

NCVO/GMCVO Autumn Conference



The Charities Act 2006

7 November 2008

Neil Robertson & Elaine Bestwick

Charities Act

CHARITY
COMMISSION



The Charities Act 1993

(As amended by the Charities Act 2006)

What is it about?

The Charity Commission logo, featuring the words "CHARITY COMMISSION" in white capital letters on a green rectangular background. This logo is positioned in the top right corner of the slide, overlapping a blue header bar and a background image of a person's shadow on sand.

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. . . a set of changes that aims to make life simpler for trustees, modernises the definition of charity and provides new safeguards to uphold public trust in the charitable sector.

Ed Miliband MP and Dame Suzi Leather
Charities Act 2006

What trustees need to know

Presentation

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- Overview of the Act and how it might affect you
- The two main areas of interest (we think)
 - Public Benefit
 - CIOs

Statutory Objectives

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1. To increase public confidence and trust in Charities
2. To promote awareness and understanding of the public benefit requirement
3. To promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities

Statutory Objectives ctd

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4. To promote the effective use of charitable resources
5. To enhance the accountability of charities to donors, beneficiaries and the general public

What is a charity?

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- New list of 13 charitable purposes
- All existing charitable purposes preserved
- Flexibility to develop new purposes in the future
- No presumption of public benefit
- Charities need to be clear about how they benefit the public

Registration of charities

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- Threshold for registration increased from £1,000 to £5,000 income
- Voluntary registration where income below £5,000 (unlikely before 2009)
- Excepted charities: registration where income above £100,000
- Exempt charities: regulation by principal regulator or registration (where income above £100,000)

Public Benefit

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- All charities must have purposes which benefit the public.
- All charities seeking registration must demonstrate how they benefit the public
- Some existing charities may be asked how they meet this test
- Commission's duty 'to promote awareness and understanding of the public benefit requirement'
 - General public benefit guidance for all charities published

Public Benefit ctd

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Late March 2009:

- Charities will begin reporting on public benefit as part of their annual reports to the Commission from this date
- Guidance will be issued to help charities with this

Audit, Accounts & Annual Return

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- Most charities with an income under £500,000 will not have to have their accounts professionally audited. (unless income is over £100,000 and assets exceed £2.8M) unless the Governing Document requires it.
- Trustees of every registered charity with an income over £10,000 must submit an annual return, annual report and annual accounts to the Commission.
- Charities with an income under £10,000 must prepare accounts and make them available on request.
- If a charity's income is above £10,000 its accounts require independent examination.

Smaller Charities

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Unincorporated

- Under £10k – Transfer of property to another charity
- Under £10k – easier to update purposes
- Charities with an income less than £10K can change their objects themselves. The new purposes must be in the best interests of the charity and be similar to the original. Two-thirds vote and submit to the Commission.
- Under £1k/endowment under £10k - allowed to spend permanent endowment (2008). Charities with an income over this figure still need the Commission's consent.

Changing governing documents

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Unincorporated charities

- Can change administrative powers and procedures without the Commission's consent.
- Membership charities - members must agree the change.

Companies

- Need the Commission's consent to changes of objects, to the way that property would be applied on dissolution or to the remuneration of trustees.

Paying trustees

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- The Act retains the central principle that trusteeship is unpaid
- Trustees may be paid for non-trustee work in some circumstances
- Trustees may seek relief from personal liability from the Commission as well as the courts
- Power to buy trustee indemnity insurance

Paying trustees: safeguards

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- Trustees can be paid for providing goods and services to the charity. The safeguards are:
 - Must be reasonable
 - Written agreement
 - Best interests of Charity
 - Minority
 - No prohibition in governing document

Schemes

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- The principles of cy-pres
- Current social and economic circumstances
- Still preserving intention of original purposes
- Relaxation in publicity requirements

Additional new powers

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- Powers to resolve membership disputes
- Powers to protect property in the event of mismanagement or misconduct
- Powers of search and seizure

The Charity Tribunal

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- Appeals against legal decisions of the Commission
- Avoiding need for High Court
- Cheaper, more convenient and less formal
- Lord Chancellor to make the rules
- Attorney General may intervene or refer issues to the tribunal

Other Provisions

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- Provisions to facilitate mergers
- Mortgaging charity property for a loan or grant
- Structure of the Charity Commission

Public Benefit: Principles

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Principle 1: There must be an identifiable benefit or benefits

- Principle 1a It must be clear what the benefits are
- Principle 1b The benefits must be related to the aims
- Principle 1c Benefits must be balanced against any detriment or harm

Public Benefit Principles ctd

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Principle 2: Benefit must be to the public, or section of the public

- Principle 2a The beneficiaries must be appropriate to the aims
- Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions; or by ability to pay any fees charged
- Principle 2c People in poverty must not be excluded from the opportunity to benefit
- Principle 2d Any private benefits must be incidental

What is a CIO?

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Charitable Incorporated Organisation

A legal structure created specifically to meet the needs of charities

With the benefits of incorporation without the need for separate registration at companies house

And registered and regulated by the Charity Commission

Why the CIO is needed?

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- Presently no structure for legal incorporation specifically for charities
- Must register at companies house to have the advantages of incorporation
- Removes burden of registering and reporting
- Benefits of incorporation

Advantages of CIO's over charitable companies

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- Single registration
- Less reporting requirements
- Lower costs
- Simpler and more flexible forms
- Straightforward merger arrangements

How to become a CIO

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- Is it appropriate?
- Register copy of proposed constitution and any other documents
- Convert an existing charity or transfer assets
- An exempt charity cannot become a CIO

When might a CIO application be refused?

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- Not exclusively for charitable purposes
- Constitution does not conform with the Act or regulations made following the Act
- Proposed name same or similar to an existing charity

What next?

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- Legal framework requires secondary legislation
- Consultation – closes 10 December 08
- Model constitutions to be prepared for CIO's
- Provisions into force and CIO available late 2009

Further Information

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or

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Charities Act 2006 - What trustees need to know

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