

News in Brief from

Chappell Associates

Specialists in Charity Law and Social Enterprise

STOP PRESS

The new charity registration threshold of £5,000 will come into effect on all new charity applications received at the charity commission after 23rd April

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**In this issue
we spend some
time looking
at what the new
laws mean in
practice – and
we're always
happy to discuss
any issues by
phone and to
provide the detail**

Charities Act 2006

Public benefit consultation commences

The Charity Commission's public benefit consultation opened on Wednesday 7th March 2007. The consultation will take place over a three-month period and will be seeking the sector's views on the principles of public benefit, the ways in which it can be demonstrated by charities and how public benefit might be assessed.

PLEASE NOTE: whilst the Commission has confirmed that the draft principles surrounding public benefit will be laid out in the document, nothing will be set in stone until the consultation has been completed and analysed.

Charity Law changes: 27 February 2007

1. Powers of the Commission to relax publicity requirements for Schemes and Trustee Orders

The Act simplifies some of the previous (and very detailed) regulations regarding Schemes, and now allows the Commission to decide, on a case by case basis, the period within which representations in response to draft Schemes and Trustee Orders must be made. The one month minimum requirement has been removed.

2. Power of the Commission to decide membership of a charity

This power allows the Commission to decide who a charity's members are. This will be done upon receipt of an application from the charity Trustees or by the Commission itself within the course of an s.8 inquiry.

NB: It may be difficult to use this power effectively where there are personality clashes between Trustees, or where there are no Trustees to make the application – or where there is a dispute about who the Trustees might be.

3. Power for the Commission to enter premises and seize documents

This power allows a named Commission officer, under protection of a warrant from a Justice of the Peace to do some or all of the following:

- Enter and search premises named in the warrant and take possession of documents relevant to an inquiry under section 8 of the 1993 Act;
- Take steps to preserve or prevent interference with or destruction of any documents specified in the warrant,

- Take possession of any computer disc or any other electronic storage device which appears to contain information relevant to an inquiry under s.8.

NB: These actions must only be taken with in the context of a s.8 inquiry which therefore means a s.8 must be open at the time.

4. Restrictions on disposals of charity land

It has always been clear that an order of the Charity Commission is required before disposing of charity land unless the charity Trustees follow certain "self certification" procedures, such as obtaining a surveyor's report and marketing the property in accordance with the surveyor's advice. What has been unclear is the timing – does that have to be done before exchange or completion? The Act removes this uncertainty. It confirms that Trustees need to follow the self-certification procedure before exchange or alternatively seek Charity Commission approval for the sale.

5. Meaning of "connected person" in the context of land sales

The 2006 Act expands the definition of 'connected person' and makes it clear that a person is to be regarded as "connected" if the relationship exists at the time of either, or both, exchange and completion.

6. Mortgaging

The new clause extends the circumstances in which a charity can self-authorise a mortgage – ie. when a charity can use charity land as security for loans or grants without needing prior Charity Commission approval.

7. Audit requirements

This is a revision of existing provisions in the 1993 Act. The thresholds are now based on income or assets only. Please contact us for details. The rules differ for charities which are companies, and those which are not companies.

8. Waiver of trustee disqualification

This provision may be of interest to disqualified Trustees and charity Trustees wishing to appoint a Trustee to their charity who has been disqualified from acting as such by the Commission. The new clause enables Trustees who were removed from office (because of misconduct or mismanagement) more than five years earlier, to have their disqualification for acting as a Trustee waived unless they are:

- disqualified as a company director; or
- an undischarged bankrupt; or
- and if the Commission is satisfied that it should grant the application.

9. Relief of Trustees and others from liability for breach of trust or duty

The new provision allows the Charity Commission to excuse individuals from a personal liability which they have incurred as a result of a breach of trust or duty. If the Commission takes the view that, although in breach of trust or duty, the person in question has acted reasonably and honestly and ought fairly to be excused, it make an order stating that the individual is relieved from their personal liability.

10. Trustee Indemnity Insurance (TII)

The new power allows charity Trustees to use the charity's funds to purchase personal indemnity insurance – unless the governing document specifically prevents it. This means Trustees no longer need an explicit power from the Charity Commission or from their governing document to purchase such a policy. There remain, however, limitations on what type of cover the Trustees can purchase from Charity funds.

Charity Commission consultation on Criminal Records Bureau checks

The Charity Commission has launched a 12-week consultation on its approach to Criminal Records Bureau checks for Trustees of charities working with children or vulnerable adults.

It is the responsibility of Trustees to ensure that appropriate CRB checks are carried out; and the Commission currently asks to see CRB disclosures for Trustees before registering charities working with vulnerable beneficiaries. It is now reviewing this policy to ensure it is proportionate and as appropriate and effective as possible.

The consultation paper **Criminal Records Bureau checks of Trustees of charities** explains the Commission's policy on CRB checks, both for existing charities and for those registering for the first time. It asks for charities' and other interested parties' views on the policy's effectiveness and seeks input to inform the final policy which will be published later this year.

The consultation document can be found on the Commission's website at www.charitycommission.gov.uk under **PROMOTING EFFECTIVE PERFORMANCE**.

Charities delivering public services

Recent Charity Commission survey results of the first ever 'all-charity' survey into charities delivering public services, reveal that many are not paid the full cost involved. The report's publication coincides with new Commission guidance for charities considering this type of work, "Charities and public service delivery" which can be found at www.charity-commission.gov.uk/publications/cc37.asp

Government requested to look at the bigger picture

The Directory of Social Change paper **The Interplay Between State, Private Sector and Voluntary Activity: A Vision for the Future** argues that there is a disproportionate influence over government by 2% of the sector, which is then directed back at that same 2%. It also says that the vast majority of the sector needs grant funding, not public sector contracts, and that for the sector to flourish it needs to be trusted to do its work. The paper makes a number of recommendations, from improving government consultation with the sector, to producing a clear definition of 'public service delivery' and where the sector should be engaging in it. The full report can be found at www.dsc.org.uk/charityexchange/DSC_policy_doc.html

Code of Practice – The Institute of Fundraising

The Institute of Fundraising has issued a new code of practice focusing on accountability and transparency in fundraising.

The code aims to enable charities to get to grips with issues such as communicating fundraising costs and beneficiary gifts.

The code covers two main areas:

- the key principles of transparency and accountability in fundraising and practical guidance about their implementation; and
- guidance about communicating to donors, fundraisers, beneficiaries and the general public such issues as fundraising costs, restricted funding and the purpose and benefits of fundraising.

The new code can be found at www.institute-of-fundraising.org.uk in the 'Codes of Fundraising Practice' section.

Snippets

Gift Aid

HMRC has published new advice on time-limits for Gift Aid repayment claims: the deadlines are different for charities which are trusts and charities which are companies. For further details please see: www.hmrc.gov.uk/charities/time-limit-repay-claims.htm

HMRC

Charity Trading

At the end of last year HMRC replaced their previous guidance on trading by charities with comprehensive notes on trading and business activities. HMRC have since issued a further detailed guidance note confirming how the taxation issues specifically affect charities. Please see www.hmrc.gov.uk/charities/guidance-notes/annex4/sectiona.htm

Companies Act 2006

The DTI has published the first of a series of plain English guides to the Companies Act 2006 to coincide with the first changes coming through from April 2007 for public companies. None of these first changes are likely to affect charities – but later ones will – we shall keep you advised. See www.dti.gov.uk/files/file37956.p

VAT

e-Petition

An e-petition has appeared on the Downing Street website as follows: "We the undersigned petition the Prime Minister to stop making charities pay VAT".

Value Added Tax (Health and Welfare) Order 2007

The European Court of Justice has ruled that the UK VAT exemption for medical services (dentists, medical practitioners and pharmaceutical chemists) was too wide. Essentially, if one of the main purposes of the medical service is the protection, maintenance or restoration of the health of an individual, then the services are exempt from VAT – but if the purpose of a medical examination or report is to enable a third party to decide on a course of action, the medical services will be subject to VAT at 17.5%. As a result, some services, currently exempt, will become liable to VAT at the standard rate from 1 May 2007.

**HMRC Charity
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