

CLAS CIRCULAR

2018/12 (18 May 2018)

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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.

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CHARITIES & CHARITY LAW

Charity Commission: automatic disqualification rules

For information

The Charity Commission has updated its [guidance](#) on the operation of the automatic disqualification rules. From **1 August 2018** changes to the rules will mean that there will be more restrictions on who can run a charity. The Commission's guidance explains:

- what the current disqualification rules are and what they mean in practice;
- what the changes are;
- what steps charities should take to prepare for the changes; and
- about waivers.

The guidance will be updated when the new disqualification rules become law.

The Commission has also produced separate [guidance for individuals](#) about automatic disqualification and how to apply for a waiver.

[Source: Charity Commission – 15 May]

Fundraising Regulator publishes guidance on dealing with complaints

For information **and possibly for action**

The Fundraising Regulator has published [guidance](#) for charities and third party fundraising organisations on how to deal with complaints made to the Regulator about the charity. This comes after changes were made to the [Code of Fundraising Practice](#), following a consultation earlier this year.

The guidance is intended for fundraising charities and third-party agencies and has been issued to help organisations deal with complaints about fundraising appropriately, defining what a complaint is and outlining what is expected of organisations when handling them. The guidance also requires that charities make their complaints procedures publicly available.

[Source: Fundraising Regulator – 9 May]

New trustee welcome pack

For information and possibly for action

The Charity Commission has [published](#) a 'welcome pack', designed to offer new charity trustees guidance on the key duties of the role. The pack can also be used by existing trustees to refresh knowledge and skills.

The pack provides essential information to help trustees understand governance basics, financial filing requirements and how the Commission can offer support. It also suggests practical steps that can be taken to carry out trustee duties effectively. The pack will be emailed to all new trustees who register their email address with the Commission.

While the Commission has already tested the welcome pack with stakeholders across the charity sector, it is still welcoming [feedback](#). It will be interesting to see if the Commission sends its pack to new trustees of excepted and exempted charities: we assume it will not.

[Source: Charity Commission – 30 April]

EUROPE

Revised Directive on energy efficiency of buildings

For information

The European Council has adopted a [revised Directive](#) on the energy efficiency of buildings in the EU. This updated legislation requires Member States to develop national long-term strategies to support cost-saving renovation of public and private buildings, with a view to reducing emissions in the EU by 80-85 per cent compared to 1990 levels.

Proposals aim primarily to increase the energy performance of both new and existing buildings, support the deployment of electric charging infrastructure and encourage the implementation of national renovation strategies. In practice, this will mean that new buildings, and those undergoing major renovations, will need to include at least one recharging point for electric vehicles in buildings with more than ten parking spaces. It will also require the installation of cabling infrastructure for recharging electric vehicles.

The legislation also introduces a “smart readiness indicator” - a new tool to measure the ability of buildings to improve their operation and interaction with the grid, adapting energy consumption to the real needs of the occupant. On top of this, in both new and existing buildings where heat generators are replaced they must include automated devices to regulate temperature levels, while rules on inspection of heating and air conditioning systems and building automation have been tightened up.

[Source: European Council – 14 May]

FAITH & SOCIETY

Civil partnerships

For information

Civil partnerships have been in the news this week. The Supreme Court has heard the oral arguments in the case of Rebecca Steinfeld and Charles Keidan, who are appealing against the decision in *Steinfeld & Anor v Secretary of State for Education* [2017] EWCA Civ 81. They argue that the current bar on civil partnerships for opposite sex couples is in breach of Article 14 (discrimination) of the European Convention on Human Rights together with Article 8 (respect for private and family life): there is a very brief summary [here](#).

In addition, the news that the Government is yet again considering the possibility of legislation to abolish civil partnerships – possibly at some point after 2020 – has attracted a negative response from the Church of England. The Church does not allow gay clergy to marry, but it does permit them to enter into civil partnerships provided they promise to remain celibate.

The Revd Dr Malcolm Brown, the Church's Director of Mission and Public Affairs, has called for civil partnerships to remain in place:

"We believe that Civil Partnerships still have a place, including for some Christian LGBTI couples who see them as a way of gaining legal recognition of their relationship ... Even if the Government's current information-gathering exercise reveals only a small number are taking up Civil Partnerships, we hope it will remain an option."

[Source: CLAS summary – 18 May]

Proposed new Government guidance on religious symbols at work

For information

On 13 May, the *Sunday Express* [reported](#) that the Government Equalities Office is to issue new guidance on wearing religious symbols at work. In its report, which was subsequently picked up elsewhere, Equalities Minister Victoria Atkins is quoted as follows:

"Discrimination in the workplace is not only completely unacceptable but also against the law. We will not stand for it. We live in an integrated and cohesive society with a proud

tradition of religious tolerance and I want to see that reflected in workplaces across the country. As long as it doesn't interfere with someone's work they should just be allowed to get on with the job."

Reactions have been positive on the whole. The Church of England was reported as welcoming the decision, as was Humanists UK Campaigns Officer, Rachel Taggart-Ryan, who noted that there had been a great deal of misunderstanding and confusion surrounding company dress codes and expressed the hope that the new guidance would provide clarity. In a slight note of caution, National Secular Society spokesperson Chris Sloggett said that the announcement was "thin on substance", adding that the NSS hoped that the intervention was not "an attempt to rally support from those pushing false narratives of religious persecution in the UK"; but he agreed that "if an employer does place restrictions it's reasonable to require them to be proportionate in the context of its wider dress codes, and to have a legitimate purpose."

The *Sunday Express* report says that the forthcoming guidance will state that "Employers should be flexible and not set dress codes which prohibit religious symbols that do not interfere with an employee's work". That would certainly fit with the [reply](#) of the then Parliamentary Under-Secretary of State for Women and Equalities, Caroline Dinenage, to Maria Miller's Urgent Question in the Commons on 15 March 2017, the day after the CJEU judgments in *Achbita* and *Bougnaoui*. She said that

"The UK's legal position has not changed. The EHRC has already published guidance for employers on religion and belief in the workplace, and we will work with it to update that guidance to take account of these rulings and to carefully explain how they should be interpreted in UK workplaces."

The source of the latest statement by Victoria Atkins remains a mystery, however: we cannot find it on [Gov.uk](#) and can only assume that it arose from an interview with the Minister.

[Source: CLAS summary – 15 May]

ODDS & ENDS

ICO publishes consent guidance on consultation on regulatory policy

For information **and possibly for action**

The Information Commissioner's Office (ICO) has published its final [Consent Guidance](#) – dated 9 May – ahead of the 25 May GDPR deadline. The updated Guidance sits alongside the ICO's [Guide to the GDPR](#) and gives more detailed, practical guidance for UK organisations on consent under the GDPR. It notes that the GDPR sets a high standard for consent and that 'consent' means offering people genuine choice and control over how their data is used. When consent is used properly, it helps build trust and enhance an organisation's reputation.

The Guidance is intended to help organisations to decide when to rely on consent for processing and when to look at alternatives. It explains what counts as valid consent, and how to obtain and manage consent in a way that complies with the GDPR. It also sets out how the ICO interprets the GDPR, and the ICO's general recommended approach to compliance and good practice.

The ICO has also launched a [consultation](#) to gather the views of stakeholders and the public on its draft Regulatory Action Policy, which gives direction to the organisations the ICO regulates on how it plans to apply new data protection laws. It reinforces the ICO's commitment to taking a proportionate and risk-based approach to enforcement.

The Policy has been updated to include enhanced powers set out in the [Data Protection Bill](#), which recently finished its passage through the House of Lords and will now be considered in the Commons. Proposed new powers include no-notice inspections, compelling people and organisations to hand over information and making it a criminal offence to destroy, falsify or conceal evidence. The Policy also covers all eleven pieces of legislation that the ICO is responsible for, including the Freedom of Information Act and the Privacy and Electronic Communications Regulations, which covers nuisance calls, texts and emails.

Responses should be made via an [online survey](#), before **28 June 2018**.

[Source: ICO – 9 May]

PROPERTY & PLANNING

Scrap Metal Dealers Act 2013

For information

Section 18 of the Scrap Metal Dealers Act 2013 required the Government to review its effectiveness within five years. At the request of the industry, that review was brought forward, and the outcome was published in December 2017. It concluded that 'The overwhelming view of those who responded was that the Scrap Metal Dealers Act had improved regulation of the scrap metal industry and, by doing so, had helped to achieve reductions in the level of metal theft. The overwhelming view was that the Act should continue in force. The Government agrees with that view'.

On 10 May, replying to a [question for short debate](#) in the Lords, Baroness Williams of Trafford, Minister of State, Home Office, confirmed the Government's position that the Act was effective and should not be repealed – though she did appear to concede that enforcement was patchy.

[Source: House of Lords – 11 May]

TAXATION

Taxable benefits in kind

For information

In the 2016 Budget the Government announced that legislation would be introduced in Finance Bill 2016 to ensure that if there was a specific statutory provision for calculating the tax charge on a benefit in kind (BiK), this had to be used. The House of Commons Library has now published a [briefing note](#) on the topic.

This decision meant that where an employee received something from their employer on the same terms as a member of the public, there would still be a taxable benefit based on the statutory provisions for calculating the charge. The measure was a technical change to the wording of the legislation to ensure clarity. At the time the Government stated that this did not represent any change to existing policy, and that the Exchequer impact would be negligible.

[Source: House of Commons Library – 10 May]