

CLAS CIRCULAR 2018/18 (10 September 2018)

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 & CHARITY LAW

Charity Commission: Annual Return Service

For information

The Charity Commission has [announced](#) that the 2018 Annual Return Service is now available for charities to submit their annual return.

The Commission published the [questions](#) for the annual return earlier in August, including new questions for 2018 asking for information on areas such as the number and value of contracts and grants from central government or local authorities, funding from outside the UK, safeguarding and the number of employees paid over £60,000.

Charities can submit their annual returns online [here](#).

[Source: Charity Commission – 20 August]

Charity Commission: public benefit reporting requirement for charities

For information **and possibly for action**

The Charity Commission has published *a report on charity trustees' understanding of the public benefit reporting requirement: [Accounts monitoring review: Telling your story well - public benefit reporting by charities](#)*. The Commission found that half of a sample of 106 trustees' annual reports that it reviewed demonstrated a clear understanding of the public benefit reporting requirement. The other half, however, did not consider what difference they had made to their beneficiaries and/ or did not include the required statement that the trustees had considered the Commission's guidance on public benefit reporting.

The Commission concludes that its findings suggest that these trustees had given little thought to the difference that their charity's activities made to its beneficiaries and/or saw little need to communicate this to those that support or fund the charity and to the wider public. Nigel Davies, Head of Accountancy Services at the Commission, commented:

“Our research into trust and confidence in charities shows that the public no longer give charities the benefit of the doubt; they want evidence that charities make a difference when using their money. Public reporting is an opportunity for charities to tell their story and explain to the public

what they do and how they use charitable funds. Producing a trustees' annual report and accounts is not an administrative box-ticking exercise. It is a chance to show how your charity is making an impact and how you are delivering on your core purpose.”

[Source: Charity Commission – 3 September]

Charity Commission: small charity annual reports and accounts

For information and possibly for action

The Charity Commission has published [Accounts monitoring review: Do small charity annual reports and accounts meet the reader's needs?](#)

There are almost 104,000 small charities with incomes below £25,000 on the register – and some of them are church charities. The purpose of the trustees' annual report and accounts is to tell the reader what the charity is set up to do, what it achieved and how it spent its money. All registered charities must produce both a trustees' annual report and accounts and make them publicly available – but small charities are not required to file these documents with the Commission (except for Charitable Incorporated Organisations).

The Commission contacted the trustees of a sample of 110 small charities to obtain their trustees' annual report and accounts. Nearly two-thirds of the charities provided sets of accounts that contained basic information on their charitable activities and how the trustees had used the charity's money. However, many trustees of small charities remain unaware of their legal duty to prepare a trustees' annual report and accounts. The Commission says that a quarter of the charities contacted provided either just one of the two required documents or neither.

Comment: As we have observed on more than one occasion when something like this comes to light, *charities in England and Wales are bound by charity law whether they are registered with the Commission or not.* Our suspicion is that trustees of exempted and small charities sometimes forget this basic truth, simply because they do not have any regular contact with the Commission and the regulatory regime.

[Source: Charity Commission – 3 September]

ICO: charities and information risk

For information and possibly for action

The Information Commissioner's Office has published [Findings from ICO information risk reviews at eight charities](#) – somewhat surprisingly dated April 2018. The report was completed under the previous Data Protection Act 1998, but includes GDPR recommendations where long-term actions were appropriate.

As well as the eight charities participating in the information risk reviews, the ICO also compared the findings with those from 25 advisory visits (AVs) carried out at smaller charities during 2017/18. The ICO saw many areas of good practice; however, not all the charities visited had key information governance policies in place. Policies were inconsistent in format and version control and not all contained a document control table. Only a few had a policy management framework that detailed how policies should look and what approval process should be followed. Not all policies were reviewed regularly and only a few had a documented review schedule in place.

Communication of policies to staff and volunteers and compliance checks on data processors were also inconsistent. At least half the charities had no requirement for staff to read IG policies as part of their induction and sign to say they had read and understood them and there was generally no strategy for disseminating or raising awareness of new or revised policies and procedures. The majority did not undertake any routine data protection or direct marketing policy compliance checks or include them in their internal audit programme. As to training, most charities did not provide annual refresher training and staff and volunteers often did not receive any data protection training before being allowed to access or process personal data. Few provided specialist training or carried out a training needs analysis to assess training requirements of roles/individuals and training was not always monitored effectively, especially volunteer training. Only two charities had a consistent and co-ordinated approach to fair processing notices (FPNs) provided on consent forms. Most did not have a log of FPNs or any kind of sign-off process and as a result they varied in content and quality.

The overall picture that emerges is that charities – or at least those in the survey – still have some way to go in order to get their data processing policies fully compliant to ICO standards.

In that connexion, the law firm EMW [reports](#) that the number of complaints about data protection breaches has more than doubled since the General Data Protection Regulation came into effect. The Information Commissioner's Office has said that there were 6,281 complaints between 25 May 2018 – the day on which the GDPR came into force – and 3 July 2018: a rise of 160 per cent in comparison with the same period in 2017, when there had been 2,417 complaints.

[Source: Information Commissioner's Office – 3 September]

Review of Charities Statement of Recommended Practice

For information

The Charity Commission has [announced](#) that the four charity regulators in the UK and the Republic of Ireland will undertake a review of the composition and constitution of the Charities Statement of Recommended Practice (SORP) Committee and the SORP-making process.

A review of the SORP rules, which govern charity accounting for charitable companies and large charities, will be undertaken by an Oversight Panel constituting of an observer representative appointed by the Financial Reporting Council and a representative from each of the four regulators. The review has been established to gain assurance that the SORP-making process commands confidence and addresses the transparency and public confidence challenges facing charities and to assure the Financial Reporting Council (FRC) that any revised arrangements adhere to the FRC Policy on developing SORPs.

It will consider:

- the composition of the advisory SORP Committee;
- identification of, and engagement with, key stakeholders in the SORP development process;
- the extent to which the views of key stakeholders have been recognised in the process; and
- potential of changes to membership of the SORP Committee should the FRC agree the remit of the SORP to make recommendations covering non-statutory financial reporting by charities

The review will take place in 2018 and recommendations will be taken forward in 2019, in time for the next SORP.

[Source: Charity Commission – 22 August]

FAITH & SOCIETY

Government consults on use of torture

Possibly for action

The Investigatory Powers Commissioner's Office (IPCO), the regulator for the intelligence services, has [launched](#) a [consultation](#) on changes to the UK's torture policy or Consolidated Guidance, which tells UK personnel how far they can go in participating in the interrogation of suspects held by a foreign country or receiving intelligence that could have been obtained through torture.

The consultation closes on **Monday 29 October**.

[Source: CLAS – 21 August]

Government to re-examine the case for “no-fault” divorce

For information

Replying on behalf of the Government to an [oral question](#) from Baroness Anelay of St Johns in the Lords, Baroness Vere of Norbiton said that the Government is looking closely at divorce law in England and Wales

“to see what can be done to reduce conflict. We want above all to limit the adverse impact on children. The Government are also listening to calls to change the law on financial provision in divorce. We are open to reviewing the evidence for change.”

She noted that the contested divorce case of *Owens v Owens* in the Supreme Court was not typical: only 2 per cent of respondents contest a divorce and only a handful of those do so in a contested court hearing:

“However, we have noted the judgment and, as importantly, the comments of Lord Justice Munby that change is needed. My right honourable friend the Lord Chancellor is sympathetic to the argument for reform and appreciates the positive changes being put forward by the noble and learned Baroness, Lady Butler-Sloss, in her Private Member's Bill. We look forward to working with her.”

Perhaps the time for reform has now come.

[Source: Lords *Hansard* – 6 September]

Non-party campaigning at elections

Possibly for action

The Electoral Commission is working on new guidance for non-party campaigners (organisations or individuals who campaign in elections but do not put up candidates themselves) and is currently seeking comments on its [existing guidance](#) via an online survey, [here](#).

The survey does not appear to have an end-date: however, *we would strongly advise any member that wishes to respond to do so earlier rather than later.*

[Source: Electoral Commission – 7 September]

ODDS & ENDS

Law Commission: electronic execution of documents

For information

The Law Commission for England and Wales has launched a consultation on [Electronic execution of documents](#). The Commission's key provisional conclusion – on which it invites comments – is that “an electronic signature is capable of satisfying a statutory requirement for a signature under the current law, where there is an intention to authenticate the document” and that “legislative reform is not necessary to confirm that an electronic signature is capable of satisfying a statutory requirement for a signature”. The consultation closes on **23 November**. Unsurprisingly, we do not intend to make a submission.

Postscript: Joshua Rozenberg [tweeted](#) "Electronic signatures are valid: somewhat unusual example of the Law Commission telling us what the law is rather than what it should be." The other point, of course, is that where a charity or corporate body is required to affix its seal to a document, *electronic seals haven't been invented yet*.

[Source: Law Commission – 21 August]

SCOTLAND

Scottish Government: Programme for Scotland 2018-19

For information

The Scottish Government has published its [Programme for Scotland 2018-19](#) setting out its plans for Scotland in the next year, including the Bills that will be introduced to the Scottish Parliament, as follows:

- [Introduction from the First Minister](#).
- [Executive Summary](#).
- [Scotland, Europe and the Constitution](#).
- [The Legislative Programme 2018-19](#).
- [Scotland's National Performance Framework](#).
- [Building a Globally Competitive, Sustainable and Inclusive Economy](#).
- [A Healthy and Active Nation](#).
- [The Best Place to Grow Up and Learn](#).
- [An Empowered, Equal and Safe Scotland](#).
- [A Creative, Open and Connected Nation](#).

New Bills

- **Biometric Data:** The Bill will deliver enhanced oversight of biometric data and techniques used for the purposes of justice and community safety.
- **Budget:** The annual Budget Bill provides parliamentary approval for the Scottish Government's spending plans.
- **Census:** The Bill will permit National Records of Scotland to ask voluntary questions on sexual orientation and transgender status/history in the 2021 census and future censuses.
- **Consumer Protection:** The Bill will establish a new statutory consumer body and make changes to existing funding arrangements to allow Ministers to fully utilise devolved powers.

- **Disclosure:** The Bill will make amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 and Part V of the Police Act 1997 to support the modernisation of the policy design of the disclosure system.
- **Electoral Franchise:** This Bill will include provisions to extend the franchise for Scottish Parliament and Local Government elections to protect the franchise for EU citizens.
- **Electoral Reform:** The Bill will implement a range of electoral reforms, some of which will use the 2016 Scotland Act powers.
- **Family Law:** The Bill will make a number of changes to family law, in particular to further ensure that the child's best interests are at the centre of any contact and residence cases.
- **Female Genital Mutilation:** The Bill will strengthen the existing legislative framework for the protection of women and girls from Female Genital Mutilation (FGM).
- **Non-Domestic Rates** The Bill will deliver the ambition set out in the Barclay Review to enhance and reform the business rates system in Scotland to better support business growth and long-term investment and reflect changing marketplaces. The Bill will introduce measures aimed at improving the administration of the system including to reduce the number of appeals and improve the quality of information available to stakeholders. It will also deliver measures to increase fairness and ensure a level playing field by reforming a number of reliefs and tackling known avoidance measures.
- **Scottish National Investment Bank:** The Bill will pave the way for the establishment of the Scottish National Investment Bank.
- **South of Scotland Enterprise Agency:** The Bill will establish a new enterprise agency for the South of Scotland, to drive inclusive growth and ensure that the region benefits from a new approach that supports a diverse and resilient economy, sustains and grows communities, and harnesses the potential of people and resources.

Bills currently in progress

- Age of Criminal Responsibility Bill.
- Children and Young People (Information Sharing) Bill.
- Climate Change (Emissions Reduction Targets) Bill.
- Damages (Investment Returns and Periodical Payments) Bill .
- Fuel Poverty (Target, Definition and Strategy) Bill.
- Health and Care (Staffing) Bill.
- Human Tissue (Authorisation) Bill.

- Management of Offenders Bill.
- Planning Bill.
- Prescription Bill.
- Scottish Crown Estate Bill.
- Transport Bill.
- Vulnerable Witnesses (Criminal Evidence) Bill

Other commitments announced by the Government include:

- consulting updating legislation to promote transparency and accountability to ensure public confidence in charities and in the Scottish Charity Regulator is maintained;
- conducting a national census of the social enterprise sector over summer 2019; and
- investing in advice and support for workplace training on cyber security and making £500,000 available to smaller businesses and charities, to at least double the number of Scottish businesses and third sector organisations with critical controls in place to defend against the most common cyber threats.
- publishing a Culture Strategy by the end of 2018, underpinned by three ambitions: transforming through culture, empowering through culture and sustaining culture. This will include protection of free access to Scotland's national museums and galleries.
- supporting communities and encouraging developments through legislative and digital improvements to the planning system.
- continuing to call on the UK Government to give the Scottish share of the Tampon Tax Fund to the Scottish Government to allow it to distribute those funds in line with Scottish priorities.
- adding criteria on fair work practices including the Living Wage, being transparent on gender-equal pay and the exclusion of exploitative zero-hours contracts to business support grants through Regional Selective Assistance and other large Scottish Enterprise job-related grants – starting with grants offered in 2019-20.

[Source: Scottish Government – 4 September]

TAXATION

Class 2 NICs to stay

For information

HM Treasury has published a [written ministerial statement on National Insurance Contributions](#) by the Exchequer Secretary to the Treasury, Robert Jenrick, as follows:

“The Government is announcing today that it will not proceed with the abolition of Class 2 National Insurance contributions (NICs) during this parliament.

This change was originally intended to simplify the tax system for the self-employed. We delayed the implementation of this policy in November to consider concerns relating to the impact on self-employed individuals with low profits. We have since engaged with interested parties to explore the issue, and further options for addressing any unintended consequences.

A significant number of self-employed individuals on the lowest profits would have seen the voluntary payment they make to maintain access to the State Pension rise substantially. Having listened to those likely to be affected by this change we have concluded that it would not be right to proceed during this parliament, given the negative impacts it could have on some of the lowest earning in our society.

Furthermore, it has become clear that, to the extent that the Government could address these concerns, the options identified introduce greater complexity to the tax system, undermining the original objective of the policy.

The Government remains committed to simplifying the tax system for the self-employed, and will keep this issue under review in the context of the wider tax system and the sustainability of the public finances.

The Government still intends to legislate for reforms to the NICs treatment of termination payments and income from sporting testimonials, which were set out in the draft NICs Bill published on 5 December 2016. These are important changes to ensure the NICs treatment is consistent with the treatment of income tax in previous Finance Acts. We will set out further details in due course.”

[Source: HM Treasury – 8 September]

HMRC: Making Tax Digital

For information

HMRC is working with software suppliers in the Making Tax Digital pilot who have:

- tested their products in HMRC's test environment; and
- already demonstrated a prototype of their software to HMRC.

Check with your existing software supplier to find out if they will be supplying suitable software before or after the pilot. Alternatively, HMRC has a list of possible software suppliers [here](#). HMRC will update the list as testing progresses.

[Source: HMRC – 29 August]

HM Treasury: call for Budget representations

For information and possibly for action

HM Treasury has opened its call for representations on the forthcoming Budget – the date of which is still to be confirmed:

“[Guidance](#) on how to submit a Budget representation, which is a written representation from an interest group, individual or representative body to HM Treasury with the aim of commenting on government policy and/or suggesting new policy for inclusion in the upcoming Budget.

HM Treasury welcomes representations as part of the policy-making process. The views of stakeholders are gratefully received.

Following the Chancellor's announcement at Autumn Statement 2016, there will now only be one fiscal event in each year, held in the Autumn. In line with this, the representations process will not open ahead of Spring Statement 2019. You are therefore strongly encouraged to submit a representation ahead of Budget 2018 in order to contribute to the policy-making process.”

Representations in advance of Budget 2018 should be e-mailed or sent as a file attachment to budget.representations@hmtreasury.gov.uk by **28 September**.

[Source: HM Treasury – 7 September]