

Charity regulation

For SRP committee meeting 14/10/2007

England and Wales

www.charitycommission.gov.uk

We are now expected to submit the Trustees' Annual Report and the Accounts online. Report and accounts have to be submitted together after approval by the Trustees. We are encouraged to do this as soon as possible after the end of the accounting year with a deadline of 10 months. In our case we should be able approve them at the February meeting and submit afterwards.

12 provisions of the Charities Act 2006 came into force on 27 February 2007. Of immediate usefulness to us is No.11 on Trustee Indemnity Insurance.

The new power allows charity trustees to use the charity's funds to buy personal indemnity insurance - unless the governing document specifically prevents it. This means trustees no longer need an explicit power from the Commission or from their governing document before purchasing such a policy.

There are limitations on what such policies can cover - for example, they must exclude:

- * the payment of fines imposed in criminal proceedings or penalties incurred as a result of non-compliance with regulatory requirements;
- * the cost of an unsuccessful defence against criminal prosecution for fraud, dishonesty, or wilful or reckless misconduct;
- * liability to the charity as a result of a deliberate failure to act in the interests of the charity.

Trustees must be satisfied the purchase of a TII policy is in the best interests of the charity. They are also subject to the duty of care in the Trustee Act 2000.

This change was noted at Conference 2007 and a resolution passed approving the purchase of TII. The following are also worth noting.

No.8. Accountancy issues

A non-company charity's accounts will have to be professionally audited if it has:

- * gross annual income over £500k; or
- * an aggregate value of assets over £2.8m and gross annual income over £100k.

Below this threshold, for non-company charities, an independent examiner can be used instead of an auditor. An independent examination is not required if the charity's gross income is £10,000 or less. If the gross income is above £250,000, then the independent examiner must be a member of an approved body under section 43(3A) of the 1993 Act as amended.

No.12, Power to modify powers or procedures

It enables the Trustees of all unincorporated charities to pass a resolution to alter the parts of their charity's governing document that set out what their powers are and how they administer their charity, for example the number of Trustees needed to form a quorum at meetings.

There is a leaflet (CSD 1342A) giving guidance on this. It is due for amendment in 2008 when other provisions will come into force. The only information published so far about these is that there will be an independent Charity Tribunal to hear appeals against decisions of the Charity Commission, saving the expense of appeals to the High Court.

Scotland

www.oscr.org.uk

The SRP is now a registered charity in Scotland, number **SC038422**. We do not have to report anything yet, as is noted in this email from the Office of the Scottish Charity Regulator (04/09/2007)

OSCR are working closely with the Charity Commission to not overburden 'cross-border' charities. We are not requesting any information from charities registered in England and

Wales for the period 2006/07. You are not required to send anything to OSCR until we write to you and ask for information.

From 31 March 2008 we shall be required to quote the number and one of the terms “charity”, “charitable body”, “registered charity” or “charity registered in Scotland” on “(a) business letters and e-mails; (b) advertisements, notices and official publications; (c) any document which solicits money or other property for the benefit of the charity; (d) bills of exchange, promissory notes, endorsements and orders for money or goods; (e) bills rendered; (f) invoices, receipts and letters of credit; (g) statements of account prepared in accordance with either regulation 8, 9 or 14 of the Charities Accounts (Scotland) Regulations 2006[3]”.

There is probably a similar requirement in England and Wales, but I have not tracked it down. At present our notepaper has “*Registered Charity No. 282751*”. The simplest variants meeting the regulation are “*Registered Charity Nos. 282751, SC038422*” or “*Registered Charity 282751, SC038422*”. A more explicit version, as used by some charities, would be “*Registered Charity: England & Wales 282751, Scotland SC038422*”. I have been asked whether branches and officers outside Scotland need bother with this. I am sure they do and don’t want to pursue it as a question. In any case, we should have a consistent image and identity everywhere.

There is a difficulty in Scots law about Trustee Indemnity Insurance paid from the charity’s funds, in that it still requires that the majority of trustees remain unpaid (TII counts as a benefit). OSCR does not have the power to vary this (unlike the Charity Commission). The previous Scottish Executive gave a commitment to amend the law along similar lines to that in England and Wales but did not do this before losing the recent election. In the meantime, OSCR has stated “For the present, therefore, OSCR will not intervene and take enforcement action simply because a charity has trustee indemnity insurance. However, we will review the position once we have clarity from the Scottish Executive as to what they propose to do”.

Andrew Short