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A HPH newsletter for organisations with charitable status

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

Charity Commission publish SORP 2005 example accounts

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Charity regulation matters

Charity Commission publishes SORP 2005 example accounts

The Charity Commission has now posted on its website guidance for charities of all sizes to help enable them produce reports and accounts in compliance with the recommendations of SORP 2005. This includes six example reports and accounts:

- A company charity operating an arts facility with a trading subsidiary
- A small company charity providing services and operating a café and a shop
- A larger grant-making trust with a total return approach to investments
- An independent school with a trading subsidiary
- A NHS example of a charity connected with a Primary Care Trust
- A NHS example of a charity connected to a NHS hospital.

A few examples of charities who have adopted SORP 2005 early have also been published on the website.

The guidance also includes work-packs for CC16 and CC17 Receipts and Payments and accruals accounts respectively, also advice on appointing an independent examiner and (for charitable companies) reporting accountants.

For more information visit:
<http://www.charitycommission.gov.uk/investigations/sorp/default.asp>

Increased protection for trustees

Under the provisions of the Companies (Audit, Investigations, and Community Enterprise) Act 2004, charities which are incorporated as companies limited by guarantee are now permitted to make amendments to their Articles of Association to enable loans to be made to directors, who are also the charity Trustees, against whom legal action has been brought, to cover the costs of their defence. Previously, the director concerned would have had to pay costs out of their own funds, which could then be reimbursed by the company once legal proceedings had been concluded. Such loans would have to be made on condition that they would be repayable should the director lose the legal case and the board of directors would need to give consideration as to whether such a loan would be in the best interests of the charity.

Additionally, new rules have come into force to allow for directors' indemnity against certain liabilities. There are three conditions which must be met in order for the liability to be a 'qualifying third party indemnity provision':

- The director cannot be indemnified against a liability to the company itself or any of its associated companies, or the costs of defending civil proceedings brought by those companies;
- The director cannot be indemnified against payment of criminal fines or regulatory penalties;

- The director cannot be indemnified against costs of defending criminal proceedings in which he is convicted.

As with the provision of loans to cover legal costs, an amendment to the company's Memorandum and Articles of Association is likely to be required in order to take advantage of the new indemnity rules.

Anti-avoidance provisions

Anti-avoidance legislation was announced in the Chancellor's Budget on 22 March in three areas:

- Transactions with substantial donors
- Non-charitable expenditure
- Restrictions on Gift Aid payments by close companies

HM Revenue & Customs has now published official guidance on the implications of these new provisions, which can be found at <http://www.hmrc.gov.uk/charities/aa-legislation.htm>

The guidance notes that while transactions with substantial donors will only be captured if they occur after 22 March 2006, the status of any particular donor as 'substantial' will take into account donations prior to this date. This is to prevent transactions and donations being co-ordinated so as to avoid the new provisions.

New Lottery funding website

A new website has been launched to make applying for Lottery funds more straight-forward. The website provides information on current Lottery funding opportunities, as well as giving advice to potential applicants who have an idea for a project but do not know how to take it forward.

The website's search facility allows applicants to input data about their potential project such as geographical location, potential beneficiaries, the type of organisation seeking funding and the amount of funding required.

The site will then generate a list of funding programmes which meet some or all of the input criteria, and enable the applicant to access more information about the programmes.

For more information, visit www.lotteryfunding.org.uk

Receiving debit and credit card donations

The Institute of Fundraising has published some preliminary guidance in respect of fundraising via donors' debit or credit cards, focussing in particular on Card Not Present (CNP) transactions. Visa and MasterCard have issued a Europe-wide mandate with effect from April 2006, whereby all organisations in receipt of CNP transactions, including charities, must obtain the card security code, which must then be destroyed when the transaction is complete. This will have implications for CNP donations under Gift Aid, as the receiving charity is obliged to maintain an audit trail for all Gift Aid claims. There may be a requirement for Gift Aid forms to be reformatted to enable the additional information to be collected in the first place, and to enable the necessary Gift Aid claim data to be retained while the card security code is destroyed.

The Institute's guidance at present is for charities to contact their acquiring bank, who will be the administrator of their card receipts scheme, for advice on how the mandate will affect them in particular. The Institute's full guidance, along with a list of UK acquiring banks, can be found at <http://www.institute-of-fundraising.org.uk/documents/Fundraising%20with%20Debit%20and%20Credit%20Card.pdf>

Charities Bill – public benefit

The Coalition for a Charities Act has written to Charles Clarke, the then Home Secretary, to push the case for a stronger test of public benefit in relation to fee-charging charities. The Coalition, which includes such organisations as NCVO, the British Red Cross and Citizens Advice, feels that the current Charity Commission

guidance does not do enough to ensure that fee-charging charities are accessible to poorer people who could benefit from the services that they offer.

This follows the announcement in the press that a number of Labour MPs intend to challenge the charitable status of public schools in the eventual Commons debate on the Charities Bill. The Coalition is not specifically targeting public schools in its communication with Mr Clarke, but any strengthening of the public benefit test would be an issue that many schools would need to consider.

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

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