

CLAS CIRCULAR 2009/10 (13 July 2009)

NOT THE QUEEN'S SPEECH	3
Draft legislative programme for 2009–10.....	3
CHARITIES AND CHARITY LAW.....	4
Charity Commission relocation.....	4
Accounting for public funds.....	4
AGMs and disruptions caused by unforeseeable circumstances	5
Charity Fund-Raising Regulations (England and Wales)	5
Public benefit reporting	5
Registration update.....	6
EMPLOYMENT.....	8
Clergy terms and conditions	8
Equality Duty consultation	8
National Minimum Wage.....	9
Workplace pensions	9
EUROPE.....	10
Copyright: extension of copyright term for music recordings.....	10
FAITH & SOCIETY	11
Equality Bill	11
FUNDING.....	12
Gift aid claims	12
NORTHERN IRELAND.....	13
Charity Commission.....	13
Planning review	13

ODDS & ENDS	14
Pandemic influenza	14
PROPERTY & PLANNING	16
Disposing of charity land: best price	16
Disposing of charity land: guidance for trustees	16
English Heritage	16
Land registration	17
Planning Policy Statement on the historic environment.....	17
SCOTLAND	18
Charities and Benevolent Fundraising (Scotland) Regulations 2009	18
Charity trustee indemnity	18
Cross-border charities	19
Fundraising guidance	20
TAXATION.....	21
Treasury ministerial responsibilities.....	21
VAT: guidance on historic claims.....	21
VAT: installation and supply of organs from abroad	21
WATER.....	23
Lobby of Parliament.....	23

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.

NOT THE QUEEN'S SPEECH

Draft legislative programme for 2009–10

The Government has announced its [draft legislative programme for 2009–10](#). Following are the items most likely to be of interest to the churches.

The most important features of the **Constitutional Renewal Bill** are proposals finally to remove hereditary Peers from the second chamber, to provide for the disqualification of Peers convicted of a serious criminal offence, and to allow (life) Peers to resign. The legislation that limits protests around Parliament (which has never worked anyway) will be repealed. The Bill will also standardise across the UK the time-limit within which legal action can be brought under the Human Rights Act 1998. One of the most interesting issues – on which there is no clear policy steer – is whether or not the new-format second chamber will continue to have places for bishops of the Church of England.

The **Flood and Water Management Bill**, which extends to England and Wales only, has already been published in draft. The description in the draft programme does not mention the issue of charging for surface water drainage – the major issue for churches and charities. CLAS has submitted evidence to the Defra consultation on the Bill arguing that in the absence of any satisfactory conclusion to the current difficulties over paying for surface water drainage) it should be extended to provide statutory backing for the earlier Guidance issued by Ministers in relation to the Water Industry Act.

The **Equality Bill**, which is currently before the House of Lords and will presumably be carried over into the next Session of Parliament, is expected to come into force from autumn 2010. There are further details in the *Faith & Society* section below.

[Source: *Cabinet Office News* – 29 June 2009]

CHARITIES AND CHARITY LAW

Charity Commission relocation

On Monday 8 June the Charity Commission moved its London office to **30 Millbank, London SW1P 4DU**. The new telephone number is 0845 300 0218. The nearest Underground stations are Pimlico (Victoria Line) and Westminster (District and Circle Lines).

[Source: *Charity Commission website* – 2 June 2009]

Accounting for public funds

Charities (including churches) that receive public funding have to account to government funders for how they spend it and should show the impact that they have achieved with it; but the cost of producing this information must be proportionate to the risks and benefits involved.

The National Audit Office has now produced guidance, [*Intelligent Monitoring – an element of financial relationships with third sector organisations*](#), for government funders. Alongside this, OTS has launched its [*Principles of Proportionate Monitoring and Reporting*](#). The aim of the two publications is to reduce unnecessary monitoring of charities and voluntary organisations. The OTS principles commit Government departments to understanding the cost of reporting for third sector organisations and to working closely with them when establishing monitoring requirements. The principles for funders, which will apply to all new funding streams, are these:

- Remember that monitoring and reporting have costs both for the funder and the recipient. Discuss monitoring and reporting requirements with potential funding recipients at an early stage.
- Specify the scale of reporting requirements at the application or tender stage.
- Justify needs to ensure that monitoring and reporting are proportionate to the level of funding and risk.
- Communicate clearly and, where appropriate offer other ways to report back, such as face-to-face meetings.
- Give feedback to help people in the third sector to understand how the funder uses their information.
- Use existing reports where possible, use existing reports, such as trustees' annual reports and the organisation's annual accounts.

[Source: *OTS News* 25 June 2009]

AGMs and disruptions caused by unforeseeable circumstances

A helpful Q&A from the Charity Commission:

Q. I'm probably over-reacting but if Swine Flu escalates we may have to cancel our AGM. Can we use email or post to register votes on proposals?

A. This situation has actually happened before, during the outbreak of Foot and Mouth disease in 2001. We agreed then that a charity can accept postal or email votes for a one-off occasion without having to add a specific provision to its governing document. Doing this on a regular basis would require a change to the governing document but as a one-off such as an AGM it's fine.

This is not likely to happen to many churches *as churches* – but it may well cause problems for a church charity. The recent disruption on the London Underground certainly caused a few tense moments for CLAS: the AGM was being held on the very day of the strike and we wondered whether we would have the necessary quorum for appointing Governors.

[Source: *Charity Commission News* – 16 June 2009]

Charity Fund-Raising Regulations (England and Wales)

The [Charitable Institutions \(Fund-Raising\) \(Amendment\) Regulations 2009](#), SI 2009/1060, have been published on OPSI's website. The Regulations, which will come into force on 1 October 2009, amend the Charitable Institutions (Fund-Raising) Regulations 1994. Regulation 7 of the 1994 Regulations regulates the raising of funds for charitable, benevolent or philanthropic purposes otherwise than by professional fund-raisers or commercial participators.

Where a person to whom regulation 7 applies makes a representation to the effect that charitable contributions are to be applied for charitable, benevolent or philanthropic purposes, that representation must generally be accompanied by a statement satisfying the requirements specified in regulation 7(2) of the 1994 Regulations. These Regulations amend those requirements, subject to savings.

[Source: OPSI – 6 May 2009]

Public benefit reporting

The Charity Commission has added two further example reports to its public benefit reporting site:

- the [Arts Theatre Trust](#)' and
- [Birchfield Mosque and Community Centre](#).

[Source: *Charity Commission What's New* – 2 & 14 June 2009]

Registration update

The requirement for excepted charities with annual incomes of over £100,000 to register with the Commission came into force at the end of January 2009. An excepted charity must now apply for registration if its annual income is over £100,000 unless the Charity Commission sends it a written decision saying that it does not need to do so. The Commission will only make such a decision if the charity's income has risen above the registration threshold due to exceptional circumstances and will fall below it in the future.

Excepted charities with annual incomes *below* £100,000 do not have to register until 2012, thus allowing time for a review of the Charities Act 2006 in 2011. The Commission aims to register the 4,000 to 5,000 excepted charities above the threshold by 1 October 2009. For more information see the [Excepted charities registration timetable](#) under 'Registering a charity' on the Charity Commission website.

When these excepted charities have been registered the Commission will start registering those *exempt* charities with annual incomes over £100,000. The first of those charities will be eligible to register from late autumn 2009.

[Source: *Charity Commission News* – 16 June 2009]

Religion and the Equality Act (Sexual Orientation) Regulations

The Roman Catholic adoption charity, Catholic Care (Diocese of Leeds), has lost its appeal to the Charity Tribunal against the refusal of the Charity Commission to allow it to replace the objects clause in its Memorandum of Association with a new one intended to bring it within the exemption under Regulation 18(1) for actions 'in pursuance of a charitable instrument, and the restriction of benefits to persons of that sexual orientation is imposed by reason of or on the grounds of the provisions of the charitable instrument'.

Though the Tribunal was mindful of the human rights of hard-to-place children and the charity's success in placing such children, it took the view that the Regulations had to be interpreted as a coherent whole, mindful of the mischief which Parliament had intended to avert. The Tribunal concluded that Regulation 18 permitted discrimination by charities only when their activities did not stray into the areas covered by the other regulations.

[Source: *Charity Tribunal ruling* – 2 June 2009]

Interim determination:
[http://www.charity.tribunals.gov.uk/documents/decisions/Ruling_on_Preliminary_Question_\(13March2009\).pdf](http://www.charity.tribunals.gov.uk/documents/decisions/Ruling_on_Preliminary_Question_(13March2009).pdf)

Final determination:
http://www.charity.tribunals.gov.uk/documents/decisions/CatholicCareDecision_1609v2.pdf

Reporting serious incidents

The Charity Commission, which is anxious for charities to be more proactive in reporting serious incidents, has published revised [guidance](#) on the matter. The updated guidance details the serious incidents which trustees should always report to the Commission: for example, fraud, links to or support for terrorism or abuse of vulnerable beneficiaries. Although the guidance is primarily aimed at charity trustees, it is also hoped that it will be useful for lawyers and accountants working with charities, since they are sometimes the first people to become aware of a serious incident having taken place.

[Source: *Charity Commission What's New* – 2 June 2009]

EMPLOYMENT

Clergy terms and conditions

Readers may recall that a DTI Clergy Working Group, including representatives of most of the mainstream churches in Great Britain (though not the Orthodox) and of the Jewish, Muslim and Hindu communities, together with delegates from the Transport and General Workers' Union and Amicus, looked at the protection of workers in religious organisations and in March 2007 produced a [Model Statement of Good Practice](#). At the time, the then Parliamentary Under-Secretary of State for Trade and Industry, Jim Fitzpatrick, said that the Model Statement represented minimum standards that faith-groups should aim to achieve and that, as a first step, the DTI was asking faith-groups to assess their current positions in relation to the standards in the statement. The DTI would revisit the issue in two years' time and then 'consider if any further action is appropriate, including legislative action'.

That time has now arrived, and CLAS has received a letter dated 23 June from Pat McFadden, Minister of State at the Department for Business Innovation & Skills, asking for a report on 'relevant developments in your own faith group since the statement of good practice was issued'. Large churches will no doubt be contacted direct: small ones will probably not be. However, individual responses can be sent to Shelley Torey, Employment Relations, Bay 482, Department for Business Innovation & Skills, 1 Victoria Street, London SW1H 0ET.

Equality Duty consultation

The Government Equalities Office (GEO) has set out its proposals for the new single Equality Duty, which will require public bodies to tackle discrimination and advance equality of opportunity, including reporting annually on their gender pay gap and considering using procurement to drive equality. The Equality Duty will build on the existing gender, race, and disability duties, and extend it to cover age, sexual orientation, gender reassignment, and religion or belief. The Duty requires public bodies to consider how their spending decisions, employment practices, and services they provide affect people from these groups.

The consultation document proposes that contracting authorities should:

- consider using equality criteria when awarding contracts, for example requiring firms bidding for a diversity training contract to report the proportion of black or minority ethnic people they employ;
- stipulate equality contract conditions where relevant and proportionate, for example, an agency managing the recruitment process for a contracting authority might be required to advertise all vacancies with part-time or flexible working options; and
- set out how they intend to use procurement to drive equality.

The Equality Duty will also require public bodies with 150 or more employees to report annually on their gender pay gap, black and minority ethnic employment rates, and their

disability employment rates. Authorities will not be required to publish a separate equality scheme; instead objectives, action to be taken and results should be developed as part of an organisation's core business planning and reported on in normal business processes, such as annual reports or school profiles. Enforcement will be by judicial review or through the Equality and Human Rights Commission. The aim is for the new Equality Duty to come into force in April 2011. The consultation runs until **September 2009**. More details are at: <http://www.equalities.gov.uk>.

Comment: the Equality Duty will apply to *public authorities*, not to private- or voluntary-sector organisations. So it will not apply to churches as *churches*. However, it cannot be simply ignored, since is likely that if a church charity contracts with a public authority to supply services, the Equality Duty will come into play.

[Source: Government Equalities Office Press Release – 11 June 2009]

National Minimum Wage

The [draft National Minimum Wage Regulations 1999 \(Amendment\) Regulations 2009](#) have been published on OPSI's website, setting out the rates due to come into effect on 1 October 2009. Regulation 2 increases the principal rate of the national minimum wage from £5.73 to £5.80 per hour, thereby amending Regulation 11 of the Principal Regulations. The Regulations also increase the rate paid to workers aged between 18 and 21 from £4.77 to £4.83 per hour (Regulation 4(a)) and the rate to be paid to workers aged below 18 who have ceased to be of compulsory school age from £3.53 to £3.57 per hour (Regulation 4(b)).

[Source: OPSI website – 22 June 2009]

Workplace pensions

The Charity Commission has pointed out that from October 2012 all employers, *including charities*, will be legally obliged to offer a workplace pension to employees and suggests that many charity trustees remain unaware of what this will mean for them. The new duties mean that employers will be obliged automatically to enrol eligible workers into a qualifying workplace pension scheme and make a contribution. A minimum employer contribution of 3% on a band of earnings will be required, although employers can put in more. The total minimum contribution for eligible workers should equal 8%, made up of employer contributions, worker contributions and tax relief. To help employers, the minimum contribution will be phased in from 1% to 3%.

As part of these overarching reforms a new scheme, personal accounts, is being created to provide a low-charge workplace pension scheme that any employer can use. It will be run by a not-for-profit Trustee Corporation and is aimed at low- to medium-earners, many of whom will not have had access to a workplace pension before. Employers can choose personal accounts or another qualifying scheme. The [Personal Accounts Delivery Authority](#) (PADA) is charged with delivering the scheme.

[Source: *Charity Commission News* – 16 June 2009]

EUROPE

Copyright: extension of copyright term for music recordings

The European Parliament has adopted legislation extending the copyright term for music recordings from 50 to 70 years. A performer will therefore continue to receive royalties for 70 years from the first publication or performance of a song. The Parliament has also asked the Commission to launch an impact assessment of the situation in the European audiovisual sector by January 2010, with a view to deciding whether a similar copyright extension would benefit the audiovisual world.

This is not yet law. Member States will have two years to transpose the new legislation.

[Source: *European Parliament Press Release* – 23 April 2009]

FAITH & SOCIETY

Equality Bill

As noted in the last Circular, the [Equality Bill](#) was introduced into the Commons on 24 April and Second Reading took place on 11 May and the Church of England has expressed concern that the scope of the exemption currently available under the Employment Equality (Sexual Orientation) Regulations 2003 in relation to employment for the purposes of an organised religion is proposed to be re-enacted in a form which is considerably more restrictive than it is at present.

William Fittall, Secretary-General of General Synod of the Church of England and Richard Kornicki, of the Catholic Bishops' Conference of England and Wales gave evidence to the committee considering the Bill, along with Maleiha Malik (Reader in Law, KCL) representing the Muslim Women's Network, Jon Benjamin, Chief Executive of the Board of Deputies of British Jews and Andrew Copson, Director of Education and Public Affairs at the British Humanist Association. Their evidence is available [here](#). One of the principal issues raised by was this:

William Fittall: The fundamental difficulty is that, if a religious organisation is imposing a faith requirement on a particular post—we have a lot of posts where we do not—and saying, “You've got to be an Anglican, a Roman Catholic, or whatever it might be”, we will, particularly for representational or pastoral roles, want people to lead lives that are consistent with the teaching of that particular Church or faith. Our conviction is that the provision does not allow for that. You might believe that some of our rules and disciplines are wrong, but our view is that that is a matter of religious liberty—a matter for the Church of England, Roman Catholics, the Jews or whoever.

We are not seeking *carte blanche*, but if a religious organisation is employing someone in a role for which you have to be a member of that faith, it is reasonable that restrictions—whether they be on marital history or whatever—can be part of the requirements. [We] think that the provision would prevent that.

Richard Kornicki: ... fundamentally, this goes to the credibility of the post holder in performing their function. [A] youth worker may have a function that involves supervising teenage children in a church hall, in social activities. That is not formal teaching of religion, but the group may be coming up to their confirmation, and issues of religion will and should arise—issues of morality and of behaviour. It would not be credible for the person holding that post not to be in harmony with the teachings of the Church. The credibility of the function being performed would be at stake in such pastoral, representative roles if the person were not in harmony with the teachings of the Church.

[Source: *House of Commons Bills* – 9 June 2009]

FUNDING

Gift aid claims

HMRC has announced formally that from 1 April 2010 the general time-limits for making repayment claims will be four years rather than six and that those limits will apply equally to charities as to other taxpayers. This change was foreshadowed in our article dated 16 March 2009. The HMRC website has a helpful step-by-step [Guide](#) to making claims. Rather than leaving things until the last minute, it is probably prudent to start checking whether or not claims have in fact been made.

HMRC has also produced a March 2009 update of the Gift Aid Toolkit CD-ROM for charities. Copies can be obtained by ringing 08453 02 02 03 (open from 8.00 am to 5.00 pm, Monday to Friday) and selecting Option 6.

[Source: *Charity Commission Charity News & Updates* – 13 & 15 May 2009]

NORTHERN IRELAND

Charity Commission

The Northern Ireland Social Development Minister, Margaret Ritchie, has announced that the first Chief Commissioner of the Northern Ireland Charity Commission is to be Tom McGrath, former chair of the Northern Ireland Tourist Board. Patricia Sloan, Director of BBC Children In Need in Northern Ireland and former CEO of the Northern Ireland Human Rights Commission, has been appointed Deputy Chief Commissioner. Paul Cavanagh, a former employee of Save the Children, Gingerbread and the North West Community Network, Angela Chada, Executive Director of the Irish children's charity Springboard, Philip McDonagh, a senior management consultant and chief economist at PricewaterhouseCoopers, who currently serves as Treasurer of Quaker House, Belfast, and Walter Rader, CEO of the Big Lottery Fund in Northern Ireland have been appointed as Charity Commissioners. The appointments take effect from 1 June 2009. Up to five Commissioners may be appointed – and there has not yet been an appointment of a legally-qualified Commissioner.

[Source: *Department for Social Development Press Release* – 1 June 2009]

Planning review

The Northern Ireland Environment Minister, Edwin Poots, has announced a major review of Northern Ireland's planning system, claimed to be the most fundamental reappraisal for thirty years. Among the proposals are:

- a streamlined and more responsive local development plan system;
- performance agreements, pre-application community consultation and pre-determination council hearings to improve efficiency, provide greater certainty about timescales and enhance transparency and openness;
- expanding the list of statutory consultees and a statutory obligation on consultees to respond within a specified timeframe; and
- a new regime of development management.

Views are also being sought on whether it should be a criminal offence for someone to carry out development without planning permission.

Eleven stakeholder events will be held across Northern Ireland during September. They will be advertised shortly on the Planning Service website and in the local press. The consultation document is not yet available on the NIE website.

[Source: *Northern Ireland Executive Press Release* – 6 July 2009]

ODDS & ENDS

Pandemic influenza

The Church of England has issued a summary of the Government's advice to faith communities on how to react should there be a 'flu pandemic in the UK. Since it is rather more user-friendly than the Government's own document, it is reproduced below, with permission, in the hope that it may be of value to members generally:

PANDEMIC FLU PLANNING: SUMMARY OF GOVERNMENT ADVICE

The Government, in consultation with Faith Groups, has recently published an important document, [Faith Communities and Pandemic Flu](#). A flu pandemic could result in high infection rates within the population, increased fatalities and disruption to community life. The seriousness and duration of a pandemic would depend on a range of factors including the virulence of the virus, the degree of immunity within the population and the effectiveness of counter-measures. In addition to the administration of anti-viral medicines these counter-measures centre on three areas of action: preventing the spread of the virus, protecting those who contract the illness and preserving core services during a pandemic. Churches and other Faith Communities would have an important role to play in effecting these counter-measures. Good planning and implementation would contribute significantly to restricting fatalities, alleviating suffering and maintaining services.

PREVENTING: The flu virus is contained in droplets released when an infected person coughs or sneezes. These droplets may be inhaled by others close by, transferred by person to person contact or by contact with contaminated surfaces. Prevention includes good personal hygiene, especially the single-use and disposal of tissues when coughing or sneezing and frequent hand-washing. To protect others, anyone with symptoms should stay at home and minimise contact with others until symptoms have resolved.

To help to prevent the spread of the virus, churches need to ensure that bins for the disposal of tissues are available at all public gatherings, that surfaces are frequently cleaned and that hand-washing facilities, including disposable towels, are well maintained. Churches should also consider supplying tissues at services and other meetings as well as providing hand-washing gel. Information regarding pandemic flu should be effectively disseminated to congregations.

Government advice is that, during a true pandemic, the common cup ought not to be used during communion services and priests ought not to administer communion on the tongue. Hand-shaking is inadvisable. 'Laying on of hands' and visitation of the sick ought to be carefully managed with hand washing after every contact, minimal carrying of objects such as mobile phones, pens, etc from visit to visit and cleaning of any such objects and changing of clothes as frequently as is practicable. The Government is unlikely to recommend a blanket ban on religious or other gatherings but plans to accommodate this ought to be put in place in case of this eventuality.

PROTECTING: In spite of the best preventative measures many people may still contract the virus. To protect themselves and others from the worst effects of the illness they ought to remain at home and contact the National Flu Line Service for information and advice. If they require anti-viral medicine it is essential that a 'Flu-friend' is contacted who will be given instructions on how to pick up the medication and deliver it to them. Churches could greatly assist this process by organising a flu-friend network among their congregations. Arranging flu-friends for the elderly, the vulnerable and for those living alone, would be particularly important. Churches may also be most effective in contacting those 'marginalised' within our society.

PRESERVING: In a pandemic, many core services would be put under strain. Funeral and bereavement services would require careful planning in order to cope with increased demand and in the event of restrictions on public gatherings. Food distribution to those who are ill and living alone may be necessary. Hospitals and other essential services may require volunteers to enable them to keep functioning. By planning now, alongside their Local Resilience Forums, churches can make a significant contribution to preserving core services in our society during a pandemic.

PROPERTY & PLANNING

Disposing of charity land: best price

The general obligation on trustees to secure the best price for the disposal of assets causes problems for some members when, for example, they wish to dispose of a redundant building to a community group rather than sell to a commercial developer. Some denominations have concluded special arrangements on this; others are simply bound by the general law.

Recently, the Charity Commission approved the sale of a charity property at below valuation. Maryland Residential Home (Formby) Ltd is a residential care home on Merseyside. The trustees decided that they could not afford to keep the care home open because it was too small to be economically viable and had too many vacancies. No other care home charity was interested in joint working or a merger; and they decided that the best option was the sale of the home as a going concern to the finance manager Suraya Bacon, who is also the wife of one of the trustees. A draft Scheme was submitted to authorise the sale of the home to a connected person at below the valuation of the property that the trustees had obtained. Objections were lodged, which were considered by a panel comprising the Head of Charity Services and a senior caseworker. The Head of Charity Services concluded that the Scheme should be made because the trustees had demonstrated that it represented the best way forward that could reasonably be achieved by the charity, and the Scheme was sealed on 22 May 2009. Further information is available [here](#).

Comment: The general rule is that because trustees have a duty to protect the assets of the trust they must dispose of them to the highest bidder. This decision appears to be contrary to that principle: in balancing the fiduciary duties of the trustees against the prospect of closure, the review panel has come down on the side of expediency.

[Source: *Charity Commission Case Summaries* – 22 May 2009]

Disposing of charity land: guidance for trustees

Perhaps coincidentally, the Charity Commission has published an updated version of [CC28 - Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land](#).

[Source: *Charity Commission website* – 2 June 2009]

English Heritage

The Government has announced that the new Chair of English Heritage is Kay Andrews (Baroness Andrews of Southover) who until recently was a junior minister in DCLG and who piloted the Planning Bill through the Lords. She is well-known to CLAS, having made a keynote speech at the CLAS launch in 2008.

[Source: *English Heritage Press Release* – 9 June 2009]

Land registration

As foreshadowed in earlier Circulars, the new land registration rules affecting non-company charities came into force on 6 April 2009. If a charity owns land that:

- is not registered under the Land Registration Acts; and is vested in the names of individual trustees; and
- is transferred to a new trustee by deed after 6 April 2009,

then it will probably have to be registered with the Land Registry. The only exception is land held under a lease which has fewer than seven years to run. A charity that registers the land voluntarily before the next transfer will get a 25 per cent discount on the normal Land Registry first registration fee. More information is available in two Land Registry Practice Guides – *First Registration – advice for trustees (No1)* and *Charities (No14)*, both of which are available at www.landregistry.gov.uk.

One way of avoiding transfers of charity land to new trustees is to vest it in the Official Custodian for Charities: see [The Official Custodian for Charities' Land Holding Service \(CC13\)](#).

[Source: *Charity Commission News* – 16 June 2009]

Planning Policy Statement on the historic environment

During DCMS Oral Questions on 8 June, Barbara Follett MP, DCMS Minister, said that the new planning policy statement (PPS) on the historic environment 'will be published in draft this summer and consulted on immediately afterwards, with a view to its coming into force early next year'. The draft PPS had previously been promised 'by Easter'.

[Source: HC Deb 8 June 2009]

SCOTLAND

Charities and Benevolent Fundraising (Scotland) Regulations 2009

The Charities and Benevolent Fundraising (Scotland) Regulations 2009 will come into force on 1 July 2009. They govern the way in which volunteers, charity employees, professional fundraisers and commercial businesses fundraise on behalf of benevolent bodies (including charities) or for general benevolent purposes. The key issues addressed by the Regulations are:

- the requirement for formal fundraising agreements between benevolent bodies and some types of fundraiser;
- the information which must be provided to potential donors when funds are being sought for benevolent bodies;
- the conditions attached to donors' rights to a refund of their donations; and
- the prevention of unauthorised fundraising.

Web-based guidance will be issued shortly at <http://www.oscr.org.uk/>.

The Regulations are the first in a series relating to fundraising. It is anticipated that the Scottish Government will consult on regulations relating to public benevolent collections (the collection of money or promises of money in public places or door-to-door) and the collection of goods later in 2009.

[Source: *OSCR Reporter* – 1 June 2009]

Charity trustee indemnity

On 28 May the Scottish Government published the [Public Services Reform \(Scotland\) Bill](#) which, *inter alia*, makes provision in relation to indemnity insurance for charity trustees.

Section 99 (charity trustees' indemnity insurance) amends the Charities and Trustee Investment (Scotland) Act 2005. It inserts section 68A into the 2005 Act, which will allow charity trustees to purchase, from charity funds, indemnity insurance against personal liability in their role as charity trustee or as directors or officers of any body corporate carrying on any activities on behalf of the charity.

In addition, sections 68A(2) and (3) set out certain types of liability that must be excluded from the provision of any indemnity, for example liability incurred by a trustee to pay a fine imposed in criminal proceedings. Section 68A(4) clarifies that this provision does not allow the purchase of insurance if it is expressly prohibited by the charity's constitution and clarifies that indemnity insurance can be provided despite any provision prohibiting the charity trustees receiving any personal benefit from charity funds.

[Source: *Scottish Parliament Business Bulletin* – 29 May 2009]

Cross-border charities

OSCR began monitoring cross-border charities in late June, starting with those charities with a 31 March year-end. Letters were sent to all such charities along with the required Annual Return and Information Return forms in late May. The new monitoring regime is outlined in OSCR's consultation document [here](#) – though there are some changes to the Information Return to make completion easier. OSCR has also updated its guidance for cross-border charities to outline the key aspects of the regulatory regime in Scotland and its impact on English and Welsh charities that are also entered on the Scottish Charity Register. The guidance will be available 'shortly' on the OSCR website at <http://www.oscr.org.uk/> (but it has not yet been posted) and a copy will in any case be sent to each cross-border charity.

At about the same time, the Calman Commission on Scottish Devolution produced its final report: [Serving Scotland Better: Scotland and the United Kingdom in the 21st Century](#). It contains two recommendations of particular interest to member churches which operate on both sides of the Border:

RECOMMENDATION 5.2: There should be a single definition of each of the expressions "charity" and "charitable purpose(s)", applicable for all purposes throughout the United Kingdom. This should be enacted by the UK Parliament with the consent of the Scottish Parliament.

RECOMMENDATION 5.3: A charity duly registered in one part of the United Kingdom should be able to conduct its charitable activities in another part of the UK without being required to register separately in the latter part and without being subject to the reporting and accounting requirements of the regulator in that part.

Overall, the report received a muted response from the Scottish Government: unsurprisingly, given that the SNP did not take part in the exercise. However, the charity recommendations came in for particular criticism from the Scottish Council for Voluntary Organisations (SCVO), which warned that they would create new complications rather than dealing effectively with the issues identified. SCVO's view was that Scotland's stronger and more rigorous line on public benefit reflected a tradition and history of charity legislation in Scotland distinct from those of England & Wales, and that the most important matter was that the public should have faith in the legal status of Scottish charities.

In reality it is very difficult to see how the Calman recommendations on charities could be implemented without substantial primary legislation, not only for Scotland and for England and Wales but for Northern Ireland as well – which the Commissioners admitted (blushing, one hopes, as they did so) that they had not taken into account.

[Sources: *OSCR Reporter* – 1 June 2009; *SCVO Media Release* – 15 June 2009; *Scottish Government News Release* – 15 June 2009]

Fundraising guidance

OSCR has published [Guidance](#) on compliance with the [Charities and Benevolent Fundraising \(Scotland\) Regulations 2009](#). The Regulations take effect on 1 July 2009. The Regulations specify how fundraisers must operate in their dealings with charities and the donating public. OSCR's guidance has been produced jointly with the Institute of Fundraising Scotland and hard copies are to be issued to IOFS members as well as to Scottish members of the Public Fundraising Regulatory Association and Fundraising Standards Board.

'Fundraising' is a wide term covering a range of activities, of which the Regulations cover a part. The Scottish Government is expected to produce further regulations in the future regarding public benevolent collections.

[Source: *OSCR News* - 26 June 2009]

Volunteer vetting procedure

The SCVO reports that the Scottish Government has agreed to change the law so that more charities will be able to gain access to enhanced criminal disclosure checks on volunteers and staff.

Disclosure Scotland, which provides the checks, started to refuse to carry out enhanced checks for volunteers who did not work with children or vulnerable adults. This caused problems for charities whose service-level agreements with local authorities required that they obtain enhanced checks. Following a meeting with the WRVS and SCVO, Scottish Ministers have agreed to put forward a legislative amendment before the summer recess that would broaden the definition of health and care services.

[Source: *SCVO News* – 6 May 2009]

TAXATION

Treasury ministerial responsibilities

Following the unscheduled departure from Government of Kitty Ussher, the Treasury has issued a revised list of ministerial responsibilities. The Financial Secretary, Stephen Timms, is responsible for strategic oversight of the tax system as a whole including direct, indirect, business and personal taxation (and therefore VAT) and will take the lead on issues affecting the voluntary sector and charities, including Corporate Social Responsibility. He is also departmental Minister for HM Revenue and Customs.

[Source: *Treasury Press Release* – 18 June 2009]

VAT: guidance on historic claims

HMRC has published [guidance on dealing with historic VAT claims](#), which sets out how to deal with claims under the three-year limitation period introduced in 1996 and 1997 for repayment claims for overpaid VAT, the correction of errors and late claims to input tax.

[Source: *HMRC What's New* – 29 May 2009]

VAT: installation and supply of organs from abroad

Barry Williams, co-author of 'Everything Else An Organist Should Know' has very kindly supplied the following note on the knotty issue of VAT on organs from makers outside the United Kingdom. It will be incorporated in the CLAS VAT Guide, which can be downloaded as a Word document from the [Publications](#) page of the CLAS website.

The rules for 'installed goods' are established law, as follows:

- (i) **for VAT purposes the 'place of supply' of installed goods is the place where they are physically installed.** This means the goods installed in the United Kingdom are liable to VAT in the United Kingdom in the normal way.
- (ii) **suppliers of installed goods who are registered for VAT in the UK are required to account for VAT on their supply here,** whether or not the customer is VAT registered.
- (iii) **unregistered UK suppliers, or suppliers from countries outside the UK, will not be required to account for UK VAT unless the value of their supplies in a year exceeds the UK VAT threshold for registration.** Once they exceed the registration threshold they will need to register for VAT here and account for the tax due in the usual way.
- (iv) **suppliers who import goods from outside the EU that are to be installed in the UK are required to pay Import VAT and Duty on those goods.** No Import VAT or Duty is payable on goods moved to the UK from other European Union countries.

All of this is very dependent upon the UK VAT threshold. The result is that for installed goods only, if the European Union supplier makes supplies under the VAT threshold in the UK, he or she does not have to account for VAT at all, unless or until their total UK sales in that year exceed the VAT registration threshold. This is on a par with any UK supplier. For *supply only*, he would have to account for his own (ie non-UK) VAT for the sale of goods *alone* wherever they were sold. The same rules apply to a UK supplier installing goods elsewhere in the European Union. It follows that there could be an advantage to using a European Union organ builder to supply and install the organ, although the threshold rules would deter the EU company from wanting to make too many supplies here in any one year. *Similar threshold rules apply to the installation of non-EU organs, but in these cases VAT and Import Duty are charged on the goods at the time of importation.*

The threshold rules do not, in the case of 'installed goods', work to the United Kingdom suppliers' advantage. The threshold is deliberately kept high to help smaller businesses. This is a benefit not available in the rest of the European Union, where VAT thresholds are generally much lower.

[Source: *personal communication* – 27 June 2009]

WATER

Lobby of Parliament

There is to be a lobby of Parliament on 15 July (St Swithin's Day) on charging for surface water drainage, organised by the Scout Association but with the participation of the churches. The Bishop of Southwell and Nottingham will be taking part as Chairman of CLAS.