CHURCHES' LEGISLATION ADVISORY SERVICE

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CLAS CIRCULAR
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EMPLOYMENT

Employment changes 2019

For information

At the beginning of the new year it may be worthwhile to remind members that **on 1 April**:

- The **National Living Wage** will increase from £7.83 to **£8.21**.
- The **National Minimum Wage** will increase as follows:
    - Workers aged 21 to 24 – from £7.38 to **£7.70**.
    - Workers aged 18 to 20 – from £5.90 to **£6.15**.
    - Workers aged over compulsory school age under 18 - from £4.20 to **£4.35**.
    - Apprentices – from £3.70 to **£3.90**.

Also on 1 April there will be **changes to auto-enrolment rates**: the minimum contribution rates will increase to 3% for employers and 5% for employees.

[Source: CLAS – 14 January]

HMRC maternity, adoption and paternity calculator

For information

HMRC has launched an online calculator to help employers assess their statutory obligations concerning maternity, paternity, and adoption pay. The calculator will also allow employers to calculate an employee's leave period.

All that is required beforehand is:

- the baby's due date;
- date of birth - for paternity;
- the employee's salary details, eg weekly rates of pay; and

- the dates for adoption, eg match date and date of placement.

Please note however that you cannot use the calculator for the following:

- births 15 weeks before the due date;
- paternity leave or pay for overseas adoptions; or
- Shared Parental Leave and Pay.

[Source: HMRC – 7 January]

Faith and Society

Child Care and when to register in England, Wales, and Scotland

Following concerns raised by CLAS members, below is a brief outline of child care registration laws in England, Wales, and Scotland. This may be particularly relevance for day care activities such as bible studies and Sunday schools.

Wales

There is no requirement to register with the Care Inspectorate Wales if you are providing day care for children over the age of **12**. A person is also defined as not providing day care if the activity involved is 'religious or cultural study'.

A crucial caveat here, however, is that this exception does not apply if the children are below the age of **5** and attend for longer than **four hours** in a given day. It will also not apply if the person offers more than two of the following activities:

a) Sport

b) Performing art

c) Arts and crafts

d) School study or homework support

e) Religious or cultural study

These exceptions are also currently the subject of a call for evidence by the Welsh Assembly which will continue until **20 March 2019** – submissions for which can be made here.

England

The situation in England is broadly similar to that in Wales, however the maximum age threshold is set at **8** rather than **12**. Again, persons providing activity involving religious or cultural study are excepted here although the list of activities for which no more than two may be provide also includes 'language study'. The children must also be older than **3** years old.

The caveat remains that the exception does not apply if the children are **below the age of 5** and attend for longer than **4 hours** in a given day.

Scotland

In Scotland any person seeking to provide day care for children (below the age of **16**) must register with the Care Inspectorate unless the period or total periods during which the service is provided is less than **2 hours** in any given day.

[Sources - Care Inspectorate Wales, Ofsted, Care Inspectorate Scotland]

ODDS & ENDS

Data protection and Brexit

For information

The Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 have been finalised. The Regulations amend UK data protection legislation with the aim of ensuring that the UK legal framework for data protection functions correctly after exit day. In particular, the Regulations:

- create a single regime for general processing, known as the "UK GDPR";
- preserve the extra-territorial applicability of the EU GDPR to cover controllers and processors outside the UK;
- deal with the international transfer of personal data by introducing powers for the Secretary of State to make "adequacy regulations" and issue standard contractual clauses; and
- amend Regulation 2 (Interpretation) of the Privacy and Electronic Communications (EC Directive) Regulations 2003 to provide that "consent" by a user or subscriber corresponds to the data subject's consent in the GDPR (as defined in section 3(10) of the Data Protection Act 2018).

The Regulations come into force on exit day, although the provisions amending PECR come into force on **29 March 2019**, irrespective of whether or not there is a transitional period. The draft Regulations are subject to the affirmative resolution procedure. [*With thanks to BWB.*]

[Source: BWB – 9 January]

PROPERTY & PLANNING

Advice from Ecclesiastical Insurance on protecting against metal theft

For information

"Lead, copper and stainless steel roof coverings, roof flashings, copper lightning conductors and lead rainwater pipes have all been targeted. Whilst world demand for metal remains strong their scrap value will continue to be high, making them an attractive target for thieves, and churches will continue to face this problem for the foreseeable future. Please review our top tips or download our detailed theft of metal prevention guidance notes below.

Security marking

Applying SmartWater to external metal (or an alternative forensic marking system approved by us) is a condition of your insurance. Please make sure you have applied the SmartWater solution and registered with SmartWater and you have displayed the signs warning that metal has been protected. For more information read our SmartWater page.

Engage with your local community

Joining the local Neighbourhood Watch scheme and urging the church's neighbours to keep a watchful eye out for anything suspicious around the church can be a big help that costs nothing. Anything suspicious should be reported to the police straightaway and you should inform other churches in your area to put them on their guard.

Install an electronic roof security system

Over 500 churches now have roof alarms to help protect external metal. Alarms can be virtually invisible and large roof areas can be protected cost effectively. If you install an Ecclesiastical-approved roof alarm we may also be able to increase your theft of metal cover. To find out more visit our roof alarms page.

Did you know?

If you install an Ecclesiastical-approved roof security system and have also applied a forensic marking system approved by us (such as SmartWater) to external metal, displayed signage and registered with the provider, we may be able to increase your theft of metal cover, depending on your individual circumstances."

[Source: Ecclesiastical Insurance Group – 11 January]

VAT and construction and repair work for churches

For information

The House of Commons Library has produced a useful briefing examining how construction and repair work for churches is treated for VAT in the UK. The briefing also explains the effects of the changes made in the 2012 Budget which removed the zero rating for VAT that had previously applied to alteration work on listed buildings.

The Government's current position regarding the rate of VAT on church repairs is articulated fairly neatly in the following exchange between Graham P Jones and Mel Stride in a written question in November 2018.

> **Graham P Jones**: To ask the Chancellor of the Exchequer, whether he has plans to remove VAT from services and items included for the repair and maintenance of (a) churches and (b) other religious buildings.
>
> **Mel Stride**: Under the current EU rules, the Government cannot remove VAT on the repair and maintenance of places of worship. The Government recognises the importance of places of worship in our communities and provides funding to cover the cost of repairs and maintenance of listed places of worship through The Listed Places of Worship Grant Scheme, managed by the Department for Digital, Culture, Media, and Sport.

[Source: House of Commons Library – 7 January]

SAFEGUARDING

Church of England on reporting safeguarding and other serious incidents

For information

The Church of England has published new guidance from the House of Bishops on reporting safeguarding and other serious incidents to the Charity Commission. The guidance has been given formal approval by the Commission.

The new guidance sets up a system which provides for the reporting of all safeguarding serious incidents by Parochial Church Councils to be through their dioceses. The Charity Commission has also agreed to the bulk reporting of safeguarding serious incidents by Diocesan Boards of Finance every six months unless an incident is very serious: for example if it presents a live risk – in which case it must be reported immediately. Religious Communities (except closed communities which are not charities) will continue to report directly to the Charity Commission but will now use the new template reports to assist them.

The guidance is obviously specific to the Church of England; however, it may be of interest to other members of CLAS.

[Source: Church of England – 2 January]

SCOTLAND

OSCR: advice on appointing the correct auditor for charity accounts

For information

OSCR has published advice on how to assess whether or not an auditor will be accepted under the statutory requirements. The advice stresses that the accounts of Scottish charities must be externally scrutinised, "*that is, someone who is independent of the charity has reviewed the accounts and produced a report attached to the accoutns, that highlights any issues to the reader*". Non-company charities with a gross income of less than £250,000 may prepare receipts and payments accounts. All charitable companies and all charities with a gross income of more than £250,000 must prepare accrued accounts.

In brief, the formal requirements under the Regulations for external scrutiny are these:

- *Independent examination* for charities with income of less than £500,000.
- *Audit* for charities with income of £500,000 or more:
  - For non-company charities with a gross income of less than £250,000 - Receipts and payments accounts
  - For all charitable companies - Fully accrued accounts
  - For all charities with a gross income of more than £250,000 - Fully accrued accounts

Where the independent examination is carried out on *receipts and payments accounts*, the examiner does not need to be professionally qualified but needs to be able to understand the legal requirements for charity accounts, the information contained in the charity's accounting records and the relationship between the accounting records and the accounts.

Where the independent examination is carried out on *fully accrued accounts*, the examiner must be a member of a relevant professional body – the professional bodies are listed in section 5 of the OSCR's independent examination guidance.

Crucally, *the person appointed to be the independent examiner must be independent of the charity*. This means that s/he cannot be one of the charity's trustees or anyone else involved in the management, control or administration of the charity. Nor can the examiner be connected to anyone in that position – so they, for instance, s/he cannot be a member of a charity trustee's family. OSCR explain more about the requirements for independence in section 5.3 of its independent examination guidance.

[Source: OSCR – 10 January]

Scottish Government: consultation on charity law

For information

The Scottish Government has launched a consultation on Scots charity law. The consultation document notes that it has been seventeen years since the Scottish Charity Law Review Commission proposed establishing the Scottish Charity Regulator (OSCR) and more than thirteen since the passage of the Charities and Trustee Investment (Scotland) Act 2005. Given that Scottish charities are now operating in a rather different environment, the Government feels that the time is right to check how well the current arrangements are working and to explore potential improvements.

The consultation seeks views on potential amendments to the statutory charity regulation framework in Scotland, in light of proposals put forward by OSCR. The proposals broadly focus on changes which, it is hoped, will increase transparency and accountability in order to maintain public trust and confidence in charities and in OSCR – principally by broadening OSCR's powers and extending the disqualification criteria for charity trustees by bringing them into line with the criteria in England and Wales.

The consultation closes on **1 April**.

[Source: Scottish Government – 7 January]

Taxation

Making Tax Digital

Sayer Vincent has produced a very helpful guide to Making Tax Digital for VAT for charities. We recommend it to charities that are registered for VAT.

[Source: Sayer Vincent - 15 January]

WALES

Ecclesiastical exemption

For information

The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018 came into force on 1 January.

Under the terms of the Order, conservation area consent will no longer be subject to ecclesiastical exemption and listed and unlisted buildings and structures within the curtilage of a listed ecclesiastical building will now be included under the ecclesiastical exemption.

The Order applies to Wales only – planning and listed building consent being devolved matters.

[Source: CLAS – 1 January]

AND A HAPPY NEW YEAR…