

CLAS CIRCULAR 2011/09 (3 JUNE 2011)

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EMPLOYMENT

Age discrimination

For information.

The Chartered Institute of Personnel and Development and the TUC have produced, jointly, an updated version of their helpful guide to age-related employment issues, [Managing Age](#), rewritten to take account of the abolition of the Default Retirement Age.

[Source: *Sandy Adirondack Legal Updates* – 1 June 2011]

Health and Safety Review: update

For information.

The finalised terms of reference for the Löfstedt Review into health and safety legislation were published on 20 May and a [call for evidence](#) has been issued. Terms of reference are at Annex B of the call for evidence and the deadline for submissions is **29 July 2011**.

The review will consider the opportunity for combining, simplifying or reducing the approximately 200 statutory instruments that are owned by the Health and Safety Executive, by learning lessons from health and safety regimes in other countries, and considering the extent to which regulations:

- have impacted on positive health and safety outcomes and businesses;
- have led to unreasonable outcomes or inappropriate litigation and compensation; and
- have unnecessarily enhanced the requirements of an EU directive.

[Source: *DWP Press Release* – 20 May 2011]

Parental leave – again

For information.

The Government has launched a consultation on [plans to introduce a new system of flexible parental leave from 2015](#). Under the proposals, once the early weeks of maternity and paternity leave have ended, parents will be able to share the overall leave allowance between them. Unlike the current system this leave could be taken in a number of different blocks and both parents could take leave at the same time.

The proposals are as follows:

Flexible Parental Leave

- 18 weeks maternity leave and pay in one continuous block around birth.
- Four weeks of parental leave and pay exclusive to each parent to be taken in the first year.
- 30 weeks of additional parental leave available to either parent - of which 17 weeks would be paid and can be broken in blocks between parents.

Flexible Working

- Extending the right to request for all workers who have been with their employer for 26 weeks.
- The Government will consider publishing a statutory Code of Practice for businesses. It will propose that employers should be allowed to take into account employees individual circumstances when considering conflicting requests.
- There are no plans to alter the current 8 business reasons for a business to turn down a request.
- The Government recognises that legislation is not the only answer to promoting flexible working practices. Non-legislative measures are being developed to promote flexible working opportunities both for those with a job and for those looking for one.

Equal Pay

- Employment Tribunals that have found an employer to have discriminated on gender in relation to pay will order the employer to conduct a pay audit and publish the results (except in some circumstances, such as where an audit has already been conducted).

Needless to say, the proposals have not been met with unmodified rapture. The Federation of Small Businesses [expressed considerable concern](#) about the move, pointing out that parental leave is already extremely complicated for small businesses to administer.

[Source: *BIS News* – 16 May 2011]

Review of employment law

For information.

The Government has announced the new areas to be examined as part of its review of employment law. The Government will look in detail at the case for reforming:

- **Compensation for discrimination.** Compensation levels for cases of discrimination are unlimited; and employers have expressed concern about the high levels of

compensation sometimes awarded by Employment Tribunals in such cases and the lack of certainty about the level of award they may be required to pay. Employers also worry that high awards may encourage people to take weak, speculative or vexatious cases in the hope of a large payout – which can lead to employers settling such cases before they reach a Tribunal.

- **Collective redundancy rules.** The current requirement is that consultation over collective redundancy runs for a minimum period of 90 days; and employers fear that this is hindering their ability to restructure efficiently and retain a flexible workforce.
- **TUPE.** The Transfer of Undertakings (Protection of Employment) Regulations implement an EU Directive and protect employees' terms and conditions of employment when a business is transferred from one owner to another. There is concern that the existing TUPE Regulations go further than the requirements of the Directive.

The operation of the TUPE Regulations, especially, will be of particular interest to members that have subsidiaries that take on existing service provisions from another employer.

[Source: *BIS News* – 11 May 2011]

FAITH & SOCIETY

ACEVO Commission on the Big Society

For information.

The independent cross-party Commission on the Big Society, established by ACEVO and chaired by Lord Rennard, has published its report on the Big Society: [Powerful people, responsible society](#). The Commission's headline message that the Government must "fill in the blanks" on the Big Society and that the Prime Minister must "take the reins". The Commission embraces the Big Society as an agenda that "should transcend party politics" but is critical of the Government for failing to explain it properly. Research conducted by the Commission found that only 13 per cent of the public believed that the Government had a clear plan for taking the Big Society forward.

[Source: *ACEVO Press Release* – 16 May 2011]

Gambling

For information.

The House of Commons Culture, Media and Sport Committee has launched an [inquiry into gambling](#), looking in particular at the implementation and operation of the Gambling Act 2005. The Committee is inviting written submissions on matters relevant to the inquiry. A copy of the submission should be sent by e-mail to cmsev@parliament.uk and should have 'Gambling' in the subject line. Submissions should be received by **Thursday 30 June 2011**.

[Source: *Culture, Media and Sport Committee Press Release* – 17 May 2011]

FUNDING

Giving White Paper

For information.

The Government has published its long-awaited [Giving White Paper](#). At the same time, it was announced that, following a suggestion in the [Giving Green Paper](#), the clearing banks have unanimously agreed to enable giving through all their cash machines in 2012 (though the detail in the White Paper says that this will be by a separate menu item – and whether or not to offer the option on a particular cash machine “will be a decision for the individual operator”).

New commitments include:

- a £10million Social Action Fund to support the most promising ideas for growing giving in priority areas in England and increasing levels of engagement over the next two years;
- challenge prizes of up to £100,000 for the best solutions to volunteer challenges;
- a £30 million fund to improve the effectiveness of infrastructure organisations that support front line organisations;
- £1 million to support [Youthnet](#) (which runs the volunteering website www.do-it.org.uk);
- £700,000 to support [Philanthropy UK](#) to connect wealthy people with charities that need their support;
- £400,000 support from Government and [NESTA](#) to trial ‘[Spice](#)’ in England – a scheme that gives volunteers rewards such as vouchers or discounts with local businesses when they do good things for the community;
- a new honours committee to ensure that people are recognised and celebrated for exceptional and sustained philanthropy;
- trial charity promotions on the public service website [Directgov](#);
- opening up government buildings to charities and voluntary groups; and
- holding a Giving Summit in the autumn to bring together charities, philanthropists, businesses, technologists and financiers.

In addition, all Ministers have agreed to undertake a one-day volunteering challenge.

Chapter 4, *What happens now?*, emphasises that the paper "marks the beginning of a process of engagement on giving, not the end of one" and that the government wants to continue to hear ideas for increasing the giving of time and money. More details about the Giving Summit will be shared "over the coming months", as the Government is "keen to engage with people to develop the agenda for the summit, and to secure widespread participation in the event this autumn".

As well as the wide participation in the event, discussions will take place about particular proposals, including:

- consultations on tax reliefs for gifts of pre-eminent works of art to the nation and input on the detail of our inheritance tax proposals;
- the investigation into the barriers to offering payroll giving in SMEs, through the Every Business Commits forum; and
- the use of the Government web-estate to support giving.

The Cabinet Office would also like to hear from charities and community groups that would like to access HM Government buildings.

In a speech in Milton Keynes on the Big Society timed to coincide with the launch, David Cameron announced a major new campaign to promote payroll giving, pointing out that around a third of American give through payroll giving, in contrast to only around three per cent in the UK.

Comment: Perhaps inevitably, the White Paper has a few tantalising omissions. It makes passing reference to "supporting programmes to encourage giving among people at different life-stages. For example, in schools and universities, the workplace and among the newly retired" – then does not mention the newly-retired again. In some areas it is aspirational rather than detailed. "We think there is significant potential for the better-off to give more", says the document – but apart from a suggestion that private banks should provide "access to high-quality philanthropy advice" to more of their clients there is little by way of positive prescription. Perhaps this is inevitable: cultural change takes a long time and, as the White Paper acknowledges, "... social action is not something we can or should compel people to do. Instead it has to be built from the bottom up through grassroots organisations and with opportunities to give which appeal to people's motivations and interests".

[Source: *Cabinet Office News* – 23 May 2011]

ODDS & ENDS

Data protection: cookies update

For information.

The Privacy and Electronic Communications Regulations came into force on 26 May, make clear that UK businesses and organisations running websites in the UK need to get consent from visitors to their websites in order to store cookies on users' computers.

On 11 May the Information Commissioner's Office published a new statutory [Code of Practice](#) on the sharing of personal information. The Code covers both routine and one-off instances of data sharing and gives advice on when and how personal information can be shared as well as how to keep it secure. Along with the full Code, the ICO has also published a (very helpful) [summary checklist](#) that can be used as a quick reference guide to sharing information.

On 25 May the Information Commissioner, Christopher Graham, announced that organisations and businesses that run websites aimed at UK consumers will have up to 12 months grace before enforcement of the new EU cookies law begins. The ICO has published [guidance on its approach to enforcing the new rules](#) – as well as guidance on other new powers coming into force as part of the revised Regulations. It includes:

- guidance on how the ICO will enforce the new rules on cookies;
- information for consumers on what the new rules will mean for them and how to complain to the ICO; and
- information on what the ICO itself is doing to comply with the new rules in respect of its own website.

[Source: *ICO News* – 11 & 15 May 2011]

Safeguarding: Munro Review

For information.

The Government has published Professor Eileen Munro's final report: [*The Munro Review of Child Protection: Final Report: A child-centred system*](#). She concludes that a one-size-fits-all approach to child protection is preventing local areas from focusing on the child. Her principal recommendations are as follows.

- The Government should remove the specific statutory requirement on local authorities for completing assessments within often artificial set timescales, so that professionals can give equal weight to helping children, young people, and families, as well as assessing their problems.
- Local services that work with children and families should be freed from unhelpful government targets, national IT systems and nationally prescribed ways of working. They should be free to re-design services that are informed by research and feedback from children and families, and that pay more attention to the impact on children's safety and welfare.
- A change of approach to Serious Case Reviews (SCRs), learning from the approach taken in sectors such as aviation and healthcare. There should be a stronger focus on understanding the underlying issues that made professionals behave the way they did and what prevented them from being able properly to help and protect children. The current system is too focused on what happened, not why.
- The introduction of a duty on all local services to coordinate an early offer of help to families who do not meet the criteria for social care services, to address problems before they escalate to child protection issues.
- Ofsted inspections of children's services should add more weight to feedback from children and families, directly observe social workers' interaction with children and families, as they do when inspecting schools, and pay more attention to whether children have benefited from the help given.
- Experienced social workers should be kept on the frontline even when they become managers so that their experience and skills are not lost. The expertise and status of the social work profession should be improved with continual professional development that focuses on the skills that are needed in child protection.
- Each local authority should designate a Principal Child and Family Social Worker to report the views and experiences of the front line to all levels of management. At national level, a Chief Social Worker would be established to advise the Government on social work practice.

[Source: *DfE Press Notice* – 10 May 2011]

Safeguarding: vulnerable adults

For information.

The Government has published its [Policy on Adult Safeguarding](#). It includes a statement of principles for use by local authority social services and housing, health, the police and other agencies for both developing and assessing the effectiveness of their local safeguarding arrangements. The policy is based on the following principles:

- Empowerment – the presumption of person-led decisions and informed consent.
- Protection - support and representation for those in greatest need.
- Prevention - it is better to take action before harm occurs.
- Proportionality – the proportionate and least intrusive response appropriate to the risk presented.
- Partnership - local solutions through services working with their communities.
- Accountability - accountability and transparency in delivering safeguarding.

[Source: *Department of Health Publications* - 16 May 2011]

PROPERTY & PLANNING

Community Infrastructure Levy: update

For information.

DCLG has published information for charging and collecting authorities about giving relief for charities, social housing and in exceptional circumstances. The publication, [Community Infrastructure Levy Relief: information document](#), sets out the rules and provides worked examples. In particular, the section on charitable relief (pages 6-15) covers the following aspects:

- Overview of charitable relief – including: common requirements for charitable relief (which contains a worked example) and specific requirements;
- Detail on eligibility requirements, including mandatory charitable exemptions, discretionary charitable investment relief and discretionary charitable relief under Regulation 45;
- Operation of a discretionary relief policy (which contains a worked example in London);
- Charitable relief procedure;
- Withdrawal and clawback of charitable relief;
- Charitable relief appeals;
- State aid; and
- Default of liability.

[Source: *DCLG Publications* - 12 May 2011]

Planning and the environment update

For information.

The proposal to demolish a building, at least in certain circumstances, may require an Environmental Impact Assessment in line with Council Directive (EC) 85/337 on Environmental Impact Assessment. The Court of Appeal has held that demolition works are capable of being a 'scheme' for the purposes of art 1.2 of the Directive and allowed a judicial review application against the proposed demolition of the former Mitchell's Brewery site in Lancaster.

In *Save Britain's Heritage, R (on the application of) v Secretary of State for Communities and Local Government* [\[2011\] EWCA Civ 334 \(25 March 2011\)](#) the Court granted declarations that:

- (i) Demolition of buildings is capable of constituting a project falling within Annex II of the Directive; and
- (ii) Paragraph 2(1)(a)-(d) of the Town and Country Planning (Demolition – Description of Buildings) Direction 1995 is unlawful and should not be given effect. (paras 3 & 27).

Applications for permission to appeal to the Supreme Court and for a stay of the declarations and quashing order were refused.

The Secretary of State had considered that demolition fell outside the EIA Directive and, delivering the judgment of the Court, Sullivan LJ declared at para 24 that

[i]t is a curious, and thoroughly unsatisfactory, feature of the [1995] Direction that those demolitions which are most likely to have an effect on the cultural heritage – the demolition of listed buildings, ancient monuments and buildings in a conservation area – are effectively excluded from the ambit of the Directive.

The Court of Appeal's ruling has certainly widened the potential requirement for EIAs. One commentator has gone so far as to suggest that this controversial ruling is likely to send "shockwaves" throughout the planning world.

The Chief Planner of the Welsh Assembly Government, Rosemary Thomas, subsequently wrote to all Chief Planning Officers in Wales to clarify the implications of the judgment in *Save Britain's Heritage*. In short, her view is that the demolition of a listed building, a building in a conservation area, a building which is a scheduled monument, or a building that is not a dwelling house or adjoining a dwelling house is now 'development'. This brings the demolition of such structures into line with the treatment of residential buildings generally. Permitted development rights apply to such development under part 31 of schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. An application to the local planning authority may be needed for a determination as to whether the prior approval of the authority will be required for the method of demolition and any proposed restoration of the site.

That view presumably applies to demolition in England as well. Ms Thomas understands that DCLG is "unlikely" to make a further attempt to appeal.

[Sources: *BAILII Judgment* – 25 March 2011; *WAG News* – 10 May 2011]

TAX

Employer guides, tax toolkits and suchlike

Possibly for action: you may need to update your files

There has been a minor flurry of updates from HM Revenue & Customs, largely as a result of the Budget:

- an amended version of [CWG2\(2011\) Employer Further Guide to PAYE and NICs](#) to include the revised Approved Mileage Allowance Payments following the Budget statement on 23 March 2011 and to incorporate a number of additional changes;
- updated Basic PAYE Tools: the latest version is 3.1.0.15205 and further information is available at [Important updates and changes to Basic PAYE Tools](#);
- the [National Insurance Contributions and Statutory Payments Toolkit](#);
- the [Property Rental Toolkit](#) for Self-Assessment (which may be of interest to clergy currently renting out their ultimate retirement homes); and
- the [Capital v Revenue Expenditure Toolkit](#).

[Source: *HMRC What's New* – 12, 20 & 26 May 2011]

Revised guidance on charity audits by HMRC Charities

HMRC has published a revised [Chapter 7 of its guidance notes](#) relating to charity audits (ie, what to expect if you are unlucky enough to have your Gift Aid claims investigated) as follows:

“7.1 Introduction

7.1.1 HMRC selects a number of charities and CASCs for audit to ensure that the Gift Aid scheme is being used properly and that any repayment claims made are accurate. If your repayment claim is selected for a review, it does not necessarily mean that HMRC believes the claim is wrong or that there is suspicion about anything to do with the claim or your charity or CASC.

HMRC wants to help you to get things right and will help your charity or CASC to make further repayment claims if it is found that less tax has been claimed than was due

7.1.2 HMRC auditors are not evaluated on the level of adjustments made or rewarded for the amount of tax they recover.

7.1.3 Charity trustees are ultimately responsible for ensuring that all claims are correct so they have an obligation to ensure that appropriate systems are in place to achieve that

result. It is also important that they are aware of any review being undertaken by HMRC, and if it isn't necessary for them to deal with the auditor directly they, should nominate a suitable charity official to do so in writing.

7.1.4 Chapter 3 of the Detailed Guidance Notes for Charities explains the requirements of the Gift Aid scheme and the records you should keep and how long you need to keep them.

7.2 Why has my charity been chosen for audit?

7.2.1 Claims for audit are generally selected for review on a 'risk' basis which takes into account a wide range of factors. HMRC also select a number of claims for review on a random basis.

7.2.2 If your charity's repayment claim is selected for a review, it does not necessarily mean that HMRC believe the claim is wrong or that they are suspicious about anything to do with the claim or your charity.”

[Source: *HMRC What's New* – 31 May 2011]