

CLAS CIRCULAR 2015/17 (9 September 2015)

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CHARITIES AND CHARITY LAW

Annual Return 2016

For information

The Charity Commission has announced its plans for the 2016 Annual Return which all *registered* charities (which, of course, does not include those congregations currently excepted from registration) must complete. The content will remain broadly the same as in 2015. The only changes will be to the financial information required of charities *with an income of £500,000* and over, reflecting the changes needed as a result of the new SORP.

In 2014 the Commission consulted on a number of possible new questions for the Annual Return, including asking charities what they spend each year on campaigning. Following the consultation, however, the Commission decided not to include that question in the 2015 Annual Return but to revisit it for 2016. Having now done so, the Commission has taken account of the administrative burden that such an additional question would place on charities and has decided not, after all, to include a question on campaigning expenditure in the 2016 Annual Return.

A test Beta version of the Annual Return is planned for release at the beginning of 2016. Further details will be published when available.

[Source: Charity Commission – 4 September]

Forthcoming review of rules on money-laundering

For information

Business Secretary Sajid Javid has announced a review of the rules on preventing money-laundering:

“This new review is about making sure the rules we have to protect our strong financial services industry from abuse are not unintentionally holding back new and existing British business. I want firms to come forward and tell us where regulation is unclear or its enforcement ineffective”.

We have not yet seen details of the review – but every secretary of a charitable trust who has gone through the agony of changing a bank mandate when new trustees are appointed will live in hope...

[Source: *Daily Telegraph* – 28 August]

EMPLOYMENT

Defined benefit pension schemes

For information and possibly for action

The Pensions Regulator has published the first in a series of guides for trustees of defined benefit occupational pension schemes to help them apply the defined benefit (DB) funding [code of practice](#).

The publication provides good practice guidance on how to assess and monitor an employer's covenant and the employer's legal obligations and financial ability to support their scheme. The Pensions Regulator has taken a practical approach, breaking the guidance down into a series of user-friendly examples, checklists and scenarios – available alongside the full, detailed guidance document.

To view the guidance and resources go to [assessing and monitoring the employer covenant](#).

[Source: Pensions Regulator – 13 August]

National Minimum Wage compliance

For information

The Department for Business, Innovation and Skills has [announced a new package of measures](#) to ensure the correct payment of the National Minimum Wage (NMW) and to pursue organisations which fail to do so. The main features of the new measures are as follows:

- A new team of compliance officers in HMRC will investigate the most serious cases of employers not paying the NMW (and National Living Wage when it is introduced in April 2016). The team will have the power to use all available sanctions, including penalties, prosecutions and naming and shaming the most exploitative employers.
- Employers who fail to pay staff at least the minimum wage to which they are legally entitled will have to pay double what they do now. This reform is intended to increase compliance and make sure those who break the law face tough consequences.
- The calculation of penalties on those who do not comply will rise from 100% of arrears to 200%. This will be halved if employers pay within 14 days. The overall maximum penalty of £20,000 per worker remains unchanged.

A consultation will be launched in the Autumn on the introduction of a new offence of aggravated breach of labour-market legislation. The consultation will also propose giving the Gangmasters Licensing Authority additional investigatory powers and a wider remit to tackle serious labour exploitation more effectively.

The Government has also announced that it will improve the guidance and support made available to firms on compliance and will work with payroll providers to be sure payroll software contains checks that staff are being paid what they are entitled to.

Comment: Exemptions currently in place for voluntary organisations will remain in force. While we cannot imagine that any member of CLAS would *intentionally* act in breach of the NMW regulations, as we have observed before, whether or not the rules apply in a particular case can sometimes be difficult to determine; and care is needed not to fall foul of the NMW regulations inadvertently.

[Source: BIS – 1 September]

FAITH & SOCIETY

Sunday trading

For information and possibly for action

Following a withdrawn Private Members' Bill put forward through the Lords' Private Bills ballot and an announcement in the Summer Budget 2015, the Department for Business, Innovation and Skills opened a [consultation](#) into Sunday trading rules. The current rules apply to large stores: retail spaces with a relevant floor area of over 280 square metres/3000 square feet, which currently have restricted opening hours on a Sunday. Smaller stores can open all day.

The Government seeks feedback on whether it should devolve Sunday trading rules to local areas, such as cities run by elected mayors and/or to local authorities. The proposals do not seek to make any changes to:

- the restrictions currently in place on trading on Christmas Day or Easter Sunday;
- protection of workers' rights under the Employment Rights Act 1996, "other than that which might be required to ensure the same level of protection applies following any amendment to the current Sunday trading restrictions";
- provisions within the 1994 Act that restrict loading and unloading of vehicles at large stores situated in a loading control area before 9am on a Sunday. However, "consent can be obtained from the local authority to load and unload before this time"; and
- existing restrictions on opening hours of individual premises imposed through planning permissions which "would also remain in place, unless the local authority decided to permit a change".

Interested parties may [respond online](#), e-mail sunday.trading@bis.gsi.gov.uk, or write to: Sunday Trading Team, Consumer and Competition Policy, Department for Business, Innovation and Skills, 1 Victoria Street, LONDON SW1H 0ET.

The deadline for responses is **16 September 2015**.

[Source: Gov.UK – 5 August]

NORTHERN IRELAND

CCNI: consultation on accounting and reporting

For information and possibly for action

The Department for Social Development has opened its promised consultation: [Accounting and Reporting by Charities: Consultation on draft Charities \(Accounts and Reports\) Regulations \(Northern Ireland\) 2015](#). The proposed changes would require charities in Northern Ireland to file their annual accounts with the Charity Commission for Northern Ireland and authorize CCNI to make provision for the preparation and scrutiny of accounts. The consultation is also seeking views on whether the income threshold that determines which charities' accounts are scrutinised should be changed.

The consultation proposes a regulatory system operated by CCNI similar to that of the Charity Commission for England & Wales. The proposed regulations will affect all registered charities and would come into effect from **January 2016**.

The eight-week consultation runs until **30 October 2015**. There is an on-line questionnaire for responses: alternatively, you can e-mail charitiesconsultation@dndni.gov.uk or post hard copy to The Charities Team, Department for Social Development Voluntary and Community Unit, 3rd Floor, Lighthouse Building, 1 Cromac Place, Gasworks Business Park, Ormeau Road, Belfast BT7 2JB.

[Source: Northern Ireland Executive Department for Social Development – 1 September 2015]

CCNI: new guidance on monitoring and compliance

For information and possibly for action

The CCNI has published new guidance on monitoring and compliance, [CCNI EG042 Monitoring and compliance guidance - getting it right](#). The guidance asks trustees to consider if they:

- know the rules in the charity's governing document and keep them regularly under review;
- maintain a list of legislation that impacts on the charity;
- regularly review the charity's activities and area of operation to identify legal obligations and best practice;

- regularly review the charity's policies and procedures to ensure they are up to date and fit for purpose;
- place legal compliance as a standing item on meetings of the charity's trustees;
- ensure that all new trustees receive an induction and are subject to trustee checks;
- have read relevant charity guidance produced by the Commission;
- seek advice from a professional or umbrella body where necessary;
- have read and comply with the Code of Good Governance;
- keep good records of trustee meetings to show how they have exercised governance over the charity; and
- keep proper accounting and other records.

The guidance also provides information for anyone who is concerned that a charity is not complying with its legal obligations, including how to alert the Commission to possible default and what action may be taken as a result.

[Source: CCNI – June/July 2015]

Property & Planning

Carbon monoxide and fire alarms: new regulations and guidance

DCLG has published [guidance](#) for landlords on the installation of carbon monoxide alarms.

The updated guidance is based on [new regulations](#), which are subject to Parliamentary approval and are to be put before the Secondary Legislation Scrutiny Committee before the end of September. As long as the regulations are granted the approval of Parliament, they will come into force on 1 October. The requirements will then be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

The guidance takes the form of a series of FAQs on responsibilities, alarms, definitions, tenancies and exemptions, assistance, and enforcement, and is available [here](#).

[Source: DCLG – 4 September 2015]

SCOTLAND

Charity test: updated guidance

For information

OSCR has published updated guidance on [Meeting the Charity Test: Guidance for applicants and existing charities](#). While the basic principles remain unchanged, *Meeting the Charity Test* has been extensively rewritten and reformatted for ease of use. The new-look guidance is web-based and organised into separate sections for easy reference according to individual needs.

The updated guidance is available in HTML and PDF format, along with further information on the charity test and applying for charity status. OSCR is to publish a summary guidance document at a later date.

[Source: OSCR – 5 August]

Exemplar charity accounts

For information

OSCR has published [four new sets](#) of exemplar charity accounts. [OSCR's guidance](#) is now in accordance with the Scottish Charity Accounting Regulations and the new charity [Statements of Recommended Practice \(SORPs\)](#) that came into effect for charities with accounting periods beginning on or after **1 January 2015**.

A consultation on the proposed changes to the UK-Irish Generally Accepted Accounting Practice (GAAP) is still open. The deadline for responses is **18 September 2015**; and further information is available [here](#).

[Source: OSCR – 20 August]