

CLAS CIRCULAR 2019/5 (5 April 2019)

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 AND CHARITY LAW

Charity Commission: Guidance for charities with a connection to a non-charity

For information

The Charity Commission has published (very detailed) [guidance](#) for trustees on how to manage and review their charity's connection to a non-charity. The guidance covers:

1. [Making a positive difference for your beneficiaries](#)
2. [Showing that you have applied this guidance](#)
3. [Who this guidance is for](#)
4. [Recognise the risks](#)
5. [Do not further non-charitable purposes](#)
6. [Operate independently](#)
7. [Avoid unauthorised personal benefit and address conflicts of interest](#)
8. [Maintain your charity's separate identity](#)
9. [Protect your charity](#)
10. [If things go wrong](#)
11. [Applying to register a charity with a connection to a non-charity](#)
12. [Use the checklists](#)
13. [Download infographic.](#)

The guidance notes that charitable status allows certain freedoms and benefits, including tax reliefs, but also places important limits on what a charity may do. *Trustees must be able to show that everything the charity does helps to achieve the purposes for which it is set up, for the public benefit.*

A charity can set up or keep a close connection with a non-charitable organisation, but its purpose must be to help the charity to make a positive difference for its beneficiaries. The connection can provide:

- a main source of funding for the charity;
- other valuable resources which help to save money;

- opportunities to strengthen the quality, reach and impact of the charity's work;
- a way of managing risk;
- an effective trading structure to raise funds for the charity; and/or
- a direct way of furthering the charity's purposes if it is, for example, a 'friends of' charity.

However, *a connection to a non-charitable organisation can also present risks and challenges* – sometimes significant ones. The guidance is to help trustees to manage their charity's connection with a non-charity in line with their charity's best interests and their legal duties as trustees.

[Source: Charity Commission – 29 March]

FAITH AND SOCIETY

Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019

For information and possibly for action

Tim Loughton's private Member's bill has been given Royal Assent as the [Civil Partnerships, Marriages and Deaths \(Registration etc.\) Act 2019](#). Under the Act:

- the Government may amend the Marriage Act 1949 to provide for a central electronic register of marriages;
- the Government must make regulations to provide for opposite sex civil partnerships in England and Wales, which must be in force no later than 31 December 2019;
- the Government must 'make arrangements' for a report on whether, and if so how, the law ought to be changed to require or permit the registration of pregnancy losses which cannot be registered as still-births under the Births and Deaths Registration Act 1953; and
- the Government must 'make arrangements' for a report on whether, and if so how, the law ought to be changed to enable or require coroners to investigate still-births.

The intention is that, in future, mothers' names should be included on marriage certificates. The Government is already consulting on whether or not coroners should be required to investigate still-births.

The Church of England is already in touch with the General Register Office about the mechanics of the new registration system and the electronic register. Member denominations that act as marriage registrars should contact the GRO sooner rather than later.

[Source: www.legislation.uk – 27 March]

Electoral law and 'hustings': a reminder

Possibly for action

As noted in our last Circular, the Commons Public Administration and Constitutional Affairs Select Committee is conducting an inquiry into electoral law, and the committee staff confirmed that the issue of local hustings and Part 2 of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 would be within the scope of the inquiry.

We intend to make a short submission on the point. **The closing date for submissions to the Committee is 20 May. It would be helpful to have any responses by the end of April.** We would be grateful for evidence from members on any difficulties that Part 2 might have caused them at previous general elections.

[Source: CLAS – 14 March]

Modern slavery

For information

The team appointed by the Government to review the Modern Slavery Act has published two further reports – one about [Independent Child Trafficking Advocates](#) and the other on [the legal application of the Act](#).

The Government has issued a tender seeking an organisation to support it to undertake an audit of compliance with section 54 of the Modern Slavery Act 2015. The placing of this tender comes after the Government wrote to the chief executives of over 17,000 UK companies in October 2018 about their duty of compliance with the s.54 requirement, warning them that a list of non-compliant companies would be published following an audit of modern slavery statements.

[Source: Home Office – 21 March]

NORTHERN IRELAND

CCNI: new Commissioners

For information

Following an open competition, the Department for Communities has appointed Gerard McCurdy as the Deputy Chief Commissioner of the Charity Commission for Northern Ireland and Kieran Donaghy as a Commissioner. Their appointments run from 1 March 2019 until 29 February 2024.

Their biographies can be found [here](#).

[Source: CCNI – 1 March]

ODDS & ENDS

Home schooling

For information

This time last year, the Department for Education issued a [call for evidence on elective home education](#) in England. The consultation document addressed two main areas: the possible registration of children who are educated at home, and monitoring of the educational provision by local authorities in relation to elective home education. The DfE estimates that about 60,000 children are being home-schooled in England.

The possibility of compulsory registration was particularly controversial; however, the Government appears to have concluded that a register *should* be introduced. In a new consultation, [Children not in school: proposed legislation](#), it [seeks views](#) online on its proposals to require local authorities to maintain registers of children who do not attend mainstream schools and to place associated duties on parents and on the proprietors of certain educational settings. It also consults on proposed legislation to establish a duty on local authorities to give support to parents who choose to educate children at home. Under its proposals, it would be the parents' responsibility to register their children if they were not attending a state school or registered private school.

The consultation paper explains that

"The inclusion of a child on the register would not form in any way some kind of licence to educate a child outside the school system; that right already exists under s.7 of the Education Act 1996, and it would be left intact under the proposed registration regime. The register would mainly function as a list of children about whose education the authority must satisfy itself as to suitability in terms of s.7, or consider a school attendance order. The register would not change LAs' powers regarding assuring themselves of suitability of education or its safeguarding duties. These powers remain unchanged. The register would serve only to assist LAs in the discharging of these responsibilities" [2.5].

CLAS does not intend to make a submission to the consultation but there may be individual members who have views on the issue, whether in support or in opposition.

[Source: DfE – 2 April]

PROPERTY & PLANNING

HM Land Registry: Practice guide 14: charities

For information

HM Land Registry has issued an updated version of its [Practice guide 14: charities](#): the update was published on 18 March. The contents are as follows:

- [1. Introduction.](#)
- [2. Making applications.](#)
- [3. Dispositions in favour of charities.](#)
- [4. Registration of charities as proprietors.](#)
- [5. Dispositions by charities.](#)
- [6. Keeping the register up to date.](#)
- [7. Execution of deeds.](#)
- [8. Execution by charity trustees.](#)
- [9. Church of England property.](#)
- [10. Old forms of register entries.](#)
- [11. Things to remember.](#)

Section 9 has been amended as a result of the enactment of the [Church Property Measure 2018](#), which came into force on 1 March 2019 and which – of course – applies solely to the Church of England.

[Source: HM Land Registry – 18 March]

'Tailored Review' of Historic England

For information

DCMS is conducting a [Tailored Review of Historic England](#). Its purpose is 'to challenge and seek assurance of the continuing need, efficiency and good governance of public bodies'.

Every public body is required to undergo a Tailored Review once during the lifetime of a Parliament; and DCMS is seeking feedback on Historic England via an [online survey](#), which is open until **9 May**. The Department is seeking the views of 'people who work, or have an interest, in the heritage sector across the United Kingdom [*evidently not just England*], including those who receive advice from Historic England and those who have applied for grant funding from Historic England'.

(Not to be confused with the Taylor Review of modern working practices or the Taylor Review of the sustainability of C of E churches and cathedrals!).

[Source: DCMS – 28 March]

TAXATION

Cathedrals, major churches and VAT

For information

Negotiations are in progress with HMRC over additional guidance on business/ non-business split for those participating in the Cathedrals and Churches VAT Banding System. We have submitted suggested draft guidance which is intended to provide clarity both to HMRC and to cathedrals and churches on how to treat the various components of an act of worship.

We will keep members informed of progress.

[Source: CLAS – 3 April]