

# New Year Roundup



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Welcome back. We hope you've had a good break and are ready for the challenges that lie ahead. As we return to news of an earthquake in Northern England, a partial eclipse of the Sun and VAT increases, it appears that 2011 will be as busy as ever.

Certainly the Government has not been resting on its laurels and used the period between Christmas and New Year to launch its Giving Green Paper aimed at encouraging a stronger culture of giving time and money - greater social action but at 'low cost' to Government. The newspaper headlines seized upon its suggestion to make charitable giving possible at cash points but the Green Paper itself is much more ambitious and talks of achieving a 'culture change.' It is intended that the Green Paper will spark a broader debate and the Cabinet Office wants to hear your views by 9th March 2011. A copy of the Green Paper can be found [here](#).

The newly knighted Sir Stephen Bubb (Chief Executive of ACEVO) also grabbed headlines and began the fight back for charities on 1st January, warning that cuts to local government grants this year could force thousands of charities to close or cut services, in what he called 'a gathering tsunami of ill-considered acts which threaten to decimate the sector.' He called for an additional levy on bankers bonuses to be introduced, the receipts from which would help fund The Big Society Bank.

This is the first of our new e-bulletins designed to keep you up to date with the latest developments in the sector and we've taken the opportunity to provide you with a roundup of recent changes to the law as well as focusing on key developments expected this year.

If you would like any further information on the subjects covered in this roundup please do get in touch.

## New Laws coming into force

The **Bribery Act 2010** is due to come into force in April 2010 and substantially reforms the law of bribery. There are four main offences: giving bribes, receiving bribes, bribing a foreign public official and a new corporate offence of failing to prevent bribery which applies to relevant commercial organisations. There has been some concern as to whether this new offence might unwittingly catch charities, particularly those involved in overseas development. The Government is obliged to publish Guidance to assist organisations to comply with the new law and as part of the consultation on the draft Guidance, the Charity Law Association sought clarification on this and other issues. It remains to be seen whether the revised Guidance (due to be published later this month) will clarify the law for the sector.

Further details can be found on the [Ministry of Justice](#) website.

The **music licensing rules** have been amended and from 1 January 2011 the exemption which applied to charities and not for profit organisations playing recorded music has been removed. Not for profit organisations playing recorded music in the workplace (estimated to be over 250,000 organisations) will now need a licence from PPL. PPL has extended a one year grace period to not for profit organisations to enable them time to apply. Further information about the licensing regimes can be found on the [PPL website](#). Following consultation with sector groups, PPL and PRS for Music will also be launching a pilot joint licensing scheme for community buildings.

The **Equality Act 2010** came into force in large part on 1 October 2010. A summary of the new law for employers can be found [here](#). The Act also applies to the provision of goods, facilities and services and charities who restrict those to whom they provide services by reference to certain protected characteristic (including disability, sex, race, religion and sexual orientation) will need to ensure that they fall within the scope of the restated exemptions for charities. Charities which discriminate in the way that they provide their benefits should ensure that they have a strong and lawful justification for doing so. Some basic guidance on what this means for charities has been produced by the [Charity Commission](#). The Commission promised more detailed (and hopefully more helpful) Guidance by the end of 2010 but it has yet to be published. We have produced a note for religious charities on the impact of the Act, available on [IBB's website](#).

## Expected Changes in 2011

The **Finance Bill 2011** – The Government is currently consulting on changes to the substantial donor rules which were introduced by the Finance Act 2006 and have been widely criticised since. If implemented, the new system will replace the Substantial Donor Rules (SDR) with a new 'purpose test' of a Tainted Charitable Donation. This new test seeks to catch donations that are linked to 'arrangements' which have as their aim (or one of their aims) to provide direct or indirect benefit to a donor or a person connected to him or her. When working out whether a benefit has been received, de minimis benefits that are acceptable under the Gift Aid scheme are ignored. HMRC will be looking at whether the donation and the 'arrangements' would have been entered into independently of one another. Unlike in the case of the Substantial Donor Rules, the primary target for the recovery of tax relief which should not have been extended will be the donor. However charities are not off the hook, and there are circumstances in which a charity can become liable for a new tax charge. The new rules will also apply to donations of any size and the SDR thresholds will fall away. The Consultation on the draft legislation closes on 9 February and we will keep you informed.

The **Charities Consolidation Bill** was designed to bring together most of the existing charities legislation in one Act. It fell before the General Election in May 2010, but we understand that time will be found for the Bill in the New Year parliamentary schedule.

The **Charitable Incorporated Organisation** is the new legal form for charities set out in the Charities Act 2006. The regulations needed to implement the new legal form were consulted upon back in 2008 and we understand that the Regulations have now been revised and it is hoped that they will be laid before Parliament in February. They have been substantially revised since earlier drafts and we wait to see how the CIO will have been developed. Mindful of the cuts to the Charity Commission's budget and the anticipated rush to use the new legal form, we understand that the Minister will phase in the use of the new CIO over an extended period and it will only be available in the first instance to brand new start up charities, rather than to existing unincorporated charities that wish to 'convert'.

**Public Charitable Collections** (the new regime set out in the Charities Act 2006) is still resting in the long grass, though the Minister has said that it will be looked at as part of the review of the Charities Act 2006. The **five-year review** of the Charities Act 2006 is due to take place this year and may get underway as early as April, when the Minister will announce who is to be appointed to undertake the Review. We understand that there is still much internal discussion going on in Government over the fate of the remaining **exempt charities**. With no final decisions having yet been taken.

On 17th May, the ISC's application for judicial review and the Attorney-General's reference on the **public benefit guidance** will be heard at the Royal Courts of Justice. Although focused on the application of the guidance to independent schools, the case will place the Commission's public benefit guidance under judicial scrutiny for the first time and any ruling may well have implications for the wider sector. The Attorney-General also announced just before the break that he intends to make a reference to the Charity Tribunal to determine whether **employee benevolent funds** and trusts with a restricted pool of beneficiaries (defined by reference to their relationship with an individual or a company) satisfies the public benefit test. We will be scrutinising the scope of the reference closely and updating you as matters progress.

## Revised Codes, Regulations and Guidance

In November last year the second edition of the **Code of Good Governance for the Voluntary & Community Sector** was published. The revised Code based on six key principles describing how an effective board of trustees provides good governance and leadership. The Code is a useful tool for any organisation wishing to review its governance. A copy is available [here](#).

In December, the Commission launched a consultation on its new draft Guidance on **Charity Investments**. The Guidance has been substantially rewritten and now offers greater guidance for charities on when programme-related investments and social investments can be acceptable for charities. The consultation which is available [here](#), closes on 28 February 2011 and the new revised Guidance is due to be published in the Spring.

The **Vetting & Barring Scheme** was put on hold in June 2010 (following the election). The VBS Remodeling review was established in October and is due to be completed early this year. The Review was tasked with meeting the Coalition's commitment to scale back the vetting and barring regime to common sense levels, and is looking at the fundamental principles and objectives behind the vetting and barring regime. We wait to see what alternatives will now be suggested.

On 14th December 2010, the Government introduced the **new COMPACT**, the agreement which governs relations between the Government and civil society organisations in England. The new COMPACT is shorter than the previous version and has been criticized by some sector bodies for watering down the previous version. Its launch was accompanied by a reaffirmed commitment from the Minister to ensuring greater compliance by Government. Copies of the new COMPACT can be downloaded from the [Cabinet Office's website](#).

The Institute of Fundraising is in the process of revising its **House to House Collections Code** of Fundraising Practice, in response to significant increases in the number of such collections. A copy of the draft Code can be found [here](#).

## Changes at the Charity Commission

Following announcement of a 33% cut in the Commission's budget, the Commission launched a consultation on its Strategic Review at the start of November. Charities have been invited to share their views on the future role of the Regulator via an [online survey](#).

Given the depth of the cuts the Review is likely to have a significant bearing on the way in which the sector is regulated in the future. It is important that as many charities take the opportunity to have their say. We will be feeding in our views through the Charity Law Association Working Party.

All in all, this has the potential to be a very significant year for charities and charity law and regulation in England and Wales and we will ensure that we keep you updated as events unfold. In the meantime, if there are any particular issues that you would like to discuss with us, please do get in touch.

Wishing you all a very successful 2011.

With our best wishes,



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