

CLAS CIRCULAR 2011/18 (13 December 2011)

Disclaimer

CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though every care is taken to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertake 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.

EMPLOYMENT.....	2
Employment law consultations: outcome and further consultations	2
ODDS & ENDS	3
Criminal records checks review	3
Funding of political parties	4
PROPERTY & PLANNING	5
Penfold Review of non-planning consents: implementation	5
Solar photovoltaic panels: consultation on Feed-in Tariffs	6
SCOTLAND	7
Charity Transfer Schemes and Restricted Fund Reorganisations: consultation on draft regulations	7
TAXATION.....	9
Energy supplies, reduced rate VAT and the climate change levy	9
Forthcoming tax changes	10
VAT Notes No 4 2011	11

EMPLOYMENT

Employment law consultations: outcome and further consultations

For information: very important for Churches involved in social service provision under contract.

The Business Secretary, Vince Cable, has outlined a raft of proposals in the [Government's response](#) to its recent consultation on resolving workplace disputes and the Red Tape Challenge review of employment law. Of the 159 regulations examined in the employment theme of the Red Tape Challenge more than 70 regulations are to be merged, simplified or scrapped.

Notably, ***BIS has issued calls for evidence on the effectiveness of the TUPE regulations and on collective redundancy consultation rules.***

TUPE: The [call for evidence](#) seeks views until **31 January 2012** on the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and how they might be improved, if at all. BIS states that whilst the Regulations implement a European Directive and provide important protections for both employers and employees, the Government is concerned that some businesses believe they are 'gold-plated' and overly bureaucratic. A series of questions seeks views on whether this is the case and whether the Regulations should be changed. Should the balance of evidence call for possible changes to the current Regulations there will be a formal consultation on any proposed changes "in 2012".

Potentially, this is extremely important to those Churches who are taking on social services contracts from local authorities and re-employing the existing workforce.

Collective Redundancy Consultation Rules: The [call for evidence](#) also closes on **31 January 2012**. Essentially, the question posed by the Government is whether the 90-day minimum consultation period for collective redundancies is restricting businesses, including the effect on "business confidence and flexibility to respond effectively and appropriately to market opportunities and challenges" and should be reduced.

Although the Government's statements about the proposals refer throughout to "businesses" and "firms", readers should assume that the proposals are intended to apply equally to charities and other voluntary organisations.

[Source: *BIS Press Release* – 23 November 2011]

ODDS & ENDS

Criminal records checks review

For information.

Mrs Sunita Mason, the independent adviser for criminality information management, has produced [phase 2 of her review of the criminal records regime](#).

In its [response](#) the Government accepts the large majority of Mrs Mason's recommendations, either unconditionally or in principle. However, there are areas in which ministers are inclined to be more cautious than Mrs Mason is.

The Protection of Freedoms Bill makes provision for a new, online status checking capability that will in effect mean individuals can reuse their certificates for different employers across the same work force and so will no longer need to apply for a new certificate every time they want to take up a new role. The Government does not, however, accept Mrs Mason's recommendation to scale back significantly eligibility for criminal records checks. The Protection of Freedoms Bill is already being used to reduce very substantially the scope of "regulated activity" from which people can be barred; and the Government believes that it remains important to retain the capacity to apply for criminal records checks in relation to a broader set of sensitive roles.

The Government accepts in principle Mrs Mason's recommendation that there should be a clear time scale for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced criminal record certificate. The Government does not, however, accept that the certificate should be issued at the end of a defined period where information is still being considered by the police, as that could pose significant risks to public protection.

The Government intends to maintain "for now" the current arrangements for holding criminal records on the police national computer while ensuring the controls on accessing those records are sufficiently strong. At the same time, ministers will "take her steer" in terms of providing a clearer definition of what constitutes a criminal record and reviewing precisely which convictions and other disposals should be recorded on national systems.

[Source: HC Deb (2011) 6 Dec c 20WS]

Funding of political parties

For information.

The Committee on Standards in Public Life has published its [report](#) recommending fundamental change in the regulation of the funding of political parties. Cleaning up the funding of political parties is not, perhaps, an issue of the most immediate interest to charities: but one of the Committee's four major recommendations is, potentially at least, of considerable importance:

“Income tax relief, analogous to Gift Aid, should ... be available on donations of up to £1,000 and on membership fees to political parties”.

The Committee concedes at para 10.19, however, that whatever the merits of the proposal,

“The downside is that there might be a risk that it could divert some funding from, or by association discourage giving to, charitable causes”.

Comment: This is not as straightforward as it might appear at first blush. Lord Feldman (Co-Chairman of the Conservative Party) apparently told the Committee that

“... we think it would deal quite well with the public perception of using public money to support political parties, because people would equate it with what happens in charities... it might also do something to enhance the reputation of political parties if people thought they were given a sort of quasi-charitable status and that they were fulfilling a public service”.

Whether or not political parties should be given “a sort of quasi-charitable status” is a matter for debate which we should not enter. More fundamentally, however, to permit political parties to claim something like Gift Aid on donations would blur the current distinction in charity law between legitimate campaigning in support of charitable aims and illegitimate campaigning as a primary purpose. As the Charity Commission's current [Guidance on Campaigning and Political Activity by Charities](#) puts it:

“... political campaigning or political activity ... must be undertaken by a charity only in the context of supporting the delivery of its charitable purposes. Unlike other forms of campaigning, it must not be the continuing and sole activity of the charity”.

We would merely draw attention to the need to preserve a clear distinction between charitable activity for the public benefit and activities – however public-spirited or well-intentioned – that are not currently regarded as charitable.

[Source: *Committee on Standards in Public Life Press Release* - 22 November 2011]

PROPERTY & PLANNING

Penfold Review of non-planning consents: implementation

For information: **property departments and church treasurers please note.**

The Government has published a further [update on implementation](#) of the recommendations of the [Penfold Review of non-planning consents](#):

- to scrap unnecessary development consents and simplify others;
- to reform the remits and working practices of the public bodies granting or advising on development consents;
- to set a clear timescale for deciding development consent applications; and
- to make it easier to apply for development consents.

Specifically, subject to the vagaries of Parliamentary time, legislation will be introduced:

- **to enable the extent of a listed building's special interest to be legally defined in its list entry** – so that only those parts of a building that contribute to its special interest are protected by regulation, removing the requirement to apply for a consent for works that impact other parts of the building;
- **to enable developers to seek a Certificate of Immunity (COI) from listing or scheduling at any time, valid for five years**, rather than the current provision of issuing COIs only in relation to listing, and after the developer has applied for planning permission;
- **to allow owners of listed buildings and local authorities to enter into Statutory Management Agreements** and enable works specified in such agreement to be undertaken without the need for separate applications; and
- **to remove the requirement for Conservation Area Consent when demolishing unlisted buildings** and make this subject to planning permission instead.

As at the last, it will remain necessary to obtain the permission of the local planning authority for demolition but it will reduce complexity in the system by removing a separate consent regime. Currently, it is an offence to demolish an unlisted building in a conservation area without consent. To ensure continued protection of conservation areas, the Government will ensure that demolishing an unlisted building in a conservation area without planning permission will be an offence.

[Source: *BIS News* – 30 November 2011]

Solar photovoltaic panels: consultation on Feed-in Tariffs

For information

The Department of Energy and Climate Change (DECC) has begun a [consultation](#) on the Government's proposals for the tariff levels available for renewable electricity generation from solar PV installations of 250kW or below under the Feed-in Tariffs scheme (FITs). The consultation applies to England, Wales and Scotland only.

FITs was introduced on 1 April 2010, under powers in the Energy Act 2008. Through the use of FITs DECC hopes to encourage deployment of additional small scale (less than 5MW) low carbon electricity generation, particularly by organisations, businesses, communities and individuals who have not traditionally engaged in the electricity market. Installation of photovoltaic panels has increased rapidly in recent months and DECC contends that, when combined with falling installed costs and a number of other factors including rising electricity prices, the returns available to new generators are higher than envisaged and that this is not sustainable.

DECC also proposes

- prioritising energy efficiency by linking PV tariffs to specified minimum energy efficiency requirements from 1 April 2012; and
- new multi-installation tariff rates for aggregated solar PV schemes, applying to new installations with an eligibility date after 1 April 2012.

Online responses are preferred and can be submitted via [DECC's consultation hub](#); or, alternatively, responses can be e-mailed to fits@decc.gsi.gov.uk. The consultation closes on **23 December 2011**. The Secretariat will be submitting a collective response.

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

SCOTLAND

For information.

Charity Transfer Schemes and Restricted Fund Reorganisations: consultation on draft regulations

The Scottish Government has opened [consultation](#) on the Draft Charities (Scheme for the Transfer of Assets) (Scotland) Regulations and the Draft Charities Restricted Fund Reorganisations (Scotland) Regulations.

One consultation document covers the two separate sets of draft Regulations, which implement parts of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) which have yet to be brought fully into force – Charity Transfer Schemes and Restricted Fund Reorganisations. These parts provide OSCR with further regulatory powers to protect charitable assets or, in the case of the restricted fund reorganisations, to approve a scheme to potentially unlock charitable assets. Neither of these parts of the 2005 Act introduces new requirements for charities.

The Draft Charities (Scheme for the Transfer of Assets) (Scotland) Regulations were made under sections 19 & 35 of the 2005 Act; and the Draft Charities Restricted Funds Reorganisations (Scotland) Regulations were made under Chapter 5A of the Act.

Responses must be made by **24 February 2012**, in writing to: Charity Consultations, Licensing & Charity Law Team, Scottish Government, Area 2W, St Andrews House, Edinburgh EH1 3DG. Email: CharityAct@scotland.gsi.gov.uk.

Draft Transfer of Assets Regulations: The 2005 Act gives OSCR the power to make inquiries into any charity, a body controlled by one or more charities, or a body which is not entered on the Scottish Charity Register but appears to represent itself as a charity. The Act also sets out the actions which OSCR may take following an inquiry. These range from directing the body to stop referring to itself as a charity to suspending a person from the management or control of a charity. The majority of the regulatory actions can be taken by OSCR itself.

However, certain actions can only happen after the Court of Session has approved an application by OSCR to the Court. For example, OSCR can apply to have a person permanently removed from the management or control of a charity. Likewise, while the Act allows for the transfer of assets, in certain circumstances OSCR cannot do so without having first applied to, and obtained the approval of, the Court of Session. A transfer of assets involves moving the ownership of an asset (or assets) - whether money, vehicles, heritable property or whatever - from a charity to another charity. However, certain conditions need to be satisfied before the Court can approve the transfer. The power to transfer assets extends to transfers from bodies which are not charities in specific circumstances.

Sections 19(4) and 35 of the Act set out the powers of the Court of Session in relation to an application to it by OSCR for approval of a transfer scheme. The scheme may be for the transfer of assets to a charity from: another charity; a body controlled by a charity; a body which is, or has been, representing itself as a charity when it is not; or a body which was a charity but has been removed from the Scottish Charity Register, or a body controlled by a body that has been removed from the Register. In relation to a body which has been removed from the Register, the only assets which can be transferred by a scheme are those which were held by the body at the time it was removed from the Register.

The draft Regulations in the consultation paper are made under sections 19 and 35 of the 2005 Act and set out the procedure OSCR must follow prior to applying to the Court of Session for approval of a transfer scheme.

Draft Restricted Fund Reorganisations Regulations: The 2005 Act introduced a new regime which allowed charities to modernise and update their governance where they did not already have to power to do so. However, the 2005 Act, as passed, did not allow a charity to amend the governance of any restricted funds which it holds. Restricted funds means property (including money) given to a charity for a specific purpose and with conditions on its use. As a result, the Scottish Government amended the 2005 Act in the Public Services Reform (Scotland) Act 2010 to allow OSCR, or the Court of Session, to approve a reorganisation scheme in respect of restricted funds held by a charity.

The new restricted funds provisions in the 2005 Act (as amended) are very similar to those in the 2005 Act about the reorganisation of charities. Detailed provisions have already been made about reorganisation of charities in the Charities Reorganisation (Scotland) Regulations 2007 (SSI 2007/204, the 2007 Regulations). Because of the similarities of the issues, the Scottish Government has tried to keep these draft regulations on reorganisation of restricted funds as close as possible to the 2007 Regulations. However, there are a number of areas where the Scottish Government (SG) departed from the 2007 Regulations as SG now considers their provisions can be improved on, and adds, "Where we have departed from the 2007 Regulations, we propose amending those Regulations to reflect these improvements. We would expect to make any changes to the 2007 Regulations at the same time as these regulations are made".

[Source: *Scottish Government website* – 28 November 2011]

TAXATION

Energy supplies, reduced rate VAT and the climate change levy

For information: **property departments and church treasurers please note.**

Third Sector reports that a survey by [Make It Cheaper](#) suggests that almost half of charities do not know they can get a VAT discount and are exempt from the climate change levy and calculates that charities will pay about £78m of unnecessary tax on their energy bills in 2011. Of the 472 charities surveyed, 46 per cent did not realise they were exempt from the levy (which is a charge on businesses to pay for services to reduce carbon emissions) and only have to pay 5 per cent VAT on much of their energy costs.

Charities have to pay only 5 per cent VAT on energy used for "non-business activities" for which the charity's only income is donations or grants. The [HMRC website](#) explains that:

- Charities can get a reduced rate of VAT on fuel and power supplied to them for non-business use, as well as certain related services such as maintenance and repairs.
- If the charity has a mix of business and non-business activities it must provide the supplier with a certificate that declares what percentage of the fuel and power supplied is put to non-business use. [See the section headed *Which supplies to charities qualify for the reduced rate of VAT?*]

However, if 60 per cent or more of the fuel or power is for *non-business* activities the charity will qualify for reduced rate VAT on the whole supply.

The crucial point is that the supplier will **not** apply the 5 per cent rate automatically: **charities have to send a certificate, including their charity number, to their energy supplier to claim the reduced rate.** HM Revenue and Customs confirms that it is possible to make a retrospective claim for up to four years where the charity has failed, incorrectly, to claim the reduced rate.

We would hope that all church treasurers are aware of this – but nevertheless thought that we should flag the matter up in case anyone has missed it, simply on the basis that *Third Sector* thought it worth reporting.

[Source: *Third Sector online* - 8 December 2011]

Forthcoming tax changes

For information.

The [draft Finance Bill 2012](#) clauses were published on 6 December 2011. Among them are several proposals that may be of interest to member Churches.

[Cost-sharing exemption](#)

Following the announcement in the Autumn Statement, the Government has confirmed that legislation will be introduced in Finance Bill 2012 to implement Article 132(1)(f) of the Principal VAT Directive (PVD) in the UK. This may well be of interest to members because it has the potential to remove a significant VAT barrier for UK charities which try to improve their efficiency and lower costs by sharing services.

The draft legislation makes clear that “to take advantage of the exemption businesses and organisations are expected to form new cost sharing vehicles” but it is unclear as to what form such a vehicle should take. Following representations from the charity sector, the Government has decided to relax the control element among members in a cost sharing group (CSG). While there must still be a separate entity with no third party control or ownership, the Government has decided to allow one member of the CSG to control/majority own the CSG and using their resources to manage and run the CSG while seeking exact reimbursement of their share costs from the other members. It is hoped that relaxation of this requirement will make the exemption more usable, particularly for smaller charities.

The Government has estimated that the average annual additional administrative costs for the CSG will be in the range of £350,000 to £550,000. There may be still be problems, if, in practice, the additional administrative costs of membership of an independent CSG are as prohibitive as the existing VAT barriers. Flexibility in the legislation and clear accessible guidance will be crucial if this measure is to be successful.

[Gifts of Art](#)

The Finance Bill 2012 will include provisions under which objects may be given to the nation for subsequent loan to appropriate institutions – including certain charities and accredited museums – for safe keeping and to provide public access. In return, donors will receive a reduction in their UK inheritance tax liability based on a percentage of the value of the object that they are donating.

The Government also confirmed that the annual limit available for both tax reductions under the new scheme to encourage gifts of pre-eminent objects, and taxes offset under the existing inheritance tax Acceptance in Lieu (AIL) scheme, would be increased from £20 million to £30 million, adding that the AIL scheme applies only to IHT and not to other taxes.

[IHT relief](#)

The Finance Bill 2012 will include legislation to provide for a reduction in the rate of IHT from 40 per cent to 36 per cent where 10 per cent or more of a deceased person's net estate (after deducting IHT exemptions, reliefs and the nil-rate band) is left to charity. The measure will apply to deaths on or after **6 April 2012**.

[In-year repayments of tax to charities](#)

HMRC makes certain repayments of tax to charitable companies and certain charitable trusts that make a claim to repayment of tax outside a tax return (in-year claims) which should, in strict law, be claimed in an annual tax return. This measure, announced at Budget 2011, will put on a statutory footing the current concession under which certain charities of making claims for repayment of tax outside a tax return (*excluding Gift Aid*).

[SA Donate scheme removed](#)

As expected, from 6 April 2012, the SA Donate scheme will be removed from the statute book. (The scheme enables an individual, who makes a self-assessment return, to direct HMRC to make any repayment of tax due for the tax year to a charity.)

[Source: *HM Treasury Press Release* - 6 December 2011]

VAT Notes No 4 2011

For information.

HMRC has published [VAT Notes No 4 2011](#). The most important item is a reminder that during what is left of December HMRC intends to lay before Parliament Regulations to require virtually all remaining VAT businesses to file their VAT returns online and pay any VAT due electronically from **April 2012**. HMRC will send letters during February 2012 to all businesses that are affected. It will include a step-by-step guide explaining how to sign up and file your VAT Return online. Taxpayers are asked to sign up to VAT Online on receipt of the letter from HMRC.

HMRC strongly recommends that businesses set up an e-mail address so that HMRC can remind them when VAT Returns are due (otherwise, you will not receive a prompt from HMRC).

[Source: *HMRC What's New* - 6 December 2011]