

This is a regular newsletter designed specifically for charities. The newsletter will include subjects of a topical nature which will hopefully be of interest to all involved in charities.

Companies Act 2006

The Companies Act 2006 has introduced a number of changes that will impact the many charities that are set up as companies limited by guarantee. Some of the key changes came into force on 1st October 2007. Further changes are to come into force in April 2008 and October 2009. These changes will generally ease the administrative burden on charitable company trustees (who are also its directors).

In the section below, we consider the impact of the provisions.

A) Annual General Meeting (A.G.M.)

i) For private companies, these are now optional. If, though, the charity's articles of association require an A.G.M. to be held, then this must be adhered to. The articles could be amended, though.

ii) There is no longer a requirement to lay accounts before the members. If trustees want to take advantage of this provision then the articles will need to be reviewed, and amended if necessary.

B) Notice of Members' Meeting

The notice period for all general meetings has been set at fourteen days. The articles may need to be amended if they contain a notice period of more than fourteen days.

C) Written Resolutions

The new rules (below) apply to all companies, irrespective of anything to the contrary in the company's articles.

- No longer necessary for all members to sign a written resolution.
- The majority required for an ordinary resolution is 50% plus one of all members entitled to vote.
- The majority required for a special resolution is 75% of all members entitled to vote.

D) Duties of Trustees/Directors

For the first time, the duties of company directors are set out in statute.

In relation to a charitable company the duties are:

- 1) To act within the charity's constitution.
- 2) When making decisions, ensure that they are for achieving the charity's charitable objectives. Also, when making decisions, directors need to consider:
 - i) interests of employees.
 - ii) interests of suppliers, creditors and others.
 - iii) impact on the environment and the community in which the charity operates.
 - iv) reputation of the charity.
 - v) the long term impact.
 - vi) to ensure fairness between members of the charity.

3) To exercise reasonable care and skill.

4) To exercise independent judgement.

5) To avoid conflicts of interest and not to accept benefits from third parties (these two measures come into force on 1st October 2009).

6) To declare to the other directors any conflicts of interest in a proposed transaction or decision. This must be done before the agreement/decision is approved by the directors. Again, this measure comes into force on 1st October 2009.

E) Company Secretaries

It will no longer be a requirement to have a company secretary from April 2008.

F) Filing Period for Accounts

For a private limited company, the filing period will reduce from ten months to nine months for all accounting periods starting after 6th April 2008.

Charitable Status

The Charity Commission expects to publish its public benefit guidance in January 2008.

The public benefit test will be the key factor in deciding whether any charity maintains its charitable status. This may present problems for some charities. For example, the Government has rejected the argument that independent schools provide public benefit by taking pupils out of the state system and therefore save tax payers' funds.

Trustees will, it is proposed, be required to report on how they have achieved the public benefit test in the annual report of the charity. This is expected to be a requirement from March 2009. A simplified report could be required for charities with an annual income below £500,000.

The Charity Commission has set out four public benefit principles:

- there must be an identifiable benefit.
- benefit must be to the public or a section of the public.
- people on low income must be able to benefit.
- any private benefit must be incidental.

If a charity does not sufficiently meet the public benefit tests, the Charity Commission is likely to ask it to change its activities to do so. The Charity Commission has the power to remove trustees and, ultimately, to dissolve and distribute the assets of the charity to other charities.

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Registration of Charities

A new streamlined charity registration form has been introduced by the Charity Commission. From 1st December 2007 it is mandatory to use this new style form.

There is also various new guidance on matters to consider in setting up a new charity

If you would like more information please contact your partner on 01865 559900 or e-mail information@wenntownsend.co.uk.

This newsletter has been written for the general interest of our clients. It is therefore essential to take advice on any specific issues. We cannot accept responsibility for any loss occasioned to any person as a result of action taken or refrained from in consequence of the contents of this publication.