

News in Brief from

Chappell Associates

Specialists in Charity Law and Social Enterprise

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The Companies Act 2006

As previously reported, the new Companies Act will be brought into effect in dribs and drabs over the next year. We'll keep you advised on progress, but for now, we offer an overview of some of the major business benefits.

DOWNLOADING THE ACT?

BE WARNED! If you are going to print it, make sure you have plenty of paper as it consists of 760 pages, 47 parts and 1300 sections.

This Act is the longest piece of legislation ever to be put on the statute book in Britain and contains hundreds of changes to existing company law.

The Act will have a tremendous impact on all private and public companies including corporate charities.

So now is the time to make sure every organisation which is a private company (excluding CICs) is well prepared for this new legislation because it is the biggest shake up to Company Law for decades.

To download your free copy of this Act please go to:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en.pdf

A summary of the major business benefits

key benefits

all companies

- Directors' general duties to conform with modern business practice.
- Greater use of electronic communications with members.
- Directors now able to file a service address at Companies House (rather than a home address).
- Improved rules for company names.
- Changes to Memorandum & Articles – and how they're used.
- Members able to agree limitations on the liability of auditors.

private companies

- Separate, simpler Articles of Association, reflecting the way small private companies operate.
- Government to set out a separate accounting and reporting "code" for small companies.
- Company secretary no longer required.
- No need to hold an AGM unless desired.
- Easier to take decisions by written resolutions.
- Changes to the minimum requirements for the Memorandum

members

- Greater rights for indirect members (who hold through a nominee), including the right to receive information electronically or in hard copy if they wish.
- Enhanced proxy rights, making it easier to appoint others to attend/vote at general meetings.
- Members to receive more timely information, reflecting technology improvements and the rate at which information becomes out of date.
- The Government wants institutional investors to disclose how they use their votes.

Information that must be on your website: an aide memoire

New provisions mean every company must now list the company registration number, place of registration and registered office address on the company's website. This new rule simply extends the current requirements applicable to paper stationery. The information must also appear on online order forms and in emails.

The following is the minimum information that must appear on an organisation's website:

- The name, geographic address and email address of the organisation. The name of the organisation with which the customer is contracting must also be given. This might differ from the trading name. Any such difference should be explained – eg. "XYZ.com is the trading name of XYZ Limited."

It is not sufficient to include a "contact us" form without also providing an email address and geographic address somewhere easily accessible on the site. A PO Box address is unlikely to suffice as a geographic address but a registered office address should. If the business is a company, the registered office address must be included.

- If a company, the company's registration number should be given and, under the Companies Act, the place of registration should be stated (eg. "XYZ Enterprises Limited is a company registered in England and Wales with company number 1234567")
- If the business is a member of a trade or professional association, membership details, including any registration number, should be provided.
- If the business has a VAT number, it should be stated – even if the website is not being used for e-commerce transactions.
- Any prices on the website must be clear and unambiguous.

Finally, do not forget the **Distance Selling Regulations** which contain other information requirements for online businesses that sell to consumers. Contact us for further details.

- ▶▶ **Charities should also include their Charity registration number on their electronic documentation and websites**

Guidance from HM Revenue & Customs

Community Amateur Sports Clubs

This guidance is intended to help sports clubs and their supporters understand the new rules. It explains the rules that apply to clubs that want to register as Community Amateur Sports Clubs (CASC's) with HM Revenue & Customs. It does not deal with the requirements that clubs need to satisfy to secure registration as a charity.

The definition of a CASC is set out in the legislation. It is designed to give relief to clubs that are open to the whole community, are organised on an amateur basis and have as their main purpose providing facilities for, and promoting participation in one or more eligible sports (ie. a sport that is recognised by the sports council).

http://www.hmrc.gov.uk/casc/casc_guidance.htm#2

Gift Aid – oral declarations

HMRC's **Detailed Guidance Notes for Charities** have been updated in respect of oral declarations to clarify charity's record keeping requirements.

The crucial text is as follows.

"Gift Aid declarations can be given in writing, or orally. This includes electronic communications such as use of the Internet, email, fax, telephone, mobile phone or text message etc. A declaration can cover a single donation or any number of donations."

Snippets

Spam spam spam

A study of the UK's biggest companies has found 31% of them breaking anti-spam laws by sending marketing emails without either prior consent or an existing customer relationship.

A recent survey carried out by **CDMS** (a data and marketing firm) found that only 69% of the top 200 UK companies were compliant with electronic communication legislation.

The companies were tested to see whether they consistently offered non-customers the opportunity to actively opt-in or otherwise consent to receiving further marketing emails when their details were recorded as the result of a promotion or enquiry. These promotions appeared either on the company's own website, through a partner's website, in a third party e-newsletter, or as part of an advertising or direct mail campaign.

CDMS said: "Companies who have not complied are putting their carefully built brands at risk, by putting out the message to consumers that they apparently don't care about legislation designed to protect their prospective customers' privacy. This effectively puts them in the category of junk emailers, and associating them with a rising tide of spam, and growing consumer concerns over the security of their personal records."

Holidays: statutory entitlement

The **Department of Trade and Industry** is launching a second public consultation on the implementation of the Government's proposals to increase workers' holiday entitlement from 20 days per year to 28.

Statutory annual leave entitlement would be increased in two stages, rising from 20 to 24 days on 1st October 2007 and from 24 to 28 days on 1st October 2008. Research by the DTI found that groups standing to benefit most from the changes include women, part-time workers, low-paid workers and workers from minority ethnic communities.

The DTI has already consulted widely on the increase and has sought the views of business and trade bodies. The cost to business is expected to be around 0.4% of the wages bill.

The consultation closes on **13 April 2007**.

Children and young people

The Government has launched a discussion paper entitled **Policy Review of Children and Young People**, setting out evidence gathered during the first stage of the review and the next areas that the review will examine to inform the 2007 Comprehensive Spending Review and the Government's forthcoming Ten-Year Youth Strategy.

The paper argues that regular participation in positive activities helps young people cope with change, develop confidence and build new skills. Almost two-thirds of 11-15 year olds already participate in groups, clubs or organisations each year, but the Government is determined to increase participation further.

A short trade mark story

Charity A is dedicated to supporting people with mental health problems. It operates in a particular locality in the UK, and has been in operation for 10 years or more. It has a really appropriate name which is well-respected and widely recognised in the region but has limited exposure outside the region. The charity relies on people recognising its name, both in respect of fund raising, and in delivering services to those it helps.

Charity B is a large national charity, also operating in the general area of mental health. Charity B employed brand consultants to create a new name and new image for them, and made expensive plans for a major launch. The new name created was the same name as that used by Charity A.

When the overlap came to light, both parties went to the Trade Marks Registry to register the name, but Charity B made their application the day before Charity A. The Charities Commission should have spotted the overlap and prevented B from going ahead, or at least from going ahead without reaching agreement with A, but failed to do so. Both parties had substantial vested interests in the name, A because of its long use, and B because it had invested much money in the creation of this new identity and its launch.

Eventually the two parties reached a negotiated agreement, but only after a long period of discussion and negotiation, and after substantial legal fees had been expended. Had Charity A registered its trade mark name early on, the situation would probably never have arisen, because the brand creators would have searched the trade marks register and found the name already in use.

So, make sure your name and trade mark is protected!

Many happy Annual Returns

The **Charity Commission** has announced a consultation on the new draft Annual Return form for 2007. The key changes can be found at: <http://www.charitycommission.gov.uk/enhancingcharities/summar07.asp>.

It is proposed that charities should in future report "serious incidents" and the Commission lists as examples:

- fraud, theft or loss of funds involving £25,000 or more;
- significant donations of money or other property from an unknown or unverified source;
- if the charity (including individual staff and/or trustees) has any known or alleged link to a prescribed organisation or to terrorist or other unlawful activities;
- if a person disqualified from acting as trustee has been or is currently acting as a trustee of the charity;
- not having a policy in place for safeguarding vulnerable beneficiaries (eg. children and young people, people with disabilities and the elderly/old people);
- not having a vetting procedure to ensure that a trustee or member of staff is eligible to act in the position to which s/he is being appointed.

The consultation runs until **19 March 2007**.

Replies in writing should be sent to:

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