

CLAS CIRCULAR

2017/11 (19 April 2017)

Disclaimer

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GENERAL ELECTION 2017	2
Guidance on campaigning during elections	2
CHARITIES & CHARITY LAW	4
Charitable giving in 2016/17	4
New guidance on matters of material significance	5
EMPLOYMENT	6
HMRC employer webinars for the new tax year	6
ODDS & ENDS	7
Data protection and derogations from the GDPR	7

GENERAL ELECTION 2017

Guidance on campaigning during elections

For information

The Prime Minister has announced that there will be a General Election on 8 June: Parliament will be dissolved on Wednesday 3 May. The House of Commons Library has published a useful [guide on the implications of the election for Parliament](#).

Campaigning by charities during elections and referendums is governed by the Political Parties, Elections and Referendums Act 2000 and the Charity Commission has published [guidance](#) on Charities, Elections and Referendums.

The principal issue for churches is holding hustings that satisfy the terms of the 2000 Act: we covered the issue in previous Circulars, most recently in Circular 2014/17, revised 9 October 2014, as follows:

Hustings

Local regulated selective hustings: In principle, a church that is holding a regulated hustings should invite every political party or independent candidate. In practice, a church can decide not to invite particular candidates, but if it does, it must have a clear objective reason which it is prepared to make public and, if necessary, defend. Possible reasons are as follows:

- that the individuals not invited are likely to obtain very few votes;
- that those invited are the candidates most likely to win in the constituency;
- that there are a very large number of candidates and it is impracticable to invite all of them;
- that a particular candidate or candidates present a public order risk.

Mere disagreement with the political views of one or other of the parties or candidates (however repulsive) is not a sufficient reason not to invite them to the hustings.

Moreover, if you do not invite every political party or independent candidate and you cannot demonstrate what the Electoral Commission judges to be “an objective reason for not doing so”, your event may count as a donation to towards those parties or candidates who were invited. If the cost is above £50 it would then need to be recorded by the invited candidates

as a political donation – and you would then have fallen foul of charity law because it is axiomatic that charities may not make political donations.

In short: before arranging a hustings, think very carefully about whom you are inviting and why.

Selective hustings

It is also possible lawfully to hold a selective hustings outside the regulation, even though the candidates invited are chosen for reasons which are not objective as described by the Electoral Commission. That is, provided that the cost of such a meeting was less than £50. However, although such a meeting would fall outside of the PPERA regulation, it would not be lawful where under Charity Commission guidance the party advocates policies in contravention of the charity's objects. Regarding the cost of a hustings for the purpose of assessing whether it is regulated and whether it gives rise to a donation, you therefore need to take into account:

- the cost of the venue (the church itself would not, presumably, be hired to outside organisations – but do you make a letting charge for the church hall?);
- costs of any advertising or flyers;
- staff costs (if any); and
- refreshment costs (if any).

Generally

We concluded Circular 2014/17 with the statement that the Electoral Commission seemed to unlikely to take a tough approach about breaches that were a genuine oversight. However, today, the Electoral Commission announced that it had fined Friends of the Earth and Greenpeace for breaking campaigning rules during the 2015 General Election: Greenpeace was fined £30,000 for failing to register and Friends of the Earth was fined £1,000 after it was late registering.

As we said in 2014, it is clear that ignorance of the law is no excuse; and CLAS members need to read the guidance carefully and proceed with caution.

[CLAS summary – 19 April]

CHARITIES & CHARITY LAW

Charitable giving in 2016/17

For information

The Charities Aid Foundation (CAF) has [published](#) its UK Giving Report for 2017, which looks back at the general trends of charitable giving – in terms of both time and money – in the UK in 2016.

Among other things, the report highlights some interesting developments for Gift Aid: that of those who donated money to charity, over half (52%) said they used Gift Aid on their donation, a higher level than 2015 (47%). Equally, those aged 25-44 were the most likely age group to have done so (60%). This is likely due to their levels of employment and taxable income, which makes them eligible for Gift Aid.

Key findings

- Donating money remains the main way in which people engage with charity, 61% having done so in the last year
- A total amount of £9.7 billion was donated by in 2016 – on a par with 2015
- Medical research is the cause people are most likely to have donated to (26%)
- Younger people are less likely to donate money than older people but are more likely to volunteer, sign a petition and take part in a public demonstration or protest
- Students are the group most likely to have volunteered in the last year (23%)
- 2016 saw a significant increase in numbers of people saying they had taken part in a protest or signed a petition. Numbers who had signed a petition in the past four weeks peaked at 35% in July, following the EU referendum
- 50% of Brits thought charities were trustworthy in 2016 – with women and young people most likely to trust them
- Analysis in the short term shows that the result of the EU referendum has had no impact on charitable donations so far, but appears to have led to an increase in some forms of civic engagement

HMRC has also published [helpsheet HS342](#), which sets out details of the four tax reliefs available for giving to charity in 2017, namely Gift Aid, gifts of shares or securities, gifts of real

property and Payroll Giving. Churches and charities may wish to remind potential donors of the benefits that exist for making charitable donations.

The helpsheet also directs users to a step-by-step guide on [Tax relief when you donate to a charity](#) as well as linking to the relevant online forms, phone numbers and addresses for advice on Self-Assessment.

[Source: HMRC – 11 April]

New guidance on matters of material significance

For information

The [Charity Commission](#), the [OSCR](#) and the [CCNI](#) have published joint guidance on matters of material significance, setting out a revised list of what auditors and independent examiners must report to the charity regulators.

The new guidance adds 2 new areas for reporting:

- If an auditor has concerns regarding a charity's accounts and issues a modified audit opinion report or qualified independent examiner's report
- Where an auditor has concerns that conflicts of interests or related party transactions have not been properly managed or declared

In all 3 jurisdictions, auditors and examiners have a legal duty to report matters of material significance to the regulator. The revision of the list reflects the fact that a number of years have passed since it was originally developed and that the CCNI is now also in operation.

[Source: Charity Commission, OSCR, CCNI – 12 April]

EMPLOYMENT

HMRC employer webinars for the new tax year

For information

HMRC is continuing to run webinars on issues for employers to be aware of, primarily in relation to payroll requirements and information for the new tax year. These may well be of use to members and are all free of charge.

Getting started as an employer – Tuesday 25 April, 11am-12pm: A webinar covering registering as an employer, taking on your first employee, running payroll and paying HMRC, this webinar covers all you need to know. [Book now](#)

Employers – what's new for 2017? – Tuesday 25 April, 1pm-2pm: Find out about the changes to Income Tax, National Insurance, Statutory Payments and the National Living and National Minimum Wage. [Book now](#)

How to avoid in-year penalties – Wednesday 26 April, 11am-11:45am: This webinar covers when and how penalties are charged and what to do if you get a penalty or disagree with one. [Book now](#)

[Source: HMRC – 19 April]

ODDS & ENDS

Data protection and derogations from the GDPR

For information or possibly for action

We have mentioned the issue of data protection – and, in particular, the EU General Data Protection Regulation, which will automatically will become part of UK law from 25 May 2018 – in several recent Circulars.

Member States are permitted to seek derogations from the GDPR; and on 12 April, the Department for Culture, Media and Sport announced a [Call for views on the General Data Protection Regulation derogations](#). Included in possible derogations is “Theme 14 - Rules surrounding Churches and Religious Associations”. The brief explanation says that “The derogations related to Rules surrounding Churches and Religious associations include Article 91- Existing data protection rules of churches and religious associations.”

Article 91 GDPR (Existing data protection rules of churches and religious associations) reads as follows:

“1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation.

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.”

What we do not know is which CLAS members have rules that are sufficiently comprehensive as to comply with a request for a derogation. Some certainly do; but we suspect that the rules of individual member Churches may reflect the basis on which they are organised – some will have overall, national guidance while, in others, guidance will be at the diocesan/synodical level.

We confess to being very unsure as to how to respond to the consultation and we would very much welcome any information that members can offer on their individual data protection policies. Any members wishing to respond should do so using the [online form](#) before 12 May 2017.

Background

As a reminder for members, the 1995 [EU Data Protection Directive \(95/46/EC\)](#) established a harmonised framework for the processing of personal data and for the free movement of such data within the EU. The UK implemented the Directive through the [Data Protection Act 1998](#) (DPA), which is the main piece of legislation that governs the protection of personal data in the UK today.

The rapid growth of the digital economy over the last decade has resulted in an enormous increase in the volume of exchanges of personal data. Delivery of services and content on the internet is often linked to the collection of information about users and their habits and preferences. These developments have raised issues around the need to strengthen the rights of individuals and protection of personal data online.

In 2012, the European Commission published proposals for the reform of data protection legislation. In April 2016, the [GDPR](#), which repeals and updates the Data Protection Directive, was formally agreed. It is directly applicable legislation and hence automatically will become part of UK law from 25 May 2018.

From that date, all businesses and public bodies will have to comply with the GDPR and its new and different requirements. UK citizens will benefit from new or stronger rights:

- to be informed about how their data is used
- around data portability across service providers
- to erase or delete their personal information
- over access to the personal data an organisation holds about them
- to correct inaccurate or incomplete information, and
- over automated decisions and profiling

Charities must be aware of all of their requirements and should prepare for the GDPR prior to its launch. This may mean, for example, putting new procedures in place to deal with the GDPR's new transparency and individuals' rights provisions. The ICO has published a helpful briefing on [12 steps to take now](#) in order to prepare for the GDPR coming into force.

[Source: CLAS Summary – 12 April]