

CLAS CIRCULAR 2010/15 (17 September 2010)

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.

| | |
|------------------------------------------------------------------------------------------------------|-----------|
| CHARITIES & CHARITY LAW | 3 |
| Charity Commission consultation on on-line services | 3 |
| Charity Commission updates for smaller and faith-based charities..... | 4 |
| EMPLOYMENT & VOLUNTEERING..... | 5 |
| Equality Act 2010: commencement..... | 5 |
| Public sector equality duty..... | 6 |
| Unfair dismissal, compensation and ability to pay..... | 6 |
| ENVIRONMENTAL & RURAL AFFAIRS | 7 |
| Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010..... | 7 |
| Rural policy..... | 7 |
| EUROPE | 9 |
| Succession and wills: update | 9 |
| FAITH & SOCIETY | 10 |
| Easing the bureaucracy around faith-based organisations | 10 |
| Rough sleeping: update..... | 10 |
| FUNDING | 12 |
| Big Lottery Fund consultation on policy direction | 12 |
| Modernising Gift Aid | 12 |

| | |
|--------------------------------------------------------------------------------------------------|-----------|
| IMMIGRATION | 14 |
| Inquiry into immigration routes | 14 |
| Secure English language tests for Tier 4 adult students | 14 |
| NORTHERN IRELAND | 16 |
| Charities Act (Northern Ireland) 2008: implementation | 16 |
| ODDS & ENDS | 17 |
| Legal professional privilege and in-house lawyers | 17 |
| Radio microphones: a reminder | 17 |
| PROPERTY & PLANNING | 18 |
| Listed Places of Worship Grant Scheme: DCMS consultation update | 18 |
| Private sewers and lateral drains | 18 |
| 'Qualified surveyors' | 19 |
| VAT: option to tax on supplies of buildings for relevant residential or charitable purpose | 20 |
| SCOTLAND | 21 |
| Charities Accounts (Scotland) Amendment Regulations 2010..... | 21 |
| Freedom of information | 21 |
| OSCR inquiry & intervention policy | 22 |
| Programme for Government 2010–11 | 23 |
| Protection of Vulnerable Groups (Scotland) Act 2007..... | 24 |
| References in documents..... | 24 |
| TAXATION | 25 |
| Compliance checks factsheets | 25 |
| New employees and tax | 25 |
| VAT: increase in standard rate | 25 |
| WALES | 26 |
| Standard information requirements for planning applications | 26 |
| WATER | 27 |
| Ofwat review..... | 27 |
| Water: Defra White Paper | 27 |

CHARITIES & CHARITY LAW

Charity Commission consultation on on-line services

The Charity Commission is consulting on plans to make a range of its services accessible on-line or by e-mail only. This follows the announcement in July that the Commission aims to provide all of its services on-line by 2012. The Commission plans to withdraw paper forms for Annual Returns and Annual Updates for the financial year ending 1 January 2011 onwards and to withdraw paper-based forms for registering as a charity from April 2011. That will also apply to those registering their charities as new Charitable Incorporated Organisations (CIOs), an option which is expected to be available from the first quarter of 2011. In August, 83 per cent of charity registration applications were submitted on-line.

In particular, the Commission would like feedback on the following questions:

- Will the on-line submission of your Annual Return/Update lead to additional difficulty or cost?
- Will the on-line application for registration lead to additional difficulty or cost?
- Will the on-line application to become a CIO lead to additional difficulty or cost?
- From those who already submit returns/updates on-line: has this benefited your charity?
- From those who have already applied to register a charity on-line: has this benefited your charity?
- Do you have any suggestions about how the Commission's on-line services might be improved?
- Do you have any suggestions of additional support the Commission could offer charities to help them use its on-line services?

The [consultation on the first stage of these plans](#) is open until **2 December 2010**. While it is aimed principally at charity trustees, their employees and professional advisers who use the Commission's services, suggestions from anyone with an interest in its work will be welcome. The Commission is especially interested to hear suggestions for ways in which it can improve its online provision of services.

This is not a matter on which CLAS can usefully make a collective response, but it is very important that the Commission should be given feedback from churches that already use its on-line services – or who are apprehensive about having to do so in future.

[Source: *Charity Commission What's New* - 9 September 2010]

Charity Commission updates for smaller and faith-based charities

The Charity Commission has published various pieces of updated or new guidance for small charities:

- [*New purposes for smaller charities*](#) is designed to help trustees change the purposes of a non-company charity with an annual income of under £10,000.
- [*Frequently Asked Questions - About Registered Charities*](#) does what it says on the tin.
- [*Enhancing the accountability of charities to donors, beneficiaries and the general public*](#) is a general discussion of issues of accountability.
- [*Guidance for small charities about the SORP*](#) is a brief introduction to what the Charities Statement of Recommended Practice is, the options available to small charities in preparing their accounts and annual report and signposts further sources of help and advice.

It should be said that because the way the material on the website is laid out is not exactly crystal clear we are not entirely sure to what extent this is entirely new material. But just in case it is, small charities need to be aware of its existence.

At the same time, the Commission has collected its material for faith-based charities on a single web-page: [*Faith-based charities*](#). The Commission's Faith and Social Cohesion Unit closed at the end of August because its funding from DCLG had come to an end.

[Source: *Charity Commission Update* - 26 August 2010]

EMPLOYMENT & VOLUNTEERING

Equality Act 2010: commencement

The Government announced on 3 July that commencement of the Equality Act 2010 will begin on 1 October 2010. The Government Equalities Office has subsequently announced that the following provisions will come into force on that date:

- The basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions, premises, work, education, associations and transport.
- Changing the definition of gender reassignment by removing the requirement for medical supervision.
- Levelling up protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic ('associative discrimination').
- Clearer protection for breastfeeding mothers;
- Applying the European definition of indirect discrimination to all protected characteristics.
- Extending protection from indirect discrimination to disability.
- Introducing a new concept of 'discrimination arising from disability'.
- Applying the detriment model to victimisation protection (aligning it with the approach in employment law).
- Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.
- Extending protection from third-party harassment to all protected characteristics.
- Restricting the circumstances in which employers can ask job applicants questions about disability or health.
- Allowing hypothetical comparators for direct gender pay discrimination.
- Making pay secrecy clauses unenforceable.
- Extending protection in private clubs to sex, religion or belief, pregnancy and maternity and gender reassignment.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.

- Harmonising provisions allowing voluntary positive action.

Details of the statutory instruments already laid, which will commence the October package are available [here](#) – though not all the necessary legislation appears to be in place.

The [Explanatory Notes](#) to the Equality Act 2010 were made available on 31 August and have just been replaced by a corrected version.

[Source: *Government Equalities Office website* – 3 & 8 September 2010]

Public sector equality duty

The Equality Act 2010 includes a public sector Equality Duty intended to ensure that fairness in the activities of public bodies. The Government Equalities Office has issued a consultation document on draft regulations for the specific duties to be imposed by ministers and the list of public bodies that will be subject to the general and specific duties – snappily entitled [Equality Act 2010: The public sector Equality Duty: Promoting equality through transparency. A consultation.](#)

Charities are not normally public bodies (though some public bodies, such as universities, may also be charities). This consultation may nevertheless be of interest to the charity sector generally, and possibly to Churches. It closes on **10 November**.

[Source: *Government Equalities Office Consultations* – 19 August 2010]

Unfair dismissal, compensation and ability to pay

An Employment Appeal Tribunal has held that the employer's inability to pay compensation is not a matter to be taken into account in making an award. In *Tao Herbs & Acupuncture Ltd v Jin* [\[2010\] UKEAT 1477 09 1407 \(14 July 2010\)](#) it was argued by the employer, *inter alia*, that the award to the claimant was not just and equitable because it was so substantial that if it had to be paid the business would go bust. The EAT rejected this as a proposition of law: in the calculation of loss for unfair dismissal the prime consideration was the loss suffered by the claimant attributable to the action of the employer.

So if a charity should find itself on the wrong end of an unfair dismissal case it will be no use pleading that an award against it will cause its collapse.

[Source: *BAILII Judgment* – 14 July 2010]

ENVIRONMENTAL & RURAL AFFAIRS

Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010

The [Coastal Access Reports \(Consideration and Modification Procedure\) \(England\) Regulations 2010](#) were made on 8 August and come into force on **1 October**. What follows is from the accompanying Explanatory Note.

The Regulations contain procedural provisions in connection with reports submitted by Natural England to the Secretary of State under section 51 of the National Parks and Access to the Countryside Act 1949 that relate the provision of a long-distance public-access route around the English coast under the Marine and Coastal Access Act 2009.

Part 2 of the Regulations contains provision regarding the advertisement of the reports by Natural England, giving of notices, and objections or representations about them.

Part 3 contains provision regarding certain functions of the 'appointed person' (appointed under Schedule 1A(10) to the National Parks and Access to the Countryside Act 1949 in connection with determining an objection about a report). In particular regulation 5 relates to a notice published by the appointed person about an objection, and regulation 6 relates to representations made in response to such a notice.

Part 4 contains provision about the procedure to be followed in a case where the Secretary of State wishes to explore or propose modifications of the proposals in a report.

Part 5 contains procedural provisions in connection with the consideration of an objection by the appointed person by means of a hearing or a local inquiry.

Part 6 includes provisions regarding the giving of notices and electronic communications.

[Source: *OPSI Website* - 13 August 2010]

Rural policy

[The Rural Challenge](#) is published by a newly-formed Rural Coalition, consisting of Action with Communities in Rural England (ACRE), the Campaign to Protect Rural England (CPRE), the Country Land and Business Association (CLA), the Local Government Group (LG Group), the Royal Town Planning Institute (RTPI) and the Town and Country Planning Association.

The report argues that without radically empowering local people to make decisions about their communities, rural villages could be under threat. The Coalition calls for reform of the Housing Revenue Account system so that councils can keep money from selling council homes to reinvest in affordable rural homes, and giving communities a leading role in planning for new neighbourhoods.

The report has been given a welcome by Housing Minister Grant Shapps, as being very much in line with his own thinking. In July 2010 he announced plans to give rural communities a Community Right to Build, under which localities would come together to approve plans for new homes, shops and community facilities to protect and preserve rural village life. Under the proposals, which will be contained in the Decentralisation and Localism Bill, any surplus made from the sale or renting of homes would be recycled for the benefit of the community. Moreover, community organisations will be able to allow new local developments without a specific application for planning permission, so long as there is overwhelming community backing in a local referendum.

What this means in practice remains to be seen when the Bill is published.

[Source: *DCLG News* - 16 August 2010]

EUROPE

Succession and wills: update

Those with long memories may recall the Ministry of Justice's 2009 [consultation](#) on the European Commission's proposed Regulation on succession and wills. The [response](#) has now been published after a delay caused by the General Election and the change of government. The response notes that on 16 December 2009 the Government announced its decision that it would not, in formal legal terms, be participating in the European Commission's proposed Regulation. This means that the Government will not be automatically bound by the Regulation when adopted. However:

Notwithstanding the Government's decision not to opt in, Ministry of Justice officials are participating in the negotiations in the Council Working Group. The Government is working with other Member States and the Commission to improve the proposal and to ensure that a future Regulation provides clear benefits for individuals and their heirs across the EU. If the UK's concerns can be resolved satisfactorily, the UK could seek to opt in to the adopted Regulation. This possibility, however, will remain subject to the views received from a further consultation exercise on the instrument as finally adopted by the Council (para 6).

[Source: *Ministry of Justice e-mail* - 25 August 2010]

FAITH & SOCIETY

Easing the bureaucracy around faith-based organisations

In its response to the comments received on the social action provisions in [Our Programme for Government](#), the Cabinet Office made the following specific points on the section entitled *Easing the bureaucracy around faith-based organisations*:

We... received comments on the bureaucracy preventing faith-based organisations from receiving government funding to set up help centres if they are 'associated with' a Christian organisation or if participants wish to advocate Christian principles.

In response to these concerns, we acknowledge that faith communities make a vital contribution to national life. Across the country, Christians and followers of other religions are working hard to address problems in their communities. They have the buildings, experience, volunteers and 'reach' that can put them at the very heart of service-delivery to many vulnerable groups.

This, and inter faith activity, is an important component of the Big Society we want to build, in which people work together for the common good and to tackle shared problems. Of course we want services to be offered equally to all people regardless of their faith. But we know that the vast majority of faith groups not only accept this, but fully embrace their role in helping to ensure the welfare of all in their local community.

[Source: *Cabinet Office News Release* – 30 July 2010]

Rough sleeping: update

DCLG has announced more rigorous counting methods for estimating the number of rough sleepers in England under which all councils will now provide information on rough sleeping. This follows consultation with homelessness charities and councils and is aimed at getting a clearer picture of the scale of the problem in each area so that more targeted support can be provided. Previously, only councils in presumed hotspot areas were required to conduct official rough sleeper counts - meaning that only 70 councils submitted information to central Government and there was considerable under-counting.

In future, where a council decides not to conduct an official count it will have to submit a robust estimate, consulting and gathering information from homelessness charities and agencies in its area. Where there is a more significant problem this will be done by street counts with representatives of Homeless Link attending counts rather than Government officials as under the old system.

New guidance published today recommends that where two neighbouring authorities intend to conduct a street count, they should do so on the same night to avoid missing, or double counting, rough sleepers who move across council boundaries.

The definition of 'rough sleeper' has been widened so that not just those that are lying down on street at that particular time are counted, but those that are sitting or standing near their bedding are also included. And for the first time councils will also have to take those sleeping rough in tents into account.

[Source: *DCLG News* - 14 September 2010]

FUNDING

Big Lottery Fund consultation on policy direction

The DCMS is [consulting](#) on the proposed wording of a new policy direction for the Big Lottery Fund to be taken into account when it makes funding decisions on Lottery grants. John Penrose MP, Minister for Tourism and Heritage, has written to the Chair of the Big Lottery Fund, Sir Clive Booth, setting out alternative directions, of which number 1 is the Minister's preferred option:

'I propose the following two alternative policy directions in respect of Big Lottery Fund's UK wide non-devolved expenditure and England expenditure, to be taken into account and read alongside the existing policy directions:

(1) "The need to ensure that money is distributed to projects that benefit people and local communities served by the voluntary and community sector"

Or, alternatively,

(2) The need to ensure that money is distributed to projects in the voluntary and community sector in order to benefit the people and local communities in that sector.".'

The closing date for responses is **29 October 2010**.

[Source: *DCMS Consultations* – 30 July 2010]

Modernising Gift Aid

ResPublica, the right-of centre think tank directed by Phillip Blond, has published a report commissioned by CAF calling for a radical overhaul of Gift Aid on its 20th anniversary. The report, [Digital Giving - Modernising Gift Aid](#), suggests that 'charities are missing out on £750 million of Gift Aid because of antiquated system' and argues that 'funding the Big Society requires cutting bureaucracy and radically modernising our system of tax relief on charitable donations'.

The report's main policy recommendations include:

- a new online system to allow charities to submit Gift Aid claims electronically;
- the establishment of a Digital Giving Steering Group chaired by the Minister for Civil Society to coordinate the activities of a new Digital Giving Unit and the Treasury's own Gift Aid Team and to work with representatives from civil society and the mobile and technology industries to oversee the development of Digital Gift Aid and to ensure that in the future, Gift Aid keeps up with rapid innovations in social media, technology and giving;
- making all text donations – potentially worth £96m per year by 2014 – tax efficient;

- HMRC to encourage all Gift Aid claims to be submitted on line; and
- an end to the Gift Aid transitional relief when it expires in 2011 saving the Exchequer approximately £300m over a three year cycle;
- asking de-regulation task force headed by Lord Hodgson to simplify the audit trail for small donations, the guidance on Gift Aid and the guidelines governing what benefits charities can offer to donors in return for donations and to examine whether the current administrative costs for HMRC in operating the self-assessment donation system could and should be better spent redirected towards modernisation and bringing the system online.

There is a tendency to assume that reports by think-tanks get very little consideration; however, speaking at the launch event the Minister for Civil Society, Nick Hurd, said that he would 'certainly be making sure this report will be given full consideration by the Gift Aid Forum'. We shall see. One recommendation that is 99 per cent certain to be adopted is not to extend Gift Aid transitional relief: an extension was always unlikely and the present downward pressure on public spending has almost certainly closed the issue.

[Source: *ResPublica Press Release* – 6 September 2010]

IMMIGRATION

Inquiry into immigration routes

The Government is to look at all immigration routes into the UK and revise the rules. In a speech to the Royal Commonwealth Society, Immigration Minister Damian Green said that, on its own, an annual limit on workers from outside the European Union [*we assume he meant the European Economic Area – but politicians frequently get confused between the two*] was not enough to reduce net migration levels to tens of thousands per year. He contended that the current points-based system for immigration was not yet properly controlling the numbers of people coming into the UK and that a more effective system was needed.

Forthcoming reviews will therefore:

- look at who is qualifying, in both the work and study categories;
- study why those who come here on immigration routes that do not lead to settlement find it easy to change routes and settle here permanently; and
- ensure a steady downward trend on every route to long-term immigration.

Simultaneously, a new research report published by the Home Office, [The migrant journey](#), analyses all those who came to the UK in 2004 (except those making short-term visits). The largest group of visas were for students; and of the 186,000 students granted visas in 2004, more than 20 per cent were still in the UK five years later.

The number of foreign students in the UK is rising: in the year to June 2010, more than 320,000 visas were issued to students and their dependants visiting for more than 6 months. Damian Green believes that these levels are unsustainable and has concluded that this must be looked at as a priority. In addition, the Government will also look at work routes that lead to citizenship. In 2004 more than 105,000 migrants were granted visas in one of these work routes - and the report shows that 40 per cent of them group were still in the UK in 2009.

[Source: *UKBA News* - 7 September 2010]

Secure English language tests for Tier 4 adult students

As from 11 August, secure English language testing became mandatory for adult students studying below degree level (excluding those on foundation degrees or English language courses) under Tier 4 of the Points Based System. The test must be taken with [a UK Border Agency-approved provider](#) before the applicant applies for a confirmation of acceptance for studies from the education sponsor.

Tier 4 sponsors must ensure that applicants are competent in English language at a minimum of level B1 on the Common European Framework of Reference (CEFR) by showing that they:

- are from a majority English-speaking country (as listed on the [Can you apply to Tier 4 \(General\)?](#) page; or
- have successfully completed a course as a Tier 4 (Child) student (or under the student rules that were in force before 31 March 2009, if they were granted permission to stay while they were under 18 years old) which lasted at least six months and ended no more than two years before the date when the CAS is assigned; or
- have passed an English language test with an approved test provider for Tier 4, and has achieved at least CEFR level B1 in all four components (reading, writing, speaking and listening).

[Source: *UKBA Press Release* - 11 August 2010]

NORTHERN IRELAND

Charities Act (Northern Ireland) 2008: implementation

The Charity Commission for Northern Ireland announced in June that as a result of legal advice received CCNI had asked the Department for Social Development to examine a technical aspect of the legislation governing the public benefit test. This had delayed the start of the registration process for charities in Northern Ireland; however, those organisations that already had charitable status for tax purposes from HMRC would be unaffected.

CCNI now says that the Social Development Minister 'is considering whether or not the legislation requires amendment, which may mean that the Northern Ireland Assembly will have to agree new primary legislation'. Its [work update for July](#) adds that the timescale is currently unclear, as it depends on a number of different factors. As soon as this becomes clear CCNI will provide updated information on timescales for registration.

Precisely what the problem is has not been made clear; but in response to the consultation on the draft Guidance the Charity Law Association argued that CCNI had misstated the law and had attempted to import a 'charity test' from Scots law which is nowhere in the Northern Ireland legislation. All may become clear in due course. In the meantime, CCNI continues to prepare for the new regulatory regime by putting appropriate staffing resources and organisational structures in place. It will continue development of the website and information resources and establish necessary processes and procedures. Finally, CCNI confirms that any organisation in Northern Ireland which operates for charitable purposes may continue to apply to HMRC for charitable tax status.

[Source: *CCNI work update* – 31 July 2010]

ODDS & ENDS

Legal professional privilege and in-house lawyers

In a case involving an investigation of a chemical company for possible anti-competitive practices, the company claimed legal professional privilege for copies of two e-mails exchanged between its managing director and one of its company lawyers, the coordinator for competition law. Notwithstanding the fact that the coordinator for competition law was a member of the Netherlands Bar, the Grand Chamber of European Court of Justice threw out the chemical company's claim, ruling that communications with in-house lawyers are not protected by legal professional privilege.

In *Akzo Nobel Chemicals Ltd v Commission* [\[2010\] ECJ \(GC\) Case C-550/07 P](#) it concluded that the extent of legal professional privilege is subject to two cumulative conditions:

- the exchange with the lawyer must be connected to 'the client's rights of defence'; and
- the exchange must emanate from 'independent lawyers', that is to say 'lawyers who are not bound to the client by a relationship of employment'.

As regards the second condition, the requirement of independence means the absence of any employment relationship between lawyer and client, so legal professional privilege does not cover exchanges within a company or group with in-house lawyers.

Comment: A Church or a charity is unlikely to be investigated by the Commission for anti-competitive practices – but *this is a statement of the general law governing relations between employers and in-house lawyers*. It would therefore appear to apply as much to religious bodies and to charities as to commercial organisations.

[Source: *ECJ Judgment* - 14 September 2010]

Radio microphones: a reminder

The Church of England's Cathedrals and Church Buildings Division is reminding its constituent churches that those affected by the changes to spectrum allocation due to take effect in 2012 are likely to qualify for compensation of up to 55 per cent of the cost of replacing or modifying their radio-microphones and associated equipment *if they held a valid Channel 69 licence during 2008*. But those churches that think they qualify **must** register with the scheme administrator between September and December 2010 in order to be eligible for compensation.

For more details on how to register, [see Ofcom's detailed material here](#). Your PA installation company should also be able to help with further advice. **Registration has already started – please don't be caught out.**

[Source: *C of E Communications* – 9 September 2010]

PROPERTY & PLANNING

Listed Places of Worship Grant Scheme: DCMS consultation update

Circular 2010/14 mentioned the DCMS e-mail consultation on proposed cuts to the LPWG Scheme for the current financial year. Two options were presented:

- Option A: continue to cover the full current scope of the scheme but pay at a reduced rate of 15% from 4 Jan 2011 (when the basic rate of VAT reaches 20%);
- Option B: Continue to match full VAT including the increase to 20% from 4 January, but remove eligibility of professional fees, clocks, pews, bells and organs (the Budget 2006 additions to scope) from the point of the announcement of the spending review (or a suitably near date).

Views were inevitably divided, though if any consensus did emerge it was for a modified Option B that would retain the eligibility of professional fees.

CLAS duly responded to the consultation. Though we offered no opinion as between the two options, we did press very strongly for some kind of transitional arrangements for work already undertaken on which the VAT had not yet been claimed. Repairs to organs and bells, in particular, can be extremely expensive; and we argued that it would be entirely unreasonable if a congregation currently in the middle of a major repair suddenly found itself liable for VAT for which it had not budgeted.

[Source: *CLAS* – 16 September 2010]

Private sewers and lateral drains

On 26 August 2010 draft regulations were published for consultation on the transfer of private sewers into the ownership of the statutory sewerage companies in England from 2011. The consultation paper sets out the Government's intentions and provides an opportunity for interested parties to respond with their views on the accompanying draft regulations.

Existing private sewers and lateral drains (that part of the drain that extends beyond the property boundary) are currently the responsibility of the owners of the properties they serve. Private sewers serve more than one property so ownership is shared and usually a large extent of the sewer will lie outside a property's own boundary. Lateral drains serve one property but always lie outside the property's boundary.

Defra has decided on the transfer following an extensive review of the arrangements for private sewers and laterals in England and Wales. Defra has concluded that transfer provides the only comprehensive solution to a range of private sewer and lateral drain problems affecting householders. These include a lack of awareness of owners' responsibilities and unwillingness or inability to co-ordinate or contribute to potentially high costs of maintenance and repair. It will bring simplification and clarity to owners, local

authorities and sewerage companies, all of whom typically become involved when these problems arise.

Transfer will also significantly help address a lack of integrated management of the sewerage network as a whole, and provide much greater efficiency of effort, environmental stewardship and expenditure. Having a much greater proportion of the sewer network in the management of the water and sewerage companies means they will be able to plan maintenance and resolve problems more easily and comprehensively. The Government is also taking steps to stem the proliferation of new private sewers in order to prevent the recurrence of existing problems in the future.

Subject to approval of the regulations, transfer will take place from **October 2011** in order to allow the water industry and those businesses operating around it sufficient time to prepare for transfer. The costs of necessary future improvement and maintenance will be met by an increase in the sewerage element of bills for the generality of customers. Although these costs cannot be stated with certainty, Ofwat estimates indicative increases of around £3 to £14 per annum across the water and sewerage companies in England.

[Source: *Defra News* - 6 September 2010]

'Qualified surveyors'

Some time ago the previous Government initiated a consultation on extending the definition of 'qualified surveyor' in section 36(4) of the Charities Act 1993. The new Government has now published a response to that exercise, concluding that there are grounds to extend the section 36 definition to include Fellows of the National Association of Estate Agents and that this will increase charities' choice and their ability to match the skills and experience of their 'qualified surveyor' to the type of disposal that they are considering. There is also scope to consider extending the section 36 definition to include other property professionals, such as Fellows of the Central Association of Agricultural Valuers.

However, because respondents criticised the general lack of proportionality and clarity in the regulation of sales and other disposals of charity land, the Government has decided that the regulation of sales and other disposals of charity land should be considered as part of the more general obligatory review of the operation of the Charities Act 2006 that must start in 2011. The Government has also decided that it will extend the definition of 'qualified surveyor' but do so as part of any changes following the 2011 review and, consequently, that the results of this consultation will inform the broader review.

The broader review will be able to consider the wider issues raised by the responses to this particular consultation and recommend how best to revise the regulation of sales and other disposals of charity land (including changing the definition of 'qualified surveyor'). It will also make it possible to take the changes forward in a way that fits with any other changes to charity law that the wider statutory review recommends, rather than to do so piecemeal.

[Source: *Charity Law Association* - 7 September 2010]

VAT: option to tax on supplies of buildings for relevant residential or charitable purpose

In *Revenue & Customs Brief 39/09*, HM Revenue & Customs announced changes to the application of the zero rate to new buildings and that, following a review, the phrase 'solely for a relevant residential or relevant charitable purpose' could incorporate a *de minimis* margin. In order to avoid unnecessary disputes in marginal cases, HMRC accepts that this statutory condition is satisfied for new buildings where the relevant use of the building by the charity or relevant residential user is 95 per cent or more. In light of this review, HMRC announced the withdrawal of Extra Statutory Concession (ESC) 3.29 and two related concessions they were considered to be no longer necessary or appropriate.

However, ESC 3.29 also allowed charities to exclude the option to tax on supplies of buildings to them (other than parts used as an office) if they were solely used for a relevant charitable purpose. [Revenue & Customs Brief 33/10](#) states that, for consistency, HMRC accepts that, where the customer and supplier agree, the option to tax can be excluded on supplies of a building or part of a building that is to be used 95 per cent or more for a relevant purpose in the following situations:

- where a building or part of a building (other than used as an office) will be used by a charity solely for a relevant charitable purpose (paragraph 7 of Schedule 10 to the VAT Act 1994 refers)
- where a grant is made in a building or part of a building designed solely for a relevant residential purpose (paragraph 5 of Schedule 10 to the VAT Act 1994 refers)
- where a grant in a building or part of a building is made to a person who intends to use the building solely for a relevant residential purpose (paragraph 6 of Schedule 10 to the VAT Act 1994 refers).

[HMRC *What's New* - 29 July 2010]

SCOTLAND

Charities Accounts (Scotland) Amendment Regulations 2010

The [Charities Accounts \(Scotland\) Amendment Regulations 2010](#), made on 23 July 2010, will come into force on **1 April 2011**. The Regulations amend the Charities Accounts (Scotland) Regulations 2006. The most important features of the new Regulations are as follows.

Regulation 3 amends Regulation 1 of the 2006 Regulations to simplify the definition of 'gross income' in line with current accounting practice. Definitions have also been added for the terms 'liability' and 'contingent liability'. The definitions of 'permanent endowment funds' and 'expendable endowment funds' have been amended. Regulation 3 also updates a reference to the Statement of Recommended Practice for Accounting and Reporting by Charities, issued by the Charity Commission for England and Wales and the Office of the Scottish Charity Regulator.

Regulation 4 amends Regulation 3(7) of the 2006 Regulations to clarify that a charity is prevented from having more than two financial years exceeding 12 months in any five-year period.

Regulations 7 and 8 raise the threshold for preparation of fully accrued accounts from £100,000 to £250,000.

Regulation 9 amends Regulation 10 of the 2006 Regulations (which makes provision about the annual audit of statements of account for charities whose assets exceed a certain asset value threshold). Most important:

Regulation 9(a) bases the calculation of a charity's aggregate value of its assets (before deduction of liabilities) on a figure at the end of the charity's relevant financial year and increases the threshold from £2.8 million to £3.26 million.

Regulation 9(b) increases the gross income threshold in Regulation 10(1)(d) to £250,000.

Regulation 9(c) amends Regulation 10 of the 2006 Regulations to clarify that consolidated accounts must be audited by a registered auditor.

[Source: *OPSI Website* – 1 August 2010]

Freedom of information

The Scottish Government is consulting on [Extending the Coverage of the Freedom of Information \(Scotland\) Act 2002](#): whether or not the reach of the legislation should be extended to cover private organisations that deliver public services, such as building and/or maintaining schools and hospitals and trusts created by local authorities for the provision of leisure and culture.

Depending on precisely what Scottish ministers have in mind, this could impact on Scottish charities that undertake services under contracts either with central government or local authorities; and any charity that thinks that it might be affected needs to respond. The complexities of operating an FoI policy for a small charity with very few full-time administrators can be very considerable. The consultation closes on 2 November 2010. Responses can either be made [on-line](#) or sent in hard copy to FOI Unit, GA (North), Victoria Quay, Edinburgh EH6 6QQ.

[Source: *Scottish Government Consultations* – 28 July 2010]

OSCR inquiry & intervention policy

For the information both of charities and of complainers, OSCR has produced a revised Inquiry and intervention policy, setting out its policy in respect of formal specific inquiries into individual charities and detailing its procedures. The fundamental decision whether or not to intervene is taken on the following grounds:

OSCR will take action where:

- there is risk of significant damage of or detriment to the charity, its assets, beneficiaries or reputation and intervention is a necessary and proportionate response to protect them;
- there is information to suggest serious or sustained mismanagement or misconduct by those in management and control of the charity;
- there is information to suggest that the charity does not meet the charity test;
- it is appropriate to provide compliance support by working with charities to ensure compliance with the Act where less serious issues are identified; or
- where a body may be misrepresenting itself as being a charity in Scotland when it is not.

OSCR will not normally intervene:

- where it is the responsibility of the trustees to deal with problems or disagreements; in particular OSCR will normally not intervene in disputes relating to employment or contractual disputes;
- in disputes which relate to service delivery within the charity – these should be dealt with through the charity's own complaints procedures;
- in disputes between trustees and members of a charity, because decisions about policies pursued or actions taken by the trustees within the law and the provisions of the charity's governing document are for trustees to take and justify and OSCR does not have discretion to overrule a valid decision of the charity trustees; or

- where activities are supervised by another regulator and OSCR is satisfied that that regulator will be able to deal with the matter more effectively than OSCR will.

Of the 371 complaints and referrals closed by OSCR last year around one third were deemed to be outwith OSCR's remit, for example employment disputes and service delivery issues, which are not in themselves a matter for the charity regulator.

OSCR's Annual Review, to be published in October, will contain further information on the complaints received in 2009-10.

[Source: *OSCR News* - 8 September 2010]

Programme for Government 2010–11

Alex Salmond has set out the Scottish Government's priorities for the final year of the parliamentary term and beyond. The measures, some of which will be of interest to CLAS members, include:

- a [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Bill](#) to provide civil remedies for those at risk of forced marriages and victims of forced marriage;
- a [Health \(Certification of Death\) \(Scotland\) Bill](#) to introduce a new single system of independent, effective scrutiny applicable to deaths in Scotland which do not require a Procurator Fiscal investigation and to improve the quality and accuracy of medical certificates of cause of death;
- a [Public Records \(Scotland\) Bill](#) to require named public authorities, including the Scottish Government, Scottish Parliament, local authorities, the Scottish Court Service and the NHS to produce and implement a records management plan to be approved by the Keeper of the Records of Scotland in order to remedy the poor record keeping that had led to difficulties for former residents of residential schools and children's homes tracing records for identity, family or medical reasons;
- a [Double Jeopardy \(Scotland\) Bill](#) to overturn the rule of law which prevents a person from being tried twice for the same offence and enable an acquitted person to be prosecuted again in certain clearly and carefully defined circumstances;
- a [Local Electoral Administration \(Scotland\) Bill](#) to establish the Electoral Management Board for Scotland on a statutory basis for its work in relation to local government elections and, generally, to address poor electoral administration following the difficulties faced in the 2007 joint local government and Scottish Parliamentary elections;
- a [Long Leases \(Scotland\) Bill](#) to convert ultra-long leases into ownership;
- a [Private Rented Housing Bill](#) to tackle abuses by rogue private landlords and tighten the systems of landlord registration and HMO licensing;

- a [Reservoir Safety in Scotland Bill](#) to introduce a proportionate, risk-based regime to protect the public from the risk of flooding from reservoirs;
- a [Scottish Water Bill](#) to transform Scottish Water from a water utility which is currently the largest consumer of electrical power in Scotland into a generator of renewable electricity; and
- the customary Budget Bill to be introduced to Parliament in January 2011.

What the programme did *not* contain was a Bill for a referendum on independence which, it appears, will not now be brought before Parliament before the election in May 2011.

[Source: *Scottish Government News* - 8 September 2010]

Protection of Vulnerable Groups (Scotland) Act 2007

The Scottish Government has announced that the Protection of Vulnerable Groups (Scotland) Act 2007 will come into effect on **30 November 2010**. According to the information currently on the Scottish Government website, after going live it is expected to take four years to phase in the PVG Scheme. During the first year the PVG Scheme will only be available to those who are joining the vulnerable groups' workforce for the first time, moving posts or whose circumstances have changed. For more information about the scheme see:

www.scotland.gov.uk/Topics/People/Young-People/children-families/pvglegislation.

[Source: *LMSC Summary* - 3 September 2010]

References in documents

The [Charities References in Documents \(Scotland\) Regulations 2007](#), as amended by the [Charities References in Documents \(Scotland\) Amendment Regulations 2008](#), set out how charities must refer to their charitable status on their documents: business letters, e-mails, advertisements, notices and official publications, and invoices and receipts.

OSCR has disclosed that since August 2009 it has been taking a more proactive approach with charities which do not meet the requirements of Regulations. OSCR's main method for identifying non-compliant charities is through a weekly search of the recruitment section of a number of national and local papers and magazines; and over the past year OSCR has identified over 100 charities that have failed to meet the Regulations. OSCR's practice is to contact the charities concerned; and it reports that, except in two cases, responses have been positive and there has been no problem with their subsequent advertisements.

Members should note that, as a result of the Public Services Reform (Scotland) Act 2010 [section 120](#), *the requirements of the Regulations will be extended to include references on charity websites*.

[Source: *OSCR Reporter* – 30 July 2010]

TAXATION

Compliance checks factsheets

[Revenue & Customs Brief 36/10](#) explains the factsheets that HMRC issues to taxpayers during a compliance check. The factsheets are designed to help explain to them in plain English:

- how HMRC conduct compliance checks
- what powers it can use
- what safeguards are in place to protect their rights
- how HMRC works with the taxpayer to reach agreement about tax liability
- what penalties HMRC may charge and what the taxpayer can do to reduce them
- when HMRC can publish the details of deliberate defaulters
- what tax or duty they apply to.

The factsheets are issued at different stages during the compliance check. Taxpayers can also request a factsheet at any stage during a check or they can view and download them from the HMRC website.

[Source: *HMRC What's New* – 31 August 2010]

New employees and tax

HMRC is no longer routinely issuing printed P49s as part of the New Employer Pack. Instead, it has produced an enhanced pdf version, [Paying someone for the first time](#), which has been "bookmarked" to enable users to click on the subject or page number to find the information they are seeking.

[Source: *HMRC What's New* – 17 August 2010]

VAT: increase in standard rate

Churches are not 'businesses' but in some cases their subsidiary operations are conducted through limited companies, so some members may be interested in HMRC's [VAT Notes No 3 2010](#), on registering for VAT Online now and payments by cheque. There is also a [Supplement](#) devoted to what businesses need to know and do when the standard rate of VAT increases from 17.5 per cent to 20 per cent on 4 January 2011.

[Source: *HMRC What's New* - 10 September 2010]

WALES

Standard information requirements for planning applications

The Welsh Assembly Government is proposing to make mandatory the Standard Application Form for planning applications, listed building and conservation area consents. Following changes to legislation to come into force in 2010/2011, the WAG proposes to issue a new circular with advice for local planning authorities and a best-practice guide for a wider audience, including applicants. The various consultation documents can be found [here](#).

The Planning Division is seeking comments on the draft guidance documents and views on whether or not the proposed approach is appropriate. Comments should be submitted by **12 November 2010**, by e-mail to planning.division@wales.gsi.gov.uk or by post to 1 App Consultation, Planning Division, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ. Additional information is available from Carole Morgan (029 20) 82 6956.

[Source: *Welsh Assembly Government Consultations* - 5 August 2010]

WATER

Ofwat review

Defra has announced a review of the water regulator Ofwat. The review will include Ofwat's objectives, its responsibilities, and how it will meet future challenges and ensure value for money. The review will also look at how well the current arrangements, involving Ofwat and the Consumer Council for Water, work in protecting water customers and in making sure that their views are heard.

Defra has engaged David Gray to act as lead reviewer. Gray was involved in the Department for Transport's review of airport regulation and has experience in financial markets, government and utility sector regulation. He is currently a non-executive director of the Civil Aviation Authority and a member of the Council of Management of the Regulatory Policy Institute. He worked for Ofgem as Managing Director, networks and was an executive member of its board, the Gas and Electricity Markets Authority. He has previously worked in a number of senior positions in the equity research and corporate finance divisions of HSBC.

The review team will call for evidence to give customers, water companies and their investors a chance to influence the review. The review is due to be completed early next year.

[Source: *Defra News Release* - 26 August 2010]

Water: Defra White Paper

A key commitment under Defra's departmental Structural Reform Plan is the publication of a Water White Paper by early summer 2011. The Water White Paper will focus on:

- securing water resources for the future;
- increasing choice and competitive opportunities, driving innovation, improving customer service and value;
- creating a modern regulatory system that protects customers and minimises regulatory burdens;
- ensuring fair and affordable water charges; and
- incentivising water conservation.

Defra has launched an [online survey](#) on SurveyMonkey asking for ideas ahead of the Water White Paper. The deadline for responses is **30 November 2010**. We are still pondering a response on behalf of CLAS, and any suggestions from members would be very welcome.

[Source: *Defra News Release* - 9 September 2010]