CHURCHES' LEGISLATION ADVISORY SERVICE

Church House, Great Smith Street, London, SW1P 3AZ
T: 020 7222 1265 E: info@clas.org.uk
www.clas.org.uk

Chairman: The Rt Revd Alastair Redfern, Bishop of Derby
Secretary: Frank Cranmer

CLAS CIRCULAR
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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.

AUTUMN BUDGET 2017

For information

The Budget

There was relatively little in the Autumn Budget of likely concern to CLAS members *as organisations*; however, some of the following may be of interest

Charity tax and the Gift Aid donor benefit rules

Following the review of the Gift Aid donor benefit rules, in order to simplify the rules for charities *the current three monetary thresholds will be reduced to two*, while all existing extra-statutory concessions will be legislated. Changes will come into effect from April 2019.

The current donor benefit limits (the "relevant value test") is a set of monetary thresholds that determine the value of benefits that charities may give to donors as a consequence of a donation and still claim Gift Aid on that donation:

- For donations up to £100, the value of the benefit can equate to a total of 25% of the donation.
- For donations between £100 and £1,000, the value of benefits is capped at £25.
- For donations over £1,000, the value of the benefit can equate to a total of 5% of the donation, up to a maximum annual benefit value of £2,500.

Under the intended reform, donors will be no worse off in terms of the value of benefits that charities can offer them because the new limits will be, for every eligible donation, at least as generous as the current limit.

Under the new limits, the benefit threshold for the first £100 of the donation will remain at 25% of the amount of the donation. For larger donations, charities can offer an additional benefit to donors up to 5% of the amount of the donation that exceeds £100.

Obviously, the activities of very few church congregations (if, indeed, of any) engage the donor benefit rules – but it is possible that the activities of some wider religion-based charities might do so.

VAT registration threshold

The Office of Tax Simplification's report, *Value Added Tax: Routes to Simplification*, which was published earlier in November, pointed out that the UK's £85,000 VAT registration threshold

is the highest in the EU – where the average is £20,000 – and the highest general threshold in the OECD. It suggested that, though the high UK threshold was often seen as a tax simplification measure because most businesses can operate without needing to be registered for VAT, there was clear evidence that it was having a distortionary impact on business growth and activity.

It was expected that the Chancellor might announce a reduction in the threshold; instead, however, he announced that the Government will consult on the design of the threshold and, in the meantime, *will maintain it at the current level of £85,000 for two years from April 2018*.

Making Tax Digital (MTD)

As announced in July and legislated for in the Finance (No. 2) Act 2017, no business will be mandated to use MTD until April 2019. Only those with turnover above the VAT threshold will be mandated at that point, and then only for VAT obligations. The scope of MTD will not be widened before the system has been shown to work well, and not before April 2020 at the earliest.

Benefits-in-kind: electric vehicles

From April 2018, there will be no benefit-in-kind charge on electricity that employers provide to charge employees' electric vehicles.

Taxation of employee business expenses

Following the call for evidence published in March 2017, the government will make several changes to the taxation of employee expenses:

Self-funded training – The government will consult in 2018 on extending the scope of tax relief currently available to employees and the self-employed for work-related training costs.

Guidance and claims process for employee expenses – HMRC will work with external stakeholders to improve the guidance on employee expenses, particularly on travel and subsistence and the process for claiming tax relief on non-reimbursed employment expenses.

Community Infrastructure Levy

The Government has announced that it will encourage local authorities to **explore the introduction of a Strategic Infrastructure Tariff**, in addition to the Community Infrastructure Levy (CIL), supported by appropriate governance arrangements. These approaches will require developers to baseline their contributions towards infrastructure into the values they pay for land.

DCLG is to launch a consultation with detailed proposals on the following measures:

- removing restriction of Section 106 pooling towards a single piece of infrastructure where the local authority has adopted CIL, in certain circumstances such as where the authority is in a low viability area or where significant development is planned on several large strategic sites;

- speeding up the process of setting and revising CIL to make it easier to respond to changes to the market. This will include allowing a more proportionate approach than the requirement for two stages of consultation and providing greater clarity on the appropriate evidence base. This will enable areas to implement a CIL more quickly, making it easier to set a higher 'zonal CIL' in areas of high land value uplift, for example around stations;

- allowing authorities to set rates which better reflect the uplift in land values between a proposed and existing use. Rather than setting a flat rate for all development of the same type (residential, commercial, etc.), local authorities will have the option of a different rate for different changes in land use (agricultural to residential, commercial to residential, industrial to residential);

- changing indexation of CIL rates to house price inflation, rather than build costs, to reduce the need for authorities to revise charging schedules and ensure that CIL rates keep up with general housing price inflation (and if prices fall, rates will fall too); and

- giving Combined Authorities and planning joint committees with statutory plan-making functions the option to levy a Strategic Infrastructure Tariff (SIT) in future, in the same way that the London Mayoral CIL is providing funding towards Crossrail: the SIT would be additional to CIL and viability would be examined in public.

This is an issue that has been of concern to CLAS ever since the original proposal for a Planning Gain Supplement (PGS) was first floated over ten years ago – and one on which we and the Charities' Property Association fought successfully for a charity carve-out. We shall be monitoring developments closely and may have to repeat the arguments all over again – for the third time.

Income tax thresholds

From April 2018, the personal allowance will rise to £11,850 and the higher rate tax threshold to £46,350.

[Source: CLAS Summary – 22 November]

CHARITIES & CHARITY LAW

Alcohol at charity meetings and events

For information

The Charity Commission has recently tweeted to remind charities in England and Wales about its guidance on how to follow the law if selling alcohol at a charity event, including on when tax needs to be paid.

A charity can sell alcohol as refreshment at an event or activity that it is running in direct connection with its charitable aims, provided that:

- the event is directly related to the charity's aims, *as they appear in its governing document*;
- the bar is only open because the charity activity is happening; and
- only guests, participants or spectators at the event use the bar.

A charity may need to pay tax on the profits from trading from selling alcohol if the event is not directly related to its aims. This would also be the case if the alcohol were sold in order to raise funds, or in other ways that are not directly connected to the charity's aims.

The guidance goes on to detail some of the risks associated with selling alcohol at events, which trustees must take into consideration. It also details the process for obtaining an alcohol licence from a local authority, which is required to sell alcohol at an event.

[Source: Charity Commission – 9 November]

English Churches and Cathedrals Sustainability Review

For information

On Wednesday 15 November, Lord Beith received an answer to an oral question in the Lords asking when the Government expects to receive the report of the English Churches and Cathedrals Sustainability Review which was announced in 2016.

Lord Ashton of Hyde, Parliamentary Under-Secretary of State at DCMS replied that he understood that the Chair and the Review Panel were currently finalising their report and recommendations in consultation with key stakeholders and it was hoped that they would submit the report to the Chancellor and the Secretary of State for DCMS before the end of the year.

[Source: Lords *Hansard* – 15 November]

Further guidance for charity auditors and examiners on reporting concerns

For information

The charity regulators – CCEW, CCNI and OSCR – have issued a joint publication, *Reporting of relevant matters of interest to UK charity regulators*, in which they urge auditors and independent examiners to be more proactive about reporting concerns that may arise during their examination of charity accounts:

> "The charity regulators have published separate guidance about the matters of material significance that **must** be reported as a legal duty. Auditors and independent examiners should ensure that they have read that guidance and understand it so that they can confidently meet their legal duty to report where required.
>
> This document provides examples of the matters that **may** be reported to the charity regulators. These are not the same as the matters of material significance, which are serious and must always be reported. Relevant matters are those matters that auditors and independent examiners consider are significant but are not listed as matters of material significance. The charity regulators will still be interested in such significant matters and so we encourage auditors and independent examiners to report them."

Their basic message is, "If in doubt, report it".

[Source: Charity Commission – 22 November]

FAITH & SOCIETY

Consultation on gender recognition

For information

The Scottish Government has published a Review of the Gender Recognition Act 2004: A Consultation.

The Gender Recognition Act 2004 allows transgender people to apply to the Gender Recognition Panel to obtain legal recognition of their acquired gender. Though the 2004 Act extends across the United Kingdom, gender recognition is a devolved matter within the legislative competence of the Scottish Parliament.

The Scottish Government believes that the requirements in the 2004 Act are too intrusive and onerous and need to be reformed and simplified. Its proposals include removing requirements for applicants to provide medical evidence and to have lived in their acquired gender for two years before applying. Some requirements would remain, such as applicants having to provide a statutory declaration to confirm they fully understand the implications of their application and intend to live in their acquired gender for the rest of their lives.

The Scottish Government also intends to consult separately later in the year on how it should address the issues experienced by intersex people and people with variations of sexual characteristics.

Member Churches in Scotland may wish to make submissions to the consultation: the closing date is **5pm on 1 March 2018**. Responses may be made online here.

[Source: Scottish Government – 7 November]

ODDS & ENDS

Conscientious objection and acquittal for alleged criminal damage

For information

On 26 October, the Revd Daniel Woodhouse, a Methodist Minister, and Sam Walton, who works with the Quakers in Britain, were found not guilty at Burnley Magistrates' Court of criminal damage. Armed with a hammer, they had attempted to reach aircraft that were bound for Saudi Arabia when they were apprehended at BAE Warton in January 2017. Their intention was to 'disable' aircraft intended for the Saudi Air Force.

Their defence was 'lawful excuse' under s.5 Criminal Damage Act 1971: that they had acted:

> "… in order to protect property belonging to [themselves] or another or a right or interest in property which was or which [they] believed to be vested in [themselves] or another, and at the time of the act or acts alleged to constitute the offence [they] believed—
>
> (i) that the property, right or interest was in immediate need of protection; and
>
> (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances"

– the property in question being in Yemen, with which Saudi Arabia is at war.

District Judge James Clarke accepted their evidence that they

> "honestly believed that property was in need of immediate protection as they had a firm belief that the damage was an ongoing consequence of the war. I am satisfied that they honestly believed that they acted as soon as they safely could, having assessed their information, prepared for the ultimate act of damage or disarmament and planned as safe an entry to the site as they could manage."

He further accepted that the actual damage to the fence and the door was "no more than the defendants honestly believed was necessary to achieve their aim".

But though they were both acquitted, DJ Clarke pointed out that "The defence under s.5 is very specific to this offence".[1]

[Source: CLAS summary – 15 November]

[1] *R v Walton and Woodhouse* [2017] Burnley Magistrates' Court (unreported). I am very grateful to Daniel J Hill for providing me with a copy of DJ Clarke's judgment.

Prosecution for misuse of personal data

For information

And while we're on the subject of the criminal law, an employee of the Rochdale Connections Trust, Robert Morrisey, recently pleaded guilty at Preston Crown Court to unlawfully obtaining personal data in breach of s.55 of the Data Protection Act 1998. He was given a conditional discharge for two years and ordered to pay prosecution costs of £1,845.25 and a victim surcharge of £15.

His offence was to send spreadsheets containing the information of vulnerable clients to his personal e-mail address without the knowledge of the Trust as data controller. The data that he sent included full names, dates of birth, telephone numbers and medical information.

Steve Eckersley, Head of Enforcement at the Information Commissioner's Office, which brought the prosecution, said:

> "People have a right to expect that when they share their personal information with an organisation, it will be handled properly and legally. That is especially so when it is sensitive personal data. People whose jobs give them access to this type of information need to realise that just because they can access it, that doesn't mean they should. They need to have a valid legal reason for doing so. Copying sensitive personal information without the necessary permission isn't a valid reason."

Churches should be aware that just because a data subject has given permission for personal data to be held on (eg) the local congregation's computer (if it has one) or the computer belonging to the church administrator, *that cannot be regarded as permission to share the data with anyone else* – and the ICO is obviously becoming much stricter about prosecuting breaches of the DPA 1998.

[Source: ICO – 7 November]