

## CLAS CIRCULAR 2011/17 (23 November 2011)

### Disclaimer

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## CHARITIES & CHARITY LAW

### Charities Act 2006: The Hodgson Review

For information: **but you may wish to respond when evidence is invited.**

The Cabinet Office has announced that Lord (Robin) Hodgson of Astley Abbots, a Conservative Peer and President of the NCVO who recently led a 'Red Tape Task Force' considering barriers affecting charities, voluntary organisations and social enterprises, will lead the five-year review of the law relating to charities in England and Wales pursuant to Section 73 of the [Charities Act 2006](#). He will be supported by officials from the Office for Civil Society and a charity lawyer and will report to Parliament by summer 2012. A call for evidence from charities is expected "in due course".

The [terms of reference](#) of the review are as follows:

#### ***Aims of the Review***

- To report on the operation and effectiveness of the provisions of the 2006 Act.
- To consider whether further changes could be made to improve the legal and regulatory framework for charities.

#### ***Structure and outline timetable***

The review:

- will be able to interview representatives of the charity sector and other interested bodies and will gather evidence and seek views from relevant stakeholders;
- will be independent and the findings and recommendations of the review will represent the views of the reviewer; and
- will aim to report to the Minister for the Cabinet Office before summer recess 2012.

On completion, the review is to be compiled into a report, including recommendations, to be presented to the Minister for the Cabinet Office, for the Minister to lay in Parliament.

#### ***Scope***

The review aims to understand how the 2006 Act is operating in practice, how effective it is and whether the legal framework for charities in England and Wales is fit for purpose now and in the future. In doing so the review will need to take into account the significant political, economic, social and technological changes in the sector's wider operating environment since the 2006 Act was passed.

Therefore (say the terms of reference) the review should take a broad approach and should seek to address these three issues:

- what is a charity and what are the roles of charities?
- what do charities need to have/be able to do in order to be able to deliver those roles?
- what should the legal framework for charities look like in order to meet those needs (as far as possible)?

(Note, however, that the formal recommendations should relate only to the third of these.)

In answering these questions, the review should also relate the following core principles:

- the need to maintain public trust and confidence in charities;
- the need to maintain the independence and diversity of the sector; the need to ensure the sustainability and resilience of the sector; and
- the need to facilitate innovation and growth in the sector.

The breadth of these questions and principles will give the review scope to address a wide variety of issues. However, within this broad framework, s73 of the 2006 Act requires that the impact of the 2006 Act on the following matters must be considered in the review:

- public confidence in charities;
- the level of charitable donations;
- the willingness of individuals to volunteer;
- charities that were “excepted” (which includes the vast majority of church charities) but have had to register as a result of the Act; and
- the status of the Charity Commission as a non-Ministerial Department.

That is probably enough information for the purposes of this Circular. No doubt individual members will wish to give evidence to the Review and it would be helpful if CLAS could be sent copies of any submissions.

[Source: *CLAS Summary* - 17 November 2011]

**Governance for smaller charities**

<b>For information.</b>
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The Governance Code Steering Group has produced a [Good Governance Code for Smaller Organisations](#). The Steering Group comprises the Associations of Chief Executives of Voluntary Organisations (ACEVO), the Institute of Chartered Secretaries and Administrators, the National Council of Voluntary Organisations (NCVO) and the Small Charities Coalition. It is supported by the Charity Commission, so one can assume that the Code is published with the acquiescence of the Commission if not with its positive endorsement.

Given that the Charity Commission itself is reducing the amount of advice that it is prepared to give to individual charities, the new Code (and the fuller version for charities generally that was last updated in 2010: [Good Governance: A Code for the Voluntary and Community Sector](#)) are likely to become increasingly important sources of guidance for charity trustees.

[Source: *Governance Code Steering Group Website* - 10 November 2011]

## EMPLOYMENT

### Pensions Act 2011

**For information – but if you do not have a pension-scheme you will be affected by this at some point in the future.**

The [Pensions Act 2011](#) received Royal Assent on 3 November. The Act brings forward the **increase in State Pension age** to 66 by 2020 and brings women's State Pension age to 65, in line with men's, by 2018. The main points of interest to employers are as follows:

Starting from October 2012 employers will begin the **automatic enrolment of eligible workers** into a qualifying pension scheme and contribute to that pension. People who are automatically enrolled will also contribute to the scheme and get tax relief.

**Automatic enrolment** will be introduced gradually from **1 October 2012** starting with employers with 120,000 individuals in their PAYE scheme. Those with fewer than 50 individuals in their PAYE scheme will not have to begin enrolling their workers until **1 April 2014** at the earliest. All employers must enrol their staff by **1 September 2016**. Employers with fewer than 10 staff are not required to enrol automatically before **1 April 2014**. Full details on staging dates for employers are [here](#). The Explanatory Notes to the Act are available [here](#).

The DWP emphasises the following as being helpful to employers:

- an optional waiting period allowing the automatic enrolment date to be deferred for up to three months to help those employing short-term and seasonal staff;
- a simplified process for employers to certify that their schemes meet requirements;
- greater flexibility to choose an automatic re-enrolment date three months either side of the three yearly re-enrolment date; and
- a new higher earnings threshold for automatic enrolment set initially at £7, 475, to be reviewed annually.

**Pension contributions** will be phased in from **October 2012 to September 2016** as follows:

- from **October 2012** these will be 1% from the employer and 1% from the worker (2%).
- from **October 2016 to September 2017** they will increase to 2% from the employer, 2% from the worker and 1% tax relief (5%).
- from **October 2017** the full minimum contribution of 8% must be paid: 3% from the employer, 4% from the worker and 1% tax relief.

The National Employment Savings Trust (NEST) will provide a simple, low-cost scheme for all employers who have little or no experience of pensions, and will be particularly suitable for small organisations.

***The Act contains no special provisions relating to charities or voluntary organisations – which means that all employers are bound by it.*** It is obviously not going to cause any problems for the vast majority of members who already have long-established pension schemes. However, some very small institutions with very few employees may find themselves having to grapple with the issue of pensions for the first time.

[Source: *DWP Press Release* – 3 November 2011]

## IMMIGRATION

### Sponsorship of partner or dependent

**For information.**

As part of the Government's review of the family migration routes the Migration Advisory Committee was asked to consider what the minimum income threshold should be for a British resident sponsoring a spouse, partner or dependent for settlement in the UK under the family route. It has recommended to the Government that a minimum salary of between £18,600 and £25,700 before tax should be introduced for UK residents sponsoring a partner or dependent for citizenship.

Presently the threshold is an annual income of £5,500 after tax, excluding housing costs: equivalent to £13,700 before tax and including housing costs. The MAC estimates that a salary threshold of £18,600 would reduce settlement through the family route by 45 per cent, while a minimum of £25,700 would reduce it by 63 per cent.

[Source: *UKBA Press Release* - 16 November 2011]

## ODDS & ENDS

### Cheques: update

**For information.**

Members may be interested to know that the Commons Treasury Committee has published the [responses](#) of the Payments Council and HM Treasury to its report, *The Future of Cheques*, and has made additional recommendations which:

- demand further information about Payments Council research on the cheque guarantee card and the Council's consequent decision-making process;
- make the case for reintroducing either the cheque guarantee card scheme or an alternative mechanism to ensure cheque acceptors have confidence when accepting cheques; and
- call for bringing the Payments Council within the scope of financial regulation "to ensure there is never again a repetition of the cheques debacle".

On the second of these the Committee argues that "Without such a scheme there is a risk that more and more shops and other bodies will refuse to accept cheques; the cheque would wither on the vine. An increasing number of shops and other organisations are refusing to accept cheques as a result of the abolition of the guarantee card" and suggests that the Government may wish to consider it should intervene over the guarantee card.

It is customary for responses to Select Committee recommendations to be made within two months.

[Source: *Commons Treasury Committee Press Release* – 16 November 2011]

### Music & copyright licensing: REMINDER

**For information: very important if you use music in any form.**

**If you have not already done so, you should check whether or not you need to update your existing licence to use music.**

As mentioned in Circular 2011/15, there are exceptions to the copyright licensing regime for divine worship, for purely private functions, for weddings and funerals (which are deemed to be domestic occasions rather than public ones) and for church home groups. Even so, if a wedding or funeral is being audio or video recorded while a sound recordings is played, those making the recording require a Limited Manufacture Licence, available from [www.PRSforMusic.com/lm](http://www.PRSforMusic.com/lm). Live concerts do not require a PPL Church Licence if only live

*music is played* – but if copyright music is played live they will require a PRS for Music Church Licence.

***The period of grace for making adjustments to your licence comes to an end on 1 January 2012.*** Those churches that already have a PRS for Music Church Licence will be contacted by Christian Copyright Licensing International (CCLI) about the new situation.

Any congregation that is using music outside service-times and does *not* have a licence from CCLI needs to think very hard as to whether or not it might be in breach of the Copyright, Designs & Patents Act 1988 and the associated regulations.

Further information is available on [CCLI's website](#).

[Source: CLAS summary - 22 November 2011]

### **Wills and trusts**

**For information.**

The Society of Trust and Estate Practitioners has published the second edition of its Standard Provisions for wills and trusts in two versions: [STEP Standard Provisions \(England and Wales\)](#) by James Kessler QC with guidance notes by Toby Harris, and [Standard Provisions of the Society of Trust and Estate Practitioners \(Northern Ireland version\)](#).

[Source: STEP Website - 3 November 2011]

## TAXATION

### VAT: buildings and construction

For information: **property departments please note.**

HMRC has issued a revised and updated version of [Notice 708: Buildings & Construction](#). The latest version cancels and replaces the previous version dated February 2008 and numerous HM Revenue & Customs Briefs. The main changes in content are:

- a change in the treatment of 'serviced' building plots;
- clarification on the treatment of 'extra care' units;
- clarification on the treatment of deposits;
- **the removal of a concession affecting charity buildings;** and
- an amendment to the 'change in use' provisions.

The fourth of these refers to Extra Statutory Concession 3.29 (the '90 per cent' concession) to disregard minor non-qualifying use in buildings intended for use solely for a relevant charitable purpose – which was withdrawn on 1 July 2010.

[Source: *HMRC What's New* - 17 November 2011]