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## A HPH newsletter for organisations with charitable status

In this issue we bring to your attention the following articles:

**Charities Act 2006**

**Companies Act 2006**

**Charities and Public Service Delivery**

### **Charities Act 2006**

The Charities Bill received Royal Assent on 8 November 2006 and became the Charities Act 2006 (the Act). The Act defines 12 specific charitable purposes, along with one general purpose, and explicitly requires that charities must exist for the public benefit. The Charity Commission has laid out a proposed timetable for its implementation of the public benefit provisions of the Act, which can be found on their website.

The Act amends the thresholds for charity registration and audit to £5,000 and £500,000 income respectively. Additionally, charities with gross assets in excess of £2.8million will be required to be audited (for corporate charities, this only applies where the charity's gross income exceeds £100,000). The Independent Examination thresholds for charity accounts are also amended such that only charities with income between £250,000 and £500,000 will require an independent examiner with an appropriate accountancy qualification – between £10,000 and £250,000 no specific qualification will be required.

The Act introduces new powers in respect of trustees, both in that there is no longer a requirement for charities to seek authorisation from the Commission to pay remuneration to trustees, as long as the remuneration relates to services supplied and only a minority of the charity's trustees are so remunerated, and in providing the Commission with the power to suspend trustees and to waive trustees' personal liability where trustees have made honest mistakes which have led

to breaches of trust. It should be noted that trustees may not be remunerated for their services as trustees and that they remain personally liable for breaches of trust which do not arise from honest mistakes. The Act removes the requirement for charities to seek authorisation before obtaining trustee indemnity insurance, as long as the charity's governing document does not specifically prohibit this use of charity funds.

The Act makes it easier for charities to be flexible in their use of funds in a number of ways: the Commission has more flexibility in granting charities permission for transferring the proceeds of failed appeals or monies held on trust for which there are no longer any beneficiaries; small charities with permanent endowments, and larger charities in certain circumstances, will have more flexibility in spending the capital as well as the income from these funds; and charity mergers will be made easier by ensuring that legacies and other funds left to previously separate charities will pass automatically to the merged charity.

The Commission's powers have been expanded by the Act to include the power to direct a charity's trustees, officers and officials to take certain actions to protect a charity, to ensure that charity property is used correctly, to decide who a charity's members are, and to enter charity premises and obtain charity documents during the course of an investigation.

The Act also establishes a new Charity Tribunal which will deal with appeals against, and carry out reviews of, legal decisions by the Charity Commission.

The full text of the Charities Act 2006 can be found at:  
[http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060050\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060050_en.pdf)

The Commission's guidance to the main provisions of the Act can be found at:  
<http://www.charitycommission.gov.uk/spr/ca2006prov.asp>

The Commission's proposed Public Benefit timetable can be found at:  
<http://www.charitycommission.gov.uk/library/spr/pdfs/timetable.pdf>

### **Companies Act 2006**

The Companies Bill also received royal assent on 8 November 2006 and became the Companies Act 2006. This Act simplifies and gathers together the requirements for small companies into one part of the Act. There are a number of changes to the formation and administration of private companies and to corporate procedures. Perhaps the most significant changes affecting the charity sector are the shortening of the private companies' filing period to nine months after the end of the relevant accounting period, and the requirement for at least one natural person to act as a company director in addition to any corporate directors who may be appointed.

The timetable for implementation of the various provisions of the Act has been extended to October 2008, with piecemeal implementation of specific aspects by Statutory Instrument to take place between now and then.

The full text of the Act will be available from Office of Public Sector Information website.

(<http://www.opsi.gov.uk/acts/acts2006a.htm>) in due course.

### **Charities and Public Service Delivery**

The Commission has issued draft guidance for Charities engaged in, or considering engaging in, the delivery of services funded by public authorities. The draft guidance is intended to assist charities which are currently considering providing public services and covers such issues as: the risks involved in service delivery; the requirements of charity law; the requirement of charities to ensure that they do not act outside their objects; trustees' obligations to act in the best interests of the charity at all times. In particular, the guidance notes the need for charities to 'know their worth' – i.e. ensure that they secure sufficient funding to cover the costs of the services provided without eroding the charity's other funds to an unacceptable degree. The draft also includes some specific guidance for grant-making charities who may be asked to fund public services.

The Commission is currently consulting on this guidance and feedback is required by the beginning of January 2007, with revised guidance being published in February 2007.

The Commission's guidance and details of how to participate in the consultation can be found at:

<http://www.charitycommission.gov.uk/enhancingcharities/consultcc37.asp>

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