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News in Brief from

Chappell Associates

Specialists in Charity Law and Social Enterprise

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With best wishes from
DEBORAH & CHRIS CHAPPELL

Chappell Associates

Specialists in Charity Law and Social Enterprise

Public Benefit Guidance



- The Charity Commission now aims to publish its definitive public benefit guidance document – **Charities and Public Benefit** – in January 2008. It acknowledges that the complexity and detail of some of the issues addressed in the draft guidance meant that it was very long. The Commission will make every effort to simplify the language used and hopes the final advice can be shortened.
- A number of lawyers commented on the legal standing of the Commission's draft guidance put out to consultation, in particular that it is not there to provide a definition of public benefit but simply to provide guidance on the existing common law. There were concerns that the draft guidance tended to 'state the law definitively in absolute terms'
- In finalising the draft guidance, the Commission acknowledges the need to make the intended purpose and effect of their guidance clear: that it is not intended to be tantamount to a legal definition of public benefit but simply to set out the position at common law.
- The draft guidance recognised that what is considered to be of public benefit changes over time. Reaction was mixed: some welcomed the balanced and practical approach to a flexible interpretation of charity law. Others expressed unhappiness that since Parliament made no reference to 'modern social conditions' in the Charities Act, the emphasis in the draft guidance was not justified.

Responses to the four principles set out in the draft guidance



Principle 1: There must be an identifiable benefit

The draft guidance acknowledged that there are different sorts of benefit. Some are more obvious or quantifiable than others, but all are relevant provided they can be identified and described. The benefits of a charity's purposes must also be weighed against any detriment or harm.

- The balance of responses was clearly split on the question of whether or not ancillary benefits should be taken into account; the debate rests on the question of how widely a charity's purposes might be interpreted, and what might therefore be regarded as a benefit arising from that purpose.
- Many responders welcomed the Commission's view that it would not be sufficient if the indirect benefit of the relief of public funds were the only benefit.
- There was widely expressed dislike of the term 'disbenefit'; that there is nothing in the Charities Act about a consideration of 'disbenefit'.

Principle 2: Benefit must be to the public, or a section of the public

The draft guidance gave rise to some debate about how narrowly a class of beneficiaries can be drawn. As well as charities for the relief of poverty, this issue was raised by responses from some religious communities, professional bodies and societies with restricted membership provisions. The Commission expects to expand on this question in the specific supplementary guidance on the public benefit of charities relieving poverty.

Principle 3: People on low incomes must be able to benefit

There appears to be general support for the Commission's interpretation that benefits to 'the poor' should be more than a token gesture and that the term 'the poor' is preferred to 'people on low incomes', despite its possibly old-fashioned appearance. Some were concerned that the suggested definition of who might be considered 'people on low incomes' was too UK focused and that the treatment of "asset rich" individuals should be made clearer.

Principle 4: Any private benefit must be incidental

There was confusion over this: the Commission will make it clear that this principle relates to non-charitable benefits that people may receive from a charity. Most responses generally agreed with this principle, although many, including religious communities and membership organisations, asked for further explanation and guidance on it. The Commission has acknowledged that this needs further guidance and clarification.

The operation of the public benefit reporting requirement

A further consultation in September 2007 conducted by the Office of the Third Sector on the Charities (Accounts and Reports) Regulations 2007, included a proposal that charity trustees provide a public benefit statement in their Trustees' Annual Report. The Commission's guidance on how best to report public benefit will be informed by the results of that consultation.

Implications of the public benefit proposals for charities and charity trustees

Many religious charities and individuals connected with religious charities expressed concern – and outrage – about what they believed could be difficulties in meeting the public benefit requirement. Many were concerned in particular that the Commission would not recognise evangelising and missionary activities as charitable, and pointed out that the charitable nature of such work was clearly recognised by the Government during the debate on the Charities Bill. The Commission will redress this point.

Revised timetables for Charity Law implementation

New January deadline for public benefit guidance

The Charity Commission has published the revised and updated timetable for its public benefit guidance for charities:

January 2008	General public benefit guidance for all charities published
January/February 2008	Start of three-month consultations on draft supplementary guidance on public benefit for <ul style="list-style-type: none">Charities for the prevention and relief of povertyCharities for the advancement of educationCharities for the advancement of religionFee-charging charities
Late March 2008	Expected date on which the public benefit provisions in the Charities Act 2006 come into force
July-December 2008	Supplementary guidance on public benefit published
Late March 2009	Charities will begin reporting on public benefit as part of their annual reports to the Commission from this date



Charities Act 2006 2006 Chapter 50

Charities Act 2006

The Office of the Third Sector has also published an updated timetable for implementation of the latest tranche of the Charities Act 2006.

Please see the revised timetable at:

http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/third_sector/ca_implementation_plan_071121.pdf

Provisions relating to fundraising

- Changes to the existing requirements in the Charities Act 1992 relating to solicitation statements for professional fundraisers and commercial participators, came into force on 28 November 2007
- The new extended provisions will now come into force on 1 April 2008 for those involved in running a charity – its trustees and employees – to make a simple statement when being paid to collect in public (sections 67 and 68 of the 2006 Act). Guidance on the

changes to the requirements relating to solicitation statements is being developed. Publication is expected early in the New Year.

- The decision to put implementation of the new provisions relating to solicitation statements back to April 2008 was made following representations from the sector that more time was needed to prepare for the changes properly.

Third Commencement Order – first quarter of 2008

Provisions relating to audit and accounting for charities, including group accounts and changes to the accounting regime for small charitable companies (expected to come into force in late March 2008).



Companies Act 2006 2006 Chapter 46

Companies Act 2006

The Government has also announced that the commencement date for most of the provisions of the Companies Act 2006 due to be commenced on 1 October 2008 will now be put back to 1 October 2009

A revised implementation timetable may be viewed at

<http://www.berr.gov.uk/bbf/co-act-2006/index.html>

Employment Law: National Minimum Wage

From 1 October 2007 the National Minimum Wage was revised as follows:

- Adult rate (workers aged 22 and over): **£5.52**
- Development rate for 18-21 year olds: **£4.60**
- Development rate for 16-17 year olds: **£3.40**

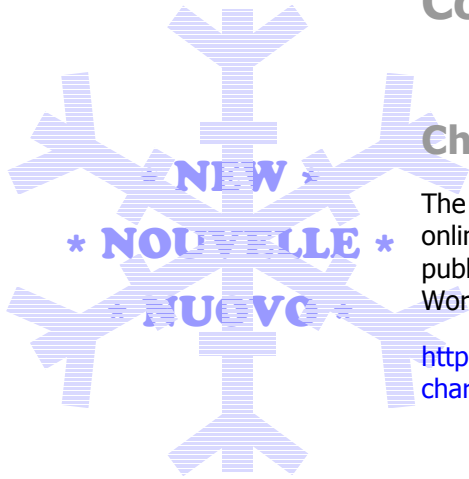
The rate for the accommodation offset has been increased to £30.10 per week (£4.30 per day).

Tax allowances etc for 2008-09

The Treasury has published the 2008-09 rates and allowances for Income Tax, National Insurance Contributions, Working and Child Tax Credits, Child Benefit/Guardian's Allowance and State Pension and Pension Credit.

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What's new at the Charity Commission?



Charity Commission Merger Registers

The Charity Commission's Register of Mergers is still promised to be fully online by the end of the year. In the interim, the Commission has published guidance on its website about 'Mergers and Collaborative Working' which may be viewed at.

<http://www.charity-commission.gov.uk/enhancingcharities/charmergers.asp>

New registrations

The Commission has launched a new online facility to enable users to view newly-registered charities (other than mergers) as they come on to the Register of Charities. The charities are listed alphabetically and the postcode given is the postcode of the correspondent for the charity.

<http://www.charity-commission.gov.uk/registeredcharities/recent.asp>

New registration forms

The Commission has launched a new streamlined application form. This form replaces all other application forms. Charities applying for registration for the first time should note that old-style application forms will no longer be accepted and old format applications will be returned with a request that a new style application be completed.

The forms and guidance for completion of the paperwork may be viewed at the following links:

<http://www.charitycommission.gov.uk/Library/publications/pdfs/cc5atext.pdf>

<http://www.charitycommission.gov.uk/Library/publications/pdfs/cc5btext.pdf>

<http://www.charitycommission.gov.uk/Library/publications/pdfs/cc5ctext.pdf>

Finding new trustees

The Commission's guidance on finding new charity trustees has been updated. The guidance covers finding potential trustees, vetting prior to appointment, Criminal Records Bureau checks, and appointing trustees, as well as lots of useful further information and advice.

<http://www.charity-commission.gov.uk/publications/cc30.asp>

Dormant Accounts

After years of discussion around the redistribution of funds lying dormant in bank accounts, a new **Dormant Bank and Building Society Accounts Bill** was announced in this year's Queen's Speech.

The Bill will see dormant funds – broadly defined as unclaimed assets covering all bank and building society accounts where there has been no customer-initiated activity for 15 years – reinvested in communities via the BIG lottery fund.

In England, initial spending will be on youth services, financial capability and inclusion and, resources permitting, a social investment 'wholesaler' – devolved administrations will determine their own priorities.

The Bill will also provide for consumer protection, with those affected having the right to claim their money back at any time. Also, the legislation will be "enabling", not compulsory for financial institutions.

However, while it is welcome news that legislative action is being undertaken on dormant funds, the Community Foundation Network has warned that the Bill will not get money to the grassroots organisations which, it says, are facing a mounting funding crisis.

Intellectual property: trade marks

The UK Intellectual Property Office "UKIPO" (formerly the Patent Office) has made changes to its examination procedures. UKIPO will no longer refuse to register a new trade mark application because of an earlier conflicting trade mark, unless the owner of the earlier mark successfully opposes the new application.

UKIPO will still search the relevant registers as part of the examination process and send the applicant the results. If the examiner considers that there may be any potential earlier conflicting marks already on the register, the applicant must choose between continuing with the application, restricting the list of goods and services to try to overcome the clash with the earlier mark, or withdrawing the application.

If the applicant decides to continue with the application, UKIPO will write to the owners of any earlier conflicting marks identified in the search when the application proceeds to publication in the Trade Marks Journal. Owners of earlier UK marks will be notified automatically; but owners of EU marks will need to "opt-in".

This can be done by completing a **form TM6** which is available electronically on the UKIPO website, subject to the payment of the relevant fee.

Further information is available at:

<http://www.ipo.gov.uk/tm/t-decisionmaking/t-law/t-law-notice/t-law-notice-relativegrounds.htm>

Gift Aid Reform

Lack of agreement on Gift Aid consultation proposals

The Charity Tax Group, Acevo, the NCVO, the Institute of Fundraising, the Charity Finance Directors' Group and the National Church Institutions propose that charities should be allowed to claim a fixed percentage of their total donations in Gift Aid based on an estimate of the proportion of donors who are taxpayers.

Under these proposals, charities would avoid the laborious process of persuading donors to fill in Gift Aid forms and collecting the completed receipts, listing their donations and submitting all the information for auditing. Instead, each organisation could agree a fixed rate of reclaim with HM Revenue & Customs on the basis of how much voluntary income it receives each year, as listed in its annual accounts.

However, the Charities Aid Foundation (CAF) objects strongly to such a radical Gift Aid reform proposal, warning that it could alienate donors. CAF also rejects the idea of making Gift Aid an opt-out system in which the presumption would be that donors wanted the charity to claim Gift Aid on their donations.

CAF says such a move would "in essence move Gift Aid from a tax rebate to a grant system" and erode the principle of donor choice.

CAF also opposes the Institute of Fundraising's proposal to reverse the rules on corporate Gift Aid so that the tax relief claimed on donations would go to the charity and not, as at present, the company. It says this would lead to an even greater administrative burden on charities and might prompt companies to reduce their giving in order to compensate for the loss of tax benefit.

A summary of responses to the Gift Aid consultation is published on the HM Treasury website.

Ahead of next year's Budget, the Government will explore with charitable sector representatives a number of areas raised during the consultation.

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Snippets

Registered social landlords

The draft RSL forms published by HMRC Charities on 8 October have now been replaced with the finalised versions, available on the charities forms page of the HMRC website.

http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2007/press_109_07.cfm

New guide to international fundraising

A new free guide for charities interested in raising funds abroad has been launched by the European Association for Planned Giving (EAPG).

The EAPG Cross-Border Directory contains a country-by-country list of professional advisers specialising in charitable fundraising, international philanthropy and planned giving.

It also contains summaries of the different tax and legal frameworks that affect charitable giving in Europe and North America, as well as links to relevant publications and websites.

Income Tax Allowances

HMRC has published an update to the income tax rates and allowances page to reflect the Government's announcement of the personal allowances for 2008-09.

<http://www.hmrc.gov.uk/rates/it.htm>

