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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 AND CHARITY LAW

Charity Commission Chair

Dame Suzi Leather has been reappointed as Chair of the Charity Commission for England and Wales for a further three-year term.

[Source: *Cabinet Office News* – 21 July 2009]

Charity Commission: Single Equality Scheme

The Charity Commission has launched a consultation on its proposed Single Equality Scheme (ie, its in-house equality and diversity practices) in a document entitled [Integrity, Equality, Respect and Fairness](#). The Commission says that, unlike previous schemes which focused on its internal processes and employment practices, the proposed scheme has an enhanced external focus and some of it is concerned with the Commission treating its customers fairly and with respect. The Commission also wishes to inform its activities by discussion with, and the involvement of, relevant stakeholders.

The question most likely to be of interest to faith-groups and charities (as opposed to the staff of the Commission) is this: 'Do you have any ideas, comments and suggestions about how we can work with charities on equality and diversity?'

CLAS is not intending to respond unless there is great concern and/or interest among members; however, individual responses can be e-mailed to the Charity Commission's Diversity Manager, jane.adderley2@charitycommission.gsi.gov.uk with the subject 'Single Equality Scheme Consultation', or may be sent by post to Charity Commission Direct, PO Box 1227, Liverpool L69 3UG. The consultation closes on **9 October 2009**.

[Source: *Charity Commission Consultations* – 17 July 2009]

Public benefit

As well as publishing individual reports on its first exercise in assessing individual charities in terms of public benefit, the Charity Commission has published a general paper on [Emerging findings for charity trustees from the Charity Commission's public benefit assessment work: 2008-09](#). The paper makes several general points:

- keeping a charity's aims and governing document under regular review can help avoid 'mission drift';
- altering or widening a charity's aims might be necessary in order to ensure that a charity continues to meet the needs of its beneficiaries and to respond to changing social and economic circumstances;
- where social and economic circumstances (including, for example, changes in statutory requirements) alter both the ability of a charity to further its aims, and the economic viability of the charity, the trustees may find it helpful to carry out a full

review of their charity's position (such as the suitability of any premises, and whether the charity's objects could be better achieved through other means); and

- it is important that trustees of charities that have multiple aims are able to demonstrate how they are carrying out each of those aims for the public benefit.

At the same time, largely as a result of the Commission's conclusions on public benefit and the advancement of education, there has been a spate of critical media comment on the role of the Commission. Leolin Price QC and Stanley Brodie QC both wrote to *The Times* arguing that the Charities Act 2006 had not set aside the common law on public benefit and that the Commission was exceeding its brief by, in effect, enunciating a new public benefit test. Stephen Cook has written an [editorial](#) in *Third Sector* questioning whether it was appropriate for the process of reinterpreting the law on public benefit to be devolved to the Commission, and concluding that the matter could only be resolved by a challenge to a Commission decision on fee-charging and public benefit before the Charity Tribunal and, if necessary, before the superior courts.

[Source: *Charity Commission News* – 14 July 2009; *The Times* 16 & 21 July]

EMPLOYMENT & VOLUNTEERING

Default retirement age review

The Government has launched its strategy, [Building A Society For All Ages](#), on how to respond to the changing age-profile of the United Kingdom, where pensioners now outnumber schoolchildren. It follows the Government's major reforms to respond to demographic change including the Turner reforms to the pensions system and the measures in the Equality Bill to outlaw age discrimination. As part of the strategy to respond to changing demographic and economic circumstances, a review of the Default Retirement Age (DRA) previously promised for 2011 will be brought forward to 2010.

Currently employers can require all staff to retire at 65 regardless of their circumstances and the majority of people retire before 65; however, 1.3m people choose to work beyond state pension age and research suggests that more would work past 65 if their employers permitted it. The intention of the review is to create a change in culture in line with the Government's ambition to move over time to a position where there is no compulsory retirement unless individual employers can justify it.

Several churches have compulsory retirement from stipendiary ministry (eg the normal retirement age for Church of Scotland ministers is 65) and it may be that they will have to review their policies.

[Source: *Department of Work & Pensions* – 13 July 2009]

National Talent Bank

The Government has announced the establishment of a National Talent Bank, developed by the Prime Minister's Council on Social Action to act as an intermediary between companies who are reducing their working hours, frontline volunteering opportunities and third sector organisations. The scheme will target employers who are releasing employees for a fixed period, reducing the working week, deferring the start dates for new recruits but still paying them, or retaining staff whose posts have been made redundant. The scheme, designed to support existing volunteering programmes to provide additional help to businesses and individuals affected by the recession, will run initially for twelve months. More information is available from info@nationaltalentbank.org.uk.

[Source: *Cabinet Office News* – 21 July 2009]

ENVIRONMENTAL & RURAL AFFAIRS

Development and coastal change

DCLG has published a consultation on planning policy on development and coastal change, some aspects of which may be of interest to churches. The consultation proposes a series of planning principles:

- broad consideration of the impacts of coastal change in preparing spatial plans at regional and local level and in considering planning applications;
- using an agreed evidence base on coastal change, including coastal erosion, projected sea-level rise and the potential increase in the intensity, severity and frequency of coastal storms;
- balancing inappropriate development in areas vulnerable to coastal change against economically-beneficial activities such as recreation and tourism;
- a 'coastal change management area' (CCMA) in which the policy applies;
- regional spatial strategies (RSSs) (and the forthcoming integrated strategies) and local development frameworks (LDFs) that promote policies to assist the relocation of coastal development away from areas at risk;
- considering coastal change impacts alongside wider social, economic and environmental spatial policy objectives;
- spatial policies that support regeneration and sustainable economic growth for coastal areas, taking account of the physical processes affecting the coast;
- joint working between neighbouring planning authorities and the Environment Agency;
- a partnership approach with other agencies such as the Environment Agency, Natural England, the National Trust and the proposed Marine Management Organisation; and
- planning policies to manage development that take account of the marine policy statement, related marine plans and the creation of the continuous signed and managed route around the coast proposed by the Marine and Coastal Access Bill.

Responses can be sent to matthew.bigault@communities.gsi.gov.uk or by post to Matthew Bigault, Communities and Local Government, Planning Resources and Environmental Policy A, Zone 1/A1, Eland House, Bressenden Place, London SW1E 5DU. The closing date is **12 October 2009**.

[Source: *DCLG Consultations* - 20 July 2009]

FAITH & SOCIETY

Pandemic influenza: communion in both kinds

The Archbishops of Canterbury and York have written to bishops in the Church of England recommending the suspension of the sharing of the chalice at Holy Communion, in the light of advice from the Department of Health that 'in a pandemic it makes good sense to take precautions to limit the spread of disease by not sharing common vessels for food and drink'.

For those who wish still to offer both bread and wine, the Archbishops have recommended use of personal intinction by the presiding minister, by dipping the communion wafers in the chalice before handing them out to communicants. They also recommend that the presiding minister's hands should have been washed with an appropriate alcohol-based rub before handling the elements and the vessels.

[Source: *Church of England National Church Institutions* – 23 July 2009]

ODDS & ENDS

Alcohol sales and licensing reform

The [Legislative Reform \(Supervision of Alcohol Sales in Church and Village Halls &c.\) Order 2009](#) will come into force on **29 July 2009**.

The Order amends the Licensing Act 2003. Its effect is to allow licensing authorities in some circumstances to include an alternative licence condition relating to the supervision of alcohol sales in premises licences for 'community premises' (defined as any church or chapel hall or other similar building, or any village, parish or community hall or other similar building).

As mentioned in previous Circulars, at the moment alcohol can only be supplied where there is a designated premises supervisor (DPS). If there is no DPS specified in the licence, or if the DPS does not hold a personal licence under Part 6 of the Act, then the supply of alcohol is not permitted. The amendments allow a committee or board of individuals responsible for managing community premises to apply for permission to authorise the supply of alcohol under the licence themselves, instead of having to employ or nominate a DPS.

[Source: *OPSI website* – 21 July 2009]

PROPERTY & PLANNING

Land Registry Practice Guide No 68: amending deeds

A completed deed sometimes needs to be altered if the owners (or their successors) decide that its effect should be changed or where there has been a clerical or drafting error. The Land Registry has published a new *Practice Guide No 68 - Amending deeds that effect dispositions of registered land* for situations where deeds lodged for registration require correction or alteration. The guide also offers advice about situations where a later deed, drawn up for the purpose of correcting or altering an original deed that has already been registered, needs to follow one of the prescribed forms of transfer and/or comply with other specific requirements

The guide can be downloaded from www.landregistry.gov.uk and is available free from any Land Registry office.

[Source: *Land Registry Press Release* – 7 July 2009]

SCOTLAND

Charities and Trustee Investment (Scotland) Act 2005 implementation

OSCR has published its [corporate plan](#) for 2009–11. Notably, section 6 covers OSCR's planned action and activity during the period, with critical tasks identified for each of 2009-10 and 2010-11 (see pages 14-22).

OSCR notes that there are still aspects of the Charities and Trustee Investment (Scotland) Act 2005 that have still to be introduced, principally the Scottish Charitable Incorporated Organisations Regulations, and fundraising requirements and formal transfer schemes – and adds, without amplification, 'There may also be amendments to existing Regulations'.

OSCR's version of an outline timetable is not provided, though the document makes reference to the [Scottish Government Implementation Timetable](#).

[Source: *OSCR Corporate Plan* - 15 July 2009]

TAXATION

Extra-statutory concessions: second technical consultation on draft legislation

HMRC has issued its [second technical consultation](#) on the draft legislation needed to give legislative effect to a number of HMRC's extra-statutory concessions (ESCs) following the House of Lords decision in [R v HM Commissioners of Inland Revenue ex p Wilkinson](#) [2005] UKHL 30. It aims to ensure that draft legislation successfully preserves the current tax treatment under the Extra-Statutory Concessions concerned. Most of the legislation is by Treasury Order made under an enabling provision at section 160 of the Finance Act (FA) 2008, while some is made under powers that existed before the 2008 enabling provision was enacted.

The decision in *Wilkinson* made clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought and HMRC is therefore reviewing its concessions. The indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC's administrative discretion. Where an existing concession exceeds the scope of the discretion of the *Wilkinson* judgment the effect of the concession will be maintained by putting it on to a legislative basis where it is appropriate to do so. Following are the ESCs under consideration, some of which will be of particular interest to members.

ESC to be legislated by order under section 160 Finance Act 2008:

- A61: Clergymen's heating and lighting etc expenses
- A68: Payments out of a discretionary trust which are taxable as employment income
- B10: Income of contemplative communities or of their members
- B47: Furnished lettings of dwelling houses - wear and tear on furniture
- D26: Relief for exchanges of joint interests
- D44: Rebasing and indexation: shares derived from larger holdings held at 31 March 1982
- D50: Treatment of compensation
- Estimated Gift Aid donations by companies.

ESCs to be legislated using powers other than those under section 160 Finance Act 2008:

- A61: Clergymen's heating and lighting etc expenses: National Insurance element
- Zero-rating for VAT of nurses' prescriptions by pharmacists
- VAT on GP dispensing.

Responses and any enquiries should be made by 7 October 2009 to Richard Hopwood, HMRC Central Policy, Room 1/74, 100 Parliament Street, London SW1A 2BQ: telephone 020 7147 2424 Fax 020 7147 2375: e-mail tap@hmrc.gsi.gov.uk.

[Source: HMRC *What's New* - 15 July 2009]

VAT claims: three-year cap

HMRC has published [Revenue & Customs Brief 41/09](#) on the decision of the Inner House of the Court of Session in *HMRC v Scottish Equitable Plc* [2009] CS (IH) 2 July (unreported).

In short, and without going into technicalities (which are in any case set out in the *Brief*) the Inner House has overturned the 2006 decision of the VAT and Duties Tribunal that the introduction of the three-year time limit without a transitional period in 1996 meant that it had never been lawfully enacted. The Inner House followed the judgment of the House of Lords in [Fleming \(t/a Bodycraft\) v HM Revenue and Customs](#) [2008] UKHL 2 (23 January 2008), in which the Law Lords held that the three-year time limit should be disapplied in relation to rights to claims that had accrued before its enactment and that that disapplication should continue until the expiry of an adequate, prospective transitional period.

All VAT claims are now capped at four years or back to 1 April 2006, whichever is the shorter – and it is possible that some of the claims have been made by church-related charitable companies. A significant number of appeals to the First Tier Tribunal (Tax Chamber) have been on hold, pending the outcome of the litigation; and appellants will now need to consider whether they wish to withdraw their appeal or proceed to a full hearing. HMRC is taking steps to have these appeals restored to the Tribunal list so that, where necessary, a hearing date can be fixed.

[Source: *HMRC What's New* – 17 July 2009]

VAT: zero-rate on new buildings used for relevant charitable or residential use

A building intended to be used solely for a relevant charitable purpose can be zero-rated if the charity provides its developer with an appropriate certificate before the first supply is made. If, however, the building is put to a business use within ten years of the building's completion, VAT must be paid to HMRC (a 'change in use charge') to reflect that the building has ceased to be eligible to benefit from the zero-rate.

Under Extra-Statutory Concession 3.29, HMRC has permitted zero-rating on the new construction of a building where it is used 90 per cent or more for a relevant charitable use; and no change of use charge has arisen where a building has ceased to be eligible if it was zero-rated *only* as a result of the application of this concession. There are two related concessions, the 'switching areas' concession (where the overall use of the building was unchanged) and the 'look through' concession, (where the occupiers' use of the building was for a relevant charitable purpose), which have enabled some business use of a building to be disregarded.

HMRC has reviewed the Extra-Statutory Concession and now takes the view that the term 'solely', as used in the phrase 'solely for a relevant residential or relevant charitable purpose', can incorporate an appropriate *de minimis* margin. In order to avoid unnecessary disputes in marginal cases, HMRC will accept that this statutory condition is satisfied if the relevant use of the building by the charity is **95 per cent or more**.

In future, it will be possible to rely on the revised interpretation of 'solely' (that is, 95 per cent or more) to determine whether a building will be eligible for the zero rate or not.

The reduction in permitted business use from 10 per cent to 5 per cent is only one side of the picture. The good news is that there will be much greater flexibility in determining how the usage is calculated. Previously it had to be calculated using one of the three methods described in ESC 3.29 which has caused problems for a number of charities; in future, however, any method may be used to calculate the qualifying use of the building so long as it is fair and reasonable. Prior approval from HMRC for any method of calculation will not be required and HMRC intends to publish guidance on possible methods to help charities. If a building is zero-rated as a result of applying this new interpretation, there will be a change of use charge if it ceases to be eligible within ten years of the buildings completion.

ESC 3.29 and the two connected concessions will now be withdrawn, subject to a 12-month transitional period starting on **1 July 2009**. During this transitional period, charities will be able to continue to apply ESC 3.29, or choose to apply the revised interpretation of the statutory provision described above. Further details are in [VAT Information Sheet 08/09](#).

Notwithstanding that some charities will stand to benefit from the ability to introduce more flexible methods to calculate the business use, the sector is *very* unhappy about this development. It was merely presented as a *fait accompli* without any prior consultation and no consideration has been given to the need to retain the two associated concessions. The Charity Tax Group has discussed the matter at length with HMRC and is meeting HMRC again to discuss the issue of the subsidiary concessions, since HMRC has agreed to review whether or not they need to be retained in some way. We will inform members of any developments as they occur.

[Source: *HMRC Revenue & Customs Brief 39/09* – 1 July 2009]

WATER

House of Commons EFRA Committee report

The House of Commons Environment, Food and Rural Affairs Committee has published its Report on the [Ofwat Price Review 2009](#) – in which it kicks Ofwat fairly hard. Following is the relevant part of the Report: the bold type is the Committee's, not ours.

Surface water drainage charging

90. We received evidence from a number of not-for-profit organisations, including sports organisations, church groups and the Scouts, about the increases in water bills associated with changes to the method of charging for surface water drainage. Previously, these charges were calculated on the basis of rateable value but several water companies have now introduced charging on the basis of the area drained. In some cases this change has led to large increases in water bills, particularly for organisations whose premises have a negligible rateable value. For example, the Scouting Association told us that the change had already increased some Scout Groups' bills by £600 'which could translate to £1.5 million for the movement as a whole'. While Ofwat had suggested ameliorating measures could be introduced, including soak-aways, the Scout Association said that for many groups the 'cost of putting in such a system and the space needed was prohibitive'. It considered that some water companies had acted counter to Defra's social and environmental guidance that required it to ensure a 'strong, healthy and just society'. The Churches' Legislation Advisory Service said they disagreed with 'Ofwat's basic position on charging' since charging all non-domestic customers in the same way transfers the burden from commercial organisations, which can pass on costs via their prices, to not-for-profit organisations which 'do not have that option'.

91. Organisations, such as the Rugby Football Union, told us that the change to site area charging came as a result of a direct edict from Ofwat to the water companies. It said that correspondence with United Utilities had 'finally' led to a suspension of the increases 'pending further review into the new charging system'. Severn Trent Water told us that it was 'reluctantly' increasing charges at Ofwat's request, but said the changes needed to be planned out sensibly and introduced 'over a long period of time'. Thames Water said it had no plans to move to such a charging system under this price review period since the ability for customers to mitigate the cost by providing, for example, sustainable drainage systems, was limited by London's geology. Yorkshire Water told us that it was operating within Ofwat guidelines but was able to minimise the impact—citing, for example, its £75 charge for a Scout hut with less than 750 square metres of roof space.

92. Ofwat described the criticisms as being due to one company failing to implement a change in charging policy in a proportionate way and that other companies introduced the system without complaint.

93. The Minister told us that Defra's social and environmental guidance 'allows for the flexibility to put forward a sensitive and sympathetic way of charging'. He added that 'where you have a load on a system through surface water run-off into a system, people should be expected in one way or another to contribute, but there is an issue of proportionality and fairness within this'.

94. The Minister agreed that it was not acceptable for Ofwat to pass responsibility to the water companies or claim it had no legal powers to correct the situation. He added that the guidance made it 'absolutely clear that there is the ability to have some discretion here within the regime that will allow the concerns of those groups to be properly addressed'. In his view 'this is eminently fixable and I hope imminently fixable'.

95. The level of anger surrounding this issue illustrates the importance of companies having sufficient information about their customers and taking account of their needs when implementing changes in charging policy. This will be something companies need to take more account of in future as changes to implement recommendations made by the Cave and Walker reviews will need to be clearly explained to consumers and their implementation undertaken carefully.

96. We consider that Ofwat should have intervened earlier and harder on this issue. It is not sufficient for the regulator to lay the blame with a company for poor communication while not attempting to help clarify action that water companies needed to take.

97. Ofwat must now develop a clear protocol to guide all water companies to ensure that a fair and affordable charging regime can be introduced throughout England which properly reflects community based organisations' ability to pay for water services.

[Source: *House of Commons EFRA Committee* – 22 July 2009]