

Welcome to our latest Charity and Education Newsletter in which we cover developments with the Charities Act, a review of some newly published charity commission publications and a reminder of some of the key issues charities should be considering when it comes to investing in a trading subsidiary and making Ex Gratia payments.

The Charities Act 2006

The first group of provisions for the Charities Act 2006 came into effect on 27 February.

Further details can be found using the following link:

<http://www.charitycommission.gov.uk/spr/charprov.asp>

The provisions include some new powers for the charity commission and more importantly for charities. There are changes to Trustee Indemnity Insurance arrangements and to Audit/Accounts thresholds.

With regard to Trustee Indemnity Insurance, the new power allows charity trustees to use the Charity's funds to purchase personal indemnity insurance – unless the governing document specifically prevents it. This means trustees no longer need permission from the charity commission or within their governing document before purchasing such a policy.

The thresholds for Audit and Independent Examination have been updated as follows:

Unincorporated Charities

An audit is required if

- gross annual income exceeds £500K; or
- aggregate value of assets exceeds £2.8M and gross annual income over £100,000

Below these thresholds, an independent examiner can be used.

If the gross income is over £250,000 then the independent examiner must be a member of an approved body (e.g. ACCA, ICAEW, AAT).

If income is below £10,000 no examination is required.

Incorporated Charities

An audit is required if the charity has:

- gross annual income over £500K; or
- an aggregate value of assets over £2.8M

If income is between £90,000 and £500,000 and assets of less than £2.8M an audit is not required if an accountant's report is provided.

If income is below £90,000 and assets below £2.8M neither an audit nor an accountant's report is required.

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The threshold changes came into force for accounting periods beginning on or after 27 February 2007

You will however need to review your governing document if you meet the criteria for dispensing with the audit. It may state that an audit is required each year irrespective of income or asset levels. If this is the case you will need to seek professional guidance.

CRB Consultation

The charity commission has launched a consultation on its approach to Criminal Records Bureau (CRB) checks for trustees of charities working with children or vulnerable adults.

Trustees should be checked by the CRB to ensure that they have no criminal convictions or other records which mean that they should not have access to vulnerable people.

The Charity Commission monitors compliance on this area. Last year an interim policy was introduced for charities registering for the first time, whereby the commission asks to see CRB disclosures for trustees before registering charities working with vulnerable beneficiaries.

To take part in the consultation see:

<http://www.charitycommission.gov.uk/Library/enhancingcharities/pdfs/consultcrb.pdf>

Charities and Public Service Delivery

The Charity Commission has issued new practical guide covering the legal and good practice issues of which charities need to be aware if they are planning to deliver services under a funding agreement with a public authority.

The guidance CC37 – Charities and Public Service Delivery replaces the old CC37 (Charities and Contracts) and moves beyond looking solely at contracts to wider issues of funding and delivery.

We think this is a very useful publication which all charities involved in service delivery under a funding agreement should read.

The publication can be found at:

<http://www.charitycommission.gov.uk/Library/publications/pdfs/cc37text.pdf>

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Charity Fraud

It has come to our attention that there is a new email scam doing the rounds.

Headed HM Revenue & Customs (HMRC), it asks charities to provide banking details so that a repayment can be made directly into their account.

From our experience HMRC would never ask for this information by email.

You have been warned!

The Finance of Trading Subsidiaries

Many charities have established trading subsidiaries to carry out commercial activities and raise additional revenue. Charities which have not done so previously are actively considering how they can diversify in the future to generate additional income.

Whilst most charities are familiar with the tax implications of trading subsidiaries there is perhaps less awareness of some of the potential pitfalls around the financing of these. Any funding of the trading subsidiary by the charity should be viewed as an investment in the subsidiary. Some of the key points to consider include:

- Does the charity have the power to make such an investment in its governing document?
- Is the investment suitable for the charity having considered the need for diversity across the charity's investments as a whole?

If the charity's tax exemptions are not to be jeopardised the trustees must ensure that certain rules are followed when investing in a trading subsidiary. To qualify for relief the charity must make an investment:

- For charitable purposes only
- For the benefit of the charity
- Not for the avoidance of tax

The investment must also be secure, carry a fair rate of return and, in the case of a loan, provide for its recovery.

Trustees should avoid undue risk or speculation and be objective in making investment decisions.

More information can be found at:

<http://www.charitycommission.gov.uk/publications/cc35.asp>

This is a complex area and we would recommend seeking professional advice before setting up or investing in a trading subsidiary.

Ex Gratia Payments

The area of ex gratia payments by charities can be contentious and is one which needs careful consideration.

The term does not have a precise legal meaning, but is generally used as a convenient way of describing a payment made by a charity in particular circumstances. These are where:

- the trustees believe that they are under a moral obligation to make a payment; but
- the trustees are not under any legal obligation to make the payment; and
- the trustees have no power under the governing document of the charity to make the payment; and
- the trustees cannot justify the payment as being in the interests of the charity.

The Charity Commission recognises the complexity of this area and has a publication to guide charity trustees through the procedures which they must follow when they wish to make an ex gratia payment out of the charity's funds.

The publication can be found at:

<http://www.charitycommission.gov.uk/publications/cc7.asp>

The guidance also gives details of other payments as well as ex gratia payments, which may need to be authorised by the Charity Commission.

We recommend that trustees seek professional advice before making any ex gratia payments.

Our Forthcoming Events:

Trustee Training Event with J M Finn & Co. Tuesday 24th & Thursday 26th April 2007

Heads of Independent Schools - Financial Workshop Thursday 3rd & Friday 4th May

For more information or to book a place please contact Liane Woollett on 01903 816699 or email liane@russellnew.com