

**CLAS CIRCULAR
2009/08 (1 May 2009)**

EMPLOYMENT

ACAS Code of Practice

With effect from 6 April the previous statutory discipline and grievance procedures for employees have been repealed and replaced by an ACAS [Code of Practice](#). The Code provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. *The Code does not apply to dismissals due to redundancy or the non-renewal of fixed term contracts on their expiry.*

The Code does not have statutory force and, therefore, failure to follow it will not in itself make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases and will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

All churches who employ staff (which means almost all of them) are strongly urged to download copies of the Code and familiarise themselves with its contents.

[Source: ACAS website – 6 April 2009]

Working Time Directive

Conciliation stage talks on the Working Time Directive broke down early on 28 April, which saw the end of the European Parliament's proposal to phase out the UK opt-out within three years. Parliament and Council could not find a compromise on three crucial points: the opt-out, on-call time, and multiple contracts. The main stumbling-block was the opt-out.

The current Directive therefore remains in force. The dossier in its current form will formally fall when the conciliation timetable reaches its conclusion in May. It will then be for the European Commission to decide how to proceed. Should the Commission wish to draft a new proposal from scratch, any such new legislation would need to take account of the rulings of the European Court of Justice on-call time.

UK ministers have, in effect, welcomed the breakdown in negotiations. Business Secretary Peter Mandelson said that 'Millions of people are better off because of the opt-out and I am relieved we have been able to resist its removal'.

[Source: BERR What's New – 28 April 2009]

FAITH & SOCIETY

Re-use of graves

There is an increasing shortage of burial space in urban areas and considerable concern has been expressed about apparent Government inaction on the matter, not least from the Churches' Funeral Group. In answer to a Question in the Lords from our Chairman, the Bishop of Southwell and Nottingham, as to why the Ministry of Justice had decided not to proceed with what had been thought to be an agreed proposal to permit the re-use of graves, the Parliamentary Under-Secretary of State, Lord Bach, said that the Government had 'announced in June 2007 that the case for re-using old graves had been accepted in principle. The matter is being kept under review'.

In an exchange that can only be characterised as unsatisfactory, the Minister pointed out that since the passing of the London Local Authorities Act 2007 it has become possible for London local authorities to disturb existing remains in the grave to create space for new interments, provided that they have complied with earlier Acts, they have the permission of the family concerned, and that where the remains are in consecrated ground they have obtained a faculty from the Consistory Court. He suggested that other local authorities 'are absolutely entitled to bring Private Bills to Parliament and carry them through, so it is not a matter for the Government'.

Up to a point, Lord Bach: realistically, very few local authorities – if any – are going to go to the considerable expense and general hassle of promoting a Private Bill specifically to replicate the provisions of section 74 of the London Local Authorities Act 2007 in respect of their own areas. So unless an authority is promoting a Bill for other purposes and can include a suitable clause, the problem in its immediate area is likely to remain unresolved for the foreseeable future. It is still not clear why the Ministry of Justice has decided not to take the matter forward.

[Source: HL Deb – 22 April 2009 c 1497]

WATER

E-petition

On 30 April the Prime Minister's Office has responded to David Boddy's e-petition on surface water drainage as follows:

Traditionally, surface water drainage charges have been based on the rateable value of properties, as allocated by the Valuation Office. Places of worship, along with other specific groups and organisations, did not have to pay these charges because of their zero rating. Four water companies, Yorkshire (2001/02), Severn Trent (2000/01), Northumbrian (2006/07) and United Utilities (2008/09), have switched from rateable value to area based charging.

The Government supports site area charging for surface water drainage in principle, because it offers financial incentive for customers to install sustainable drainage systems which improve water quality and prevent surface water flooding. However, the Government believes that it is clearly very wrong if customers such as faith buildings, community amateur sports clubs and scout huts are facing hikes in their bills of several hundred per cent, and where there are massive variations between what is being charged in different areas by different companies.

The Government recognises the level of concern over charges for surface water drainage, especially in some areas of the country and for some groups where increases in charges have been disproportionate and insensitive to the needs of water companies' customers.

It is ultimately for the water regulator Ofwat, the independent economic regulator of the water industry, and individual companies to agree a fair and proportionate system of charging that is sensitive to those organisations who previously enjoyed a cross-subsidy. However, Defra has made the Government's position clear to Ofwat and to the Chief Executive of United Utilities (whose customers have been most affected, including as a result of miscalculated bills). We have also made it clear that increases in bills of this magnitude are not in line with Defra's guidance on charging issued to Ofwat in 2000, or Ofwat's more detailed 2003 guidance to the water companies.

In particular, Ofwat's guidance states that companies that are thinking of introducing site-area charging need to assess possible impacts on all customers' bills. Ofwat's guidance goes on to state that companies will need to take into account the scale and speed of any bill changes to see if they are reasonable and acceptable to customers.

It is for individual companies to prepare their charging schemes and for Ofwat, as the economic regulator of the water industry, to review and approve them. Customers with sensitive properties, who are concerned about disproportionate increases in

their bills, or inaccurate bills, should raise their concerns with their water company in the first instance or, failing that, with the Consumer Council for Water.

United Utilities has been the focus of many of the recent concerns expressed in the media and in representation directly to Defra. As noted above, Defra has conveyed its views on this issue to Ofwat and to the Chief Executive of United Utilities.

In response to such representations, United Utilities now proposes to set its surface water drainage charges for 2009/10 at 2007/08 levels for customers such as faith buildings, community amateur sports clubs and scout huts (i.e. at levels prior to the introduction of site area charging), and is also committed to finding a long term solution to this problem for 2010/11 and beyond. This is a very welcome step forward although Defra will continue to monitor this issue and engage further with Ofwat as necessary.

[Source: *No 10 Website* – 30 April 2009]

Draft Flood and Water Management Bill

Defra and the Welsh Assembly Government have published the [draft Flood and Water Management Bill](#). A consultation exercise will be carried out by the two departments and, in addition, the draft will no doubt be the subject of pre-legislative scrutiny in Parliament.

From the point of view of the churches, the significance of the Bill is what it omits: the draft appears to be completely silent on the matter of charging for surface water drainage and highway runoff.

The consultation period runs until **24 July 2009**. Comments can be sent in writing to: Flood and Water Management Bill Team, Department for Environment, Food and Rural Affairs, Area 2C, Ergon House, London SW1P 2AL, or by e-mail to floodsandwaterbill@defra.gsi.gov.uk. Comments specifically in relation to Wales should be copied to: Water Policy Branch, Climate Change and Water Division, Assembly Government, Cathays Park 2, Cardiff CF10 3NQ or electronically to water.consultation@wales.gsi.gov.uk.

[Source: *Defra News Release* – 21 April 2009]

CLAS CIRCULAR

2009/09 (18 May 2009)

Gift aid claims

HMRC has announced formally that from 1 April 2010 the general time-limits for making repayment claims will be four years rather than six and that those limits will apply equally to charities as to other taxpayers.

The HMRC website has a helpful step-by-step [Guide](#) to making claims. Rather than leaving things until the last minute, it is probably prudent to start checking whether or not all claims have in fact been submitted.

In addition, HMRC has produced a March 2009 update of the Gift Aid Toolkit CD-ROM for charities. Copies can be obtained by ringing 08453 02 02 03 (open from 8.00 am to 5.00 pm, Monday to Friday) and selecting Option 6.

[Source: *Charity Commission Charity News & Updates* – 13 & 15 May 2009]

WATER

Ten-minute rule Bill

Mike Hall (Weaver Vale, Labour) was given leave to introduce his Surface Water and Highway Drainage Charges (Exemption) Bill on 12 May. The Bill would

require water companies to exempt from surface water and highway drainage charges places of worship, non-profit making sports clubs, scout groups and guide associations; and for connected purposes.

He argued strongly that the need for the Bill had been created by Ofwat, pointing out that when Ofwat concluded that the fairest way to charge for surface water drainage was by charging non-household customers on the basis of site area, it failed to implement its own guidance by not carrying out a regulatory impact assessment on the change of policy. As an example of the impact of the new charging regime, he noted that the bill for St Mark's Church and the Bethesda Church in the Hallwood ecumenical parish in Runcorn (which are billed jointly) was set to rise from zero in 2007–08 to approximately £2,000 by 2010–11. He also noted that where water companies had tried to be sensitive to the needs of community and voluntary groups they were experiencing difficulties with the regulator. Ofwat had made it clear to water companies that it would not approve any tariffs for surface area charging that involved cross-subsidies, were based on rateable values or involved exemptions: so that, for example, Severn Trent had been told that it must remove its exemption from surface area charging for community and voluntary groups.

The motion to introduce the Bill was unopposed, but it has no realistic chance of becoming law. However, the fact that no-one spoke in opposition to the motion suggests the degree to which politicians of all parties are concerned about the way this issue has developed.

[Source: [HC Deb \(2008–09\) 12 May 2009](#)]