums. Within each of those three schemes, there is a series of further sub-options for reform. Alongside the three schemes, the Commission put forward a range of other options for reform, including:

- prescribing the rates used in calculating the price, to remove a key source of disputes and make the process simpler, more certain and predictable
- helping leaseholders with onerous ground rents, by capping the level of ground rent used to calculate the premium
- creating an online calculator to determine the premium to make it easier to find out the cost of enfranchisement and reduce uncertainty around the process
- enabling leaseholders who are collectively enfranchising a block of flats to avoid paying “development value” to the landlord unless and until they actually undertake further development.

As well as reducing the price, the Commission claim that these options would clarify and simplify the law, making the process of leasehold enfranchisement easier and less expensive to operate. The report also explains the limited role that simple formulae – such as a multiple of ground rent – could play in delivering reforms, while explaining that their wider use is not possible under the UK’s human rights laws.

Additionally, the Law Commission will publish three further reports:

- a separate report addressing all other aspects of a reformed enfranchisement regime – such as who qualifies to make an enfranchisement claim and the process that they must follow to exercise their rights. In that report, the Law Commission will make recommendations as to how the regime should be reformed. [This will address a number of the broader points about widening exemptions addressed in the CPA response];
- a report on the project on the right to manage; and
- a report on the project on commonhold.

The three schemes (with a bit of detail) are as follows:

- **Scheme 1:** Under Scheme 1, it is assumed that the leaseholder is not in the market at the time the premium is calculated and will never be in the market. This assumption produces a premium based on the value of “the term” and “the reversion” only. The extra value attributable to the leaseholder being in the market; marriage value and hope value is therefore not payable. Scheme 1 reflects what the landlord would receive if the lease ran its course and the leaseholder never chose to extend the lease or acquire the freehold: the landlord would receive the ground rent (“the term”) and would get the property back at the expiry of the lease (“the reversion”).
- **Scheme 2:** Under Scheme 2, it is assumed that the leaseholder is not in the market at the time the premium is calculated, but may be in the market in the future. This assumption produces a premium based on the value of the term, the reversion, and (in certain cases) hope value. The extra value attributable to the leaseholder being in the market on the valuation date (marriage value) is therefore not payable. Scheme 2 reflects what the landlord would receive if his or her interest were sold to a third party. An investor purchasing the freehold would not pay marriage value (because the leasehold and freehold interests would remain in separate ownership, so marriage value would not be realised). But an investor might pay hope value, to reflect the fact that he or she might in the future be able to realise the marriage value by selling the interest to the leaseholder.
- **Scheme 3:** Under Scheme 3, it is assumed that the leaseholder is in the market at the time the premium is calculated. This assumption produces a premium based on the value of the term, the reversion and marriage value (where it exists). Scheme 3 reflects what the landlord would receive for his or her interest if sold to the leaseholder. By acquiring the landlord’s interest, the leaseholder realises the marriage value, and so would pay the landlord for it. Scheme 3 reflects the way in which premiums are calculated under the current law, but when combined with other reforms Scheme 3 can still be used to reduce premiums.

[Source: Law Commission for England & Wales, 9 January]

MHCLG: Tenancy agreements and pets

For information and possibly for action

Members who let surplus church property may wish to know that MHCLG has [announced](#) planned changes to the model tenancy contracts, calling on landlords to make it easier for responsible tenants to have ‘well-behaved pets’ in their homes. The Government’s model tenancy contracts for renters can be used as the basis of lease agreements made with tenants.

[Source: MHCLG, 4 January]

SCOTLAND

Scottish Government: short-term lets

Of possible relevance to Scottish members that let surplus accommodation on short-term tenancies, the Minister for Local Government, Housing and Planning, Kevin Stewart, has [announced](#) that he intends to introduce a series of new measures in relation to short-term lets, including:

- establishing a licensing scheme for short-term lets;
- prioritising work to give local authorities the power to introduce short-term let control areas; and
- reviewing the tax treatment of short-term lets.

[Source: Scottish Government, 11 December]

TAXATION

HMRC: company-provided living accommodation

For information

HMRC has published a consolidated version of *How to tax living accommodation given to employees*. The contents are as follows:

1. [Basis of liability](#)
2. [Exemption](#)
3. [Provision of living accommodation 'by reason of employment'](#)
4. [The cost of providing living accommodation](#)
5. [Substitution of market value for cost](#)
6. [Calculation of cash equivalent: accommodation costs £75,000 or less](#)
7. [Calculation of cash equivalent: accommodation costs £75,000 or less: lease premiums](#)
8. [Calculation of cash equivalent: accommodation costs over £75,000](#)
9. [Annual value equal to open market rental value of the accommodation](#)
10. [Accommodation provided to more than one employee](#)
11. [Provision of benefits or facilities connected with living accommodation](#)
12. [Deduction for business expenses](#)
13. [Optional remuneration arrangements](#).

As the Guidance makes clear, no tax charges for the provision of living accommodation will arise where:

- (a) It is necessary for the proper performance of the employee's duties that they should reside in the accommodation.
- (b) The accommodation is provided for the better performance of the employee's duties and the employment is one of the kinds for which it is customary for employers to provide accommodation for the employee.
- (c) There is a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements.

And where 'exemption is due in any of the above circumstances it also extends to any tax charge that might arise for Council Tax, water charges or rates reimbursed to, or paid on behalf of, the employee concerned'. In some circumstances, however, the guidance may be relevant to accommodation for church-workers other than parsonage-houses.

[Source: HMRC, 30 December]

AND A HAPPY NEW YEAR TO ALL!