

Welcome to the September 2018 edition of our
Charity Essentials newsletter



Welcome to the September edition of Charity Essentials. In this edition we look at immigration and the proposed scheme for EU nationals post-Brexit. We also consider the Law Commission's initial conclusions regarding the validity of electronic signatures in a recently published consultation report. In addition, there are various other news items that may be of interest to charities. Our trustee training programme recommences after its summer break. If you would like to attend one of these invaluable sessions, please follow the link below.

As always, if you have any suggestions for content or improvements, please do get in touch, we really value your feedback!

[Sarah Clune](#)



Immigration

EU Nationals - The Post Brexit plans

The UK Government has released information on the proposed scheme for EU nationals once the UK leaves the EU. This transitional scheme will run from 29 March 2019 until 31 December 2020. There will be two types of status:

1. Settled Status
2. Pre-settled Status

From 1 July 2021 all EU nationals must hold one of these two statuses.

Settled Status

This will allow those EU nationals who have lived in the UK for 5 or more years to obtain confirmation of their settled right in the UK.

The settled status will require EU nationals to take 3 steps:

1. To prove their identity,
2. To prove they live in the UK, and
3. To disclose they have no “serious criminal convictions”.

The Home Office will liaise with other Government departments to check on employment and benefit records. There will be a fee of £65 (£32.50 for those under 16 years of age). Any EU nationals who already have confirmation of their permanent residence will have their fee waived. The deadline for applications will be 30 June 2021.

Pre Settled Status

Those who have not yet completed 5 years in the UK will be granted pre-settled status. After completion of five years, settled status can be applied for. Close family members will also be eligible for both statuses.

An application may be refused if you the applicant are not resident in the UK by 31 December 2020 or on the grounds of a serious criminal conviction or for security reasons or fraud. It is important to note that Parliament is yet to give their approval to these plans, although it is anticipated that there will be no objections.

Stone King advises any employer with EU employees to seek support and advice to ensure you are fully prepared for Brexit. Please contact [Julie Moktadir](#) if you require further information or advice.



Law Commission

Electronic execution of documents

The Law Commission has, albeit provisionally, concluded that electronic signatures are as valid as paper ones in certain circumstances in a recently published Consultation [report](#).

As part of its current Programme of Law Reform, the Commission (which was established to ensure that the law is as fair, modern and as cost-effective as possible) is considering electronic signatures with the aim of addressing uncertainties in the area. The Commission's intention is to ensure that the law is sufficiently certain and fit for purpose in a modern society. It is worth noting that the Law Commission's work does not extend to registrable property transactions, since the Land Registry is currently working on a separate project regarding electronic conveyancing.

Uncertainty currently exists because the law in this country does not expressly state that electronic signatures will be valid. The difficulties are compounded by the additional requirements for the execution of deeds, which require witnessing.

However, the Commission has concluded that "an electronic signature is capable of satisfying a statutory requirement for a signature under the current law, where there is an intention to authenticate the document". The Commission considers that a change of the law is not required but that an industry working group should be established in order to investigate the practical and technical issues of electronic signatures.

Where signatures require witnessing (such as in the case of deeds), the Commission proposes that an electronic signature can be observed when the witness is physically present, and that this should also be the case for a witness via video link, although the Commission's conclusion is that in the latter case a change to the law would be required for this to be established.

In light of suggestions from some that the requirement for a witness should be dispensed with in the case of electronic deeds, the Commission's conclusion that witnessing fulfils an important evidential function which should not be dispensed with is to be welcomed.

These and other matters such as the use of electronic signing platforms and the concept of "electronic acknowledgement" as a replacement for witnessing are outlined further in the Commission's consultation paper.

Whilst it is clear that the use of electronic signatures would improve the efficiency of document signing and allow for even faster commercial transactions, which can be of benefit, it will be of utmost importance that the safeguards that "wet ink" signatures and traditional witnessing provide are not lost. We will be following the developments of this area of law with keen interest.

If you have any queries in relation to the above or would like further information, please contact [Chris Sharpe](#) of the Stone King Commercial Property Team.

Charity Commission

The relationship between charities and non-charities – response to consultation

The Charity Commission has published the results of its consultation on draft guidance about the relationship between charities and non-charities. In a recent blog, Nick Mott (Head of Policy Development Guidance and Review), says "*This guidance isn't intended to frustrate charities. We know that many work successfully - and with care - alongside other organisations. But the connection with a non-charity can expose charities to additional and sometimes significant risks - so it is vital that trustees are equipped to manage these relationships with a critical eye.*"

The Commission acknowledges that the feedback from the consultation has thrown up areas of concern for charities and has said that it will develop its guidance further, taking on board the criticisms, and will consult further with some stakeholders before the final version of the guidance is published later this year. [Jonathan Burchfield](#) and [Sophie Pughe](#) were part of the working party formed by the Charity Law Association (CLA) to respond to the Commission's consultation and it is hoped that the Commission will consult further with the CLA in advance of producing the final guidance.

Annual Return 2018 – questions published

The Commission has published the full list of [questions](#) that charities will need to answer in the 2018 annual return. It has published them now to allow time for charities to prepare and collate the information that will be needed to answer the questions in the tailored annual return, which will be available for use at the end of August. Certain questions will be optional this year to give charities time to put the systems in place to collect the information easily, requiring less effort in future.

The updated annual return requires information regarding salaries and benefits, overseas expenditure, and income from outside the UK.

Official Warning issued to RSPCA

The Charity Commission has issued an [official warning](#) to the RSPCA over governance issues.

The official warning relates to a settlement paid out to the former Acting Chief Executive. The Commission's official warning says that it considers that the officers of the charity at the time of the relevant decisions committed a breach of trust or duty or misconduct and mismanagement in the administration of the charity. The official warning outlines steps that the charity needs to take to rectify the misconduct or mismanagement or breach of trust which includes formal training for council members to ensure they are fully aware of their responsibilities as charity trustees and implementation of recommendations set out in an independent report.

The power for the Commission to issue an official warning is one of a range of powers introduced under the Charities (Protection & Social Investment) Act 2016, strengthening the Commission's pre-existing powers to deal with wrongdoing in charities, including by giving regulatory advice and guidance or using temporary and protective powers. The Commission has issued [Q and A guidance](#) on official warnings. The charity must now demonstrate compliance with the actions outlined in the official warning. If it does not, it could lead to further regulatory action being taken by the Commission.

Converting a Community Interest Company to a CIO

From 1 September 2018 it has been possible to convert a CIC directly into a CIO. The Commission has published [guidance](#) on the conversion process.

Charities falling short on reporting public benefit

The Commission has published the [results](#) of its latest monitoring reviews of charity trustees' annual reports and accounts. Trustees have a legal responsibility to comply with the Commission's guidance on public benefit reporting. Whilst there has been a small improvement in reporting on public benefit, the Commission says that charities are still falling short in this area. It says that public benefit reporting plays a key role in providing transparency so that the public can understand exactly what a charity does and how their donations are being used. The Commission has published [guidance](#) on how to report your charity's public benefit. The most common reason for inadequate reporting was that the trustees' annual report did not explain the charitable activities that the charity had carried out. The Commission has provided regulatory guidance to 89 charities included in the reviews in order to help the trustees improve the quality of future annual reports and accounts.

Information Commissioner's Office

Outcomes of risk reviews at eight charities

The ICO has published a useful [report](#) on eight charities who voluntarily participated in an information risk review between December 2017 and February 2018. The report is intended to help the participating charities and the wider sector recognise where they can make improvements in the same areas. There are some useful pointers for areas of improvement including in relation to:

- governance
- policies and procedures
- monitoring and reporting
- training
- consent, fair processing and data sharing
- business continuity
- incident reporting
- retention and disposal

Upcoming Charity Events

We are pleased to announce our Autumn Winter programme of for Charity Essentials Training - The Essential Trustee and Governance in Practise. Our introduction session is essential for all charity trustees – new and experienced trustees alike – covering key Charity Commission guidance and the underlying charity law duties. The aim is to help trustees implement best practice, prevent and deal with problems when they arise and recognise when further input is needed.

[Click here to book your place](#)

GDPR Consent Form

As you will be aware the GDPR regulations mean we will need your consent to email you in the future. If you would like to be invited to events and informed of legal updates, you will need to let us know.

We have updated our privacy policy to reflect the changes to UK data privacy law, which you can find [here](#).

Please click the button below to complete a short GDPR consent form, or email data@stoneking.co.uk and let us know what you would like to receive.

[GDPR consent form](#)



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