An Introduction to Charity Law

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An Introduction to Charity Law

- Main features of charitable status
- Charities Act 2006
- Legal forms for charities
- Registration process
PART I: What is a charity?

An organisation established for purposes which are regarded as exclusively charitable under the law of England and Wales.

Various legal forms available.

A status not a legal form.
What are the main features of charitable status?

- registration with the Charity Commission
- regulation by the Charity Commission
- tax breaks
- fiduciary duties for trustees
- restrictions on trustee benefits
- other restrictions e.g. trading, campaigning
Trading by charities

- **Primary purpose trading** – ok: profits applied solely to the purposes of the charity, plus exercised in fulfilling objects or work carried out by beneficiaries

- **Non-primary purpose trading** – usually should not engage: risk of paying tax on profits plus trustees may be held personally liable, unless:
  - Ancillary trading
  - Small scale (de minimis)

- Use of trading subsidiaries
PART II: Charities Act 2006

- Royal Assent in November 2006
- Phased implementation in 2007/8
- Not a stand alone piece of legislation - amendments to Charities Acts 1992 and 1993
- Govt has committed to produce a consolidated Act in 2007/2008 session of Parliament
Charities Act 2006: Key changes

- Statutory definition of charitable purposes
- Removal of presumption of public benefit
New charitable purposes (1)

- 4 old heads of charity from 1603
- 13 new heads:
  - *prevention or relief of poverty
  - *education
  - *religion
  - health or the saving of lives
  - citizenship or community development
  - arts, culture, heritage or science
  - amateur sport
New charitable purposes (2)

- 13 heads of charity (cont):
  - human rights, conflict resolution, reconciliation, religious/racial harmony, equality and diversity
  - environmental protection and improvement
  - relief of those in need from youth, age, ill-health, disability, financial hardship or other
  - animal welfare
  - Armed forces; police, fire and rescue services or ambulance services
  - *Other purposes (catch-all)
Public Benefit – What’s changed?

- All charities will need to demonstrate that their purposes are for public benefit
- End of the presumption that religious, education and poverty charities are for the public benefit
- Charity Commission has published general guidance and is consulting on sub-sector guidance
Public Benefit - cont

- Charity Trustees must “have regard to” the guidance
- New requirement to included statement of public benefit in annual report – threshold distinction
- No change in law – charities have always had to be for the public benefit
- Meaning of “public benefit” not defined
The Two Principles of Public Benefit

Principle 1

- There must be an identifiable benefit or benefits:
  - It must be clear what the benefits are
  - The benefit must be related to the aims
  - Benefits must be balanced against any detriment or harm
The Two Principles of Public Benefit

Principle 2

- Benefit must be to the public or section of the public:
  - the beneficiaries must be appropriate
  - where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted
  - people in poverty must not be excluded from the opportunity to benefit
  - any private benefit must be incidental
Thorny issue of fee-charging

The Concordat Principles

- Services mainly on a fee-charging basis can be for the public benefit
- Relieving the public purse is not itself sufficient
- Direct and indirect benefits may be taken into account
- An organisation which wholly excluded poor people from direct or indirect benefit would not operate for the public benefit
- Tokenism not an adequate response
Practical implications for Charities

- Must demonstrate public benefit – internal audit recommended
- Specific duty to have regard to the guidance
- Decision making still rests with Trustees
- Charities will not be expected to make changes overnight – Commission should work with charity
- Active accountability
- Significant issue arises if “indirect benefits” are outside of the objects
Charities Act 2006: other important changes (1)

- New look Charity Commission
- Powers
  - various
  - mortgages of land, Cy-pres, publicity requirements for schemes
- Charity Tribunal
Charities Act 2006: other important changes (2)

- Registration requirements
- Statutory powers to pay trustees and pay trustee indemnity insurance
- Permanent endowment - more flexibility
- Unincorporated charities - relaxation of restrictions
- Accounting and auditing
Charities Act 2006: other important changes (3)

- Changes to fundraising rules
  - Commercial participators, professional fundraisers
  - Public charitable collections
- Mergers – new framework
- Charitable incorporated organisation (CIO)
PART III: Legal Forms for charities

- Companies
- Industrial and Provident Societies (IPS)
- Trusts
- Unincorporated Associations
- Royal Charter Bodies
- Charitable Incorporated Organisations (CIO)
- Also: Community Interest Companies (CIC), Limited Liability Partnerships (LLP)
Companies

- Limited by shares or guarantee
- Separate corporate legal entity
- Directors and members (shareholders)
- Regulated by Companies House
- Memorandum and Articles of Association
- Examples
Reasons for Incorporation

- Legal personality
- Limitation of risk
- Clear ownership structure/governance
- Accountability/disclosure
- Finance – recognition and equity
- Can enter into contracts, own or lease property and employ staff in its own name
Industrial and Provident Societies

- An organisation conducting an industry, business or trade and registered under Industrial and Provident Societies Act 1965 either as a:
  - Co-operative
  - For the benefit of the community

- FSA is the registering authority
- Members
- Rules
- ‘Exempt’ if set up for charitable purposes
Trusts

- Trustees
- Cannot own land or sign documents in its own name – appoint holding or custodian trustees
- Trust Deed
- Examples: small organisations, no membership, grant-making bodies etc.
Unincorporated Associations

- Executive or Management Committee
- Unincorporated – no limited liability or legal personality of its own
- Cannot own property in its own name – appoint holding or custodian trustees
- Constitution or Rules
- Examples: small organisations, local branches, membership organisations etc.
Limited Liability Partnerships (LLPs)

- Legal personality and limited liability
- Registered at Companies House
- Transparent for tax purposes – joint ventures
- Cannot be a charity
Community Interest Companies (1)

- Rise of the social entrepreneur
- Over 1,500 registered
- Memorandum and Articles of Association
- Limited by shares or guarantee
- Regulated by Companies House and CIC Regulator
- Examples
Community Interest Companies (2)

Tailored for social enterprise
- Asset lock
- Community interest test
- Control
- “light touch” Regulator
- Payment of directors, dividends (CLS)
- Equity finance
- Recognised form (CLS/CLG)
Charitable Incorporated Organisations (CIOs)

- New legal form for charities introduced by Charities Act 2006
- CIO will give charities benefits of incorporation (limited liability and legal personality) with a single regulator – Charity Commission
- New charities should be able to set up as CIO’s from early 2008
Advantages of a CIO

- Single registration with Charity Commission and 1 annual return
- Less onerous accounting and reporting requirements
- Lower costs
- Codified duties for trustees and members
- More straightforward arrangements for mergers and reconstructions
Key features of CIOs

- A body corporate with a constitution that states name and purpose
- Principal office in England or Wales
- Trustees and one or more members
- Members not liable to contribute to assets of CIO on winding up or have limited liability
- Constitution to include certain provisions
Registration of a CIO

- Registration will be by application to the Charity Commission with copy of proposed constitution and any other prescribed documentation or information.
- Applications may be refused.
- CIO is then entered in register of charities and becomes a body corporate.
- CIO’s entry in register will include date of registration and that it is constituted as a CIO.
Running a CIO

- Codified duties for trustees and members
- Amending constitution – resolution passed by 75% majority of those voting at a general meeting or unanimously if not passed at a general meeting
- CIO may not amend its constitution in ways where it would cease to be a charity
- Resolution making ‘regulated alterations’ need prior written consent of Charity Commission.
Conversion to CIO

- Charitable companies and IPSs – charity will need to pass resolution to become a CIO and adopt new constitution
- Unincorporated charities – charity will need to register a new CIO and then transfer its property to the CIO before winding up the unincorporated charity (note TUPE applies)
Analysis and warning points

- A ‘significant deregulatory measure’?
- Large parts of company and insolvency law incorporated by reference.
- Not clear how disclosure requirements will compare with those for a CLG
- Amending constitution is complicated
- Mergers
## Comparing Alternatives - companies

<table>
<thead>
<tr>
<th>Structure</th>
<th>Regulator</th>
<th>Charitable Status</th>
<th>Tax breaks</th>
<th>Lock on assets</th>
<th>Remuneration of trustees/directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charitable company</td>
<td>Charity Commission &amp; Companies House</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Restricted</td>
</tr>
<tr>
<td>Charitable incorporated organisation (from 2008)</td>
<td>Charity Commission</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Restricted</td>
</tr>
<tr>
<td>Company</td>
<td>Companies House</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Unrestricted</td>
</tr>
<tr>
<td>Community interest company</td>
<td>Companies House and CIC Regulator</td>
<td>No</td>
<td>No – but watch this space</td>
<td>Yes</td>
<td>Generally unrestricted (market rates should satisfy CIC test)</td>
</tr>
</tbody>
</table>
PART IV: The Registration Process

Establishing the charity

- Deciding on the form and structure
  - Incorporated or unincorporated
  - Membership
  - Appointment of trustees
  - Involvement of stakeholders/funders

- Names – some limitations
The Registration Process

- Governing document
- Application form
- Trustee Declarations
- Supporting information
- Covering letter
Governing document

- Standard consideration
- Objects clause – examples, register
- Oligarchy vs. Membership
- Appointment and removal of Trustees
Application form

- Tick-box
- Objects and activities
- Evidence of income
- CRB checks
- Private benefit
Trustee Declaration

- Consent to become a trustee
- Originals
- Introduction to trustee responsibilities
Supporting information

- Business plan
- Promotional materials
- Consistency
- Website
Covering letter

- Pre-exempt concerns
- Expedite application
Charity Commission response

- Trying to be more customer friendly
- Flexible – responding to circumstances
- Shorter response times
Useful sources of information

Charity Commission:
www.charitycommission.gov.uk
0870 333 0123

NCVO
www.ncvo-vol.org.uk
020 7713 6161

Active Community Unit
www.homeoffice.gov.uk/comrace/active
020 7035 5328

Charity Law Association
www.charitylawassociation.org.uk

Inland Revenue Charities Unit
www.inlandrevenue.gov.uk/menus/charity.htm
0845 302 0203
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