Charities Technical Digest

April 2024

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HAT
Group of Accountants

EDITORIAL

Welcome to the latest HAT Charities Technical Digest.

New charity law in England and Wales continues to be brought into force, with the changes which became effective in March primarily relating to governing documents, the disposal of charity land and charity mergers.

New charity law in Scotland is also starting to be brought into force, with changes which became effective at the start of April increasing OSCR's inquiry powers, being able to remove charities which do not fulfil their filing requirements and clarifying that to register as a Scottish charity, there needs to be a clear link to Scotland.

The Charity Commission has provided updated guidance relating to circumstances where a charity should refuse or return donations. This may happen in a situation where the risks involved in accepting or keeping the donation could include the likelihood of reduced support or reputational harm, particularly among supporters or beneficiaries.

Finally, all of the UK's charity regulators are engaging with the main UK banks as their research has highlighted pressing issues faced by charitable organisations in their interactions with banking services.

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OVERVIEW OF CHARITIES ACT 2022 PROVISIONS COMING INTO FORCE

It has been confirmed that the following changes included in the Charities Act 2022 came into force on 7 March 2024 and these are summarised by the Charity Commission as follows:

"Making changes to governing documents:

The new statutory power that trusts and unincorporated associations can use to make changes to their governing document is now in force.

If using this power, these charities will need to get the Commission's authority to make certain 'regulated alterations' in the same way as charitable companies and Charitable Incorporated Organisations (CIO).

Other changes that are in force include:

- How unincorporated charities must pass trustee and (where they have members) member resolutions when using the new power;
- That the Commission will apply the same legal test when deciding whether to give authority to charitable companies, CIOs, and unincorporated charities changing their charitable purposes; and
- A power for the Commission to give public notice to, or to direct charities to give notice to, regulated alterations they make.

Statutory powers for certain (small) unincorporated charities to change their governing document have been repealed.

Selling, leasing or otherwise disposing of charity land:

The following provisions are now in force:

- Provisions relating to disposals by liquidators, provisional liquidators, receivers, mortgagees or administrators;
- Provisions relating to the taking out of mortgages by liquidators, provisional liquidators, receivers, mortgagees or administrators; and
- Changes about what must be included in statements and certificates for both disposals and mortgages.

These provisions were due to come into force on 14 June 2023 but did not.

Charity mergers:

For certain mergers, new rules are now in force that will allow most gifts to charities that merge to take effect as gifts to the charity they have merged with. The statutory process for certain (small) unincorporated charity mergers has been repealed.

Other provisions:

The Act enables the Commission to:

- Authorise a trustee to receive or retain a payment for work completed for the charity where the Commission decides it would be inequitable for a trustee not to be paid; and
- Confirm defective or potentially defective trustee appointments."

ACTION FOR FIRMS

Where you work with charities which wish to change their governing document, dispose of land or merge, make them aware of the changes.

HAT RESPONSE

Where it affects charity audits, amendments have been made to reflect requirements relating to charity land in the HAT Charities Methodology.

CHANGES TO SCOTTISH LAW AFFECTING CHARITIES

Legislation has been laid in the Scottish Parliament which brought into effect, on 1 April 2024, certain changes contained in the Charities (Regulation and Administration) (Scotland) Act 2023. A Press Release from OSCR includes the following:

"While there is no immediate action required on the part of charities or charity trustees, we want to make sure that the sector, and those who advise it, know what changes are coming up.

Increased inquiry powers:

From 1 April 2024, we should have a number of new powers to help us work more effectively to protect charities and their assets. They include:

- Power to direct charities to take particular actions;
- Power to appoint interim trustees;
- Power to inquire into former charities and former charity trustees; and
- Changes to OSCR's powers to require charities and others to provide information.

Removing charities that fail to submit accounts and to respond to OSCR:

Every year, charities must submit accounts to OSCR within 9 months of their financial year end. The 2023 Act will give us the power to remove charities from the Scottish Charity Register that have failed to submit accounts on time and failed to engage with OSCR about putting this breach of trustee duties right.

A charity's connection to Scotland:

From 1 April 2024, OSCR must refuse an application to be registered as a charity from organisations that have no or a negligible connection with Scotland. To decide on this, we will need to look at factors including whether the organisation has a principal office in Scotland, occupies premises or carries out activities here. Our experience indicates that this will not be an issue for the overwhelming majority of applicants, but the new measure will ensure that we can deal with issues where they arise.

Other changes:

In addition to the changes above, there will be several minor changes aimed at simplifying and enhancing the flexibility of interactions between charities and OSCR. For example:

- Charities will no longer be required to give OSCR 42 days' notice of changes which require our consent (like changes to charity name, purposes in the constitution or dissolution); and
- We will be able to enter two charities on the Scottish Charity Register with the same name when there is a merger of charities – for instance, when an unincorporated charity is winding up and transferring its assets to a new SCIO, the new SCIO can be registered under the same name as the unincorporated one.

We will also be able to take action where the working or 'known as' name of a charity or an applicant for registration is misleading, offensive or too similar to another charity's name, as we do now for charities' legal names.

The future:

Scottish Ministers intend to commence some further measures on 1 October 2024. This includes the creation of a publicly searchable record of individuals who have been permanently disqualified by the Courts from being a charity trustee so that charities can carry out due diligence on prospective new trustees.

The remaining parts of the 2023 Act are planned to come into force in summer 2025. This should give charities and OSCR the time needed to prepare for these changes, which include:

- A schedule of charity trustees;
- Publication of trustee names;
- A record of charity mergers; and
- Updates to the disqualification criteria for charity trustees."

Separately, for charities which own, or has an interest in, land and property in Scotland, there is new legislation which may apply to them (where the registration deadline was 1 April 2024) and a Press Release from OSCR includes the following:

"The Register of Persons with a Controlled Interest in Land ("RCI") is a new public register managed by the Registers of Scotland ("RoS"). While there are existing Registers in Scotland which provide details of the owner or tenant of land and property in Scotland these Registers do not detail who can significantly influence or control the owner or tenant's decisions about the land. The RCI aims to improve transparency of land ownership in Scotland by providing this information.

The RCI contains information about:

- The land or property;
- The owner or tenants; and
- Any person who has a controlling interest over the land.

You will only need to make an entry in the RCI if another person or entity has significant control or influence over any decision you make in relation to the land or property. These people are known as associates. The RoS website contains lots of information to help you understand whether or not you need to register, including a RCI self-assessment tool to check if you need to register.

If your charity is a Scottish Charitable Incorporated Organisation (SCIO), a cross border Charitable Incorporated Organisation (CIO) or a company, you will be exempt because the property will be held in the name of the SCIO, CIO or company and the necessary information is publicly available elsewhere.

If your charity is an unincorporated association or a trust, and land or property is held on its behalf by the committee or trustees, you might need to register. There is helpful RoS guidance on land held for Trusts and Unincorporated Associations and when registration is required."

ACTION FOR FIRMS
Where you work with charities registered in Scotland, ensure that both you and the charities' trustees keep up to date with these changes.

GUIDANCE ON REFUSING AND RETURNING DONATIONS

The Charity Commission has published new guidance to help charities when deciding whether to accept, refuse or return a donation and their Press Release states:

"The regulator's guidance makes clear that trustees should start from a position of accepting donations, but from time to time a charity may face a difficult decision as whether to refuse or return a donation. The guidance is designed to help trustees have informed discussions when faced with a choice that has potentially significant consequences.

The Commission has set out an approach for trustees to take on these occasions, advising they:

- Consider the risks involved in refusing or returning the donation, and how likely and serious these are. These include negative financial impact, ability to deliver services and ability to attract donations in future;

- Consider the risks involved in accepting or keeping the donation, and how likely and serious these are. These include the likelihood of reduced support or reputational harm, particularly among supporters or beneficiaries;
- Determine how any decision aligns with their charity's purposes; and
- Determine what steps they can take to mitigate the risks. These include negotiating the terms of a conditional donation with the donor or developing a public explanation for a decision.

The regulator also warns trustees not to allow their personal views, or any external pressures that do not relate to their charity's purposes, to influence them to act in a way that is not in their charity's best interests.

The guidance reaffirms the importance of following existing principles which trustees must use when making any decision that will impact their charity. These principles help to ensure trustees are acting reasonably and serve only their charity's best interests. If followed correctly, any choice will be adequately informed and evidenced.

The guidance adds that trustees should take enough time to allow sufficient information to emerge, should balance short and long-term risk and allow trustee boards to ask questions and challenge assumptions."

ACTION FOR FIRMS
Where you work with charities which receive material donations, advise the trustees to review this guidance and establish appropriate policies.

CHARITY REGULATORS CONCERN OVER ACCESS TO BANKING

The Chief Executive Officers of the UK Charity Regulators (including OSCR and the Charity Commission) have jointly penned an open letter directed at the UK's main high street banks. This letter, a collaborative effort representing the collective concerns of charity regulators, highlights pressing issues faced by charitable organisations in their interactions with banking services. OSCR summarises the concern as follows:

"Among the challenges outlined in the letter are a reduction in bespoke banking services, experiences of administrative delays and feedback that online banking is not designed to match the way charities operate.

In a bid to address these critical issues, the CEOs urgently call upon banks to take specific actions:

- Simplify the process for setting up a charity bank account, recognising that it is in all our interests to safeguard donated funds and to support charities to prioritise meeting the needs of their beneficiaries; and
- Develop comprehensive training materials for bank staff that enhance their understanding of charity structures and governance mechanisms to prevent avoidable delay driven by misunderstanding.

This collective appeal by the charity regulators emphasises the crucial role played by banks in supporting the charitable sector."

Subsequently, a survey from the Charity Commission reveals widespread scale and impact of ongoing banking issues facing the sector and their Press Release states:

"The Charity Commission has shared early findings from its annual sector survey, revealing that 42% of trustees surveyed said their charity experienced poor service from their banks in the last 12 months.

6% of respondents confirmed that they had experienced account freezes or being blocked out over the past year and 7% of respondents reported that their bank had lost their records.

Other findings from the survey include:

- 32% of respondents faced issues when trying to update their charity's contact details or signatories;
- 18% had difficulty trying to open a new bank account;

- 15% found it challenging to comply with identity requirements set by their bank; and
- 14% found it difficult to understand what their bank requires of them.

These figures include charities experiencing more than one issue.

This comes as the Charity Commission renews its calls for urgent action to be taken by the UK banking sector to improve the service it offers to charities.

The regulator says inadequate banking services result in three key concerns:

- Risks to the provision of charitable services, resulting from charities being unable to meet financial obligations, such as paying staff;
- Unsafe banking and financial practices, for example the use of trustees' personal bank accounts to meet financial obligations, a direct contravention of the Commission's guidance; and
- Longer-term impact on morale of volunteer trustees – anecdotal evidence demonstrates some trustees have resigned over frustrations around disruptive banking services."

HAT CPD COURSES

To ensure that all members of your team who deal with the preparation and audit of charity financial statements are fully trained, the following are included on the HAT CPD programme. These are:

- Charities Update for Auditors & Independent Examiners (available as a recording); and
- Introduction to Charities ~ A Practical Guide.

Both CPD courses will be scheduled for a future date and can be run, "in-house" at firm's offices on a mutually convenient date. In specialist areas, such as when a firm acts for a charity, during their monitoring visits, audit regulators query how those involved in such assignments have received appropriate training. It is therefore essential that knowledge is kept up to date via appropriate CPD being undertaken.

For details of our charges and availability, please contact Bertie Townsend at the HAT Office at bertie@hatgroup.co.uk.

ACTION FOR FIRMS
With the advent of ISQM (UK) 1, a lack of current training can create quality risks. Avoid such risks by attending our update course.

HAT AUDIT METHODOLOGIES

HAT Charities Methodology:

The HAT Charities Methodology has been updated as part of our annual update cycle.

The key driver of the update is the introduction of ISQM (UK) 2 Engagement Quality Reviews and ISA (UK) 220 Quality Management for an Audit of Financial Statements which have necessitated changes to both planning and finalisation sections.

The changes to the Auditing Standards are effective for accounting periods commencing on or after 15 December 2022. As a result, the changes are most likely to affect clients with a 31 December 2023 year end and onwards (albeit care will be needed with short periods).

The main changes made to the Methodology can be broken down as follows:

- Ac2 Regulation of Auditors Checklist now includes consideration of the need for an internal hot review or an Engagement Quality Review in accordance with ISQM (UK) 2;
- Consequential changes to several documents in planning that previously referenced the conduct on an engagement quality control review;
- Aa1 Audit Control Record now includes enhanced responsibilities of the R.I.; and
- The suite of Engagement Quality Control checklists has been updated.

Other amendments include:

- The sample size calculation against the cut-off assertion has been removed further to feedback from users; it is now a matter of using professional judgement to determine the appropriate level of testing;
- A new test has been added to work programme C2 to cover new powers introduced under Charities Act 2022 in respect of the sale / lease / disposal of charity land; and
- New tests added to work programmes M2 and P2-1 to cover spending and borrowing from permanent endowment funds, covering new powers introduced under Charities Act 2022.

HAT Not for Profit Entities Methodology:

The HAT Not for Profit Entities Methodology has been updated as part of our annual update cycle. This methodology provides additional guidance for firms preparing the financial statements or auditing Registered Societies under the Co-operative and Community Benefit Societies Act 2014 and Community Interest Companies under Companies Act 2006.

The update reflects changes made to other methodologies introduced by ISQM (UK) 2 Engagement Quality Reviews and ISA (UK) 220 Quality Management for an Audit of Financial Statements which have necessitated changes to both planning and finalisation sections. The effective dates of these changes are noted above.

The changes made to the Methodology can be broken down as follows:

- Ac2 Regulation of Auditors Checklist now includes consideration of the need for an internal hot review or an Engagement Quality Review in accordance with ISQM (UK) 2; and
- Aa1 Audit Control Record now includes enhanced responsibilities of the R.I.

ACTION FOR FIRMS
Ensure that the correct version of the methodologies are being utilised for accounting periods commencing before / after 15 December 2022.

HAT Academies Methodology

HAT RESPONSE
Time has been set aside to process the annual update of the HAT Academies Methodology, which will apply to 31 August 2024 year ends.

IMPORTANT NOTE
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