



Charities & Trustee Investment Act – Key Changes & Impacts.

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The Charities and Trustee Investment (Scotland) Act 2005, most of which was effective in April 2006 along with the Charities Accounts (Scotland) Regulations 2006, aim to relax significantly the accounting regime for charities. In due course the rules will apply to both companies and unincorporated charities, but as explained below the rules will be different for probably another couple of years.

Legislative changes

Broadly, the threshold for accruals accounts will be £100,000 and the audit threshold will be £500,000. The new rules apply to accounting periods commencing on or after 1 April 2006. Because the new rules relax the existing position they cannot be adopted early so most charities will enjoy their effects from 31 March 2007 onwards.

However for this change to be effective for charitable companies, the Companies Act must be changed. Those of you following the progress of the Companies Bill will know that this received Royal Assent on 8 November with effective implementation expected by October 2008. Until then all charitable companies must prepare accounts that give a true and fair view, irrespective of size, and whilst there is a lighter touch external scrutiny regime for those charities with income below £90,000, the audit requirement kicks in at £250,000: half the threshold applying to unincorporated charities.

If the Scottish Charitable Incorporated Organisation (SCIO) form had been introduced at the same time as the new accounting regulations, this would have presented unincorporated charities with a corporate limited liability vehicle which would still have enabled them to take advantage of the relaxed regime. As things stand, this is unlikely to be available much before the Companies Act becomes effective so the uneven playing field will exist for the next couple of years and may cause concern to trustees who want to incorporate.

Implications

The new regime is a welcome relaxation in the rules and could save charities thousands in professional fees. However there is an unintended consequence of implementing a more favourable regime for the unincorporated charity, and that is to create a potential conflict of interest.

Unincorporated charities carry greater personal risks for trustees as they are potentially personally liable in insolvency. Whilst many trustees are aware of this risk and accept it in the smaller charity, experience shows that there are still many unincorporated charities where the trustees don't really understand the implications of this status.

Normally charities will incorporate when they begin to become more complex and enter into longer term commitments, such as the provision of care for a beneficiary, employing staff, entering into leases, etc. This is principally to ensure protection for the trustees in the event of

the charity facing a large bill that could not be paid for out of the charity's assets, as long as the trustees could not reasonably have known that they were about to become insolvent.

The Charity Act requires trustees to act in the best interests of the charity. There is clearly significant personal interest for trustees deciding to incorporate a charity but the conversion costs for an existing charity are normally not significant and it is often more efficient for a corporate entity to enter into contracts than for the unincorporated trustees to do so.

However in future if the charity trustees come to the point where they want to incorporate to limit their potential personal liabilities they face a more significant potential conflict: not only are there one off conversion costs, but they put the charity into a much stricter and therefore quantifiably more expensive regime for accounting and auditing. Arguably, this is not in the charity's interests and there is concern that this would put off the charity trustees from incorporating beyond the date that would be appropriate to guard their personal situations.

So whilst the new regime is better for the charity's beneficiaries – as there is more money to spend on charitable purposes – unincorporated charity trustees are presented with an unintended conflict of interest. It is entirely reasonable for charity trustees not to be put personally at risk for their valuable, voluntary contribution to charities and would encourage trustees to ensure they are aware of their personal risk in undertaking charitable activity and to make their decision based on the need to recruit and retain the appropriate calibre of trustees and provide them with adequate protection rather than delaying the process simply to save money in the interim.