

# LEGAL UPDATE

August 2009: Issue 13

Vab welcomes feedback on its services from customers and service users. If you wish to make a compliment, complaint or comment about the service you have received, please contact our main office for a copy of our procedure or send your comments in writing to our Chief Executive.

Chief Executive  
Voluntary Action Barnsley  
The Core ,County Way,  
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Voluntary Action Barnsley  
Registered in England & Wales  
Registered Charity N° 515268  
Company Limited by  
Guarantee N° 1819712

If you would like to receive this Legal Update in an alternative format, please contact us and we will try to meet your requirements. If you do not have access to internet facilities for seeking further information on a particular subject, please contact us so that we may obtain the information on your behalf.



# Legal

## At a glance: Changes from 1st/6th April 2009:

- ◆ Minimum entitlement to paid holiday 24 to 28 days (can include bank holidays)
- ◆ Maternity/paternity adoption pay rose from £117.18 per week to £123.06 per week
- ◆ Statutory sick pay £75.40 to £79.15 (limited to 28 weeks in a three year period)
- ◆ New rules for discipline and grievance ( new ACAS guidance issued)
- ◆ The right to request flexible working extended to parents of children up to the age of 16.
- ◆ New Health & Safety regulations/home workers & lone workers.
- ◆ Status of Community Amateur Sports Clubs.
- ◆ Revised 'Code of Practice' issued by Criminal Records Bureau.

To request further information on any of these issues contact the Advice Team at VAB on 01226 320114 (Ann Moffatt) or 01226 320113 (Shokat Hayat)



## In effect from October 2009:

- ◆ Entirely new structures for Memorandum and Articles of Association for companies
- ◆ 250 new forms to be issued by Companies House.
- ◆ Vetting & Barring scheme under the Safeguarding Vulnerable Groups Act 2006.
- ◆ Tips and service charges not to count towards minimum wage even if they are paid through payroll.
- ◆ Maximum weekly pay for calculating statutory redundancy pay expected to rise from £350 to £380

## Dates still to be announced:

- ◆ The new Equalities Bill expected summer 2010
- ◆ The long awaited Charitable Incorporated Organisation expected April 2010
- ◆ 'Fit notes' to replace 'sick notes' expected Spring 2010



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## **New Land Registration rules for non-company charities**

**From April 6th 2009:**

**If your charity owns land that:**

- ♦ **Isn't registered under the Land Registration Acts; and**
- ♦ **Is vested in the name of individual trustees; and**
- ♦ **Is transferred to a new trustee by deed after April 6th 2009,**

**Then it will probably have to be registered with the Land Registry. The only exception is land that is held under a lease which has less than seven years to run. If you register the land voluntarily before the next transfer you will get a 25% discount on the normal land Registry first registration fee.**

**More information is available in two Land Registry Practice Guides 'First Registrations (No 1)' and 'Charities (No 14)'**

**Both are available from the Land Registry website at:**

**[Www.landregistry.gov.uk](http://www.landregistry.gov.uk) or from your Land Registry office.**

**You can also use the Land Registry website to check if your charity's land is registered.**

**One way of avoiding transfers of charity land to new trustees is to vest it in the Official Custodian for Charities.**

**[Charity Commission]**



## **Go for Gift Aid!!**

**HM Revenue & Customs (HMRC) have launched a CD-based toolkit.**

**The Toolkit contains clear, basic guidance, templates, an interactive claim form and other materials to help charities and community amateur sports clubs (CASCs) get started with gift aid and use Gift Aid in different fundraising situations.**

**The Toolkit compliments the updated and improved guidance on the HMRC website. Charities and CASCs can get the new Toolkit by calling HMRC on 08453 020 203 Or email: [charities@hmrc.gov.uk](mailto:charities@hmrc.gov.uk)**

## Companies Act changes from 1st October 2009

The changes happening after 1st October are a combination of changes in the law and changes to how Companies House will operate.

### New Companies House forms

There will be a significant difference to Companies House forms with over 250 new forms including a new CC04 which must be filed with the copy of the special resolution, so far as we know there is no fee payable.

For a draft list of the new forms go to

<http://www.companieshouse.gov.uk/forms/formsavailable.shtml>.

These draft forms should not be used—final versions for use will be published on 1st October 2009.

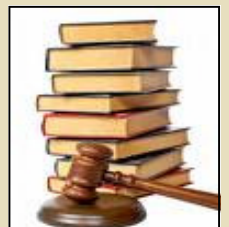
At the time of writing we have only draft guidance and the content may be subject to change. Further updates will be issued when Companies House guidance and forms are finalised. The emphasis in this guidance is for companies Ltd by guarantee (not having share capital)

A brief outline of changes by categories:

- ◆ Changes affecting existing companies which are not optional
  - Changes to existing company's constitutions (but not **until** any amendments are made to the article after 1st October)
  - Changes to the objects
  - Variation of class rights
  - Late filing penalties—(listed separately in this article)
- ◆ Optional changes affecting existing companies
  - Change of name
  - Directors service addresses
  - Single alternative inspection locations ('SAIL')
  - Electronic filing
  - Incorrectly filed documents
- ◆ Changes to formation of new companies
  - Different memorandum of a company
  - New forms for filing new companies—form 10,12 and 30(5)(a) will be replaced by a new form IN01.
- ◆ Timetable for company registrations
  - 'old style' applications made on or after 1st October will be rejected
  - 'new style' applications made before 1st October will be rejected

**For full details supplied by 'Bates, Wells & Braithwaite' please contact the Advice team at Voluntary Action Barnsley for a copy or email:**

**[Ann.Moffatt@vabarnsley.org.uk](mailto:Ann.Moffatt@vabarnsley.org.uk)**



# LEGAL

## **New late filing penalties for incorporated organisations (as of 1st February 2009)**

Companies House will be imposing new penalties for companies who are late filing their financial accounts. This will apply to such groups who are incorporated either as a Company Limited by Guarantee, a Community Interest Company or the new Charitable Incorporated Organisation when it comes into force (possibly April 2010)

The new penalties are:

£150 for accounts up to one month late.

£375 for accounts one to three months late.

£750 for accounts three to six months late.

£1,500 for accounts over six months late.

Also, if the accounts are filed late two successive years they incur **DOUBLE** penalties!!

In addition from 1st October 2009 the Registrar has been given the power to fine companies which fail to file a resolution relating to a change to the articles. The time limit for filing remains 15 days. Before imposing a fine, the Registrar must send a notice to the company it thinks is in default, requiring it to meet its filing obligations, there will then be a 28 day period to comply and if the company still fails to file there is a new automatic civil penalty of £200.

### **A word of warning!! Confidentiality and Data protection**



**A recent decision has found a group in breach of the Data Protection Act after a laptop computer was stolen, the laptop was not protected by password.**

**It is strongly recommended that those groups dealing with confidential information, particularly relating to individuals, should take steps to ensure that the information is password protected (and try not to lose the laptop!)**

**Data protection technical guidance: 'Determining what is 'data' for the purposes of the DPA' can be accessed at:**

**[www.tinyurl.com/c2y6xm](http://www.tinyurl.com/c2y6xm)**

### **Equality Bill**

**The Bill was introduced into Parliament on 24 April and is expected to receive Royal Assent in Spring 2010 and come into force in October 2010**

**It will replace all the existing equal ops legislation and cover nine protected characteristics: Age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Bill is intended to simplify the law, sort out the differences between the discrimination strands, extend some protections and introduce new protections.**

**We will go into more detail in the next issue.**



# LEGAL

## Status of Community Amateur Sports Clubs

### Sections of the Charities Act 2006 provisions

From 1 April 2009, sports clubs registered with HM Revenue and Customs under the community amateur sports club (CASC) scheme are not charitable even if their objects are charitable. CASCs will continue to have some of the same tax advantages charities have.

## Status of Miners' Welfare Trusts

When the relevant provisions of the Act come into force on 1 April 2010, miners welfare trusts will retain their charitable status if they meet the new definition of charity; if they do not, they will not be able to retain their charitable status.

This provision amends section 2.1 of the Recreational Charities Act 1958.

The Charity Commissions guide to the main provisions is at:

[www.charitycommission.gov.uk/spr/ca2006prov.asp](http://www.charitycommission.gov.uk/spr/ca2006prov.asp)

[Sandy Andirondack]



## Stop the 'Rain Tax' and 'Don't drain us' campaigns!!

These campaigns are in response to the change in water charges covering water supply, waste water drainage from sinks, toilets, surface water drainage, and highway water drainage.

Charges for 'non-domestic' properties are generally based on the rateable value of properties, but since 1999 water companies have been able to charge for surface and highway water drainage on the basis of site area rather than rateable value.

In 2003 OFWAT, the water regulator, required all water companies to start to move towards charging for surface water drainage on this basis.

From 2010 all water companies are expected to charge non-domestic properties on a site area basis for surface water drainage.

Because charities and many other voluntary organisations get rate relief their drainage charges have been low, and where water companies have introduced a new way of charging this has led to huge increases

A coalition of organisations including Scouts, Community Matters, ACRE, churches and others have been campaigning for the provision of a social tariff for low income groups. Similarly the church groups have organised the 'Don't drain us' campaign which is calling for a government review of surface water charging where serious consideration should be given to introducing a 'charity band' or returning to rateable value charging for churches, clubs and charities the campaign is at:

[www.dontdrainus.org](http://www.dontdrainus.org)

## Vetting & Barring Scheme Update

As previously updated in our newsletter and through VAB safeguarding training many of the current requirements in relation to work with children and vulnerable adults under the Protection of Children Act 1999, The Care Standards Act 2000 and related legislation are gradually being replaced by a new 'Vetting and Barring' scheme.

From October 2009

- ◆ The POCA (Protection of Children's Act) list and list 99 will be integrated into a single list of people barred from working with children, and the POVA (Protection of Vulnerable Adults) list will be a separate but aligned list of people barred from working with vulnerable adults.
- ◆ These lists will be operated by the Independent Safeguarding Authority, with access via an enhanced CRB check
- ◆ It will be an offence for a barred individual to seek to undertake work, whether paid or unpaid, with children or vulnerable adults or for an employer to knowingly take on a barred person.
- ◆ The range of 'regulated positions' will be increased, especially in relation to work with vulnerable adults.
- ◆ There will be a new duty on employers, social services and professional regulators to notify the ISA of relevant information about individuals who pose a threat to children and vulnerable adults.
- ◆ From **July 2010**  
All new employees, those moving jobs and volunteers who want to work with children or vulnerable adults can register with the ISA.
- ◆ From **November 2010**,  
All new employees and volunteers **must** register before they start work. From then it will be illegal to employ people who are not ISA-registered.

For the ISA toolkit go to:

<http://www.isa-gov.org/toolkit/>



Independent Safeguarding Authority

## Criminal Records Bureau Guidance.

An updated 'Code of Practice' for CRB checks has been issued by the Bureau with effect from 6th April 2009 and older copies of the previous guidance should be discarded.

The Code is available at  
[www.crb.gov.uk/default](http://www.crb.gov.uk/default)

For 2009-2010 the fees for Standard (£31) and Enhanced (£36) checks still remains the same.

Volunteer disclosures remain free of charge.

### From 12 October 2009

Standard disclosures for people employed to work with children or vulnerable adults will not be available, all such work will need to be supported by an Enhanced Disclosure.

For further information go to the Independent Safeguarding Authority web site at:

<http://www.isa-gov.org>



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## Support for organisations working with children & young people

The NSPCC in partnership with Children England is setting up a National Safeguarding Unit for the Third Sector in England which will establish an agreed framework of safeguarding standards for work with children and will promote and support the implementation of these standards throughout the sector.

Information about the unit is at:

[www.nspcc.org.uk/inform/nsuwda63026.html](http://www.nspcc.org.uk/inform/nsuwda63026.html)

For support in implementing best practice guidelines or to up date your policies, please contact:

**Doreen Gwilliam on 01226 320106 or**

**Ann Moffatt**

**On 01226 320114**

(The Advice team would like to acknowledge the invaluable information and updates supplied to the sector by Sandy Andirondack)



### Third Sector Sub Group to the Children's & Young People's Trust Executive Group

The next meeting of the Third Sector Sub Group to the Children & Young People's Trust Executive Group will be on 25 September 2009. Monthly meetings of this group bring together Third Sector providers of services for Children & Young People, in order to share ideas and good practice, voice concerns and feed issues into the local decision making mechanism of the Trust Executive Group.

**If you would like to attend this meeting, or obtain information about developments in Children's & Young People's Services please contact the Participation Team on 01226 320106.**

### NSPCC 'Safe Communities Project'

In March 2009 the NSPCC project published a guide and toolkit which is free of charge to voluntary and independent community groups working with children the publication is called

*'Safe Communities: A toolkit to protect children & young people.'*

It is available in English and bilingually in Bengali, Punjabi, Urdu and Welsh.

It can be ordered from NSPCC via [tinyurl.com/ox6kfh](http://tinyurl.com/ox6kfh)



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## New Community Accountancy Service

Voluntary Action Barnsley's new Community Accountancy Service is here to provide support and advice to Third sector groups on all aspects accounting and finance. We can help with book keeping, financial controls, budgeting, accounts preparation and year end independent examination of accounts. We can also provide training and support on a wide range of issues, on a one to one or group basis.

As well as offering practical advice and support on how to handle finance, we could potentially greatly reduce the cost of accountancy fees for your organisation.

For more information, please call Angela Hayes on 01226 320116 or e-mail [angela.hayes@vabarnsley.org.uk](mailto:angela.hayes@vabarnsley.org.uk).

## Event at 'The Core'

### Importance of Safeguarding Awareness Raising

**Why is safeguarding important?  
What policies & Procedures should we have?  
Where can we find safeguarding training?**

**Wednesday 23rd September 2009  
1:00—4:00 At The Core  
To book a place  
Contact the Participation Team  
On 01226 320106**

## Barnsley's Safeguarding Children Board Annual Report now available

**For up to date information and advice see  
[www.safeguardingchildrenbarnsley.com](http://www.safeguardingchildrenbarnsley.com)**

**A new website for Third Sector organisations who work with children has recently been launched which provides model policies, procedures and templates for**

**safeguarding children that can be downloaded and adapted for local use.**

**The safenetwork site has lots of useful information about a range of issues relevant to the Third Sector.**

**[www.safenetwork.org.uk/resources](http://www.safenetwork.org.uk/resources)**

# The Advice Team



## **Nigel Middlehurst** **External Services Manager**

Nigel is responsible for all VAB external services and manages the advice team.



## **Ann Moffat** **Senior Organisation Advisor**

Ann is responsible for supporting community and voluntary groups in developing/drafting governing documents, policies, procedures and legal structures. Ann also supports groups with induction/training for trustees.



## **Shokat Hayat** **Business Advisor HR & Legal**

Provides advice and support for voluntary and community groups on all aspects of HR policies and procedures.



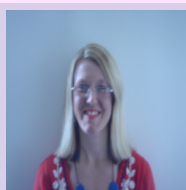
## **Angela Hayes** **Community Accountant**

Supports social enterprises and community groups all aspects of accounting and financial management.



## **Helen Langley** **NVQ Centre Manager**

Helen coordinates the NVQ Centre at Voluntary Action Barnsley and is currently working with 40 candidates towards achievement of their NVQs in Business, team leading and management.



## **Deborah Hollingsworth** **Payroll & Financial Services Officer**

Runs a payroll service for voluntary and community groups and provides advice and guidance on payroll and finance issues.



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