

Charity Law - Future changes

In this issue ...

- **Introduction by John Stoker, Chief Commissioner**
- **Views from the sector**
- **Next steps for the draft Bill and how to comment**
- **Defining charity -** new headings for charitable purposes, public benefit
- **Which charities will have to register? -** new thresholds for registration, general threshold, exempt and excepted charities, charities below the threshold, next steps
- **Fundraising -** public collections and self-regulation
- **Modernising charities -** campaigning, trustee payments, trustees' personal liability, mergers, endowments and Charitable Incorporated Organisations
- **Transparency and accountability -** Standard Information Return and SORP
- **Reviewing accounts**
- **Reforming the Commission -** changes to the Commission, open Board meetings and AGM's, joined up enforcement, Welsh office opening, public information and independent tribunal
- **Watch these spaces -** useful websites
- **How to find us**

The Charities Bill - what will it mean? - Introduction by John Stoker

The much anticipated draft Charities Bill was published by the Home Office (HO) on 27 May and the full text can be found on the ACD website at:

www.homeoffice.gov.uk/comrace/active/charitylaw/index.html

This edition of Charity Commission News is entirely given over to summarising the key changes and initiatives which the draft Bill contains. The Government's Strategy Unit (SU) report which informed the Bill contained some recommendations which require the legislation the Bill will provide, and some which the Commission could take forward without legislation.

We have already undertaken a considerable amount of work on those not requiring legislation and have included key areas in this issue of the newsletter.

Overall, we warmly welcome the changes, and think that this Bill will provide charities with new opportunities and flexibility to enable them to carry out their work even more effectively.

We will continue to keep you updated about the passage of the Bill in future editions of CC News.

This is my last edition of Charity Commission News as I leave the Commission in July. I have been hugely impressed by what charities achieve, and the spirit in which they achieve it.

Thank you for all you do through your charity, and my best wishes to you for success in the future.



Views from the sector

The contents of the draft Bill have been eagerly awaited by the sector, and we thought it might be useful to pass on some of their views.

Linda Laurance is the Chair of Charity Trustee Networks (CTN) which helps trustees of different charities network and exchange ideas and experiences. She told us,

'The proposals contained in the draft Bill should make life easier in different ways for virtually all charities.

Trustees have a delicate balancing act between delivering services and making sure they adhere to the law while trying to develop higher standards.

We at CTN believe the common-sense solutions to an excess of red tape which are

contained in the proposals will make life easier for trustees on the ground.

We would encourage trustees of all types and sizes of charities to make themselves familiar with the proposals and contribute to the debate.'

Kevin Curley is the Chief Executive of the National Association of Councils for Voluntary Service (NACVS), which has over 300 member CVS advising and supporting local voluntary and community groups.

His views are equally supportive of the proposals.

'NACVS keenly supports the contents of the draft Bill. We think the proposed new legal form - the Charitable Incorporated Organisation - will be valuable to many CVS

and the local charities they support, reducing the work and costs in reporting both to the Commission and the Companies Registrar.

Many small, local charities will welcome the removal of the need to register with the Commission if they have annual income of less than £5,000.

It is also a positive feature of the proposals that small charities which want to get a registration number will still be able to do so.'

Many people will want to comment on the proposals and details on how to do so are included in the article below.

Next steps for the draft Bill

The Home Office has published the proposed Charities Bill in draft to give everyone a chance to see what the legislation looks like.

This is an opportunity to comment on the technical drafting of the proposals which were consulted on following the SU report, 'Private Action, Public Benefit', published in September 2002.

Parliament has decided to look at the draft Bill and has set up a Scrutiny Committee to look at the proposals in the draft.

This Committee is made up of members of both the Lords and Commons.

It will examine both written and oral evidence on issues relating to the draft Bill during the Summer and will publish a report in the Autumn.

Following this, the next step towards turning the draft Bill into law will be for a Charities Bill to go through the usual Parliamentary process.

We do not yet know when this will happen as it will depend on when Parliamentary time is available.

When the legislative process begins Parliament will be looking at a Charities Bill based on the draft Bill but possibly amended following the report of the Scrutiny Committee.

To find out about the Committee, the issues it is examining and how to submit evidence to it, please access the Committee's website at:

www.parliament.uk/parliamentary_committees/jcdchb.cfm

The Joint Committee is especially keen to ensure that the views of small charities are taken into account.

Defining Charity

New headings for charitable purposes

First, it's important to stress that nothing which was previously charitable will stop being charitable when the new Bill becomes law.

The draft Bill proposes defining existing charitable purposes (with some slight extensions or clarification) under a set of broad headings rather than creating any new charitable purposes.

The 12 headings covered in the draft Bill are the:

- prevention or relief of poverty;
- advancement of education;
- advancement of religion;
- advancement of health;
- advancement of citizenship or community development;
- advancement of the arts, heritage or science;
- advancement of amateur sport;
- advancement of human rights, conflict resolution or reconciliation;

- advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage (including by the provision of accommodation or care);
- advancement of animal welfare; and
- other currently charitable purposes.

Under the proposals, charities which are currently registered will continue to be so and need take no further action. We will provide more detailed guidance about these proposed headings in due course.

'Public benefit'

There will be no statutory definition of 'public benefit' as the Government has decided that the current non-statutory approach will remain because it believes it gives flexibility, certainly and the capacity to accommodate the diversity of the sector.

However, the presumption of public benefit for charities for the relief of poverty, the advancement of religion and the advancement of education will be removed.

Currently, the law assumes that these things in themselves provide public benefit. This assumption will go and new charities registered under these headings will have to show that, as well as being established for a recognised charitable purpose, they are also providing benefit to the public.

One of the recommendations in the SU's report was that the Commission should carry out checks into the public character of charities to make sure they existed for the public benefit. We are reviewing the scope for these checks.

Following the review we will reconsider our guidance for charities on public character and will then decide on what basis these checks may be carried out.

Which charities will have to register?

New thresholds for registration

Currently, all charities with an annual income over £1,000 must register. There are a number of proposals for change in this area.

General threshold

The SU original recommendation to raise the income threshold for registration to £10,000 provoked much comment, especially from smaller charities. In response, the Bill proposes to raise it to £5,000.

At present any charity with permanent endowment or the use or occupation of land must register, regardless of income.

It is now proposed that these charities will only have to register if they cross the £5,000 income threshold. Charities under this threshold will be able to register voluntarily.

Currently exempt charities

Changes are proposed for currently exempt charities under

which they will fall into one of two categories:

- Some will be subject to a regulator, other than the Commission, that has agreed to take responsibility for charity law regulation.

These charities will continue to be exempt. They will still be unable to register but the Commission will be able to investigate them at the request of their regulator.





- Where there is no suitable alternative regulator, a currently exempt charity will lose its exemption and will come under the Commission's regulation in the normal way.

It will have to register but to ease the transition it will initially be subject to a threshold of £100,000 annual income.

Currently excepted charities

It is proposed to end the current system of exceptions by

Regulation or Commission order. Charities excepted in this way will have to register subject to an interim threshold of £100,000 to ease the transition.

Charities below the threshold

The draft Bill retains the current provision which makes it possible for charities below the relevant threshold for compulsory registration to register voluntarily.

When the changes are made charities already registered but below the new threshold(s) will

stay on the register, unless they ask to be removed.

Next steps

We will be contacting representatives of the main groups of exempt and excepted charities to continue discussions on the way forward, as the details of implementation become clearer.

Fundraising

Public collections

The draft Bill proposes corrections to some anomalies and gaps in the way public collections are licenced and controlled.

There will be a new, updated and unified local authority licensing scheme for all types of public charitable collections brought together in one Act, instead of the several which currently apply.

The proposal is that basic eligibility criteria will apply to all organisations seeking a permit, with a separate 'capacity check' at local level. This should increase consistency and help local authorities, charities and the public to be clear about what's required.

The definition of 'public place' for the purposes of collecting have previously been ambiguous, with a high street being considered as a 'public place' while railway stations and supermarket forecourts are defined as 'private property'.

The draft Bill proposes extending the definition of 'public place' to include these types of areas, doing away with this long-standing anomaly.

For smaller local collections, it's proposed that the disproportionate burden of applying for a permit is lifted.

These and house to house clothing collections will no longer require a permit.

Organisers of these collections will still need to notify their local authority of their intention to collect to allow the authority to keep accurate records and enable the public to check that the collection is legitimate.

Given that eligibility criteria for granting licences will be more consistent across all local authorities, permits to collect may apply to multiple collections which take place in more than one local authority area.

In these cases, while charities will still have to apply to each local authority for permission to collect the local authority will consider the request on the grounds of capacity only - dealing with the issue of people perceiving they have to run the gauntlet of numerous collectors.

The Home Office will issue guidelines on this in due course.

The ambiguity around what statements should be made by commercial participators about the proportion of donations actually going to charity is also set to be resolved in the new Bill.

Self-regulation of fundraising

In addition to the legislative changes to unify public charitable collections, the SU report also contained recommendations that fundraisers themselves develop a system of self-regulation.

An independent commission, funded by the Institute of Fundraising and headed by Rodney Buse was set up to consult on the issue.

The Buse Commission's final report, recommending a UK -wide framework for self-regulation, was published in January this year.

The report can be found at: www.busecommission.org.uk

The consultation closed in April.

'Back up' powers are being included in the draft Bill to enable statutory legislation should self-regulation be unsuccessful.

Modernising Charities

Campaigning

The SU report recommended that the Commission's guidelines on campaigning be revised to make them less cautionary. It felt greater emphasis was needed on the campaigning and other non-party political activities which charities can undertake.

As this recommendation did not require legislation, we started work on reviewing our guidance for charities on campaigning last year. We have had a number of discussions with charities and in November 2003 held a focus group discussion with sector representatives. The draft revised guidance has been published for consultation on our website. Comments are invited by 30 July 2004. We expect to publish the completed guidance by late Summer this year. At the same time we will look again at our guidance on human rights which has links to the issue of campaigning.

Trustee payments

The SU report stressed that the principle of voluntary trusteeship remains at the heart of the role. However, it also suggested changes and the Bill includes proposals which will give trustees the power to pay an individual trustee to provide an additional service to the charity if they think it is in the charity's interests to do so.

So, for example, if a trustee is a plumber, the rest of the trustee board will no longer have to get specific authorisation from the Commission for paying the trustee to undertake plumbing work for the charity - if this work will be undertaken at a better price than would be the case if supplied externally. The Bill will introduce safeguards to prevent this power being abused either unintentionally or deliberately.

Relief from personal liability for trustees

Recruiting new trustees can be difficult if potential recruits are worried that they may be personally liable for mistakes they make which put the charity's assets at risk. This concern is compounded by the fact that the Commission cannot give anxious trustees assurance that they won't be held liable as, currently, only the courts can do this.

One of the draft Bill's proposals is to allow charity trustees to apply to the Commission, as well as the courts, for relief from personal liability for a breach of trust where the trustees have acted honestly and reasonably.

This obviously only applies to circumstances where mistakes have been honestly made. The Commission and the courts will still take deliberate breaches of trust by trustees very seriously.

Making it easier to evolve and merge

The SU report recognised both that it should be easier for charities to merge where appropriate and also that more should be done to help trustees run the administrative aspect of their charities.

The draft Bill proposes a package of legal measures to make it easier for charities to update their governing documents and to merge.

Additionally, the Commission itself has undertaken a number of steps, which aren't dependent on legislation, to make this easier.

The SU report contained further recommendations for the Commission, which we are currently reviewing with the aim of publishing a policy statement during 2004-05.

Flexible use of endowments

The trustees of charities which have permanent endowment funds can use the income from the fund but they cannot usually spend the capital. The draft Bill proposes extending the circumstances in which charities can spend such capital.

The process for enabling small charities to spend capital will be made easier and larger charities will be able to spend capital, in certain circumstances, provided the Commission agrees. This increased flexibility to enable the charity to more effectively fulfil its purposes, given the changes in circumstances since the gift was originally made, will be balanced against respecting the donor's original intentions.

Charitable Incorporated Organisations

Charities that wish to have legal personality are currently normally set up as companies. This means they have to register both with the Charity Commission and with Companies House and provide accounts and returns to both. As the framework of company law was designed primarily for commercial organisations this may mean that it is not always suitable for charities.

The draft Bill proposes a new legal form of incorporation which is designed specifically for charities, the Charitable Incorporated Organisation (CIO).

The basic framework for the CIO will be included in the Bill while the detailed structure will be dealt with in secondary legislation.

The Government will review the need for other forms of incorporation for charities five years after the introduction of the CIO.

Transparency and accountability

Standard Information Return

The SU report proposed that, as part of their reports and accounts, charities with annual income of over £1 million should complete a Standard Information Return (SIR).

This should highlight key information about the charity (both qualitative and quantitative), focusing on the outcomes it achieves, and the measures it has in place to assess these.

The development of the SIR will not be dealt with in the Bill

We have worked with charities, and other interested groups, to design a draft SIR which we

started piloting in April this year with up to 200 charities and which will run until June.

We will road test the pilot with a wide range of stakeholders, including the public and donors.

We will be reviewing feedback from this later this year and hope to have final proposals ready for SIR design towards the end of the year.

SORP

The SU report recommended that the way in which charities present their accounts (SORP - Statement of Recommended Practice for Charities) should be updated to make charities more transparent and accountable.

Particularly, it focused on reporting costs and expenditure, strengthening its emphasis on achievements against objectives, and encouraging smaller, equity-holding charities to declare their ethical investment policy.

These proposals are being considered by a group of sector representatives and Commission staff and by the Committee reviewing the SORP.

This year's annual review of the SORP will include issues raised in the SU report, and there will be a public consultation on possible changes in Summer 2004.

Reviewing accounts

Protecting whistleblowers

Auditors who scrutinise the accounts of larger charities are often able to identify abuse or significant breaches of trust during the audit process.

The draft Bill proposes that auditors of charity accounts will be protected from the risk of action for breach of confidence or defamation when they communicate relevant information to the Commission. Independent examiners of charity accounts will also be protected.

Changing the audit threshold for charities

Charities are subject to different degrees of external scrutiny based on income and expenditure levels in the current and preceding two financial years.

These rules are complex and require simplifying. Under proposals in the draft Bill -

Accounts will have to be professionally audited for any charity which is not a company and which has:

- an annual income over £500,000; or
- an annual income over £100,000 and assets exceeding £2.8 million.

For charities which are companies a professional audit will be required if they have either:

- an annual income over £500,000; or
- assets exceeding £2.8 million.

Any charity which is not a company and which has an annual income between £250,000 and £500,000 can have its accounts audited or independently examined. The independent examiner must have an appropriate accountancy qualification.

If the charity's annual income is below £250,000 the independent examiner does not need to have an accountancy qualification.

For charities which are companies the equivalent of an independent examination is an accountant's report.

The upper limit for which an accountant's report is allowed will be increased to £500,000.

Reforming the Commission

Changes to the Commission

There are two main areas of change. First, the SU report recommended that the role of Chief Commissioner be split into that of Chief Executive and a separate Chair of the Board.

Part of this proposal is underway. From July 2004, the role of Chief Charity Commissioner, currently held by John Stoker, will change and the postholder will be the Chair of the Commission. There will also be a separate Chief Executive.

Second, that there should be a larger number of Commissioners, who will be appointed when the legislation is enacted.

This will allow wider input, greater diversity in decision making and the strengthening of a strategic approach to better meet sector needs.

Objectives

The draft Bill proposes four new regulatory objectives for the Commission relating to public confidence, compliance, social and economic impact and accountability.

Open Board meetings and Annual General Meetings

Again, this was a recommendation in the SU report which didn't need to wait for legislation and the Commission aims to hold its first open Board meeting in September this year. We hope to hold our first open AGM later in the autumn.

We will publish agenda, papers and minutes for these meetings on our website. In line with both the Strategy Unit recommendation and the Government's response some business will be reserved if there are good reasons for doing so.

Joined up enforcement

The SU report acknowledged that, despite its relative rarity, bogus fundraising caused disproportionate concern to the donating public, which was damaging to all legitimate charities seeking public support.

It recognised that enforcement action was not as effective as it could be, due to responsibility for this action falling to different bodies.

The report recommended that the current joint liaison between the Commission, local authorities and the police should be strengthened by formal agreements on joint working.

We've already started work with a number of key police and local government bodies, both nationally and locally, to improve liaison.

Commission office in Wales

The SU report recommended that the Commission open an office in Wales and the Commission announced in August 2003 that it would open its first Welsh office.

The new office is in Newport. It formally opened in April, and can be reached in the first instance via the Contact Centre on

0870 333 0123

The work of the office will include:

- registration of new charities;
- review visits; and
- advice and guidance to registered charities of all sizes.

Our guidance will continue to be available in Welsh as it is now, together with Charity Commission News.

Giving information to the public

It's important that the Commission continues to be responsive to public views and the SU report contained a number of proposals to help us develop better ways of providing information to the public.

We worked with Philanthropy UK to help potential donors who want to create foundations through which to give to charity. We have also agreed a streamlined approach to registering this type of charity.

Standard information about the largest charities will be collected by a Standard Information Return and is discussed in greater detail earlier in this edition.

The governing documents and accounts of the 400 largest charities were made available on our website this April, and more charities will be included during 2004/05.

Our website was relaunched in October 2003 and now includes links to other bodies. Further work is currently being undertaken to provide details of relevant bodies for handling particular types of complaint about charities.

Independent Tribunal

The draft Bill includes the proposal to set up an independent tribunal to hear appeals against the decisions taken by the Commission.

The Government is currently working on wider scale tribunal reform and the introduction of the proposed charity tribunal will need to be consistent with the reformed tribunal system as a whole, details of which will be published by the Government in due course.

Watch these spaces

This edition of Charity Commission News can only summarise what we think will be the main areas of interest to charities in the draft Bill.

Anyone wanting more information should keep a watching brief on the following:

www.homeoffice.gov.uk/comrace/active/charitylaw/index.html

The Charities Unit at the Home Office has responsibility for co-ordinating the Bill's progress and its website has the draft Bill in full.

www.charitycommission.gov.uk

Our website which, under 'Strategies, Plans and Reports' contains our pages on 'Reforming the Framework', carrying updates on progress we're making against the aspects of the SU's report which do not need to wait for legislation.

How to find us

Here are the contact details for each of our offices:

Liverpool

Charity Commission
2nd Floor
20 Kings Parade
Queens Dock
Liverpool L3 4DQ

Fax: 0151 703 1555

London

Charity Commission
Harmsworth House
13-15 Bouverie Street
London
EC4Y 8DP

Fax: 020 7674 2300

Newport

Charity Commission
8th Floor, Clarence House
Clarence Place
Newport
South Wales NP19 7AA

Fax: 01633 225 549

Taunton

Charity Commission
Woodfield House
Tangier
Taunton
Somerset TA1 4BL

Fax: 01823 345003