

CLAS CIRCULAR 2011/16 (4 November 2011)

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CHARITIES & CHARITY LAW

Charity Commission investment guidance for trustees

For information.

The Charity Commission has published updated guidance on [Charities and Investment Matters](#) which may be of interest to members – particularly those who have trusts with unrestricted fund. The updated guidance replaces the Commission's previous advice on investments and describes the legal duties and principles that apply to charity investments and the risks that trustees must address. It offers a clear framework for decision-making but emphasises that *it is up to trustees to decide on the most appropriate overall investment strategy for their charities*.

In the past, charities usually invested solely for a financial return; in recent years, however, increasing numbers of charities have been considering investing funds in ways that serve directly to further their charitable aims. The guidance explains the three investment approaches that charities can use:

- *Financial investment* aims to achieve the best financial return within the level of risk considered acceptable. When trustees make financial investments they have to make sure they are aware of and acting within their charity's powers to invest and must exercise care and skill.
- *Programme-related investment* is aimed at helping the charity further its objects directly in a way that might also yield a financial return. When deciding whether to make a programme-related investment, trustees must be confident that doing so wholly furthers the charity's aims for the public benefit.
- *Mixed motive investment* is where charities make investments that cannot be wholly justified either as financial or programme-related investments but which the trustees still consider likely to be in the best interests of the charity. Trustees making this type of investment should be satisfied that it can be justified by the combination of the anticipated return and the contribution to the charity's aims.

The updated guidance confirms that trustees can invest ethically and sustainably, can invest for a financial return or can invest to achieve charitable aims – or for a mix of all or any of these. However, where trustees make a mixed motive investment they need to be satisfied that the investment can be justified by the combination of the anticipated return and the contribution to the charity's aims.

[Source: *Charity Commission What's New* – 27 October 2011]

FAITH AND SOCIETY

Civil partnerships on religious premises

For information.

The Government has published its [response](#) to the consultation document on its proposals to allow civil partnerships to be registered on the religious premises, together with an analysis of the consultation responses. The Government confirms that the scheme to allow religious premises to apply to be approved for civil partnership registrations to be in place by the end of 2011 – the accompanying draft Regulations, if approved, will come into force on 5 December. This response does *not* deal with any further proposals for change, such as equal civil marriage – the consultation on that will appear in March 2012.

The Government reiterates its view that ‘the concerns raised about potential legal challenges and remains confident that the proposals provide protection from the risk of successful legal challenge’ (para 2.73). In addition,

The draft regulations set out clearly that an application for approval can only be made with the consent of the appropriate, authorised body of the faith group concerned. Faith groups are able to have their nominated, authorised body or bodies listed in the Schedule to the regulations. Whether to give consent and whether to apply for individual premises to be approved is a matter for the faith organisation and the owner or trustee of the premises (para 2.74).

In addition, the draft Regulations reiterate the principle set out in section 202 of the Equality Act that there is no obligation on a religious organisation to seek approval for its religious premises to host civil partnership registrations, as follows:

“Religious premises: no obligation to make an application for approval

2B. Nothing in these Regulations places an obligation on a proprietor or trustee of religious premises to make an application for approval of those premises as a place at which two people may register as civil partners of each other in pursuance of section 6(3A)(a) of the 2004 Act.”

[Source: *Government Equalities Office* – 31 October 2011]

PROPERTY & PLANNING

Council Tax: discount for second homes

For information.

On 31 October the Department for Communities and Local Government issued a consultation paper, [Technical reforms of council tax: Consultation](#) which, *inter alia*, proposes to give councils the flexibility to remove council tax relief on second homes and empty houses by extending the range of billing authorities' discretion over second homes discount (currently 10–50 per cent) to 0–50 per cent: ie offering them the option of giving no discount at all.

The document points out that a furnished dwelling which is not the sole or main residence of a council taxpayer attracts a *mandatory* discount of 50 per cent if the person liable for council tax necessarily occupies it and another dwelling and one or other of the occupations is job-related. Though the document goes no further on that particular issue, even on a close reading it is not clear whether the proposals relate *only* to the discretionary discount on second homes generally or whether the proposals also engage the mandatory 50 per cent discount for second homes owned and occupied by workers who are otherwise obliged to live over the shop.

The 50 per cent mandatory concession is particularly important for members of the armed services, for agricultural and estate workers *and for clergy who have bought second homes for their retirement*. We are actively pursuing the matter with DCLG.

[Source: *DCLG Consultations* – 31 October 2011]

TAXATION

VAT: common errors toolkit

For information.

HMRC has published an updated [VAT Input Tax Toolkit](#) effective from 1 June 2011. The update reflects a number of recent changes including the VAT treatment of assets used for business and non-business or private purposes and entertaining overseas customers.

[Source: *HMRC What's New* – 3 November 2011]

VAT: supply of food

For information.

HMRC has produced an updated [VAT Notice 701/14 on the supply of food](#), explaining when the supply of food can be zero-rated and when it attracts the standard rate of VAT. It has been updated from the 2002 version to improve readability and includes subsequent amendments.

Any church or church charity that operates (eg) a cafe or a guest-house that provides meals for guests needs to take careful note of its contents.

[Source: *HMRC What's New* – 3 November 2011]