

Charities Update



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The last few months have been staggering. As natural disasters have followed revolutions and savage cuts have preceded record bonuses, the world seems to have turned upside down. In the grander scheme of things, charity law and regulation seem almost irrelevant but yet here too, the landscape has been changing quickly.

In this Spring e-bulletin with the sun still shining outside we bring you an update on recent changes and developments.

Our team is not standing still either and we are delighted to report that with effect from 1st May, Tim Rutherford will become a Partner. Tim's appointment reinforces our commitment to the sector in these interesting times.

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

"10 for 10" and other budget changes affecting charitable giving

The headline of "10 for 10" sounds like an England cricket supporter's worst nightmare, but according to the Chancellor of the Exchequer this is actually intended to be: *"the most radical and most generous reforms to charitable giving for more than 20 years. Do the right thing for a charity and the government will do the right thing by you. It's a big help for the big society"*.

March's Budget has introduced this new relief as a way of trying to persuade people to leave 10% of their wealth to charities when they die in order to reduce the amount of inheritance tax that their estate will pay. In summary, if you give away 10% of your estate to charity then (for deaths after 5 April 2012) the inheritance tax rate applied to the balance of your estate will fall from 40% to 36% (ie a 10% reduction of the 40% rate, hence "10 for 10").

The Chancellor estimates that this will make charities better off to the tune of £300 million whilst at the same time meaning that beneficiaries under a will are not going

to be worse off. How does this work in practice? As with any budget the devil is in the detail and we have not yet seen the detailed proposals but taking the announcement at face value, we have worked through a couple of examples.

Example 1

Assume your elderly bachelor Uncle dies leaving you his entire estate worth £2 million. Under the current rules, the first £325,000 of his estate would pass free of tax and the balance would be taxed at 40%, making a tax liability of £670,000. This would leave you with £1,330,000.

If, however, your Uncle was to have left £200,000 to his favourite Charity and the residue of £1.8 million to you, then: (a) £200,000 would have passed to the charity tax free (as no inheritance tax is paid on gifts to qualifying charities), (b) £325,000 would have passed to you tax free, and (c) the balance would be taxed at 40% making a tax liability of £590,000. You would therefore have inherited £1,210,000. Whilst you would have inherited £120,000 less, the charity would have benefited to the tune of £200,000, so a net saving on inheritance tax of £80,000.

Example 2

Under the new rules, assuming your Uncle were to leave the same legacies, then (a) the £200,000 would still pass to the charity tax free, (b) £325,000 would pass to you tax free, and (c) the balance would be taxed at 36% making a tax liability of £531,000. You would therefore inherit £1,269,000. Therefore, you would be £58,000 better off than under the current system in Example 1, whilst the charity would be no worse off. Of course, you would still be £61,000 poorer than if there had been no gift to charity, but you would have the benefit of knowing that the charity had received £200,000 and £139,000 less had been paid in IHT.

Gift Aid – permitted benefits

The Budget also introduced changes to the limits imposed on the benefits that charities can give to those who make substantial donations. At the moment if a charity wants to thank a donor by giving him benefits (for example an arts theatre might give a season ticket to a substantial donor) it can only do so within certain limits if the charity and the donor want to benefit from the available tax reliefs and Gift Aid. There are two tests, firstly for donations between £0 - 100 the value of the benefits must not exceed 25% of the value of the donation, for donations between £101 - 1,000 the value must not exceed £25, and over £1,000 the value of the benefits must not exceed 5%. Secondly, the benefit must also not be more than £500. This second limb of the test has been extended and, as from 6 April 2011, the limit will now be £2,500.

Now, if your philanthropic Uncle decides to give £100,000 to the local arts theatre, he will be able to receive benefits up to the value of £2,500 - so a season ticket and a thank you dinner. However, if he were to only give £10,000 then the new rules would make no difference. This is because the first test still applies, so any benefit would have to be less than 5% of the total donation, in this case a limit of £500.

Gift Aid for Collections

The Budget is also making Gift Aid simpler. From April 2013 a charity that has been operating the Gift Aid scheme for more than three years will be able to claim Gift Aid on small donations of £10 or less (up to a total cap of £5,000) without having to get the donor to complete a Gift Aid declaration. This will reduce the cost to the charity of having to provide envelopes and pens in order to attract donations.

Changes to the Law

The Bribery Act

The [Guidance](#) on what constitutes “adequate procedures” for the purposes of avoiding the “corporate offence” under the Bribery Act 2010 has now been published along with a “[Quick Start Guide](#)” to the Act. The guidance is still fairly vague and organisations will have to monitor developments in this area to see how they are likely to be affected. The guidance does now, however, make it clear that charities are intended to be affected by the “corporate offence”:

“So long as the organisation in question is incorporated (by whatever means), or is a partnership, it does not matter if it pursues primarily charitable or educational aims of purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” The Act will now come into force on 1 July 2011. On the positive side the guidance makes it clear that inviting people to Wimbledon for corporate hospitality is not regarded as bribery – the invitations are in the post.

Removal of the Default Retirement Age

The default retirement age of 65 will be phased out under new [Regulations](#) which came into force on 6 April 2011. From 6 April 2011 retirement is no longer a fair reason for dismissal. If no notice of retirement was served prior to 6 April then employers will not be able to retire an employee under the old regime. In very limited circumstances employers will be able to retire employees at a certain age as “some other substantial reason for dismissal” where it is objectively justifiable to do so. Failing that, employers will have to place more emphasis on performance managing employees where performance has become an issue due to an employee’s age. Organisations grappling with these issues should take legal advice.

Exempt Charities

The Government has [announced](#) that it is intended that charitable Foundation and Voluntary Schools and Sixth Form colleges will, subject to Parliamentary approval, be re-conferred with exempt status. This means they will no longer have to register with or report to the Charity Commission. In return, the Secretary of State for Education will be appointed as their Principal Regulator. Whether red tape will be kept to a minimum as promised remains to be seen.

The Charitable Incorporated Organisation - a step closer

At the end of last month the Commission published the first part of its [Guidance](#) for anyone interested in setting up a Charitable Incorporated Organisation (CIO), together with two model forms of constitution for the [Foundation CIO](#) and the [Association CIO](#).

The Guidance has been issued notwithstanding that the relevant regulations needed to create the CIO, have not yet been considered (let alone passed) by Parliament.

As expected, the implementation will be phased in and at the outset only new charities will be able to register as CIOs. Conversion by existing charities is likely only to be enabled towards the end of the implementation period.

Furthermore, following consultation with the sector in 2008, the CIO now has no register of charges (the mechanism which allows mortgagees to register their loan security against the entity) and it is therefore unlikely that the CIO structure will ever be useful for charities with significant assets.

The Charities Bill 2011

The Charities Bill was published last month which consolidates the existing charities legislation contained in the Recreational Charities Act 1958, the Charities Act 1993 and the Charities Act 2006. The Bill, which fell before the general election last year, has been resurrected and had its first reading in the House of Lords on the 3rd March. The new regime for public charitable collections contained in the Charities Act 2006 (which has not yet been brought into force) is not included in the new Bill.

Recent Cases

X v Mid Sussex Citizens Advice Bureau

In January, the Court of Appeal gave its judgment in the case of [X v Mid Sussex Citizens Advice Bureau](#). A case which looked at whether volunteers were protected by discrimination legislation. X worked for the CAB under a volunteer agreement. She was then asked to cease volunteering. X believed that this was for a reason connected with her disability. Although X did not have a contract with the CAB, she argued that she was protected from discrimination either by domestic or European discrimination law.

The Court ruled that volunteers were not so protected. Central to its decision was the issue of pay. If a person received no pay then, subject to few exceptions, they were unlikely to be protected by discrimination legislation. The fact that a proposed amendment to European law to include “unpaid and voluntary work” had previously been rejected by the European Council was a factor in the Court’s decision.

The advice for organisations seeking to ensure that volunteers do not acquire employment rights remains unchanged by this decision, for example only reimbursing volunteers for out of pocket expenses and expressing the relationship in terms of expectation rather than obligation.

It is understood that X is seeking a referral of this matter to the European Court of Justice, so watch this space.

When do you stop being responsible for your children?

There has been a further development in the closely watched case of *Heather Ilott v. David Mitson, Michael Land, Blue Cross, Royal Society for the Protection of Birds and Royal Society for the Protection of Cruelty to Animals* [2011] EWCA Civ 346. The case relates to a daughter who was excluded by her mother’s will which left everything to charity. The daughter had left home at the age of 17 and, despite a few attempts, had still not been reconciled with her mother by the age of 43, when her mother died. Since the age of 17 the daughter had not received any financial support from the mother and she had no expectation of receiving anything under the will. However, she brought a claim against her mother’s estate claiming that the will failed to make reasonable financial provision for her. At first instance the court found that the will did not make sufficient financial provision for the daughter and awarded her a lump sum of £50,000. The charities appealed, on the basis that although the daughter was not well off, she was unable to show any moral or special obligation that meant she should receive maintenance from the will. Although the charities succeed on appeal, the case was appealed again to the Court of Appeal who reversed the decision and reinstated the award in favour of the daughter. The Court of Appeal held that an adult child of the deceased does not have to go so far as to show a moral obligation or some other special circumstance to succeed; the fact that the will does not make reasonable financial provision is sufficient. In addition, the Court of Appeal acceded to the daughter’s request that she be allowed to appeal further the award of £50,000 in an attempt to obtain a higher figure. Legacy departments should keep in mind that this case may lead to disappointed beneficiaries reconsidering their options.

New Guidance for Charities

Public Benefit Revealed

On 23 March the Charity Commission published its second [Emerging Findings](#) report which sets out the Commission’s conclusions and recommendations following its latest round of assessments of the public benefit of a variety of arts and recreation and leisure charities.

The Commission has now concluded twenty public benefit assessments, and of the eight arts and recreation and leisure charities most recently considered, seven have passed and just one, a lawn tennis and squash members club, has failed the test.

The publication of the Emerging Findings Guidance 2009-11 concludes the Commission’s formal public benefit assessments. The Commission will now continue to review and monitor public benefit as a routine part of its work, in particular at the point of registration.

This recent report will be of interest to membership charities that charge high membership fees, particularly where membership is the main way through which people can access benefits. It also comments upon the private benefit issues which can arise from training young people to a high level in a field in which they show talent such as music, art or sport. The Commission looked at the private benefit arising in the case of Birmingham City Football Club Community Trust, where successful participants may receive the training they need to launch a career in professional football.

The 20 assessments have been very useful in explaining how the Commission is applying its current Guidance. However the Guidance will be back in the spotlight next month when the Charity Tribunal hears the Attorney-General’s reference and the Independent Schools Council’s judicial review.

Fraud Toolkit

The Charity Commission has published the third chapter of “*Protecting Charities from Harm*”, its online compliance toolkit for charity trustees. [Chapter 3](#) deals with Fraud and Financial Crime. This chapter tells you what to do if your charity becomes aware that it is involved in a fraud and also gives practical tips to Trustees on how to avoid such situations. The most eagerly awaited part of the chapter dealing with Bribery and Corruption remains to be completed.

Fundraising - House to House Collections Code

The IOF has launched its new [House to House Collections Code of Fundraising Practice](#) following a period of consultation. This new Code provides guidance to fundraisers and suppliers, and also helps the public identify bogus collectors from genuine ones.

Child Sponsorship Charter

The FRSB and IOF have supported a new Charter to guide charities which establish child sponsorship programmes where the donor is invited to support a particular child or family. Details of the Charter can be found by [clicking here](#).

Expenses - Full Disclosure

Following the report of the Independent Expert Group on [Charity Expenses](#) in February, charities are being encouraged to publish the expenses of their trustees and senior managers.

Though the Group did not find a significant problem in the sector, charities would be best advised to ensure that their expenses policy is up to date and that they have considered the best way of reporting upon these expenses with their auditors.

Equality Act - Guidance for Charities

The Commission has not yet issued its new Guidance for charities following the removal of the blanket charities exemption last October. We will bring you more as soon as the Guidance is published.

Consultations

CC14 - New Investment Guidance

The Commission’s consultation on its draft new investment guidance closed at the end of February. The Commission received over sixty responses to its consultation. Though the Guidance (which is due to be published this summer) has been broadly welcomed in the sector, many who had hoped that the guidance would encourage wide participation by charities in the Social Investment Market have been disappointed, and are concerned that the guidance deters those charities which would otherwise wish to make programme-related investments. Others have criticised the guidance as overwhelming and overly-long. The Guidance is now being re-worked to take into account the various comments and to focus in more detail on pooled funds and cash.

There is no doubt that investment is a complicated area for charities and when the new Guidance is published we will be seeking to clarify the implications for you.

Localism Bill

The Government is currently consulting on the [Community Right to Challenge](#) and the [Community Right to Buy](#), two aspects of the Localism Bill that is currently going through Parliament. The first would give community groups the right to bid to run local public services under certain circumstances and the second relates to the right to buy certain community assets. The Consultation closes on 3rd May 2011. Further details about the consultation can be found [here](#).

Sports Consultation

The Charity Commission is carrying out a [consultation exercise](#) to enable it to provide further clarification on what is meant by the “*advancement of amateur sport*” which is one of the 13 descriptions of purposes that are capable of being charitable for the public benefit.

The Charities Act 2006 defines this as the advancement of amateur sports or games which promote health by involving physical or mental skill or exertion. The recent decision by the Commission to allow the [Hitchin Bridge Club](#) to register as a charity for the advancement of amateur sport may go some way to explaining why further guidance is necessary.

Tim Rutherford



We are pleased to announce that, with effect from 1 May 2011, [Tim Rutherford](#) has been appointed as a Partner of the firm.

Tim has been with the firm since 2005 and was previously with Burges Salmon LLP in Bristol. Tim has spent many years advising charity clients on litigation matters and regulatory investigations. Over the last few years Tim has been developing a practice in mainstream charity law particularly for the religious whilst keeping his hand in at litigation when the need arises. Tim is recognised as a “leader in his field” by Chambers & Partners 2011 and is an ADR Accredited Mediator.

Tim’s appointment follows that of Jo Coleman last year and brings the number of partners in the Charity Team to three. This demonstrates the continuing commitment of the firm to this sector and the strength in depth of the team.

Wishing you all a happy Easter. Enjoy the wedding!

With our best wishes,



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