



Autumn 2023

Charities and not for profit newsletter

Welcome



Welcome to our autumn 2023 edition of the Charity and Not for Profit Newsletter, which has continued as a blog series over the year on our website. This edition brings together recent articles published on our website into a newsletter.

It includes the following articles:

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Please do not hesitate to contact us if you need more information on anything we have raised.

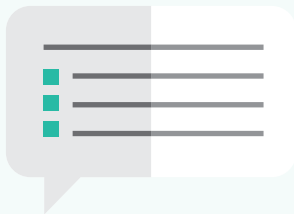
2024 looks to be a busy year for the charity sector with the forthcoming issue of the Charities SORP. Keep an eye on our website for events and guides to the changes.

As Christmas is now fast approaching, may we take this opportunity to wish you a restful festive break and we look forward to seeing you in 2024

The Charities Act 2022 and Restricted Funds – what has changed?



The Charities Act 2022 comes into force in several stages from 31 October 2022. The idea of a staged timetable up to the end of 2023 is to give charities time to digest the changes and prepare for any that might affect them. One of the key changes in the Act relates to how charities use certain types of funds – restricted funds and permanent endowment funds.



As a quick refresher:

- **Restricted funds** are those where the charity has to spend the funds in line with a particular purpose or project, usually specified by the donor or a fundraising campaign for a specific project or activity.
- **Permanent endowment** funds are less common, but the capital of these funds is to be protected and only income generated from it can be spent by the charity. Some permanent endowment funds have further restrictions on how the income is spent, but for many charities, the fund is invested for the long term, with the income from those investments being used for charitable activities. The idea is to generate a stable long term source of funding for the charity.

What is the challenge with permanent endowment funds?

Many charities find that these funds are difficult to spend down and in some cases can build up over the long term with no way for the charity to effectively utilise them. Some restricted funds, for example, may have such a narrow scope in their purpose as to be effectively redundant, or others may become outdated and relate to activities a charity no longer undertakes. In other cases, a fundraising appeal may get stalled short of its target and leave the funds unable to be utilised.

Some Permanent funds also have unnecessary restrictions on their use or even the costs of managing such funds become impractical compared to the income generated.

On occasions, charities need access to cash or resources quickly and permanent endowment funds can be inaccessible in times of need, such as during the COVID-19 pandemic when initial funding was short or activities curtailed.

We also often find that some funds, particularly endowment funds, have long legacies and original documents or agreements to their use are unclear or unable to be located. This can cause difficulty in a charity knowing how it can utilise the income or capital.

What changes does the new Charities Act introduce?

Firstly, there are amendments in force from October 2022 relating to where fundraising appeals have failed to hit targets or older appeals have funds that cannot be used up. The new rules offer more flexibility in using these funds rather than trying to contact donors from some time ago or immediately returning funds.

Such funds can be applied 'cy-pres' – which means applied to a closely related charitable purpose or similar appeal. In the past, charities had to wait six months at least before using funds in this manner, but this rule will now be removed.

Sections 6 and 7 deal with this area and should be read carefully before applying to change the use of any funds in different circumstances. For example, where the amount exceeds £1,000, there is a requirement to gain the Commission's consent.

Overall, this means that Charities will now hopefully have more flexibility in using some restricted funds that have 'stalled' or become difficult to apply to current activities.

More guidance on how to react to the types of issues raised above is available from the fundraising regulator [here](#).

How about Permanent Endowment Funds?

The changes for these funds came into effect on 14 June 2023. Previously charities could use statutory powers to apply a change of purpose for endowment funds if they had income from these funds of £1,000 or less and a market value of £10,000 or less. In most cases, this would rule out the majority of older permanent endowments. For larger funds, the charity could apply to the Charity Commission to change the purpose, but this often took some time and acceptance was uncertain as the process was considered complicated.

The new powers will mean that statutory powers can be used for funds with a market value up to £25,000, which increases the range available and simplifies the process.

For larger funds, an application can be made to the Charity Commission as before. The Charity Commission must now respond within 60 days rather than 90 days.

There are also welcome changes that increase the flexibility of these funds with a new statutory power that enables a charity to 'borrow' up to 25% of the value of a permanent endowment provided that borrowing is repaid within 20 years. This can be a useful new tool where cash needs are more urgent for Charities and appears to be a sensible approach to protecting the longer term endowment.

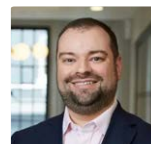
In addition, permanent endowments using a total return policy can make more varied social investments. Previously these were not considered due to a risk of a negative return. This also adds to the variety of investments and activities available.

What should you be considering as a result of these changes?

At the current time it's wise to review your funds overall and highlight any such permanent endowments or older restricted funds that may benefit from use of the new powers. Discussions would be needed at board level to approve any applications or changes and all such discussions should be minuted. Consideration should also be given as to how they might be used to further the charity's aims and activities whilst keeping in mind the various rules and process noted above and in the following link [here](#).

In conclusion, the new powers are a welcome boost to the sector in keeping activities and funds well managed and applied in the best interest of your charity.

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Gift Aid repayment claims – is your charity compliant?



HMRC have recently launched a One to Many letter campaign relating to Gift Aid repayment claims.

This is an educational letter that has been issued to charities that make use of the “aggregated donations” provisions within their Gift Aid repayment claims. The letter sets out the related rules and requirements and is aimed at supporting compliance.

Aggregated Donations

Charities can aggregate donations of £20 or less from different donors and show them as one entry on their Gift Aid spreadsheet. The total donation on one line cannot be higher than £1,000 and the total cannot include donations associated with admissions to charity visitor attractions.

To claim Gift Aid on aggregated donations, **the following needs to be entered on the claim:**

- A simple description in the aggregated donations box – for example, “Thursday club”
- The date of the last donation
- The total amount raised

There is no limit to the number of lines on a claim schedule. You should only add together donations that were made within the same accounting period.

Record Keeping

Charities must keep evidence of individual donations and show that they qualify for Gift Aid. Claims cannot be made without evidence and records must be kept for six years from the end of the accounting period to which they relate.

HMRC Agents

Gift Aid repayment claims may be submitted on behalf of a charity by an agent or other representative, however responsibility for the accuracy of the claims remains with the charity's trustees.

The charity is also responsible for providing their agent access to all records that identify their donors, amount of donations and whether those donors have agreed to Gift Aid.

One to Many Letters

The One to Many approach is where HMRC sends a standard message to many customers, in this case, trustees of charities. The aim is to influence customers' behaviour so that they are more likely to comply with their tax obligations. A One to Many approach is not a compliance check.

The letters will not be copied to agents, therefore charities may wish to share the contents of these letters with their advisors and discuss any queries with their agents or HMRC directly.

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Removal of charitable tax relief to non-UK charities



It surprised many to hear that in the 2023 Spring Budget announcement, HMRC declared that certain reliefs on gifts made in Wills left to non-UK charities would be removed with immediate effect.

What does this mean in terms of Inheritance Tax (IHT) and Will planning?

Previously, donations to EU/EEA charities were exempt from IHT. This meant lifetime gifts to many overseas charities could be made without any risk that the [sums gifted](#) would reduce an individual's Nil Rate Band (the amount up to which an estate has no IHT to pay). With the withdrawal of this relief, such **donations will now be classified as chargeable lifetime transfers** for IHT purposes. Consequently, these gifts may incur lifetime IHT charges, and additional IHT may become payable if a donor passes away within seven years of the gift.

Another consequence is if a specific charitable legacy has been written into a Will in favour of an EU/EEA charity, the cost of the withdrawn tax relief will likely be borne by the residuary beneficiaries of the estate.

Who will be impacted?

Anybody who has left a gift to a non-UK charity should review their Will as the impact may be that the additional cost of

the withdrawn tax relief is borne by the estate's residuary beneficiaries. This might not be what the Testator intended. They may wish instead for the non-UK charity to bear the burden of the tax instead.

Individuals who have relocated to the UK from Europe and are subject to UK IHT regulations are most likely to feel the impact. Likewise, UK [expats living in Europe](#) may also be caught out. Expats can still be liable for IHT in the UK on their global gifts, and some may mistakenly believe that a gift to a European charity remains exempt from IHT.

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Internal financial controls for charities CC8

A review of the Charity Commission's updated guidance for internal financial controls.



The Charity Commission issued updated guidance on 26 April 2023. The guidance has been significantly updated to look at more detailed financial controls that a charity should be expected to have, including advice and practical guidance, as well as details of changes to the law.

Therefore, the main changes are to redesign the guidance, update the controls questions and to focus attention on specific charity risk, which means the guidance now references [fraud and cybercrime](#), risk of operating overseas and risks of corruption and bribery as specific operational risks to consider. The use of internal audit and the role of audit committees is updated also.

As expected, there is detailed guidance on expenditure, which not only covers authorisation of invoices but also considers purchase ledger reconciliations, authority limits, purchase orders and whether invoices are paid on time, as well as the need to have appropriate controls for any reimbursed expenses. For payroll, a reminder that this is not only around the payroll costs controls but also with regards to starters, leavers and changes to employees' data from their contract to their bank details. The guidance is also considering modern methods and issues such as cryptoassets and payment methods like Apple or Google Pay, bank mandates and use of credit cards, as well as the basics of undertaking bank reconciliations.

There are now sections, which cover the following:

- Internal financial controls for banking
- Internal financial controls for income

- Internal financial controls for expenditure
- Internal financial controls for payments to related parties
- Internal financial controls for assets and investments
- Internal financial controls for loans
- Internal financial controls for hospitality, including gifts

Finally, the internal control checklist has also been updated and follows the updated sections and guidance of CC8. The breakdown of the checklist into these sections means it is easier to hone in on specific areas of internal control risk when reviewing the checklist.

The guidance and checklist can be found [here](#).

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Code of Fundraising Practice review



Fundraising code

The Code of Fundraising practice was last reviewed by the Fundraising Regulator in 2018/19. The latest review commenced in 2022 with phase one being a call for consultation to gather information surrounding how the code should be updated. We have now entered phase two of the review process where the proposed updates to the code can be reviewed to ensure its relevancy and effectiveness. Phase three will see implementation of the code in 2025.

The 12-week consultation of phase two is now running until the 1 December 2023 and is seeking external feedback on the proposed changes to the code. We would encourage all fundraising charities to engage in the [review of the code](#) and feed into the consultation so that its updates best reflect your requirements.

The review encompasses three areas; the general principles of the code, updated planned policy changes, and minor updates to the existing code.

The Fundraising Regulator are particularly considering additional rules, regulations and policies on the following areas:

- **Contactless/tap and donate** – ensure total transparency for donors so that the information provided to them at the point of donation communicates transaction fees and donation amount.
- **'Round ups' and micro-donations** – consider transparency surrounding rounding up card transactions or additional small donations.
- **Cryptocurrencies and NFTs** – assess the key principles for charities to consider when receiving crypto-donation.

- **Online Fundraising platforms** – to what extent should online fundraising platforms have to confirm their compliance with the code as well as enforcing their users to confirm their compliance.
- **Social media** – consider whether the code should cover social media fundraising.
- **Gaming and streaming** – consider whether the code should specifically cover fundraising in gaming environments.
- **Protecting fundraisers** – consider whether the code should include protection for fundraisers from inappropriate behaviour by donors and potential donors.
- **Modern slavery** – consider whether the code should require that charities carry out proportionate due diligence and monitoring of supply chain partners.
- **Complaints handling** – expand the code to require all applicable organisations to comply and engage with the Fundraising Regulator’s processes
- **Third-party regulators and legislation** – expand the code so that a breach of any legal obligation relating to fundraising would equally result in a breach of the code.
- **Use of funds** – require accountability for funds from campaigns that are unsuccessful or those which exceed their target, which is not stipulated as a requirement currently.

There are also consultation questions to confirm suggested updates to the existing code. As exemplified in the above list, fundraising methods are continuing to evolve and therefore the code must adapt accordingly. Should the code be expanded to include these new types of fundraising areas specifically and clarify precisely how charities need to behave?

We would encourage charities to engage in the fundraising consultation. It is expected that the code will be issued in 2024 following this consultation, with implementation from 2025.

Social media

The Charity Commission also issued their guidance on social media in September 2023 detailing how charities should campaign legitimately.

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The next charities SORP and FRS102



The Financial Reporting Council has produced [a project update on the next FRS102](#). The timeline for its application has moved from the accounting period beginning on, or after, 1 January 2025 to 1 January 2026 at the earliest; this being a year later than FRED 82 originally proposed.

Charities SORP

The delay on the FRS102 comes as welcome news as the Charities SORP has not yet been issued for consultation; this we are expecting in 2024 with a short 12-week consultation period and plans to have a final version issued by the Autumn/Winter 2024. This means, however, that there will be little time for the charity sector to consider and debate the next SORP if only a 12-week consultation period takes place.

We ask all charities to be prepared for the SORP review in 2024 so that you can review the commentaries that will be produced on the changes planned. This includes our own commentary and events, to please issue feedback to the SORP making body. It is evident from the FRS102 process that the final version will be updated by the FRC with the comments they have received.

The FRC response to FRED 82 says “We are preparing final amendments for issue, taking into account the responses received. The final amendments are likely to differ in a number of respects from the FRED 82 proposals; the basis for conclusions will explain our key judgements and decisions.”

By providing feedback on the proposed changes by the Charities SORP, we can ensure the changes remain relevant and effective.

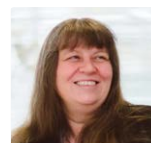
Next FRS102

From the project update from the FRC on the next version of FRS102, it is clear that the proposed alignment with international standards on the five-step model for contract income recognition and for all leases, including operating leases being recognised on the balance sheet remains.

However, there are indications that the FRC are considering exemptions on the size criteria to which the requirements will apply; instead making the requirements more proportional, as well as looking to clarify recognition exemptions on low value leases.

The final version is due to be issued in the first half of 2024.

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Our Not For Profit team

This newsletter is from our Charity and Not for Profit team at Price Bailey, if you have any questions about any of the points raised in this newsletter please contact us [here](#).

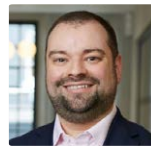
We always recommend that you seek advice from a suitably qualified adviser before taking any action. The information in these articles only serves as a guide and no responsibility for loss occasioned by any person acting or refraining from action as a result of this material can be accepted by the authors or the firm.

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