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Charity Commission guidance to disqualification changes

Guidance about changes to automatic disqualification rules coming into effect in August 2018 has been published by the Charity Commission for England and Wales. The changes, which are introduced under the Charities (Protection and Social Investment) Act 2016, extend automatic disqualification rules to certain senior management positions. Currently, the rules only apply to charity trustees. The changes will also extend the list of circumstances that result in automatic disqualification to include unspent convictions for certain terrorism, money laundering and bribery offences.

Charity staff that currently hold senior positions within a charity and are affected by the new rules can apply for a waiver from the Charity Commission in order to remain in position after July 2018. According to the commission, the availability of waivers will enable them to protect charities while ensuring they retain experienced and skilled personnel.

The Charity Commission started accepting waiver applications in February 2018. According to the guidance, those who need a waiver to remain in a restricted position beyond 1 August 2018 should submit by 1 June 2018 latest to allow time for processing. Waiver applications are free of charge and must be submitted online.

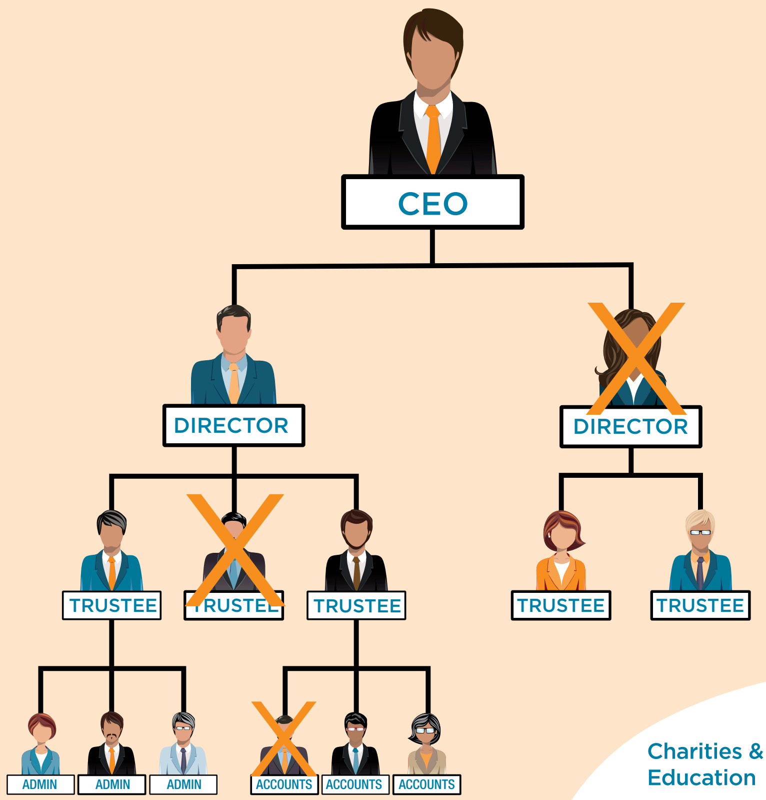
The Charity Commission recommends that charities should prepare for the changes well in advance and must establish whether they have any personnel in restricted positions that are affected by the change.

Restricted positions include chief executive, chief finance officer or equivalent senior management positions. The charity must then check whether any of these personnel will be disqualified by the changes. If this is the case, the individual concerned must step down or obtain a waiver.

The guidance explains that an individual's job title does not determine whether they are working in a restricted position in a charity. Instead, this is determined by their job role. For example, employees who are responsible for day to day charity management and accountable to trustees only are working in restricted positions, regardless of their job title. The charity's size and turnover are also irrelevant.

Charity Commission deputy head of guidance & practice, Nick Mott said: *"The point of these further restrictions is, of course, to provide some protection for charities, but the system allows us to waive disqualification for those whose experience and skills in running charities should not be lost. For charities, just remember to add these new restrictions into the recruitment and post-appointment declarations that you ask trustees, CEOs and FDs to complete".*

Read more about the changes to automatic disqualification rules at: http://bit.ly/2FHSwv7 and http://bit.ly/2Iroyxx



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update on changes to Annual Returns

Following a comprehensive consultation in the latter half of 2017, the Charity Commission for England and Wales has amended various aspects of the 2018 annual return (AR18) that apply to charities with an annual income of more than £10,000. The Commission has promised that the changes will make completing the annual return easier for trustees.

The regulator is claiming that the changes to the annual return will lead to an average of 15 fewer questions for organisations completing the return, with only those charities with large or complex operations required to provide more in-depth information. Following targeted user testing, the Commission reported it had received 'largely positive feedback.' Among the amendments to the information requested, charities will no longer be required to inform the Commission if they are claiming rate relief or Gift Aid. However, new questions regarding executive pay will be included covering details of salary, bonuses, pensions and benefits in kind.

Many of the organisations affected still have concerns over the Commission's decision to insist they reveal the sources of their overseas funding, as doing so places a heavy burden on charities (especially smaller ones). The changes mean that only income from overseas governments, quasi-governmental bodies, charities and Non Goverment Organisations will need to be declared in the annual return, but that all overseas income from other institutions or donors must be declared from 2019.

Although many charity bodies fear that the new version of the annual return will be too burdensome, the Commission has stated that *"it is important that we have a better understanding of the income sources of the charity sector, including a more complete picture of the flow of funding into and out of the UK, and the provenance and volume of donations and income from outside the UK."*

Read more on changes to the annual return at: http://bit.ly/2HygHNm

GDPR guidance for charities published

New EU-wide data protection rules are due to come into force on 25 May 2018 under the General Data Protection Regulation (GDPR). The GDPR will replace the Data Protection Act 1998, and places a range of requirements on how charities collect or process personal data.

The GDPR will cover activities such as fundraising, how charities gain consent, management of personal data and fines for data protection breaches.

The ICO has published a GDPR FAQs guide for charities that covers topics including consent and legitimate interest, data security and when a data protection officer should be appointed. The ICO guidance clarifies that charities handling sensitive personal data will be able to continue processing this data under the GDPR, as the conditions for processing sensitive data are likely to be similar to those under the Data Protection Act 1998.

The GDPR will increase financial penalties for non-compliance, and it is therefore crucial that trustees of charities and non-profit organisations understand and meet their new legal obligations. This also provides an opportunity for charities to review how they currently process data and ensure they are prepared to make any necessary changes to comply with the new legislation.

The Fundraising Regulator and the Institute of Fundraising have produced six briefings on GDPR specifically for fundraisers. The briefings have been reviewed by the ICO and cover legacies and community, corporate and charitable trust fundraising.

To read the GDPR FAQs for charities, go to: http://bit.ly/2pdjd4H
The Fundraising Regulator's briefings can be downloaded from: http://bit.ly/2pdM4oM
The ICO's general guide to the GDPR can be downloaded from: http://bit.ly/2FLhQk3

in brief...

Charities missing out on cash deposit interest

According to a survey carried out by Third Sector and Flagstone, 85% of charities in the UK earn interest of less than the base rate of 0.5% on cash held in their bank accounts, while almost a third are earning less than 0.1%. The research has revealed that while 80% of charities are unhappy with the interest rate they receive, 58% believe it takes too much time and paperwork to open a new account. Nevertheless, 42% of charities are concerned about the risk of placing all their money in accounts provided by non-high-street banks that offer higher interest rates.
http://bit.ly/2FI2Bsc

Auditors failing to meet new reporting requirements

A review by the Charity Commission for England and Wales has indicated that a significant number of auditors are failing to inform the regulator of matters of material significance identified in their charity audit reports. While 114 auditors gave an audit opinion that required them to alert the commission to matters of material significance between May and October 2017, just 28 contacted the regulator. In response to the findings, the commission has announced it is working with the accountancy sector to improve awareness about the new reporting requirements among auditors. Since May 2017, the list of matters an auditor must report to the commission has been extended to include modified audit opinions.
http://bit.ly/2pfICtU

Charities responsible for 4% of all data breaches

According to figures published by the Information Commissioner's Office (ICO), charities accounted for 110 data security breaches in 2017. Overall, charities were responsible for just under 4% of the 2,877 data security breaches reported to the ICO in 2017. The loss or theft of paperwork was the most commonly reported breach among charities. This was followed by failure to comply with the Data Protection Act's information security rules, and charity staff emailing data to the incorrect recipient.
http://bit.ly/2tPPGTj

Slowdown in converting maintained schools to academies

According to a report from the National Audit Office (NAO), the Department for Education (DfE) has spent £745 million to convert almost 7,000 maintained schools in England into academies between April 2010 and December 2017. The report has also indicated that while conversions to academies have been straight-forward so far, the process is expected to become more challenging. In particular, the DfE has become more rigorous when scrutinising an applicant's financial position and governance, and there are concerns about whether it will be possible to convert large numbers of schools going forward. In response, the NAO has called for the DfE to ensure good value for money and high quality schooling when converting schools into academies.
http://bit.ly/2FCZA0d

Regulators consult on changes to SORP

The Charity Commission for England and Wales and the Office of the Scottish Charity Regulator have launched a consultation on proposed changes to the Charity Statement of Recommended Practice (SORP). Under the proposals, the SORP will be amended to reflect changes in UK-Irish accounting standards or FRS 102 that took effect in December 2017. The SORP provides guidance about applying FRS 102 when preparing a charity's accounts. The consultation is asking for feedback about whether the changes to FRS 102 have been properly reflected in the proposed amendments to the SORP and whether any further amendments are needed. The consultation closes on 4 April 2018.
http://bit.ly/2tS1sg0 And: http://bit.ly/2pdHp6c

Significant growth in online donations

The value of online donations to charities in the UK increased by 18.5% in 2017 compared with 2016, according to a report from fundraising software provider Blackbaud UK. The 'Charitable Giving Report' has revealed that the total value of donations to charities in the UK increased by 2.9% from 2016 to 2017. Online donations now account for around 7.6% of total fundraising revenue, while 21% of online donations in 2017 were made using a mobile device. The report has indicated that December is the biggest month for donations and accounted for 20% of the total value of online donations in 2017.
http://bit.ly/2ItaDqs

HMRC updates VAT supply and consideration guidance

HMRC has published updated guidance about the treatment of grants and contracts for VAT purposes to help clarify which services are eligible for VAT. The 'VAT Supply and Consideration' guidance clarifies how a charity can determine whether income should be treated as a grant and is therefore outside the scope of VAT, or is payment for a supply and therefore eligible for VAT.

The guidance sets out a list of factors which indicate that a payment is for a service and falls within the scope of VAT. These include what the payment will be used for, if the funder receives something in return for a payment and if the funder has specified conditions about how the money can be spent.

According to the guidance, an organisation must consider whether a *"specific supply is made to the funder or a third party in return for a payment. If so then the payment is consideration for a supply."*

However, if a direct link cannot be made between a payment and a specific supply, the payment will fall outside the scope of VAT.

In contrast, previous HMRC guidance stated that a payment can be treated as a grant for VAT purposes if conditions were attached to it, as long as they were only minor house-keeping conditions. However, the guidance did not clarify the VAT implications when an organisation provided a service in return for funding.

Commenting on the guidance, a spokesperson for the Charity Tax Group said: *"Overall we feel it is an improvement, particularly the sections on indicators of the supply position and related factors to help determine whether the payment is consideration of a supply or not."*

Read more about the guidance at: http://bit.ly/2FSun8v

process opens for 'Company' to 'CIO' conversion

The Charity Commission for England and Wales has started accepting applications to convert incorporated charities into charitable incorporated organisations (CIOs). Between 20% (7,200) and 35% (12,600) of existing incorporated charities are expected to become CIOs over the next ten years.

In 2017 new regulations were introduced under the Charities Act 2011, enabling incorporated charities to convert directly to CIOs. Before the new regulations were introduced an incorporated charity converting to a CIO had to establish a new CIO, transfer its assets and be wound down.

The Charity Commission has published a phased conversion time-table that allows smaller incorporated charities to convert to CIOs first. The timetable is based on income bracket and started on 1 January 2018, when the application process opened to charities with an annual income of less than £12,500. The second phase opened on 1 March 2018 and the third phase will open on 1 May 2018. The conversion process will be open to all incorporated charities from August 2018.

Incorporated charities must submit reports to Companies House and the Charity Commission, while CIOs are only required to report to the Commission. However, an incorporated charity considering conversion should weigh this and other advantages against potential disadvantages. For example, banks may be reluctant to offer secured debt to CIOs as the Charity Commission does not keep a register of secured charges.

More information about the phased conversion timetable is available at: http://bit.ly/2pgeSOf

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