

Haines Watts

Charity News

Spring 2023

Our Charity News includes the latest guidance and support available for the not-for-profit sector. We consider the impact of recent legislative, reporting and tax developments and other pertinent issues, giving you the inside track on the sector's current hot topics and latest guidance.



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The newsletter is applicable to the whole of the United Kingdom and makes reference to the three UK charity regulators:

- the Charity Commission for Northern Ireland (CCNI)
- the Office of the Scottish Charity Regulator (OSCR) and
- the Charity Commission for England and Wales (CCEW).

All the articles may be of interest; however, to aid you we have included the following key:

Key

-  **United Kingdom**
-  **England**
-  **Wales**
-  **Scotland**
-  **Northern Ireland**

Hot topics



Charities and the continuing cost of living crisis

In our last edition we featured how charities are being affected by the cost of living crisis. Six months on and the financial pressures remain. Recent research published by the Charities Aid Foundation as part of its Charity Resilience Index shows that:

- 57% of charities have seen an increase in demand for their services over the past year, with charities in the North of England among the hardest hit with a 67% increase
- Less than a third of charities are highly confident in their funding
- More than half of charities are worried about their survival

All of the charity regulators across the UK have addressed the crisis by updating their guidance. Whilst this often just refocuses existing guidance rather than offering anything new, it can be a useful reminder for trustees on issues they need to consider

when tackling the financial challenges faced by charities. The CCEW guidance stresses the need for trustees to continue to act in their charity's best interests and to act prudently and with reasonable care and skill at all times, taking advice when necessary. It goes on to set out what needs to be done when financial difficulties are being experienced and the need to develop options to support the continued operation of the charity, or in the worst case scenario what to do if the charity is unable to continue. Similar guidance has been published by OSCR and CCNI, and all of the guidance provides useful links to other sources of information and guidance.



For many charities the rising cost of fuel and energy is the main source of concern. As the days lengthen and the temperatures slowly start to creep up you would hope that the financial pressures placed on charities from rising energy costs would start to ease, but this may not be the case. The initial Energy Bill Relief Scheme for non-domestic customers came to an end on 31 March to be replaced by the less generous Energy Bills Discount Scheme. This is planned to last for a year until 31 March 2024 and will have three components:

1. A baseline discount that will apply automatically to eligible non-domestic customers across the UK including voluntary organisations.
2. The Energy and Trade Intensive Industries (ETTI) discount that provides a higher level of support to businesses and organisations in eligible sectors. Certainly some charities may be able to take advantage of the ETTI discount as it covers museum and library activities for example,
3. The Heat Network discount that will provide a higher level of support to heat networks with domestic end customers.

Both the ETTI and Heat Network discounts have to be applied for by businesses and organisations who believe they qualify for higher levels of support.

Details: <https://bit.ly/40TniKM>

<http://bit.ly/3McCfdN>

<http://bit.ly/40YPXxU>

<http://bit.ly/4324UBh>

<http://bit.ly/3U6E4E6>



Charity law reform

In our last edition we reported on the reforms set out in the Charities Act 2022 that took effect from 31 October 2022 in England and Wales. CCEW has now ensured that its guidance material has been updated for these legislative changes, in areas such as managing conflicts of interest, making payments to trustees and fundraising. New guidance has also been issued for the first time for charities governed by Royal Charter that addresses how to make changes to their constitution and also provides guidance to charities on how to apply for Charter status.

In addition the Fundraising Regulator has also issued guidance on how the Act amends the law in respect of fundraising, and what to do when more donations are received than is needed, or where an appeal doesn't raise enough.

We can now consider the following changes which will come into effect for charities located in England and Wales later in the Spring:

Land transactions

Reforms are being introduced that will expand the range of advisers a charity can utilise when contemplating a potential disposal of land. Previously advice had to be sought from a qualified surveyor, this is extended to now also include fellows of the National Association of Estate Agents and the Central Association of Agricultural Valuers. It is also expanded to include trustees, officers and employees of the charity where they are suitably qualified.

There are further changes designed to simplify and add clarity to the restrictions that apply to disposals of land, but it remains a recommendation that a charity always seeks advice when doing so in what remains an area where complex regulations exist.

Using a permanent endowment

This is another complex area where there are some welcome changes which provide greater clarity of when CCEW consent is required before a charity can

spend permanent endowment capital, along with a new power for charities to be able to borrow up to 25% of the value of its permanent endowment fund over a term of up to 20 years without having to obtain CCEW consent. There is also a new power enabling social investments that could not previously have been made due to the expectation that the return on that investment could be negative or uncertain.

Charity names

CCEW already has the power to direct a charity to change its name if it is too similar to that of another charity or if it is considered offensive or misleading. This power will be extended to also cover the working name that a charity may use instead of its full legal name, enable the Commission to delay the registration of a charity with an unsuitable name and use its powers in relation to exempt charities working in consultation with the principal regulator involved.



Guidance: <https://bit.ly/3BTKIoB>

<http://bit.ly/42W2FzD>

The last wave of reforms introduced by the Act are expected to come into force in the autumn and include changes to how charities can amend their governing documents. Plans to reform the treatment of ex gratia payments are being considered further and it has not yet been announced when these will come into effect.

Scotland

There is also reform to charity legislation taking place north of the border, with the Charities (Regulation and Administration)(Scotland) Bill currently being considered by the Scottish Parliament. If passed this Bill will make changes in the following areas:

- Give OSCR wider powers to investigate charities and charity trustees;
- Amend the rules on who can be a charity trustee or a senior office-holder in a charity;

- Increase the information that OSCR holds about charity trustees;
- Update the information which needs to be included on the Scottish Charity Register; and
- Create a record of charities that have merged.

More detail on these proposed reforms will be included in future editions of Charity News when they are implemented.

Details: <http://bit.ly/3m5KZkn>



Annual return changes

In our last edition we reported on proposed changes to the annual return. It is now confirmed that these changes will take effect for financial years ending on or after 1 January 2023.

CCEW have now published guidance on what information charities will need in order to be able to answer the new questions that are being included in the annual return for the first time, so that charities can prepare for the changes and ensure that they have the information required to complete the return.

The key changes to the annual return include:

- Identifying charities that are dependent on key supporters for a significant proportion of their income.
- Improving clarity on whether trustees have been paid by the charity or any connected organisations for the supply of goods and/or services.
- Requiring greater information on grants paid to individuals and other charities, highlighting whether any of those grants were to connected parties.
- Details of how overseas income was paid to the charity.
- Providing details on the premises from which the charity delivers services.
- Details of property belonging to unincorporated charities that is held by custodian trustees other than the Official Custodian.
- The location of any websites that are hosted outside the UK.
- Details of any wider organisations that the charity may be a member of.
- Details of any trading subsidiaries that have been dissolved.
- Information on the number of employees a charity has both in the UK and overseas, and the total payroll cost.

Guidance: <http://bit.ly/3GeiOGC>

There have also recently been changes made to the annual monitoring return (AMR) required by charities in Northern Ireland. From 1 October 2022 charities have had to provide contact details for all of their trustees, including both an email address and mobile telephone number, information that is being collected through annual reporting. There are also new questions in areas such as safeguarding, the processing of personal data and fundraising. To aid charities CCNI has published a new guidance document on how to complete the AMR.

Guidance: <http://bit.ly/3McTVip>



Use of social media

CCEW has published draft guidance on the use of social media by charities. The guidance notes that charities are increasingly making use of social media to promote the work that they do, engage their supporters and campaign for change. It also acknowledges the role social media has with members of the public to engage with or debate the work that charities do.

The draft guidance highlights the importance of trustees being aware of how the charity utilises social media, especially where day-to-day operation of social media is being delegated, and of the risks that it can bring. It encourages charities to develop and adopt policy in this area and demonstrates how the trustees' existing duties are relevant to a charity's use of social media.

The consultation period for this draft guidance has already ended and CCEW are currently considering responses before issuing the final version of this guidance.

Details: <http://bit.ly/3lUKARS>



The risks from cyber crime

The National Cyber Security Centre (NCSC) has published a new report that sets out the cyber threat that all charities now face, noting that in their 2022 survey of cyber security breaches 30% of charities had experienced a cyber attack during the previous 12 months, with over a third of those attacks having an impact on services and nearly a fifth resulting in a 'negative outcome' for the charity concerned.

The report highlights reasons why the charity sector can be particularly vulnerable to cyber attack and sets out some of the ways charities can be attacked such as phishing, ransomware or business email compromise.



Included within the report are links to a range of guidance and resources available to charities to help protect them from cyber attack, tailored for charities of all sizes.

Details: <http://bit.ly/3ZDYmfN>



Other charity guidance

It's been a busy few months at CCEW. As well as the guidance that has already been commented upon elsewhere in this edition of Charity News there have also been a number of other developments in their guidance for charities that are worth noting.

First of all CCEW has developed a range of '5 Minute Guides' designed to raise awareness of core trustee duties and the guidance that is available to trustees to help them discharge their responsibilities, in areas such as delivering purpose, making decisions and safeguarding.

Details: <http://bit.ly/40Tiy7Z>

Clarification has been received on trustees' responsibilities when setting investment policy following a recent High Court judgement. It confirms that trustees have wide discretion where appropriate to exclude certain investments based on non-financial considerations when making financial investment decisions, enabling what is often referred to as an ethical or responsible investment policy. However the judgement also confirms that trustees are under no obligation to do so and can instead adopt a policy designed to secure the best financial return. This judgement will be reflected in revised CCEW guidance on investing due to be published later this year.

Details: <http://bit.ly/3Mb4OkK>

The CCEW's Compliance Toolkit that provides charities with information on key aspects of the UK's counter terrorism legislation and how it can affect charities and the work they do has been updated to signpost new guidance from the Crown Prosecution Service on proscription offences and terrorist financing offences and cases involving humanitarian, development and peacebuilding work overseas.

Details: <https://bit.ly/2WLPlog>

CCEW guidance on campaigning and political activity have been updated in response to the passing of the recent Elections Act 2022.

Details: <http://bit.ly/40V0kTx>

CCEW guidance on protecting charities from abuse for extremist purposes has been updated in order to signpost to safeguarding responsibilities and relevant guidance.

Details: <http://bit.ly/433nUzu>



Charities in Northern Ireland

We have previously reported on the Charities Act (Northern Ireland) 2022 which sought to correct some legal anomalies and ensure that CCNI was able to be an effective regulator for the sector.

As part of these changes a consultation process has been opened on a prospective Scheme of Delegation that will enable certain decision-making functions to be delegated to the Commission's staff, just as they are in other parts of the UK. Views are being sought on the proposals from all those with an interest in the charity sector, with responses to the consultation required by 15 May 2023.

With the Act now in place it is now clearly established that all charities in Northern Ireland have a legal duty to submit their accounts and reports to CCNI each year. For accounting periods commencing before 1 April 2022 though charities are being encouraged to voluntarily file accounts and reports to CCNI in order to demonstrate that they are being open and accountable to the public, and guidance on how to "backfill" accounts and reports has been issued.

Consultation: <http://bit.ly/3zySt2d>

Guidance: <http://bit.ly/400Axww>

Accountancy and tax update



Future changes to financial reporting

The Financial Reporting Council (FRC) has published proposed changes to FRS102, the accounting standard upon which the charity reporting requirements set out in the Statement of Recommended Practice (SORP) is based. These proposals are set out in an exposure draft known as FRED82 and are currently being consulted upon. If approved the changes will also result in the need for the SORP to be updated so that it remains consistent with FRS102, and it is expected that the changes will come into force for accounting periods commencing on or after 1 January 2025.

The key proposals set out in FRED82 are designed to keep reporting in the UK consistent with developments in International Financial Reporting Standards that have already been enacted in the areas of income recognition and leasing.



It is the proposed changes to lease accounting that will have the biggest impact for charities. At present leases are classified as being either 'finance leases' or 'operating leases' with a different approach followed for each. In short finance leases are those where the lessee is deemed to have the benefits of ownership of the related asset despite not being the legal owner, with the lease recognised 'on balance sheet' as a result, with the accounts showing both the asset and a creditor for the lease obligation. All other leases are accounted for 'off balance sheet' as operating leases with no asset or liability recognised, with lease payments generally recognised as an expense when paid.

The proposals will remove this distinction between finance and operating leases, and will see all leases recognised on balance sheet except for those of low value or with a lease term of less than a year. As a result for the first time many leases will need to be recognised on balance sheet, including leases for property, vehicles etc. Doing so will inevitably require additional work to be performed when preparing accounts, and some charities could find that they reflect debt obligations in their balance sheet for the first time due to the recognition of lease balances.

The other main proposal outlined in FRED82 is a change to the way income is recognised. Whilst the changes are unlikely to have any significant impact for the majority of charities, those with more complex arrangements where they provide a combination of goods and service in a single package could be affected.

Few of the other proposals in FRED82 are likely to impact on charities themselves, but for those that utilise subsidiary undertakings to conduct any trading activity the accounts of those companies could be affected, with additional disclosure requirements being introduced for small entities.

Future editions of Charity News will keep you apprised of development in FRS102 and the Charity SORP as we approach the 2025 implementation date for the revised versions of these standards.

Details: <http://bit.ly/3nFXqDX>



Improving the quality of charity accounts

OSCR has published a report following a review of charity accounts that are submitted to them. Based on a random selection of 90 charities of varying sizes the survey has helped the regulator identify areas where improvement is frequently required.

The four main issues they discovered were:

1. Failing to include a trustees' report completely, or providing inadequate information so that the report does not meet legal requirements.
2. Failing to ensure that the accounts are subject to the appropriate external scrutiny, whether it be an audit or independent examination, with a failure to comply with an audit requirement in the charity's governing documents noted as a recurring issue.
3. Not providing sufficient comparative information.

4. Failing to provide the required notes to the financial statements, specifically around the disclosure of trustees' remuneration & related party transactions, grant-making activities and the nature & purpose of funds held.



It's likely that these findings would be equally true of charity accounts prepared elsewhere in the UK.

The publication of this report highlights the continuing struggle regulators are having with charities that do not meet their reporting obligations, and the need for charities to ensure that they are appropriately advised by persons familiar with charity reporting requirements.

Details: <http://bit.ly/3U2ldKr/>



Fundraising update

The Fundraising Regulator has published research that shows that the majority of charities are not complying fully with the requirement to disclose details of the fundraising activities in their annual report, requirements that affect charities in England and Wales with income over £1 million. Compliance was better for those charities that pay the fundraising levy, but of them only 33% of charities fully complied with the requirements and 9% included none of the required disclosure. For levy-refusing charities the figures were worse, with only 13% of charities fully meeting the disclosure requirements and 32% not including any of the required fundraising disclosures in the annual report. In response to their finding the Regulator has updated their guidance on the disclosure requirements to better help charities understand their reporting responsibilities in this area:

Guidance: <http://bit.ly/40XF5Aq>



Spring Budget 2023

On 15 March the Chancellor Jeremy Hunt made his first Budget Speech, the first full Budget for 18 months. Included within the measures announced are several with implications for the charity sector:

Non-UK charities

UK tax reliefs for non-UK charities and their donors has been withdrawn with immediate effect, although transitional provisions are being implemented for those overseas charities that qualified for relief on Budget Day that will enable them to claim relief until April 2024 to give them time to make appropriate adjustments. The change also applies for non-UK Community Amateur Sports Clubs (CASCs).

This has implications for any charities or CASCs based in the EU or EEA that have taken advantage of the wide range of tax reliefs available to the charity sector, or were planning on doing so. There will also be implications for any higher rate taxpayers who donate to overseas charities as they will no longer be able to claim higher rate tax relief on those donations using gift aid.

Additional funding

One of the highlights of the Budget Speech was the announcement of extending the provision of free childcare. To help achieve this increased direct funding to nurseries from this September was announced.

Extra funding for charities and community organisations was also announced, with £100 million being targeted at those most at risk due to increased demand from vulnerable groups and higher delivery costs, as well as providing investment in measures to improve energy efficiency.

A further £63 million of support was also announced for public leisure centres and swimming pools.

Cultural tax reliefs

The higher rates of relief available for Theatre Tax Relief (TTR), Orchestra Tax Relief (OTR) and Museums & Galleries Exhibition Tax Relief (MGETR) are being extended for two additional years. The current higher rates will now remain in place until 1 April 2025 before being reduced for a year. TTR and OTR will then return to their normal levels from 1 April 2026, but no expenditure incurred after

31 March 2026 will be eligible for MGETR. The rates can be summarised as follows:

	Current rates to 1 April 2025	2025/26	2026/27 onwards
TTR: non-touring / touring	45 / 50	30 / 35	20 / 25
OTR	50	35	25
MGETR: non-touring / touring	45 / 50	30 / 35	N/A



Homes for Ukraine

It has been confirmed that ‘thank you’ payments made by Local Authorities to individuals, business and charities under the Homes for Ukraine scheme are exempt from Income Tax or Corporation Tax, with retrospective effect from when the scheme was introduced on 14 March 2022. There are also reliefs available from the Annual Tax on Enveloped Dwellings and the 15% rate of Stamp Duty Land Tax for any dwelling made available under the scheme.

Social Investment Tax Relief

It has been confirmed that Social Investment Tax Relief will not be renewed, and will close for any new investments made from 6 April 2023.

Employment measures

The Budget contained a series of measures designed to improve the labour market and support those seeking to enter work, increase their working hours or extend their working lives. Reforms to childcare, pensions and the payment of Universal Credit grabbed most of the headlines, but there were also measures designed to improve access to employment

for disabled people and those with long-term health conditions, and also for older workers.

Many charities employ staff, and will be affected by any changes to payroll taxes. With the thresholds for Income Tax* and National Insurance frozen until 2028 this will effectively increase the tax burden on both employers and individuals. The rate at which Tax and National Insurance is payable remains unchanged, with the Health and Social Care Levy that was due to be introduced from April 2023 already scrapped.

The following rates of the hourly National Living Wage and National Minimum Wage apply from 1 April 2023:



- £10.42 for those aged 23 and over
- £10.18 for those aged 21-22
- £7.49 for those aged 18-20
- £5.28 for those aged 16-17
- £5.28 for apprentices under 19 and those aged 19 and over in their first year of apprenticeship

* A separate regime applies to income tax rates in Scotland.

Trading activities

It has been confirmed that the planned increase in the rate of corporation tax to 25% from 1 April 2023 will take place. Those with lower levels of profit are likely to see little change though, as the higher rate of tax will only apply to companies with taxable profits in excess of £250,000. The current rate of 19% will continue to apply for those companies with profit below £50,000, with the increase tapered for those with profits between those two limits.

With the tax rate increasing this could be an opportune moment for any charities that undertake trading activities to ensure that they are properly structured to avoid any unnecessary exposure to tax, possibly through the use of a separate subsidiary undertaking to carry out any trading activity.

Details: <http://bit.ly/3G8o0Mn>



VAT update

Charities that are registered for VAT should be aware that from the start of this year the way penalties are issued for submitting late VAT returns and for paying VAT late have been amended. A new points-based system has been introduced which is designed to be more lenient for the occasional error but still penalises those who repeatedly fail to comply with their obligations. Changes have also been introduced to the way interest is charged on late payments and repayments of VAT.

Details: <http://bit.ly/41eD4QP>

VAT Notice 708 *Buildings and Construction* has been updated to provide clarity on the use of a building as 'village hall' in respect of the Relevant Charitable Purpose relief for constructing buildings for certain charitable purposes, setting out key conditions that must be adhered to if the relief is to be available so that construction work can be zero-rated.

Details: <http://bit.ly/3U3096y>

There has been confirmation that the Listed Place of Worship Grant Scheme will be extended through to 31 March 2025. The scheme provides grants that cover the VAT incurred in making repairs to listed buildings in use as places of worship, supporting the effective conservation of these sites.

Details: <https://bit.ly/40Z8SsL>

