

# Charity update



Welcome to the first edition of Charity news for 2007,

Its all change...after 4 years the waiting is finally over and the Charities Act has been created, making one of the most significant changes to English Law for 400 years.

In this edition of our specialist newsletter for Welsh charities and not-for-profit organisations, we focus on the detail of the Act and the impacts not only on charities themselves, but also their trustees.

I hope you find the newsletter engaging and informative, and as always, should you have any queries, please contact us.



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## IN THIS ISSUE:

### > THE CHARITIES ACT 2006

- IMPLEMENTATION PLAN
- WHAT DOES IT MEAN FOR TRUSTEES?

### > LATEST CHARITY SECTOR NEWS

## THE CHARITIES ACT 2006

The Charities Act finally received Royal Assent on 8th November 2006. Over the next few months and years, this critical piece of legislation will influence how the sector operates, and alter the relationship between charities and the Charity Commission. In this issue of Charity Update, the specialist charity team at Broomfield & Alexander have tried to answer some of the questions that our clients have recently put to us.

### HAS THE DEFINITION OF A CHARITY CHANGED?

Yes, the Act says that in order to be a charity, an organisation must have a purpose that falls within one of the 13 defined charitable purposes, **and** must be able to demonstrate that it exists to benefit the public in some way.

The 13 charitable purposes are:

- > The prevention or relief of poverty
- > The advancement of education
- > The advancement of religion
- > The advancement of health or the saving of lives
- > The advancement of citizenship or community development
- > The advancement of the arts, culture, heritage or science
- > The advancement of amateur sport
- > The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- > The advancement of animal welfare

- > The advancement of environmental protection or improvement
- > The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- > The promotion of the efficiency of the armed forces of the Crown; or of the efficiency of the police, fire and rescue services or ambulance services
- > And any other purposes charitable in law.

The '**public benefit requirement**' was the previously applied acid test, and is a concept that charities are familiar with. However, charities for the advancement of education or religion and charities for the relief of poverty were previously presumed to provide a public benefit and did not have to prove this. This presumption no longer applies, meaning that all charities (new and existing) must now demonstrate that they operate for the public benefit.

The Charity Commission will decide if an organisation meets this **public benefit requirement**. In order to do this, the Commission has produced an Indicative Programme: *Taking forward public benefit*, which is available from their website, and they are now holding a consultation with the sector and the wider public. After the consultation, the Commission will provide general guidance on what the requirement means later this year.

# THE CHARITIES ACT 2006 (CONTINUED)

## WE ARE CONSIDERING INCORPORATING OUR CHARITY, CAN WE SET UP A CIO NOW?

A Charitable Incorporated Organisation (CIO) is a new corporate vehicle for charities that has been created by the Act. A CIO will have the advantages of a corporate structure, such as reduced personal liabilities for trustees, without the burden of being regulated by both the Charities Commission and Companies House like companies limited by guarantee.

Consultation with the charity sector on the detailed structure of CIO's is underway and we hope to bring you the details in our next edition.

It is worth considering that this process will take time, and may be followed by a period of uncertainty as banks, suppliers and members of the public get used to dealing with the new corporate vehicle. If you need to incorporate as soon as possible, the company limited by guarantee 'route' is still the main one available.

## ARE THERE ANY CHANGES TO CHARITY ACCOUNTING?

The Act simplifies the rules about when a professional audit is required, with similar thresholds

for incorporated and unincorporated charities:

### Incorporated Charities

- > must have their accounts professionally audited if they have a gross annual income over £500,000 or a balance sheet total (aggregate assets) over £2.8m.
- > must have their accounts independently examined if they have a gross annual income between £90,000 and £500,000 and assets of less than £2.8m.
- > with income below £90,000 are not required to have an audit or independently examination

### Unincorporated Charities

- > must have their accounts professionally audited if they have a gross annual income over £500,000 or a balance sheet total (aggregate assets) over £2.8m and gross annual income over £100k.
- > must have their accounts independently examined if they have a gross annual income between £10,000 and £500,000 and assets of less than £2.8m.
- > with income below £10,000 are not required to have an audit or independently examination.

These thresholds have not yet been implemented, so in the short term, the old thresholds apply.

Although it was previously good practice to prepare group accounts for a parent charity that show all trading subsidiaries, the new Act now provides a legal precedent to do this, although the thresholds have yet to be agreed.

## HAS THE ROLE AND POWERS OF THE CHARITY COMMISSION CHANGED?

The Act restates the objectives of the Commission, emphasising that it is still a source of advice as well as a regulator. Its roles continue to include increasing compliance and accountability as well as public confidence in charities, but it is also now tasked with promoting awareness and understanding of public benefit and the effective use of charitable resources.

The Commission has been given a number of new powers, including:

- > The power to suspend or remove trustees and others from membership of charities. This is unlikely to be used often, but will be useful on rare occasions when a member of a charity under investigation threatens the effective running of the charity.
- > Power, even without instituting a formal inquiry, to order that anyone in



# CHARITIES ACT 2006

possession or control of charity property should apply it for its intended purpose.

- > The power, after starting a formal inquiry, to seek a warrant from a Justice of the Peace to search premises (which could include a trustee's home) and seize documents to prevent them from being destroyed.
- > Power, in the course of a formal inquiry, to direct the trustees, the charity or its employees to take specific actions to protect the charity.

## WHAT IS THE CHARITY TRIBUNAL?

The Act establishes the Charity Tribunal, whose job is to hear appeals against, and reviews of, legal decisions taken by the Charity Commission. Currently, in order to appeal against a decision by the Commission, the case must currently go to the High Court, which is both difficult and very expensive.

The Tribunal will be established by the Department for Constitutional Affairs, and will probably take at least a year to set up. It will not be responsible for dealing with customer service complaints against the Commission which will still be dealt with by the Commission's internal complaints system and the Independent Complaints Reviewer.

## WHAT CHANGES HAVE BEEN MADE TO THE ROLES AND RESPONSIBILITIES OF TRUSTEES?

**Payment of trustees** - the concept of the unpaid, volunteer trustee remains at the heart of the charity sector. However, the Act allows trustees to pay an individual trustee for providing an additional service (i.e. not part of their role as a trustee) to the charity, if they think it is in the best interests of the charity to do so. They do not need to seek the Commission's authorisation to do

so, but must ensure that the number of trustees being paid in this way are in the minority, the amounts are reasonable and set out in a written agreement, and that the charity's governing document does not forbid such payments.

**Personal liability of trustees** - the Act allows charity trustees to apply to the Charity Commission, as well as the courts, for relief from personal liability for a breach of trust where the trustee has acted honestly and reasonably.

**Trustee indemnity insurance** - the Act allows trustees to take out trustee indemnity insurance using the charity's funds without the permission of the Commission, as long as there is no provision in the charity's governing document which specifically forbids this.

## OUR CHARITY USES PROFESSIONAL FUNDRAISERS, ARE WE ABLE TO CONTINUE?

Currently professional fundraisers and commercial participators fundraising for charities must have a written agreement with the charity, and must make a statement telling potential donors that they are being paid when they ask for money. The Act will require this statement to include the amount the professional fundraiser or commercial participator will be paid for fundraising for the appeal, or to give a reasonably accurate estimate of this figure if they do not know.

## OUR CHARITY RELIES UPON PUBLIC COLLECTIONS, ARE THERE ANY CHANGES AFFECTING THESE?

The Act introduces a new system for licensing public collections, in which the Commission's new role is to check if charities and other organisations are fit and proper to carry these out, and to issue public collection certificates, which are valid for up to five years.

A charity with a public collections certificate will be able to conduct 'door-to-door' (i.e. businesses as well as homes) collections without local authority permission, but must inform the local authority that the collection is taking place.

Some small-scale collections will be exempt from the licensing regime, but organisers must notify the local authority that the collection is taking place.

## IMPLEMENTATION OF THE ACT

The Office for the Third Sector has set a provisional timetable for the implementation of the Act. The first half of 2007 will see:

- > A 'plain English' guide to the Act.
- > A series of regional events to explain the Act to charities in England and Wales.
- > Initial reductions in the regulatory burden on charities, especially smaller charities.
- > A modernised framework for the Charity Commission.
- > Consultations with the sector to ensure clear guidance is available on the public benefit test.

Other key measures in the Act will follow. The full raft of deregulatory provisions will be brought into effect as quickly as possible, while other measures will require consultation and Secondary Legislation or guidance before they can be commenced.

More information on the implementation of the Charities Act can be found on the Office of the Third Sector's website at:

[http://www.cabinetoffice.gov.uk/third\\_sector/documents/charity\\_reform/implementation\\_plan.pdf](http://www.cabinetoffice.gov.uk/third_sector/documents/charity_reform/implementation_plan.pdf)

## OTHER CHARITY SECTOR NEWS

### COMPANIES ACT 2006 AND THE IMPLICATIONS FOR CHARITIES

The Charities Act was not the only piece of legislation affecting the sector to receive Royal Assent in November. The new Companies Act also became law and will be implemented between January 2007 and October 2008.

#### Will we be affected by the Companies Act changes?

Yes you will if the charity, trading subsidiary or social enterprise is set up as a limited company, or if you are a community interest company (CICs).

Some of the key points of the Act are:

- > From 1 January 2007 all promotional materials must include full company name, place of registration, registration number and registered office address. That includes websites, premises, emails, order forms etc.
- > 'Authorised signatories', who do not need to be officers of the company, may execute documents.
- > AGMs will no longer be mandatory for private companies but for many charities these act as a forum for transparency, accountability and good governance.
- > The position of Company Secretary will no longer be mandatory for private companies.
- > Changes to the number of votes needed to pass a written resolution.
- > Accounts will now have to be filed at Companies House within nine months of the financial year not ten.



### CHARITIES COUNT COST OF 'NEGLECTING TAX BREAKS'

A study by the financial advice website Unbiased.co.uk has estimated that charities missed out on more than £808m last year by failing to collect donations tax-efficiently. This figure showed a rise of £117m on the previous year's figure.

Lee Grant, project manager for tax efficiency at the Institute of Fundraising, said "We believe that up to a third of donations cannot be collected tax-efficiently, perhaps because they are given by non-taxpayers or form part of a cash collection.", "An achievable target for charities would be to collect two-thirds of donations tax-efficiently. Only a handful of the big charities are achieving this and, on average, charities collect only a third of donations tax-efficiently."

Make sure you make the most of the tax breaks with your fundraising, call our charity tax team now on **02920 549939** or email them at [tax@broomfield.co.uk](mailto:tax@broomfield.co.uk).

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