

The Fundraising Standards Board

The new Fundraising Standards Board was launched to the public on 12 February 2007, with a £250,000 advertising campaign introducing its "blue tick". So far, over two hundred charities and fundraising organisations have signed up and can display the blue tick on their fundraising material.

What does it mean for charities?

The Fundraising Standards Board (FSB) emerged after a report on Charity Law and Regulation by the Government's Strategy Unit. In broad terms, the FSB aims to:

- Ensure charities follow best practice in all fundraising activities;
- Act as a channel for complaints from the general public;
- Raise public confidence in making charitable donations; and
- Help to make charities more open and transparent.

The FSB is balanced between the interests of the public and the interests of the third sector. It is a means of self-regulation; an alternative to statutory controls.

Charities that sign up to the scheme agree to adhere to the Institute of Fundraising's Codes of Fundraising Practice and the FSB's Fundraising Promise, which requires principally that all fundraising activities must be fair, honest and legal.

The FSB will arbitrate a clear procedure for public complaints, backed up by a significant campaign to raise public awareness. The procedure will start with the charity concerned, and, if the complainant is still dissatisfied, they can take their grievance to the FSB.

The FSB wants its logo to represent fundraising best practice. It asks members to indicate their membership of the scheme on their fundraising material (e.g. promotional and advertising literature etc).

There is a joining fee based on a sliding scale tied to charity voluntary income or supplier fundraising turnover. Therefore, charities' membership fees are based on their voluntary income as defined by SORP (Accounting and Reporting by Charities) in their latest annual statutory accounts.

There are over twenty different price bands, but by way of example; charities with income of under £10,000 must pay £30 to join the scheme, charities with income between £100,000 and £250,000 must pay £150, charities with income between £6 and £7 million must pay £550 and charities with income over £50 million must pay £1,800. Details can be found on the FSB's Web site at www.fsboard.org.uk.

Membership benefits

The FSB states that "any organisation that engages in fundraising from the general public should join". Therefore, charities,

voluntary sector or non-profit distributing organisations or businesses should consider joining if they receive financial donations, gifts in kind or services and facilities from the public, their members, supporters or businesses.

The FSB lists the benefits of membership as follows:

- Members will be at the forefront of championing best practice in fundraising activity. Using the "blue tick" logo will help reassure the public that the charity engages in best practice and will help build long term and fruitful relationships with donors;
- Having a complaints process in place means the charity can deal with any problems efficiently and effectively;
- The FSB will be conducting research to test public attitudes to fundraising and to determine trends. Members will be able to access this data to help develop their activities;
- The scheme should provide light touch regulation that it is easy to integrate into the charity's working practices;
- The scheme is self-regulatory. If charities, organisations and suppliers do not join, the sector will become subject to statutory regulation which may involve a more intensive and prescriptive regulation process.

The outlook

Since opening its doors to applications for membership last year, response from the voluntary sector has been positive. As above, over two hundred charities and fundraising organisations have signed up, including some of the largest charities. The FSB is also working in conjunction with

local CVS groups to promote the scheme and encourage awareness of best fundraising practice amongst smaller charities. The FSB is adamant that the scheme is not only for large charities. Many see the FSB as a means primarily to encourage public confidence, which is important for charities of all sizes that rely on the donations and generosity of the general public.

With the advertising campaign and public launch having been launched on 12 February 2007, public awareness should grow considerably. It is likely that more charities will choose to sign up and start using the "blue tick" logo on their fundraising material.

Have you considered the benefits of joining the scheme for your organisation?



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Charities Act

The First Commencement Order, which brings the first provisions of the Act into force. The following provisions of the Act will come into force on 27 February 2008.

The Charity Commission

The Charity Commission will be reconstituted as a corporate body with members who will be appointed by the Minister for the Cabinet Office. However, the Act makes it clear that the Charity Commission will not be subject to the direction or control of any Minister or Government department, thus emphasising its independence.

The primary objectives of the Charity Commission are set out in the Act and include:

- Promoting awareness and understanding of the public benefit requirement
- Promoting the effective use of charitable resources
- Promoting public confidence and trust in charities
- Enhancing the accountability of charities to their donors, beneficiaries and the general public
- Promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities

Public benefit

The Act makes it clear that a charitable purpose is one which is for the public benefit.

The Charity Commission will be required to issue guidance in pursuance of its public benefit objective (as above) and promote awareness and understanding of the operation of the public benefit requirement.

The Charity Commission will soon launch its consultation on public benefit with the sector and the wider public so that it can then issue general guidance on what the requirement means.

Charities should watch this space.

The Charities Tribunal

The Lord Chancellor will have the power to draft the supporting legislative framework for the Charity Tribunal.

The independent Charity Tribunal will be set up to hear appeals against, and reviews of decisions, directions and Orders of the Charity Commission. It will act as a Court of first instance against decisions of the Charity Commission and it is hoped that it will increase the Charity Commission's accountability to the charities it regulates.

The drafting of the supporting legislation will inevitably take some time and therefore, the Charity Tribunal is not expected to be up and running until at least early 2008.

However, the First Commencement Order enables the Lord Chancellor to start preparing the framework and the supporting legislation for the Charity Tribunal.

Registration of charities

The First Commencement Order brings into force interim changes to the registration threshold for small charities. A further Order will be issued increasing the compulsory registration threshold from £1,000 to £5,000 gross annual income. However, small charities under the £5,000 threshold will be able to voluntarily register.

Relaxation of publicity requirements' relation to Schemes

The Order brings into force changes relating to the period of publicity required for Charity Commission Schemes. Schemes may enable a charity to do things that will affect the way it carries out its charitable purposes or the way in which it is run.

The Order brings into force provisions which give the Charity Commission discretion to decide whether or not publicity for such a Scheme is required with a power to determine that no publicity is required if it is unnecessary.

New Charity Commission powers

The Charity Commission will have the power to provide advice and guidance on the written application of any charity trustee relating to the performance of his or her duties as a charity trustee, or the proper administration of the charity.

The Charity Commission will also have the power to determine the membership of a charity as part of an investigation on receipt of an application from the charity. This will be of particular use to charitable companies where the company books (e.g. Register of Members) have not been kept up to date.



2006 Update

of the Charities Act 2006 into force, has finally been published.
February 2007:

Restrictions on mortgaging

The circumstances in which a charity does not require the prior consent of the Charity Commission to charge charity land as security will be extended. The procedures charities must follow to charge charity land as security for a loan will remain largely the same. The new provisions enable charities to follow the procedures in order to charge charity land as security for a proposed grant as well as a loan.

Charities' audits and accounts

Non-company charities

A charity which is not a company will have to have its accounts professionally audited if it has gross annual income over £500,000; or an aggregate value of assets over £2.8 million and a gross annual income over £100,000.

The Order brings into force provisions which enable charity trustees to purchase trustee indemnity insurance without the prior consent of the Charity Commission if the charity's governing document contains no express power enabling them to do so.

However, if the charity's governing document contains an express prohibition against the purchase of trustee indemnity insurance out of the charity's funds, the trustees will still require the prior consent of the Charity Commission to amend this to enable purchase to take place.

The purchase of trustee indemnity insurance must still be in the charity's best interest. For example, it may be deemed to be in the charity's best interest if it is having difficulty attracting new trustees because they are concerned about potential personal liability. This is particularly significant for trustees of unincorporated charities.



If a non-company charity's assets are below this income/asset threshold, an independent examiner can be used instead of an auditor.

If a non-company charity's income is above £250,000 then the independent examiner is required to have an appropriate accountancy qualification.

A non-company charity's accounts will not have to be independently examined if their income is below £10,000.

Charitable companies

Charitable companies' accounts will have to be professionally audited if the charitable company has gross annual income over £500,000; or a balance sheet total (aggregate assets) over £2.8 million.

Charitable companies with gross annual income between £90,000 and £500,000 and assets of £2.8 million or less, will not be required to have their accounts audited if they provide an accountant's report.

If a charitable company has income of £90,000 or less, then neither a professional audit nor an accountant's report will be required unless the charitable company's assets are over £2.8 million.

Trustees' indemnity insurance

Trustee indemnity insurance indemnifies trustees against personal liability in relation to any breach of trust or duty committed by them in their capacity as charity trustees.

New powers for unincorporated charities

The Order brings into force provisions in the Act which gives trustees of all unincorporated charities (e.g. non-company charities) power to pass a resolution to amend the administrative parts of their charity's governing document (e.g. the method and form of holding meetings).

This power will only need to be used if it is not already set out in the charity's governing document. However, in cases where there is no power of amendment, it will enable trustees of unincorporated charities to amend the administrative provisions of the governing document without the prior consent of the Charity Commission.

Conclusion

This is an outline of the first main changes the First Commencement Order will bring into place which are contained in the Charities Act 2006. The majority of the Act is yet to be implemented, but we will keep you updated through our e-bulletins and newsletters.

If you have any queries about this article or require any further advice, please do not hesitate to contact Gerry Morrison on 01904 625790, email gerry.morrison@rollits.com.

The Companies Act 2006

The Companies Act 2006 ("the Act") received Royal Assent on 8 November 2006, the same date as the new Charities Act. However, the vast majority of the provisions of the Act have not come into force.

Once implemented in full, the Act will affect the operation of charitable companies and charities' trading subsidiary companies.

Publicity and disclosure of information

One of the few parts of the Act to have already come into force which affects charitable companies and charities' trading subsidiary companies relates to the disclosure of information on companies' publicity. In addition to existing legal requirements, charitable companies and trading subsidiary companies must state:

- The full company name;
- The place of registration (e.g. England and Wales);
- The company registration number; and
- The address of the registered office

on their Websites, order forms and electronic communications including e-mails.

If a company fails to comply with the above provisions it, and any officer who authorises such information not to appear on such websites or documents personally is liable to a fine, which is currently set at a maximum of £1,000.

We recommend that charitable companies and charities with trading subsidiaries review their website and publicity material to make sure that they are compliant.

We can provide further advice on compliance if required.

Other changes not yet in force:

The following provisions are not yet in force, but give an idea of how charitable companies and charities' trading subsidiaries will be affected when they are brought into force in accordance with the Government's implementation plans:-

Accounting and reporting

One change, when brought into force that will affect charitable companies and trading subsidiaries is the obligation to file accounts at Companies House within nine (reduced from ten) months of the financial year end. All charities with annual income or expenditure exceeding £10,000 remain obliged to file accounts with the Charity Commission within ten months of financial year end. Therefore, when these provisions are brought into force charitable companies must take care to abide by the reduced time period for filing their accounts with Companies House.

Governance and AGMs

Companies will be able to execute documents under the witnessed signature of one director, as an alternative to execution by two directors or one director and the secretary.

New and existing private companies will no longer be obliged to hold an annual general meeting unless they are specifically required to do so by their memorandum and articles. In most circumstances, it would be undesirable for charitable companies to dispense with holding annual general meetings, particularly those with large memberships for reasons of accountability, transparency and good governance. The changes may be useful for smaller trading subsidiaries (although they may need to change their memorandum and articles in order to take advantage).

Constitution

Charities thinking of setting up trading subsidiaries may be interested to hear that when the relevant provisions are brought into force, the Act will introduce a new shorter form of memorandum of association and new model articles for private companies.

Members' meetings

All companies have a two tier system of governance (e.g. Directors and Members). The Directors of charitable companies are also charity trustees at law and are responsible for the control, direction and management of the charity. The Members of charitable companies have agreed to guarantee the liabilities of the company to a nominal amount (usually £1) and have rights to attend general meetings and voting powers to pass resolutions (e.g. to amend the Articles of Association). Directors and Members may or may not be the same people, but if they are, they wear different hats.

When the relevant provisions are brought into force, the Act will introduce a number of provisions affecting the organisation and conduct of Members' meetings which will particularly benefit charitable companies with large Memberships.

With their Member's prior agreement, charitable companies will be able to use electronic communication with Members when sending out notices for general meetings and so on, saving time and costs. With agreement of the company, Members will be able to communicate electronically in return.

Directors

Directors of charitable companies will be allowed to register a "service address" with Companies House in order to keep their residential address off the public record. However, no existing records will be removed from the public domain.

Company Secretary

Private companies can choose not to have a company secretary. Existing private companies can effect this by changing their memorandum and articles. However, given the standards of accountability and governance expected of charities, in the case of charitable companies the company secretary will remain an important position and should not be dispensed with without good reason.

Looking forward

The Government plans to draw up detailed implementation plans in February 2007. However, apart from the disclosure of information provisions which are already in force, there is at present no clear timescale. It is envisaged by the Government that all sections will be implemented by October 2008.

When the Act is implemented in full, it will have an important affect on charitable companies and trading subsidiaries. We will issue further bulletins as the timeline for implementation becomes clear.

INFORMATION

If you have any queries on any issues raised in this bulletin, or any charity matters in general please contact:

Gerry Morrison or Ralph Coyle on (01904) 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 14 February 2007

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