



AUTUMN 2017
NEWSLETTER

Tessa Hennessy Solicitor

Legal Advice for Charities & Social Enterprises

We hope that you enjoy reading our latest newsletter. If you would like more information about any of the topics covered, please do not hesitate to contact us.

Tessa Hennessy

Converting to a CIO

The charitable incorporated organisation (CIO) has proved very popular since its introduction in early 2013 but it is not yet available to those charities which have a company structure and wish to convert to the CIO structure.

This wait will soon be over however: draft regulations which set out the process for conversion to a CIO were published in September along with a provisional timetable for phased implementation to assist the Charity Commission in managing anticipated demand for company conversions to the CIO structure.

The regulations are now going through the parliamentary process and it is anticipated that they will come into force early in 2018.

Under the provisional timetable, priority will be given to charitable companies with an annual turnover of less than £12,500, with larger charitable companies (turning over more than £500,000) being able to apply to convert to a CIO later in 2018. Community interest company conversions will be phased in last of all.

If your charity has a company structure and you are interested in converting to a CIO, do get in touch with us for a no obligation discussion about the pros and cons of conversion and to find out what the process will entail and how long it is likely to take.

Reporting serious incidents in your charity

The Charity Commission recently updated its guidance to trustees on identifying and reporting serious incidents. By way of a reminder, all charity trustees have a responsibility to report adverse events which result in or risk significant:

- loss to the charity's money or assets;
- damage to the charity's reputation;
- harm to the charity's work, its beneficiaries or reputation.

In the unlikely event that a serious incident does occur, charity trustees must report it to the Charity Commission as the regulator of charities and explain what steps they are taking to deal with it. This obligation applies even if you have reported the incident to other agencies, such as the police, donors or another regulator.

Trustees of charities with an annual turnover exceeding £25,000 must also include in their annual report a declaration about serious incidents.

The revised guidance can be viewed at: <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>

Draft Charities Bill

Over the past couple of years, the Law Commission has been looking at charity law reforms to address a number of technical charity law issues which charities (and their professional advisors) struggle with. These issues include amending governing documents, land transactions, dealing with permanent endowment and protecting legacies when two or more charities merge. The Law Commission is recommending solutions to these and other technical problems and to this end a draft Charities Bill has now been published for further consideration.

Provisions in the Bill would help charities amend their governing documents more easily; provide charities with more flexibility in terms of obtaining advice when they sell land (currently a written report must be obtained from a qualified surveyor); and give greater flexibility to use a charity's permanent endowment with checks in place to ensure its protection in the long-term.

The Law Commission is also recommending new powers for the Charity Commission which would prevent organisations from using misleading names and give the Commission the ability to confirm whether trustees were properly appointed.

The General Data Protection Regulation (GDPR)

It cannot have escaped your attention that a new EU law governing data protection will come into force next May. This will happen irrespective of Brexit. A new Data Protection Bill was published in September to implement the changes in the law. If your charity holds/processes personal data (and very few charities don't) you will need to get up to speed with the new data protection regime and find out whether you should be doing things differently or implementing new measures e.g to keep data safe and prevent a security breach, an all too common occurrence these days.

The Information Commissioner's website contains a wealth of information on GDPR and what you can do to prepare for the changes at: <https://ico.org.uk/> Getting staff and trustees up to speed on data protection should be prioritised in the run up to May 2018 to ensure your charity is ready for GDPR. There are plenty of training opportunities available at the moment or you could even consider commissioning your own in-house training but do make sure you use a reputable trainer who is a specialist in this field.



Tessa Hennessy on a recent visit to Pennyhooks Farm Trust

Delays in registering new charities

The Charity Commission has experienced a record number of applications to register new charities in 2017 and has recently issued a press release to alert applicants to the fact that it is taking longer than usual to process new applications. The Commission says that applicants should allow up to 3 months for a response following the submission of an application. Given the time it takes to prepare for submitting an application to register a new charity, we would recommend that you allow 4-6 months from the start of the application process to point of registration.

New charity governance code

In July an updated version of the Charity Governance Code was published. It comprises two codes: one for larger charities and one for smaller ones. The code sets out seven principles and recommended practice for achieving these, ranging from organisational purpose to board effectiveness, to openness and transparency. While adopting the new code is not a regulatory requirement, doing so could help improve the governance of your charity and also offer an assurance of high standards of governance to potential funders. More information can be found at: <https://www.charitygovernancecode.org/en>

Good governance seminars

We have been busy throughout 2017 delivering our popular “Good governance” training to charities and not for profits in and around Oxfordshire. The training is organised by Oxfordshire-based OCVA and delivered by us in conjunction with charity accountant, Sheila Parry, of SPX Oxford Limited. The two hour training session is aimed at trustees/senior charity managers to help them understand their legal and financial responsibilities. Our next Good Governance seminar will take place on Wednesday 8th November in West Oxfordshire. Details can be found at: <https://ocva.org.uk/good-governance-understanding-your-legal-and-financial-responsibilities/>

We also provide bespoke training to boards of trustees on their duties and responsibilities. Please contact us if you are interested in finding out more.

ABOUT US

Tessa Hennessy Solicitor is a specialist legal practice providing advice to voluntary and community organisations on a range of constitutional, governance and regulator issues. Based in Oxford and founded in 2008, the firm provides a responsive, personal and affordable service.

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