SPRING **2016** NEWSLETTER

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Spring is finally here with the promise of welcome warmer weather and longer days. We hope you find our latest newsletter of interest. If you would like more information about any of the topics covered, please do not hesitate to contact us.

Tessa Hennessy

CHARITABLE COMPANIES - CHANGES IN COMPANY LAW

From April 2016 all companies (including charitable companies) will have to create and maintain a new public register of people with significant control following a number of changes to the Companies Act 2006 introduced by the Small Business, Enterprise and Employment Act 2015. The aim of this new requirement is to create greater transparency in the ownership and control of UK companies.

A person with significant control (PSC) may be an individual or a company meeting one of five specified conditions. These include: ownership of more than 25% of the shares or voting rights in the company; the right to appoint or remove a majority of the board of directors of the company; and the right to exercise or actually exercising significant influence over a trust or firm which would be PSC if it were an individual.

The register must be compiled from 6th April onwards and should be kept with the other statutory registers which companies must maintain. From the end of June 2016 companies will have to submit information from their PSC register to Companies House as part of their annual confirmation statement (formerly the annual report). Even if there is no individual or company PSC a register must still be maintained which includes the required statutory wording.

Trading arms of charities which are wholly-owned by a charitable company (or by a CIO) will need to record the holding company/CIO as a PSC on a register.

Arguably the trustees of unincorporated charities such as charitable trusts will also need to be recorded on the PSC register of a trading company which they control.

Charitable companies with three company members or fewer will also need to record the details of those members as each member will hold voting rights exceeding 25%.

Statutory guidance on PSCs has now been produced by the Department for Business Innovation & Skills and can be found by going to www.gov.uk and searching on “Guidance on People with Significant Control”.

It should be borne in mind that failing to maintain a PSC register is a criminal offence by the company and its directors. If your organisation operates through a company or has a trading arm and you would like more information about how to meet these new requirements please get in touch with us.

CONVERSION TO A CIO

On 1st April the government opened a ten week consultation on proposals for conversion by an existing charitable company or community interest company to charitable incorporated organisation (CIO) status. The CIO is proving very popular with small to medium-sized charities with over 6,500 CIOs registered so far, accounting for 1 in 4 new charity registrations, but until now it has not been possible for existing companies to convert to a CIO. Draft regulations required to implement the conversion process have been published as part of the consultation and set out in detail the steps which existing companies must take to be eligible for conversion. The process will involve passing a special resolution that the company convert to a CIO and sending a copy of this to the Commission along with the proposed CIO constitution. The draft regulations currently state that the company will need to be up to date with its filing requirements in terms of accounts and reports to the Commission, even if these are not actually due. The process will be slightly different for CICs as they are not charitable; the Charity Commission will first need to assess whether the CIC which is applying will be charitable in law and liaise with the Office of the Regulator of CICs and Companies House.

The consultation includes a provisional timetable for phased implementation in order to manage anticipated demand by the Charity Commission. As currently drafted the timetable would give priority to those existing charitable companies with an annual income exceeding £500,000 - these could apply for conversion from 1st October 2016; followed by those with an annual income of between £250,000 and £500,000 from 1st December; then companies with annual incomes between £100,000 and £250,000 from 1st February 2017; those with incomes between £25,000 and £100,000 from 1st April 2017 and from 1st July 2017 charitable companies with incomes of less than £25,000. It is proposed that CICs will be able to convert to CIO status from 1st October 2017.

It should be stressed that the timetable is provisional and depends on the regulations being finalised after the consultation period has ended and passed through the parliamentary process in time.

UPDATED FINANCE GUIDANCE FOR CHARITY TRUSTEES

In the wake of the collapse of Kids Company and mindful of the financial pressures which charities continue to face, the Charity Commission updated and strengthened its finance guidance for charity trustees at the end of January 2016. In their press release announcing the updated guidance theCommission said: “Charity trustees must engage with and use finance guidance from the regulator if they are to run their charities effectively”.

The updated guidance comprises the following all of which are available on the Charity Commission website:

- Managing a charity’s finances: planning, managing difficulties and insolvency (CC12)
- Charity reserves: building resilience (CC19)
- Charity governance, finance and resilience: 15 questions trustees should ask

If things go wrong financially in a charity it is the trustees who will ultimately be held responsible (and if the charity is unincorporated they could be pursued personally for any shortfall) so maintaining sound financial health is essential. The charity’s finances should be a standing item on the agenda of every trustee meeting and up to date figures should be available. If you don’t feel your board of trustees has the required financial skills, why not talk to your accountant about providing some training on financial management – it may be “money well spent”.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) ACT 2016

On 16th March the Charities (Protection and Social Investment) Bill 2016 received Royal Asset and became an act. The bill has been much debated and subject to many amendments. As a consequence, it covers a range of issues and is rather a hotch potch of provisions. As well as bolstering the Commission's existing powers and adding new ones (including a power to issue "official warnings" which many charity lawyers feel is not subject to sufficient checks and balances), a late amendment to the bill means that it now includes provisions concerning fundraising. There are new rules relating to agreements which charities make with professional fundraisers and commercial participators as well as new requirements about information about fundraising which larger charities must include in their annual reports.

None of the changes have come into force yet, although some will do so in the next few months, with others being implemented over the next 12-18 months possibly longer.
The Charity Commission has said that it will remind charities, via its homepage and Twitter feed, of the changes.

HAVE YOU FILED YOUR CHARITY ACCOUNTS?

According to the Charity Commission as of April nearly 12,000 charities hadn't yet complied with their end of year filing requirements. Charities with an income exceeding £25,000 must file accounts digitally with the Commission within ten months of their year end. While there are currently no financial penalties for non-compliance, the Commission takes failure to comply very seriously and the fact that a charity is late will be clearly visible on their entry on the public Register of Charities with the risk of reputational damage with donors, supporters and grant funders.

In September 2013 the Commission launched its first class inquiry into charities with last known annual incomes exceeding £500,000 which had failed to file returns for two years or more. The regulator has since embarked on further phases of the inquiry with charities with a last known income of between £200,000 and £249,999 being the latest to fall under its scrutiny.

Excuses for non-filing were recently published by the regulator and included the following:
- I already did it….last year
- I'm not involved with this charity's requirements, I'm a trustee
- My boot came open on the motorway and all the papers went down the M1
- I don't have internet access (sent by email)
- It's the accountant's responsibility, not mine

If your charity's year end was 31st March 2016, it's not too early to start assembling the information needed for your trustees' annual report and accounts. In fact, the sooner the better, to avoid exceeding the deadline and the consequences of non-compliance with all that brings.

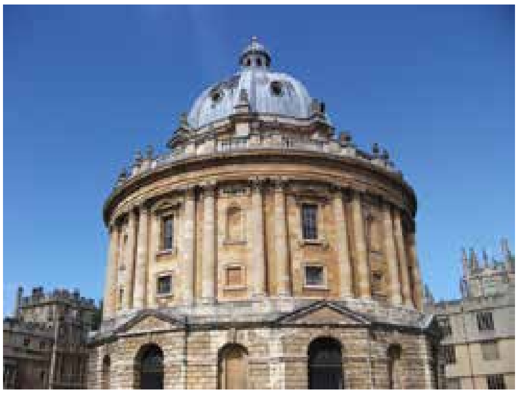
NEWS IN BRIEF

Updated guidance on fundraising by charities is awaited following consultation by the Charity Commission on new draft guidance issued last December. The new guidance is likely to place a huge emphasis on the legal duties of trustees in relation to their charity's fundraising and the need for trustees to feel that they can effectively oversee the charity's fundraising activities. The current guidance Charities and Fundraising (CC20) can be found at:
https://www.gov.uk/government/publications/charities-and-fundraising-cc20

The Charity Commission continues to digitise its services with the aim of becoming "digital by default". The first of its new digital services is a new online registration service with a number of new features such as charity name check facility, the introduction of tailored question sets for charity types and ability to print hard copies. The Commission is also promising quicker turnaround times. We have yet to use the service as it has only recently been introduced so will report back in our next newsletter on what we think of it.

Charities continue to fall foul of data protection law with a recent casualty being The Alzheimer's Society. The Information Commissioner's Office (ICO) found "serious failings" in the way the Society's volunteers handled sensitive personal data. The ICO found that volunteers handling such data were poorly supervised and had little knowledge of the charity's data protection policies and procedures. It should be remembered that the ICO has the power to issue fines of up to £500,000 for data protection breaches.

HMRC has updated its guidance on gift aid for online donations and is planning to introduce a "pre-donation questionnaire" for supporters to complete when making gift-aided donations on line. The move has been criticised for adding further red tape to the gift aid process. More information can be found at:
https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid



ABOUT US

Tessa Hennessy Solicitor is a specialist legal practice providing advice on a range of governance and regulatory issues for voluntary and community organisations including social enterprises.

Founded in 2008 and based in Oxford the firm provides a responsive, personal and friendly service.

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