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A HPH newsletter for organisations with charitable status

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## CHARITY REGULATION MATTERS

### Charities SORP 2005 released

The Charity Commission has now published the Charities SORP 2005. The new SORP also updates guidance for the application of new accounting standards. The foreword says it will assist charities to provide financial information about their activities and resources that is of interest to many people and meet legal requirements that such accounts give a 'true and fair' view.

Among the key points where the new SORP differs from SORP 2000 are:

- New approach for the Trustees' Annual Report focusing reporting on the activities and performance against annual objectives
- The SoFA now emphasises the reporting of charitable expenditure against the charitable activities
- Clearer guidance on when grant commitments must be recognised
- Guidance on accounting for (charitable) programme-related investments, the total return basis and investment pooling.

The new SORP is available on the Charity Commission website:  
[www.charitycomission.gov.uk/investigations/sorp/default.asp](http://www.charitycomission.gov.uk/investigations/sorp/default.asp)

### What's changed from the Exposure Draft?

Many further explanatory paragraphs have been inserted in the SORP, sometimes to clarify the most contentious areas (such as accruing for grant commitments), while in other places the rules have been narrowed down more by deleting small but significant sections of text from the Exposure Draft (ED). Some of these late additions, however, could themselves clearly benefit from public consultation.

For example, the ED had deleted SORP 2000's disclosure exemption for vulnerable historic and inalienable assets, but the public consultation compensated for this by inviting views on complete exemption from capitalisation for all heritage assets. Now that this has been denied by the ASB, despite the clear mandate given by respondents, charities for the preservation of our cultural heritage, built up and natural environments and the many valuable collections held by museums and galleries, are now burdened with publishing details of all their heritage assets, despite the obvious risks of theft or vandalism in some cases, as well as having to capitalise them where a cost or value is available.

On the optional use of extra columns in the SoFA, a lengthy new paragraph (87) suggests that a *school* might wish to devote one column to *'the resource movement connected with teaching, another welfare and other costs'* (the sector occasionally already uses two Unrestricted Funds columns: one for the school itself as a 'designated activities fund' and one for more general purposes). Another odd suggestion is for the use of one Restricted Fund for *'fixed assets acquisition and another for other Restricted Funds'* – odd because the advice overlooks the *endowment* nature of most gifts/grants intended under trust law to provide for *the continuing use of the asset by the charity*. On a more helpful note, paragraph 95 brings a clarification that any costs of fundraising deducted from the proceeds remitted to the reporting charity by a non-agency, non-employed event-organiser are not to be grossed up in the SoFA.

The new SORP's start date has been put back a month, from 1 March to 1 April, due to the timing of its release. However, until the supporting Regulations 2005 have become law (the Home Office public consultation on the S.I.'s Exposure Draft ended in mid-February) SORP 2005 cannot legally be adopted for any non-company (non-exempt) charity's accounts prepared under Part VI, Charities Act 1993, as the Act binds them to SORP 2000 through the extant Regulations 2000. Charitable companies, on the other hand, can legally migrate to SORP 2005 for their accounts as soon as they like - but not for their annual report, because of the same legal constraint!

The finalisation of the SORP includes a definition of performance related grants.

Paragraph 100 states that for a performance related grant *'entitlement to the incoming resource only arises with the performance of a specific output identified as a condition for the grant'*, therefore the fact that a grant is restricted for a particular purpose does not mean it is a performance-related grant.

While paragraph 153 states merely because a grantmaker awards a multi-year grant and may monitor the work of the grant recipient, it *'would not create a performance-related grant if the funding is not directed at providing a specified service to the grantmaker or its beneficiaries as a condition of payment'*.

Non-performance related grants may give rise to a constructive obligation under FRS 12. This may arise where events have created a valid expectation in other parties that the charity will discharge its obligations. Paragraph 156 states that *'A term in a grant agreement or offer that relieved a donor charity from a future obligation in the event of lack of funds at a future settlement date would not normally prevent the recognition of a liability by the donor charity'*. Therefore the donor would have to disclose their liability except in the case where an event occurs requiring the funding offer to be rescinded.

Donated services/facilities, no longer called 'intangible income', are redefined in paragraphs 133/4 to include those *'usually provided by an individual or entity as part of their trade or profession for a fee'*, and without the former reference to an 'indicative' cost borne by the donor, but with the 'value to the charity' defined as the estimated market price of an alternative supply deemed *equally useful to the charity*.

The materiality of grant-making will now be against total *charitable* expenditure, not total expenditure (paragraph 200), the meaning of 'serious prejudice' as grounds for non-disclosure has been clarified to exclude inconvenience, embarrassment and commercial disadvantage (paragraph 208) and the specific 5% and £1,000 thresholds and the limit of 50 named institutions have all been dropped - as has the analysis by purpose of the number and total value of all grants made to a particular institution (paragraph 207).

Paragraph 384 introduces a new and stricter interpretation of FRS2's specific consolidation exceptions, saying that 'severe long-term restrictions' are those that *'substantially hinder the exercise of the parent's rights over the subsidiary undertaking's assets or management'*, where the ED just said they were a *'hindrance on the ability of the parent to act as parent'*, while the SORP has dropped *'the subsidiary is (very exceptionally) so different that the consolidation will not give a true and fair view'* (ED paragraph 361) – thus throwing down the gauntlet to many a charity group set up by a wealthy entrepreneur to protect a successful family business ...

Another small step towards 'proportionality' in the regulatory framework is the dropping of the

disclosure of trustee indemnity insurance costs as a 'trustee-benefit' (ED paragraph 211) – which must imply a matching change to the draft Regulations 2005, where the disclosure is still mandatory (for auditable charities). Similarly, the disclosure of non-statutory audit costs (e.g., of a branch, or for a donor) in ED paragraph 218 has also been dropped.

Finally, the special section on Accounting for Smaller Charities has been relegated to a new Appendix 5, which after the recent seismic shift in the Commission's regulatory policy towards 'proportionality' (registered charities below the statutory audit threshold will no longer have to provide the monitoring data that makes up Part B of the Annual Return for financial year-ends from April 2005 onwards) looks like a clear hint that for them the SORP is becoming more a kind of 'highway code' to be aspired to as the ideal, not a basis for enforcing compliance for its own sake. That impression is reinforced by the disclosure relief at paragraph 236 in respect of higher-paid staff earnings, with the bandings now starting at £60,000 instead of £50,000 – though it is hard to see how most charities below the audit threshold could afford such staff!

### Charities Bill may yet be passed before the General Election

The Charities Bill has now cleared the Grand Committee stage. There is now optimism that it will clear the Report and Third Reading stage in the House of Commons before the General Election on 5 May. Further updates will follow.

### Charity Commission warns against new scams

The Charity Commission has published details of two scams currently affecting charities.

Fraudsters have been emptying charities' bank accounts after obtaining their bank details from Gift Aid forms. This information is used to set up standing orders, which take funds from charities and place them in their own accounts. The Commission has urged charities to be vigilant and check bank statements very carefully for rogue payments and consider deposit-only accounts for charitable donations.

The Charity Commission has also warned charities about the faking of charity fundraising in supermarkets. Bogus collectors have been using fake charity registration numbers to con supermarkets into giving them permission to collect in their stores. A supermarket exposed the scam when a fake charity name 'Child's Wish' was given together with the Comic Relief charity registration number. It was only when the supermarket contacted Comic Relief that it realised the other 'charity' did not exist.

### Has compassion fatigue hit the UK?

The British public has been so generous in giving approximately £300m to the Tsunami appeal, but this represents almost half of the amount annually donated to international aid charities. Charitable donations have remained fairly flat over the last 15 years, so does this mean there is going to be less for other charities this year? Many charities have already experienced a fall in donations this year.

CAF has stated that in order to keep the public interested it is essential for charities to explain what they are doing and the impact their work is having, otherwise many regular donors who gave to the Tsunami appeal will not be persuaded to make their usual donations to other charitable causes.

### Charity Commission publishes details of how they work

The Charity Commission has published a new leaflet 'The Charity Commission and Regulation' explaining its new regulatory policy and practice. It gives details on its role as regulator, the principles it follows and the standards of service it aims to give and how it deals with complaints about charities.

For more details visit:  
<http://www.charitycommission.gov.uk/spr/pdfs/regstance.pdf>

### Voluntary Sector Review findings published

The full findings from the Treasury's 2004 Voluntary and Community Sector review have recently been published. There are over half a million voluntary and community groups in the UK ranging from community groups to national and international organisations.

The review examined how best understanding and the strengthening of partnerships with local authorities could be built up following the results from the 2002 Cross-Cutting report.

The full findings have been published within three documents:

- Working together, Better together, which suggests ways to press for progress in particular service areas
- Exploring the role of the third sector in public service delivery and reform. This reviews how the sector can realise its full potential contribution to service delivery, including in the design and evaluation of public services
- Effective Local Partnerships, a practical checklist to consider when developing local Compacts, or when entering partnership agreements.

See the 2004 VCS review link on [www.hm-treasury.gov.uk/voluntarysector](http://www.hm-treasury.gov.uk/voluntarysector) for more details.

### Charity Commission inquiry reports

The Charity Commission has published more results of recently closed inquiries on their website.

Of the 45 inquiries reported this month; 35 related to charities defaulting in their duty to submit Annual Returns and Accounts. The inquiry summaries show varying reasons behind the defaults. However the Charity Commission stressed that they believe the process of submitting Annual Returns and Accounts on time is a key element in demonstrating the integrity and transparency of charities and in supporting public confidence in them. Trustees should be aware that:

- Under s.49 of the Charities Act 1993 trustees who, without reasonable excuse, persistently fail to comply with the requirement to supply Annual Returns and Accounts may be guilty of a criminal offence and may, on conviction, be fined. There have been successful prosecutions of trustees failing to comply with these requirements
- Under s.43 of the Charities Act 1993, the Commission is empowered to appoint an auditor to produce accounts on behalf of a charity for any outstanding years. The auditor's costs can be recovered from any or all of the trustees

Other issues raised in their inquiries related to the cessation of charities and trustees' responsibilities to inform the Commission, and issues such as the need to be fully aware of all relevant legislation for charity fund raising.

For any queries, comments or suggestions for future articles, or if you would like to receive this newsletter via email on a monthly basis please send an email to Robert Woolley at [robert.woolley@hponline.co.uk](mailto:robert.woolley@hponline.co.uk)