

News in Brief from

Chappell Associates

Specialists in Charity Law and Social Enterprise

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Public Benefit Consultation

The Charity Commission's consultation exercise on Public Benefit is due to end in June. The four key principles set out in the consultation document by the Commission have attracted a broad consensus of support. There was some debate about the third draft principle that people on low incomes must be able to benefit, in as much as it applies to fee-charging charities, but with some qualification even that principle looks likely to be retained.

The four draft principles are:

1. There must be an identifiable benefit
2. Benefit must be to the public, or a section of the public
3. People on low incomes must be able to benefit
4. Any private benefit must be incidental

10 questions
to help you
assess whether
your purposes
meet the
principles of
Public Benefit

1. What benefit(s) does your organisation provide?
2. How do those benefits help fulfil your organisation's purpose(s)?
3. Who is your organisation primarily set up to benefit?
4. Does your organisation provide wider benefits to the community or society generally? If so, how?
5. What criteria does your organisation use to select beneficiaries? Is anyone excluded from being a beneficiary? If so, who is excluded and why?
6. Does your organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?
7. Does your organisation provide facilities for, or services to, the public? If so, what, if any, restrictions are there on what people can have access to or who can have access?
8. Does your organisation charge for its services? If so, how are charges set? Is everyone charged the full rate?
9. How are people on low incomes able to benefit from your organisation?
10. Does anyone receive private benefits from your organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving your organisation's purposes and/or to what extent are they incidental?

Public Benefit Timetable

6 June 2007	Consultation on draft public benefit guidance ends
June – September 2007	Commission analyses responses and revises guidance
October 2007	Commission publishes public benefit guidance – Charities and Public Benefit
November 2007	Commission launches three month public consultation on draft sub-sector guidance dealing with the public benefit of: <ul style="list-style-type: none">▪ Charities for the prevention and relief of poverty▪ Charities for the advancement of education▪ Charities for the advancement of religion▪ Fee-charging charities Commission begins pilot public benefit assessments of charities which may have difficulty meeting the public benefit requirement
January 2008	Sub-sector consultations end
Early 2008	The new definition of charity and the public benefit requirement come into force
June 2008	Commission publishes sub-sector guidance

Charities Act 2006: plain language guide



Charities Act 2006 2006 Chapter 50

The Office of the Third Sector and the Charity Commission have jointly produced a plain-language guide to the Charities Act 2006, aimed primarily at charities with an income below £500,000. It explains the main provisions of the Act, and sources of further information or guidance on specific provisions. The web version of the guide will be updated periodically as various provisions of the Act commence and new guidance is published.

To review the web version of the plain language guide, type the following address into your web browser:

▶▶ http://www.cabinetoffice.gov.uk/third_sector/documents/charity_act/charities_act_web.pdf

Gift Aid consultation

The Third sector minister, Ed Miliband, has rejected the suggestion from the Institute of Fundraising to cut the link between Gift Aid and the basic rate of income tax. The Institute wrote to Gordon Brown this month asking him to fix the Gift Aid reclaim rate at 28p in the pound, in the hope of staving off the loss to the sector when the basic rate is reduced to 20p in April 2008.

The Press report Mr Miliband as saying 'Gift Aid is a non-discretionary tax relief; and because it is not linked to public expenditure, the Government cannot increase or decrease it at will. On the contrary, maintaining the connection with the basic rate of income tax means that Gift Aid is kept out of the direct control of ministers' – which he feels is important for the sector.



ONE TO WATCH

Meanwhile, HMRC predicted that its radical suggestions on altering the Gift Aid regime could lead to 'tensions' in the forthcoming Gift Aid consultation, which is expected to open in June. One HMRC suggestion is to alter Gift Aid from a tax rebate to a form of Government spending.

Watch this space!

Charity Commission & the Fundraising Standards Board: Memorandum of Understanding

The Charity Commission and the Fundraising Standards Board have agreed a Memorandum of Understanding in relation to charitable fundraising in England and Wales. The memorandum sets out:

- how the two organisations have agreed to work together on the self-regulation of fundraising, resolution of issues of jurisdiction and 'grey areas' (which will probably be dealt with, in the first instance, case by case);
- the approach of the two organisations on information-sharing;
- the responsibilities of the two organisations for dealing with complaints (and, just as important, sets out the types of complaints that the two organisations will not deal with).



Equality Act (Sexual Orientation) Regulations 2007

For the Communities and Local Government Board brief guide to the **Equality Act (Sexual Orientation) Regulations 2007**, covering teaching in schools, goods, facilities and services, civil partnerships, charities, faith-based adoption and fostering agencies, religious liberty and freedom of speech, type the following web address into your web browser:

▶▶ <http://www.communities.gov.uk/index.asp?id=1510339>

On charities and voluntary organisations specifically, the guide states:

- that the Regulations will not interfere with current charity law. If a charity is required to discriminate in line with the explicit terms of the charitable instrument under which it is established, it may continue to do so.
- that faith-based voluntary organisations or charities will not have to comply with the Regulations where this would conflict with either the doctrine of their organisation or the strongly-held beliefs of a significant number of the religion's followers – provided they are not operating on either a commercial basis or on behalf of and under contract with a public authority.

VAT: cultural services

Bournemouth Symphony Orchestra has been refused leave to appeal to the House of Lords against the Court of Appeal's judgment that, overall, its managerial body was not "essentially voluntary" for the purposes of claiming the cultural services exemption contained in Group 13 of Schedule 9 to the VAT Act 1994.

The case turned on one of the conditions for exemption for services provided by an 'eligible body' in that the body must be 'managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities'.

HMRC has published guidelines on how to interpret the term 'direct or indirect financial interest' as a result of this case. The Brief supersedes earlier HMRC advice.

It is now the view of HMRC that payments to individuals for services in managing and administering the body, are not financial interests if:

- they are allowed by the governing document;
- the recipient is excluded from any decision-making regarding the award of any contract to the person ;
- the payments are not above market rates; and
- are not linked to profits.



Snippets

PAYE

HMRC have rewritten their PAYE help sheet to incorporate the changes brought about by the Finance Act 2006 (the Budget).

For more details, type the following address into your web browser:
▶▶ <http://www.hmrc.gov.uk/helpsheets/mp2.pdf>

And ask us about Company Law changes

Current Company Law	New Company Law	Expected Effective Date
	Certain information about the company to be included on all emails and faxes and the company's website	Already in force
	Provisions relating to electronic communication with members/the company	Already in force
Director's duties set out in case law	Statutory statement of directors' duties – including the new duty of 'success'	1 October 2007 (with some exceptions)
Companies must hold an AGM	Option to dispense with the AGM	1 October 2007
Company must have a company secretary	Option to dispense with the Company Secretary	6 April 2008
	Minimum age of 16 for Directors	1 October 2008
Director's home address is on the public record	Directors can give a service address for the public record	1 October 2008



Two Acts in Two Hours

We are offering a two hour "plain English" seminar to advise what the significant changes to Charity Law and Company Law mean in practice to charitable companies.

The price is **£240** (no VAT). Please contact us for details.