

## **CLAS CIRCULAR 2019/17**

### **(16 October 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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## THE QUEEN'S SPEECH

For information

The [Queen's Speech](#) began: 'My Government's priority has always been to secure the United Kingdom's departure from the European Union on 31 October. My Government intends to work towards a new partnership with the European Union, based on free trade and friendly cooperation.'

How much of it will be implemented remains to be seen: a good deal of what followed was predicated on the assumption that the UK will cease to be a member state of the EU on 31 October. Further, as several political commentators have pointed out, the Government currently has a House of Commons majority of about minus forty, depending on precisely how you calculate it.

That said, the following are the legislative and policy proposals most likely to be of interest to CLAS members:

- an Immigration Bill to end free movement and establish a points-based system – but resident EU citizens will have the right to remain;
- an NHS Bill 'to support and strengthen the National Health Service, its workforce and resources, enabling it to deliver the highest quality care', including a new independent body to investigate serious healthcare incidents, reform of adult social care in England and reform of the Mental Health Act;
- lots on criminal justice and sentencing, including longer sentences for serious offenders and for foreign offenders who return to the UK, placing a duty on public sector bodies to work together to counter violent crime, and obliging the Parole Board not to release convicted murderers who refuse to say where their victims are buried;
- legislation on domestic abuse and on 'no fault' divorce in England and Wales – In effect, reintroducing the Divorce, Dissolution and Separation Bill which fell at Prorogation;
- legislation on new building safety standards;
- simpler oversight of pensions and checks on irresponsible management of pension schemes;
- delivery of nationwide broadband networks and making it easier for telecoms companies to install digital infrastructure when landlords ignore repeated requests for access;
- a White Paper on regional decision-making;
- continuing to deliver on the commitments set out in the Good Work Plan; and
- legally-binding environmental principles to be enshrined in law, with a new independent regulator to investigate complaints and ensure enforcement.

- a declaration that the Government remains committed to restoring devolved government to Northern Ireland.

**Proposed legislation**

- Divorce, Dissolution and Separation Bill
- Domestic Abuse Bill
- Environment Bill
- European Union (Withdrawal Agreement) Bill
- Immigration and Social Security Co-ordination (EU Withdrawal) Bill
- Pension Schemes Bill
- Telecommunications Infrastructure (Leasehold Property) Bill.

[Source: HM Government, 14 October]

## CHARITIES & CHARITY LAW

For information

### Charity Tribunal: 10-year suspension from trusteeship

The First-tier Tribunal (Charity) has dismissed the disqualification appeal from a former church pastor who was banned from being a charity trustee for ten years after the Charity Commission concluded, *inter alia*, that he had used charitable funds for foreign trips that did not appear to be for charitable purposes.

In *Martin C Phelps v The Charity Commission for England and Wales* [2019] FTT CA/2019/0004, Mr Phelps was not a trustee of the Rhema Church London ('the Charity') but he was employed as its pastor. The Commission had concerns about the conduct of the charity's affairs and installed an Interim Manager, using its powers under the Charities Act 2011. In July 2017, the Interim Manager suspended him, pending an investigation of alleged disciplinary breaches and serious misconduct. He was dismissed in November 2018, following an independent panel disciplinary finding of serious and gross misconduct. He appealed, unsuccessfully, to an independent disciplinary appeal body, then brought an equally unsuccessful application for unfair dismissal to an Employment Tribunal [7]. The Charity Commission then suspended him from trusteeship and involvement in a charity as a senior manager for ten years, against which he appealed. The First-tier Tribunal concluded:

- that Mr Phelps had ignored the specific instructions of the Interim Manager on the unauthorised use of the Charity's credit cards [24];
- that there was considerable doubt, on the evidence, that a number of overseas trips that he had led to Italy, Austria, France and Greece were for a charitable purpose and that there was 'a marked lack of documentation in connection with those trips, including a paucity of detailed itineraries and budgets' [25];
- that he had invited members of the Charity to a meeting on 19 July 2017 in breach of the terms of his suspension, which had included a prohibition on communicating with any employee, trustee, contractor, congregation or other stakeholder of the Charity without written authorisation from the Interim Manager [26]; and
- that he had seriously obstructed the Interim Manager [27].

In the circumstances, the ten-year suspension was not unreasonable and his appeal was dismissed.

**Comment:** The issue of dishonesty apart, the case serves as a reminder that charity trustees need to keep a careful eye on what their senior employees are doing – particularly if they have access to the charity's credit cards or bank accounts. It also highlights the fact that *a charity's activities have to be in line with its charitable objects*. However desirable or apparently 'good' a particular action might be, if it is not in line with the charity's objects, it will very probably be a misuse of charitable funds.

[Source: BAILII, 6 October]

## FAITH & SOCIETY

For information and possibly for action

### Home Office independent review of Prevent: call for evidence

The Home Office has published a [call for evidence](#) for the independent review of Prevent to be undertaken by Lord Carlile, which will examine and report on the Government's strategy for supporting people vulnerable to being drawn into terrorism as set out in CONTEST, June 2018. The [terms of reference](#) for the review are now published, together with a [ways of working page](#) providing an overview of review activity and the way in which the review will be carried out. It will look at the range of views and evidence provided across the responses to identify key themes and topics, rather than counting the number of responses on a particular issue. Lord Carlile wants to hear a broad range of opinions, expertise and experience on what Prevent means, how it works and how it affects individuals and communities. He would especially like to hear from

- those working to deliver Prevent locally and nationally;
- those responsible for implementing the statutory Prevent duty (for example, health care professionals and schools and higher education institutions);
- civic groups and charitable organisations; and
- research and academic institutions with an interest in Prevent.

He also wants to hear from individuals who have been referred to, or accessed, Prevent services, and parents, carers, friends, or others close to those individuals, and from members of the public and communities.

You can reply by completing [the online survey](#) and paste links to existing reports and articles you think are relevant at the end of the survey. There is a limit on the length of responses per question. Alternatively, the survey can be made available as a paper questionnaire if required. To request a copy by e-mail please contact [indpreventreview@homeoffice.gov.uk](mailto:indpreventreview@homeoffice.gov.uk).

*Please do not submit referrals or queries about specific cases as part of this survey.*

The consultation closes at **11:45 pm on 9 December 2019**.

[Source: Home Office, 7 October]

## FUNDING

For information

### Fund for tackling loneliness

The Minister for Civil Society, Baroness Barran, has [announced](#) a new £2 million fund to help organisations tackling loneliness. The fund aims to support frontline, grassroots organisations that bring people together and help them build social connections such as community cafés, street parties, coffee mornings or local walking groups.

The intention is that the fund will help small organisations to promote themselves more widely, help fund the use of suitable venues and accessible transport and bring established groups together to serve local people at risk of loneliness.

Further details on the funding application process, including eligibility criteria and when it will open, will follow in due course.

[Source: DCMS and Office for Civil Society, 15 October]

## IMMIGRATION

For information

### **Migrant religious workers**

Further to our last Circular on the Immigration Rules and ministers of religion, Julie Mektadir, a partner at Stone King, has posted a very helpful article, [Migrant Religious Workers – An update](#), in the the Autumn edition of Stone King's Faith Bulletin.

[Source: Stone King LLP, 14 October]

## ODDS & ENDS

For information

### The Cabinet Office on a no-deal Brexit

The Cabinet Office has [published](#) (and subsequently updated) its report on readiness for a no-deal Brexit. The following is a summary of relevant announcements:

**Citizens:** In a no-deal scenario, employers and other third parties will not need to differentiate between those with status under the EU Settlement Scheme and new arrivals until 2021. From 2021, a new points-based immigration system will begin to be put in place.

**Data protection:** In a no-deal scenario, GDPR will be brought into UK law and the ICO will remain the UK's authority on data protection. The European Commission does not plan to adopt adequacy decisions regarding the UK at the point of exit and so businesses and civil society organisations should:

- identify the personal data they receive from organisations in the EU/EEA and where it is held
- review contracts relating to personal data flows and, where absent, include alternative transfer mechanisms to ensure continued, legal flow of personal data from the EU/EEA

**Services:** In a no-deal scenario, the WTO rules will replace the single market protections for UK services firms and investors operating in the EU/EEA. UK businesses may face new barriers and/or qualification requirements where Member State rules limit provision of services or investment to locals or other EEA nationals. UK nationals seeking recognition of their professional qualifications after 31 October will be assessed under the rules of the individual country and professionals will no longer be able to provide services based on a temporary and occasional declaration.

UK businesses and professional providers will face new mobility restrictions, such as visa and work permit requirements, although UK nationals will be able to travel to the EU without a visa for short-term visits for a limited set of activities (including business meetings).

**Public Services and Local Authorities:** In relation to critical goods and medical supplies, adult social care providers should regularly review business continuity plans to make sure that they are up to date and consistent with other local contingency plans, in particular those being developed by their local resilience forum. They should also:

- plan for longer lead times of up to five days for products imported from the EU and be prepared to receive stock deliveries outside normal hours.
- notify their local commissioner, director of adult social services and the Care Quality Commission as soon as possible if there is any risk to service delivery
- review resourcing and staff scheduling plans to ensure care services can be maintained.

The Government has stated that UK beneficiaries of EU programmes will continue to receive funding, where they are eligible under that Guarantee. This applies to UK organisations that have successfully bid into EU-funded programmes and had their bids approved before the end of 2020.

[Source: Cabinet Office, 8 & 14 October]

## PROPERTY AND PLANNING

### Minimum energy efficiency standards consultation

For information

BEIS has [published](#) a consultation on the proposed targets for the minimum energy efficiency standard (MEES) for privately rented non-domestic buildings in 2030. The government has committed to support businesses to reduce their energy use by at least 20% by 2030.

This consultation seeks views on how best to improve the energy performance of non-domestic private rented buildings through tighter minimum energy standards. BEIS state that acting now to set a clear long-term trajectory to 2030 is designed to provide time and certainty to non-domestic landlords, businesses and the energy-efficiency market in delivering the energy savings to support a zero-carbon future.

BEIS has also published a full [Impact Assessment](#) to support this consultation.

[Source: BEIS, 15 October]

## SAFEGUARDING

For information

### NCVO safeguarding resource

Of possible interest to some members of CLAS, the National Council for Voluntary Organisations has launched [safeguarding resources](#) on NCVO Knowhow with the aim of providing key guidance and resources on safeguarding.

The new resources page marks the end of the first phase of work funded by DCMS and the National Lottery Community Fund. The funders are now moving to fund phase two – which will focus on delivery of training, dissemination of resources, and enabling local networking.

[Source: NCVO, October]

## TAXATION

For information

### **Making Tax Digital: update**

HMRC has published an updated sign-up timeline for organisations (including charities) that had their MTD mandated start date deferred until October 2019: see [Deferred sign up timelines - v1.0](#)

*HMRC will not automatically sign charities up for MTD.* Merely having digital software that the provider says can submit via MTD does not automatically enrol charities for MTD. Charities need to sign up themselves. Charities can sign up to MTD VAT [here](#) and agents can sign up their charity clients to MTD VAT [here](#).

*Civil Society* reports that HMRC has attempted to reassure charities that it is not being strict in enforcing Making Tax Digital. At a conference last week, Verna Gellvear, of HMRC's Customer Readiness & External Stakeholder Team, said that that HMRC was being 'quite lenient' with exemptions, so 'don't be put off applying for them if you think you might qualify for them'. HMRC was also being 'very lenient' on penalties for non-compliance because it 'understands that this is a huge change'. She also said that charities would not be penalised if 'the compliance officer who is visiting you can see that you are making a genuine attempt to comply', recommending that if charities are having trouble, they should 'pay it, and then try to get the figures to us'.

That said, however, she told delegates that the most popular exemption request, that someone is too old to use MTD, will not be granted.

[Sources: HMRC & *Civil Society*, 15 October]