

July Issue
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A HPH newsletter for organisations with charitable status

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CHARITY REGULATION MATTERS

Charities Bill progresses

The Charities Bill was re-introduced in the House of Lords on 7, June and 28 June was set for the next reading. It was re-introduced by Baroness Scotland of Asthal who gave a brief summary of the provisions of the Bill together with a summary of the 'state of play'. The Bill re-introduced incorporates the amendments made in the Grand Committee, together with the amendments tabled by the Government for Report and two significant changes:

- the promise to include group accounting provisions
- amendments to the Charities Act 1993 disclosure requirement of grants to institutions by a trust not required in the lifetime of the trust's settler, or that of spouse or civil law partner.

Otherwise it is the same Bill as before.

Lord Hodgson of Astley Abbotts summed up nicely a popularly held view on the Bill, as it makes its way through the final phases of the legislative process, with a saying from his grandfather who fought in the First World War:

"One more heave and we shall be in Berlin by Christmas." We are not going to Berlin and I hope that we will act before Christmas but one more heave should take this Bill to its well deserved and long anticipated place on the statute book.'

However, peers argued that the Bill still required improvements on various aspects including:

the definition of religion, the independence of action of the Charity Commission, audit thresholds and the regulation of armed forces charities. So we can only wait and see how things progress.

Scottish Bill passed

The Charities and Trustee Investment (Scotland) Bill was passed on 9 June by the Scottish Parliament. The Bill creates a single framework for charity registration and regulation for the 25,000 charities in Scotland. It also modernises investing and fundraising activities undertaken in Scotland.

Irish Bill pushed back

The Charities Regulation Bill which was due to be published this year will now not be brought before the Dáil until next year. This follows news that £60,000 had been taken from the Christina Noble Children's Foundation in a suspected fraud.

Noel Ahern, Minister of State for Community, Rural and Gaeltacht Affairs accepted that at present there is no regulation of charities in Ireland and it had been that way since the foundation of the State. He stated 'Various people and various reports have signalled what needs to be done. We are doing it now. Most charities are great bodies [that] are doing great work, but the potential for huge abuse is there.'

The bill is complex and requires more detailed consultation.

The Essential Trustee: What you need to know

The Charity Commission have published the first of its new style publications; CC3 The Essential Trustee: what you need to know.

This is the first response to the pre-legislative scrutiny of the draft Charities Bill. One of the recommendations made was for the Commission's regulatory and advisory roles to be separate. This new publication uses plain English and bright colours which highlight both legal requirements and recommended best practice. The guidance covers:

- the charity regulatory framework in brief
- trustee duties at a glance
- trustees and their responsibilities
- compliance
- the duty of prudence
- the duty of care
- if things go wrong.

It also lists a number of external organisations able to help trustees on a range of issues.

Please visit: http://www.charity-commission.gov.uk/recent_changes/CC3_the_essential_trustee.asp for more information

Memorandum of understanding signed

The Charity Commission and the Office of the Scottish Charity Regulator (OSCR) have signed a memorandum of understanding. Its aims are to:

- consult and co-ordinate in the interpretation and application of the relevant law and policy
- minimise the burden of regulation for those charities operating right across England, Scotland and Wales

- share information and collaborate where a common regulatory approach is required
- pave the way for future co-operation as charity law develops.

Workers rights updates published

ACAS have published updates for a range of their Rights at Work leaflets. All employers are advised to ensure their organisation's procedures are fully up to date and take into account best practice as stated in these leaflets. Although they offer guidance on a range of issues, they should not be regarded as an authoritative statement of the law; legal advice should be sought where necessary. The updated leaflets include:

- redundancy handling
- communicating with your employees
- contracts of employment
- controlling labour turnover
- dealing with grievances
- discipline at work
- employing older workers.

Copies of the updated leaflets can be found at www.acas.org.uk/about_acas/whatsnew.html

New Pensions Act comes into force

Charities with pension schemes should note that many of the provisions of the Pensions Act 2004 have recently come into force.

This Act replaces Opra with the Pensions Regulator which inherits all the old powers of Opra but also has some new ones, including increased powers to gather, retain and share information. Its objectives are: the protection of pension scheme members, reducing the risk of calls on the finite resources of the newly created Pension Protection Fund and the promotion of good administration of work-based pension schemes.

Some of the other major provisions of the Act include:

- the creation of the Pension Protection Fund
- Contribution Notices and Financial Support (Moral Hazard Provisions)
- Funding Defined Benefit Pension Schemes
- Whistleblowing and Notifiable Events.

The provision of most immediate interest among these is the requirement for employers to notify the Pension Regulator when certain events occur. These include:

- any decision to compromise a debt owed to the scheme
- any decision to cease a business in the UK
- there is evidence that the employer is trading wrongfully
- any significant change in the employer's credit rating
- a decision of a controlling company to relinquish control of the employer
- changes in holder of key employer posts (i.e. Chief Executive or Director)
- the conviction for dishonesty of a senior officer of the employer.

The requirement for employers to notify the Pensions Regulator became effective on 6 April 2005. Failure to notify is an offence. The new law also includes a 'whistleblowing' duty for advisers to make a report. That duty overrides client confidentiality.

For more details visit

<http://www.thepensionsregulator.gov.uk>

More charity 'impersonation' scams uncovered

Two more charity scams have been identified recently. The first relates to charities being approached by a company identifying themselves as the Business Services Agency to state that someone wishes to register a domain name which uses that charity's name in full (in fact three domain names, one each for .net, .co.uk and .com). The charity is then offered the opportunity to purchase those domain names for £600 before they are registered by someone else. The registration of a domain name is normally in the region of £20.

The Office of Fair Trading (OFT) has received over 400 complaints from companies about telephone callers trying to sell them advertising space in publications they falsely claim support charities. More than £40,000 has been lost so far. The OFT has issued a warning to companies to beware of publications making claims about links to the emergency services and charitable organisations.

Facts about Charity 'Receivers & Managers'

The Charity Commission has published new figures on the achievements and costs of 'Receiver & Manager' appointments over the last year. Nearly £20 million of charitable assets came under the control of the appointed Receiver & Manager in the six cases that were concluded in 2004/05.

Receiver and Manager appointments are interim arrangements to run a charity in place of the trustees when the Commission has serious concerns about how it is being run. The appointee typically stays in charge until the difficulties that led to the appointment have been resolved to the satisfaction of the Commission.

Visit

www.charitycommission.gov.uk/common/sectornews2.asp for more details of cases concluded in 2004/05

Charity Commission inquiry reports

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

The inquiries cover a number of issues including concerns over the management of charities ranging from conflicts of interest, fundraising issues and filing defaults.

Among these is a report showing the results of a sample of 300 charities checked by the Commission to consider the eligibility of certain randomly selected persons acting as charity trustees. This exercise included obtaining information from charity records, the Insolvency public register and the Companies House 'Record of Disqualified Directors'. It raised concerns over a small number of charities where it appeared that trustees had been acting whilst disqualified. In these cases they were followed up by the Commission, resulting in the trustee either

resigning or lodging an application with the Commission for a waiver of the disqualification.

The trustees of all charities involved were reminded of the circumstances which render individuals ineligible to act as a charity trustee under Section 72 of the Charities Act 1993 which include:

- person has been convicted of any offence involving dishonesty or deception
- person has been adjudged bankrupt
- person has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it
- person has been removed from office of charity trustee on the grounds of misconduct or mismanagement in the administration of a charity for which they were responsible
- person is subject to a disqualification order under the Company Directors Disqualification Act 1986
- person is subject to a disqualification order under Section 429(2) (b) of the Insolvency Act 1986.

Acting as a trustee whilst disqualified is a criminal offence under Section 73 of the Charities Act 1993 in almost all cases. The Commission has discretion to report offences to the relevant authorities.

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