

CLAS CIRCULAR
2009/14 (11 September 2009)

FAITH & SOCIETY

Birth registration: rights for female couples

Changes to the [Registration of Births and Deaths Regulations 1987](#) mean that female civil partners who use fertility treatment to conceive a child will now be treated in the same way as married couples, with both female parents' names able to be included on the birth certificate. In addition, female couples not in a civil partnership but receiving fertility treatment may also be registered as parents in the same way as unmarried heterosexual couples. In both cases, providing relevant conditions are met, the female partner of the mother can be recorded as 'parent' in the birth or still-birth registration and on any certificates issued. The changes only apply to female couples who have fertility treatment on or after 6 April 2009.

[Source: *Home Office Press Release* – 1 September 2009]

Burial law

The Ministry of Justice has posted a [new section on burials](#) on its website, containing the following:

- [Guidance for burial ground managers](#)
- [Guidance for custodians of war memorials in England and Wales](#)
- [Managing the safety of burial ground memorials](#)
- [Memorial safety guidance: frequently asked questions](#)
- [Statement on burial law and archaeology](#).

None of these are particularly new – the first two are still in Department of Constitutional Affairs format and the other three were published in January – but the new section brings together burial law issues in a convenient single location.

[Source: *Ministry of Justice What's New* – 3 September 2009]

[Source: *HMRC What's New* – 6 August 2009]

VAT: works to listed buildings update

Members may recall that in Circular 2009/13 a VAT issue was mentioned in relation to [works to listed buildings](#): a dispute over whether or not fitting secondary double-glazing to a listed place of worship was zero-rated or attracted VAT at the standard rate. We have now been told by the institution in question that the HMRC Charities VAT Office has finally agreed that the installation of the secondary glazing should indeed be zero-rated.

We suspect that each case will have to be argued afresh on its merits – but the moral of the story is to think ahead and investigate the VAT situation in relation to any works to a listed building *before* the works start, rather than attempting to have the argument once the money has been spent and, possibly, the VAT incorrectly charged.

CLAS CIRCULAR

2009/15 (28 September 2009)

Single-congregation LEPs

The Charity Commission has approved a standard governing document for Local Ecumenical Partnerships where two or more Churches have formed a single congregation. Existing LEPs do not need to change their constitution unless–

- they have an annual income normally greater than £100,000;
- they do not yet have an agreed constitution;
- their constitution needs amendment.

The necessary documents – [Information](#) needed for approval of an LEP, the [Approvals Form](#) to be completed as information and permissions are given, the [Model Constitution](#) for Single Congregation LEPs and an [Ecumenical Vision Statement](#) – can be downloaded as Word documents. Further information is available from the relevant CTE [webpage](#).

CTE is organising a [training event](#) for County or Denominational Ecumenical Officer and treasurers, secretaries and clergy of single-congregation LEPs with an annual income of over £100,000.

The event will take place on **Monday 12 October 2009** from 11.00 am to 3.30 pm at [Methodist Central Hall, Oldham Street, Manchester M1 1JQ](#) (0161 236 5194). Its purpose is–

- to guide participants through the process of application for charity registration;
- to explain the new Charity Commission-approved model constitution for single congregation LEPs; and
- to guide participants through the process of adopting the new constitution

It will include time for questions and the opportunity for one-to-one exploration of specific questions about individual situations. There will also be a separate session for Ecumenical Officers about the approvals process.

[Source *CT E-news* 15 September 2009]

Sick leave and the Working Time Directive

In what is likely to prove a landmark judgment, [*Vicente Pereda v Madrid Movilidad SA*](#), the European Court of Justice has held that workers who fall ill during their holidays may claim the time back from their employers. Mr Pereda, a driver for Madrid Movilidad SA, had an accident at work in July 2007 which meant that he was on sick leave for all but two days of his allocated summer holiday. When he asked for more paid annual leave for 2007 to make up for this, his employers rejected his request without giving any reasons and he took the matter to the local employment court.

Article 7 of Directive 2003/88 (the Working Time Directive) provides that

Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The court, unsure of the correct interpretation of Article 7 of the Directive, sought a preliminary ruling from the ECJ – which ruled as follows:

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national provisions or collective agreements which provide that a worker who is on sick leave during a period of annual leave scheduled in the annual leave planning schedule of the undertaking which employs him does not have the right, after his recovery, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period.

The ECJ judgment in this case has already caused considerable disquiet among employers who are fearful that the controls in the United Kingdom's system of self-certification of sick leave will prove inadequate in the new situation. The *Daily Telegraph* reported that Katja Hall, Director of HR Policy at the CBI, had described the ruling as a concern and had commented that 'Many firms already take a common sense and sympathetic approach. But allowing employees to re-classify their holiday as sick leave opens the door to abuse'.

The possible impact of *Pereda* on the churches is potentially quite considerable. It will obviously apply to employees – clergy or lay – with contracts of employment. Its effect on the position of office-holder clergy without contracts, such as Church of England incumbents with freehold, is more difficult to estimate. But it might be as well to assume that, in time, it will be extended to apply to them as well.

[Source: *BAILII* – 10 September 2009]

CLAS CIRCULAR

2009/16 (5 November 2009)

Model constitution for small charities

A charity with an income of less than £5,000 does not need to register with the Charity Commission but is still subject to charity law. The Commission has launched new, simplified [constitution for very small charities](#) designed to provide a concise, practical framework for charities with an income of under £5,000. It attempts to provide a clear, jargon-free constitution covering all the requirements for a very small charity that does not own land or employ staff directly; and it may be of interest to very small religious charities. It should be noted that if the income of a very small charity grows larger than £5,000 it will need to register with the Commission and to draw up a more comprehensive governing document.

[Source: *Charity Commission Press Release* – 29 October 2009]

WATER

Surface water drainage: update

On 22 October various representatives of community groups, including CLAS and the Church of England's Cathedrals and Church Buildings Division, attended a further meeting with Huw Irranca-Davies, the Minister for Marine and Natural Environment at Defra. The background was that after the previous meeting on 7 September he had agreed to look again at the matter of charging for surface water drainage (SWD). It was then announced at the Labour Party Conference that the Government had decided to legislate for a social tariff for community groups.

Irranca-Davies said that he could not pre-empt the Queen's Speech (thereby implying that there might not be sufficient parliamentary time for legislation). That said, his proposal is as follows:

1. Legislation as part of the forthcoming Flood and Water Management Bill will allow for the kind of concessionary scheme currently operated by Severn-Trent. The Government does not propose to legislate for complete exemption, and the legislation will be (quasi-) permissive: companies will be able to take account of the affordability of surface water drainage costs for community groups and devise their own schemes.
2. The Government does not regard it as its function to set out schemes for individual utilities.
3. Under the legislation, the Government will produce guidance which itself will be subject to consultation, under four heads:
 - the utility companies will assess the advisability of concessionary schemes;
 - the guidance will determine which organisations should benefit;
 - all customers will have to pay *something* – there will be no total exemptions; and
 - the utility companies will have to consult their customers.

The Bill will refer the utility companies to guidance about the types of organisations that may qualify for preferential rates and the issues that they should consider in setting such rates. Ofwat would then approve the tariffs.

The question was raised as to whether it was appropriate that the utilities should themselves determine who should be the beneficiaries of any social tariff, to which he replied that the overall charging regime was meant to be cost-neutral: relief for one group of consumers would mean higher charges for another. The solutions would have to reflect local circumstances, eg the impact of a social tariff in terms of higher bills for households.

He was also adamant that the principle should be maintained that every consumer should contribute to drainage costs. Extreme weather events had increased and Defra was convinced that they would go on increasing; and it was part of the policy to encourage the move towards sustainable drainage. The annual cost of dealing with surface water was £600 million and we needed to put in place means of dealing with the problem, ranging from high-cost engineering solutions to low-cost soakaways.

A representative of the Consumer Council for Water argued strongly against any kind of social tariff at all, on the grounds that the cost would bear harshly on low-income domestic consumers; however, her argument appeared to fall on deaf ears. When asked for an assurance that Ofwat would follow the guidance, Irranca-Davies said that the guidance would be backed by primary legislation. He also made it clear that the guidance would be addressed to the *utility companies*, not simply to Ofwat. He accepted the offer of the stakeholders present to contribute to the drafting of the clause and associated guidance.

So far, so good – but two outstanding issues remain. First, we shall be looking very carefully at the Bill when it appears and, in due course, at the draft guidance. Secondly, given that there is a strong likelihood that Parliament will be prorogued and dissolved in early April to make way for an election on 6 May, there is no cast-iron guarantee that the Bill will reach the statute-book.

[Source: *CLAS* summary]

CLAS CIRCULAR
2009/17 (19 November 2009)

CHARITIES & CHARITY LAW

Model constitution for small charities: update

In the previous Circular we mentioned the Charity Commission's simplified [constitution for very small charities](#) for charities with an income of under £5,000, and pointed out that if the income of a very small charity grows larger than £5,000 it would need to register with the Commission and to draw up a more comprehensive governing document. Alan Wilson, Treasurer of ACAT, e-mailed a reminder that this statement should be qualified by the proviso that registration would not be required where the small charity was excepted from registration. We have updated the article on the CLAS website accordingly.

[Source: *Charity Commission Press Release* – 29 October 2009]

EMPLOYMENT

Harassment and violence in the workplace

A new guide, [Preventing Workplace Harassment and Violence](#), has been produced as a joint enterprise between the CBI, the Partnership of Public Employers and the TUC, with the support of the Government through the Health and Safety Executive, ACAS and the Department for Business, Innovation and Skills. The publication follows a pan-European agreement between employers' organisations and unions. The agreement defines harassment and violence as unacceptable behaviour by one or more individuals that can take many different forms, some of which may be more easily identifiable than others. Harassment occurs when someone is repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work. Unsurprisingly, violence occurs when someone is assaulted in circumstances relating to work. Both may be carried out by a fellow-worker, a service user or a member of the public with the purpose or effect of violating the victim's dignity, affecting his or her health and/or creating a hostile work environment.

Potential readers are warned that some of the guidance reads as if it has been badly translated from the Albanian original, eg: 'Under British law it is an offence to lay your hand on to another person without their consent'. However, the importance of the new guidance is not, primarily, to remind us that bosses should not intimidate, bully or assault their staff (nor, for that matter, *vice versa*): we all knew that anyway. The interesting aspect is the extension of that principle to *service-users*:

Employers should [p]rovide a clear statement to staff and service users that harassment and violence will not be tolerated and will be treated as disciplinary offences (up to and including dismissal or, if appropriate, criminal action) – together with information on how to report harassment and violence...

[Source: *BIS News* – 17 November 2009]

Copyright and not-for-profit organisations

The Government has announced its response to the consultation on changes to exemptions for charitable, not-for-profit and other third sector organisations in relation to licences required for the public playing of sound recordings and broadcast music. To no-one's surprise, given that the changes in intellectual property law are driven primarily by an EU Directive, it has been decided that the current exemptions – bar one – are to be ended. The necessary Statutory Instrument to repeal the relevant parts of the Copyright Designs and Patents Act 1988 will be laid in February 2010 and come into force in April 2010

The Community Sector Law Monitoring Group (CSLMG) – of which the Secretary of CLAS is a member – has been in discussion with Phonographic Performance Limited (PPL) and the Performing Right Society (PRS) to attempt to come to some kind of sensible accommodation on the matter.

The key initiatives being discussed are:

- a new joint licensing scheme to simplify the process for voluntary organisations obtaining a licence for playing sound recordings and broadcast music;
- a code of practice and independent complaints mechanism: PRS has already implemented this and PPL is in the process of developing a code of practice linked to an independent complaints reviewer; and
- a consultation with CSLMG to agree affordable tariffs.

The crunch question is, however, 'What is an affordable tariff?' CSLMG is seeking a sensible and affordable outcome. We have, however, made it clear that whatever the position may be of other participants, the secretariat of CLAS has no power whatsoever to enter into any agreement nor to mandate CLAS members.

The good news is that the exemption from performing right for the performance of music during church services remains. In addition, the Secretary was told that none of this applied to (eg) a wedding-reception held in the church hall after the wedding-service because that was regarded as a private occasion.

[Source: *UK Intellectual Property Office Press Release* – 12 November 2009]

TAXATION

2009-10 Employer Annual Returns

New PAYE Regulations introduced on 13 August 2009 mean that virtually all employers are required to file their Employer Annual Return (P35 and P14s) on-line from the 2009-10 tax year onwards. The 2009-10 Return is due by **19 May 2010**. HMRC has published details of the employers who are exempt from the on-line filing requirements: [Who can still file on paper: guidance for exempt employers](#).

HMRC has also updated its on-line guidance, including all the end of year guides: [PAYE for employers: end-of-year tasks](#). The key guides relating to end of year will also be published on the Employer CD-ROM which is due to be issued in February 2010.

[Source: *HMRC What's New* – 12 November 2009]