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# CHARITY NEWSLETTER

**February 2005**

## Introduction

Happy New Year and welcome to our first charity newsletter for 2005. This is going to be a year of change in respect of the accounts and regulation in the sector with a drive towards increased transparency and accountability. In this newsletter, we look at the latest stage in the draft Charities Bill and the Joint Committee report thereon. We also review the new SORP which is expected soon together with some issues to consider in relation to the money laundering rules. The setting up of a new structure for community interest companies (CICs) may be of interest to some readers and the establishment of a payroll giving scheme is a consideration for all employers and charities alike. We have also brought together a selection of other 'hot topics' which we hope will be relevant to you.

*Richard Robinson - charity partner*



### New SORP

The new SORP is expected soon and will be compulsory for accounting periods beginning on or after 1 March 2005 and early adoption will be encouraged. It is currently at the stage of an exposure draft.

The new SORP explicitly requires charities to list their aims, objectives, activities and results. Focus on costs has increased the detail to replace a general total of administration or support costs. Cost allocation rules have been tightened to prevent hiding fundraising costs in charitable expenditure. Support costs will not be shown on the SOFA (Statement of Financial Activities) and the heading 'management and administration' changes to 'governance costs'.

There is also clarification of the distinction between grants and contracts and the introduction of a new category of income termed 'performance related grants'. More explanation is also given to the point of recognition of a grant liability. Historic assets will become 'heritage assets' and the definitions have been clarified.

Charities must now disclose any ethical investment policies adopted.

Although the proposal to value volunteer time has been rejected, a fuller disclosure of volunteer contribution should be included in the annual report.

### Community Interest Companies (CICs)

This is a new type of company structure for social enterprises and is expected to be introduced in July 2005. They are corporate entities under company law but with additional features ensuring that they work for the benefit of the community. They are not charities and will report to an independent regulator whose powers are greater than they would be for companies but less than for charities. The community interest test is decided in the context of not serving an unduly restricted group of beneficiaries. Any profits must be reinvested for the benefit of the community; assets and profits can be distributed to other similar organisations if they too have an asset and profit lock. There will be a cap on dividends and interest payable to investors.



## Draft Charities Bill

The main barrier to the successful passage of the Charities Bill through parliament will be the calling of a general election. The first reading of The Charities Bill was on 20 December 2004. The second reading in the House of Lords was on Thursday 20 January. The next stages are in committee, the third reading (when amendments can be made) before going to the Commons. The same sequence is followed in the House of Commons but a timetable can be given to the Bill at the second reading to speed up the process. To be successful The Bill needs Royal Assent before the General Election (expected to be on 5 May). If this does not happen, the Bill can be reintroduced in a new Parliament.

The Joint Committee's report on the draft Charities Bill was issued on 30 September 2004. The majority of the issues included in the draft Bill were originally proposed in the Strategy Unit report. The Joint Committee report sets out 52 main recommendations regarding the Bill together with general recommendations regarding the scrutiny process including the following:

### ***Public benefit-loss of charitable status***

Consideration should be given as to whether or not the effect of a loss of charitable status should be included so that trustees may be given the power to retain the assets and continue to run the organisation as a not-for-profit entity for the original purposes.

### ***Regulation***

An independent review should be carried out of the burden of regulation especially for smaller charities and grant-making charities to ensure that it is fair and proportionate.

### ***Charity Commission roles***

The Charity Commission should distinguish between its advisory and regulatory functions and should make clear if correspondence is advice or instructions.

### ***Charity Appeal Tribunal***

Various recommendations were made to increase the new body's remit and powers.

### ***Trustees***

The Home Office is urged to review the proposals as it is suggested that trustees paying themselves improperly should be a civil rather than criminal offence.

### ***Public collections and fundraising***

The Home Office is urged to review the proposed legislation.

### ***Trading***

The Bill should allow charities to trade with no additional tax burden up to 25% (or £5,000 if greater) of the charity's total turnover. The overall limit of £50,000 should be increased.

### ***Legislation***

It was recommended that a single or consolidated Charity Act be enacted to incorporate the 1992, 1993 and 2005 Acts.

### ***Charity Commission***

Under the draft Bill the Commission is to be reconstituted as a statutory corporation and general functions and objectives as regulator and advisor are laid down.

### ***Constitutional changes***

More flexibility is proposed to allow charities to develop and evolve including the power to spend permanent endowment, clarify charitable objects and amend the governing document. New provisions allow trustee remuneration for the provision of services, provided that steps are taken to avoid conflicts of interest.



## Money laundering

Money laundering has been the subject of extensive coverage in the professional accountancy press in recent months due to the impact of the Proceeds of Crime Act 2002 and Money Laundering Regulations 2003. Money laundering can be defined as processing or doing anything with the proceeds of any criminal conduct.

Charities can be vulnerable to being used by criminals for money laundering purposes. Ways in which 'dirty money' can be integrated into the legitimate economy through a charity include the following:



Offering a cash donation for a certain period of time, the charity to receive interest on the sum, but the principal to be returned at the end of the specified period.

Offering donations that are conditional upon particular individuals or organisations being engaged to work for the charity.

- Making a substantial prepayment for services provided by the charity, such as advance school fees, then obtaining repayments from the charity when the services are not required.

It is often difficult for charities to look suspiciously at donations offered. However, it is the responsibility of the trustees to consider the best interests of the charity and they should therefore balance the benefits of the incoming resources with the risk to the charity of being associated with criminals or being used inadvertently to clean dirty money.

The size of the donation and the identity of the donor must be considered. If the charity trustees are doubtful about the identity of the potential donor they should treat the offer of funds with care.

However, since the refusal of an offered donation could lead to accusations that the trustees did not act in the best interests of the charity, the trustees can ask the Charity Commission for guidance if they are unsure how to treat specific instances.

## Payroll giving

The payroll giving grants programme, which is funded by the Home office, will be launched on 26 January. Charities and businesses will be eligible to receive a grant of up to £500 if the organisation has fewer than 500 employees and establishes a system between April 2004 and 2007. In addition, the first £10 of each employee's donation will be matched for six months. The system is straightforward as the donations are made directly from the employee's gross pay. The advantages to the charity include a regular stream of income and this can benefit local charities where they have taken the time and money in promoting it. The Institute of Fundraising can provide a training programme and printed guidance for smaller charities. ([www.institute-of-fundraising.org.uk](http://www.institute-of-fundraising.org.uk))

## Standard Information Return

This has now been finalised and will need completion by large charities (those with income in excess of £1million) in addition to their annual return from 2005. The return is a 2 page statement covering the charity's achievements, aims, income and expenditure. The information will feed into the Guidestar online charity information website. Concern has been raised about the need to condense a charity's work and the fact that the information is unverified. However, it is hoped that by encouraging charities to report on the impact of their work, both in the short and long term, their effectiveness will be improved.

## Other bits'n'pieces

- You can now view trustee names online. There are also 400 charities' accounts available to view online. ([www.charitycommission.gov.uk](http://www.charitycommission.gov.uk))
- From 1 October 2004 it became illegal for any employer to discriminate against a disabled person because of their disability. The Disability Rights Commission (an independent body) has produced information for smaller employers about the new requirements ([www.drc-gb.org](http://www.drc-gb.org)).
- The issue of transparency has been raised again following a Charity Commission regulatory report. Charities should tell their story in a clear and accountable way.
- Village Halls and community centres were reviewed as part of a Charity Commission regulatory review. Trustees need to adapt to changes in social and economic factors. The advice is to plan ahead to accommodate potential user groups.
- The Charity Commission ask that charities file their accounts at least three weeks before the 10 month deadline to allow for their processing period of 10-15 working days at busy periods.
- The promotion of sustainable development has become a charitable purpose in its own right (in addition to education in this area). This can affect currently registered charities who can add sustainable development to their registered charitable activities.
- Insurance brokers should have registered with the Financial Services Authority by 14 January. Charities are recommended to check registration so that they are not at risk of being without cover.
- Charities may be missing out on VAT relief's available to them. These include a reduced rate of 5% on heating costs, zero rating on advertising including for new staff and on costs incurred in printing any written materials.
- A tax liability under section 776 of the Taxes Act could arise on a sale of property by a charity if development of the land is involved.
- It may be worthwhile checking if there is provision in a charity's constitution for meetings to be conducted by telephone as decisions made in this manner may otherwise be held to be invalid.
- The Regulation of Fundraising Unit (a new self-regulatory body for fundraising) will be launched in the autumn. Charities and agencies will pay between £30 and £1,500 per annum for voluntary membership. This will entitle them to use a logo showing that they conform to industry standards. Non-compliance with the rules will be punished by expulsion rather than fines.
- Gordon Brown announced in his pre-budget report that charities could still claim Gift Aid on entrance fees provided the visitor makes an extra donation of at least 10% or benefits from this donation for a full twelve months. The new regime starts from 2006.

## And finally

We have produced a summary of our experience of points raised at Charity Commission review visits. Please contact us if you would like a copy.



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