

Grey Paper No. 15 - April 2010 - Charity Law Update

Most LTG Member Theatres are Charities and have considerable knowledge of and advice available on the application of Charities Law. This Grey Paper, the information for which is drawn from the Charity Commission Website (www.charity-commission.gov.uk) and the Government's Business Link Website (www.businesslink.gov.uk) draws attention to recent changes in law but does not purport to do anything other than draw attention to the changes. If specific legal advice is needed, you should consult your own legal adviser or the Charity Commission.

1. Reporting requirements

- 1.1. Since February 2007 charities with annual incomes of less than £5,000 do not have to register with the Charity Commission. For those that are already registered, this means that they can ask to be removed and avoid the responsibility for keeping their register entry up to date. For accounting periods starting on or after 1 April 2009:
 - 1.1.1. Non-company charities with incomes of less than £250,000 can now prepare receipts and payments accounts instead of the more complicated accruals accounts.
 - 1.1.2. Charities with incomes below £25,000 no longer need to have their accounts independently examined.
 - 1.1.3. Charities with incomes below £25,000 no longer need to routinely send their annual accounts and the trustees' annual report to the Charity Commission.

2. Charitable Purposes

- 2.1. Legislation now requires charities to show that they exist for charitable purposes. 'Charitable purposes' are those that fall within the descriptions of charitable purposes set out in the Charities Act and that are for the public benefit.
- 2.2. The Charities Act includes the advancement of the arts, culture, heritage or science in the descriptions of charitable purposes.
- 2.3. Further guidance on charitable purposes can be found in the Commentary on the Descriptions of Charitable Purposes in the Charities Act on the Charity Commission website.

3. Public benefit?

- 3.1. There are three key principles both of which must be met in order to show that an organisation's aims are for the public benefit. Within each principle there are some important factors that must be considered in all cases. These are:

Principle 1: There must be an identifiable benefit or benefits that are clear, related to the charity's aims and balanced against any detriment or harm. Your charitable document will normally cover these.

Principle 2: Benefit must be to the public, or a section of the public, appropriate to the aims and, 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. This means that people in poverty should not be excluded from the opportunity to take part in your activities.

- 3.2. What the courts have regarded as being for the public benefit has changed over time, as society's needs and circumstances have changed. In the same way, the Charity Commission will continue to consider the principles of public benefit in the context of current social and economic conditions.

4. Charity trustees' public benefit duties

- 4.1. Everyone who is a trustee of a Charity must:
 - 4.1.1. ensure that they carry out their charity's aims for the public benefit;
 - 4.1.2. have regard to guidance published on public benefit (when they exercise any powers or duties where that may be relevant); and

- 4.1.3. report on their charity's public benefit in their Trustees' Annual Report. Charity trustees are not legally required to follow this guidance but they must have regard to it when it is relevant for their charity.
- 4.2. That means they should be able to show that:
 - 4.2.1. they are aware of the guidance; in making a decision where the guidance is relevant, they have taken it into account; and
 - 4.2.2. if they have decided to depart from the guidance, they have good reasons for doing so.
- 4.3. Although the guidance does not constitute the law on public benefit, it is a guide to what the law says on public benefit and how it will be interpreted and applied. Trustees, and their advisers, should therefore be familiar with, and understand, the public benefit guidance. They should understand what is required for their charity to meet the public benefit requirement and how to avoid taking decisions that might adversely affect their charity's public benefit. It is also important for trustees to understand the criteria that will be used to assess whether or not they are carrying out their charity's aims in a way that meets the public benefit requirement. Guidance on the Charity Commission's assessment of public benefit, and the criteria used for this, can be found on the Charity Commission's Website.

5. Charitable Incorporated Organisation

- 5.1. Increasingly, charities are seeking incorporation as a means of limiting the risk of personal liability for trustees. Currently around 25,000 registered charities are incorporated as companies, but this brings the burden of double regulation by both the Charity Commission and Companies House. The new CIO will be regulated by the Charity Commission alone.
- 5.2. The aim is for the CIO to become an option for charities starting from spring 2010. Both new and existing charities will be able to consider becoming a CIO, although other forms of incorporation will also remain available.
- 5.3. The Charitable Incorporated Organisation (CIO) will be the first incorporated legal structure designed specifically to meet the needs of charities. It will be an entirely new type of charity that will provide charity trustees with protections similar to those given to directors of limited companies. Charities can currently incorporate as companies, but this means dual registration with the Charity Commission and Companies House, and dual regulation under charity law and company law. The CIO will reduce red tape, as it will be both registered with and regulated by the Charity Commission.
- 5.4. The new legal form designed specifically with the needs of charities in mind will be available during 2010.
- 5.5. The CIO will be available only to charities and will add to the existing range of forms that charities can use. The Government and the Charity Commission propose to:
 - 5.5.1. ensure a robust duty of care
 - 5.5.2. tighten up rules on access to personal information in the registers of trustees and members that CIOs will have to maintain, and
 - 5.5.3. replace a number of minor criminal offences for administrative failings with a power for the Charity Commission to direct rectification. Further Guidance is available from the Charity Commission on www.charity-commission.gov.uk

6. Legal Disclaimer

- 6.1. This Grey Paper, like many previously issued, is to be read as a Guideline to Best Practice, and the Guild and Tom Williams can accept no responsibility for any action taken upon its contents. All theatres are again advised to take independent advice on any of the points raised here. This Grey Paper was prepared by Tom Williams