

COMPANY LAW CHANGES

Company law has been undergoing major changes as a result of the Companies Act 2006. The Act has been brought into force in phases. The last phase of implementation takes place on 1 October 2009. The changes happening then will be a combination of changes in the law and also practical changes to how Companies House will operate.

For charities which are structured as companies, there will be some significant changes. Most noticeably, from 1 October 2009 all Companies House forms will change. There will be over 250 new forms and all forms will have a new look and new names.

If your charity is a company, you have to notify Companies House every time your 'Trustees' change. 'Trustees' is the term used by OSCR for the people who are in management and control of the charity, no matter what structure the charity has. For the purposes of charitable companies, Companies House refers to these people as Directors. Changes must be notified to Companies House as soon as they take place, using the appropriate forms. If the change happens before 1 October 2009, you must use the 'old style' forms (even if you are sending them to Companies House after 1 October). For all changes that take place after 1 October 2009, the new forms must be used.

Changes to the Trustees do not have to be separately notified to OSCR. The information will be picked up from the questions on the OSCR Annual Return.

The time limit for filing accounts with Companies House has also been shortened to nine months from your financial year end. The penalties for late submission have also been increased. The new, shorter time limit is the same as that for delivering your annual report

and accounts (along with the OSCR Annual Return) to OSCR.

OPPORTUNITIES AT OSCR

The Scottish Government is advertising for at least two new Trustees for OSCR. The new Trustees will have a four year term of office, starting from 1 March 2010. It is commitment of 1.5 days per month and the salary is £200 per day plus expenses. The closing date for applications is 8 October 2009.

OSCR ANNUAL REPORT

In September 2009, OSCR published its Annual Report and Accounts 08-09. OSCR noted that 2008-09 had been a very busy year for casework. There was a 40% increase in the number of charities applying for consent to take certain actions (the law requires that you get prior consent from OSCR if you want to change your name, wind-up, amalgamate, change your objects/purposes, or change your legal structure). There was also a significant increase in the number of applications from charities wanting to re-organise. These increases (hopefully) show that charities are more aware of their obligations to work with OSCR.

In the Report, OSCR also made some recommendations for minor changes to current Charity law, including a requirement that every charity on the OSCR register have a continuing connection with Scotland (by having an office here or at least one Trustee resident here).

GIFT AID

HM Revenues & Customs has published revised recommended wording for Gift Aid declarations. The new wording includes changes

If you would like to discuss this or any other matter relating to the Law and Administration of Charities, please contact any member of the Balfour + Manson Charity Team:

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to the statement made by the donor to include confirmation that the donor has paid sufficient tax to cover the Gift Aid being reclaimed and also the dates of the tax year. There should be no need to replace existing Gift Aid declarations with new ones. The new Gift Aid declarations should be brought into use for future donations.

MANAGING THE MONEY

In the current economic climate, charity Trustees are rightly concerned about their organisation's financial position. Trustees must ensure that they are getting access to the right

financial information (you can't make judgments and decisions on incorrect, incomplete or out-of-date information) and are asking the right questions. Although the Charity Commission in England & Wales has no jurisdiction in Scotland (and all its advice and guidance is based on English law – not Scots), it has prepared helpful guidance on 'The Economic Downturn, 15 questions Trustees need to ask'. The Guidance can be found at www.charity-commission.gov.uk/tcc/ccnews29check.asp

VOLUNTEERS – WHAT IS THEIR LEGAL STATUS?

Charities and the not-for-profit sector rely hugely on the work of volunteers to allow their organisations to function and for the core aims of the charity to be realised. It is estimated that last year, there were approximately 18 million people in the United Kingdom choosing to volunteer. There are a number of theories about this expansion, with many believing that the non-stop pace of modern life means individuals wish to "put something back" into society. Whatever the reason there is no doubt that the not-for-profit sector now consider volunteers to be vital for the survival of their organisation.

However, more and more trustees have found that this boom in volunteers comes at a price. As volunteers participate more, and return to the charity time and again for regular events, the charity runs the danger that their legal status will change from that of "volunteer" into an employee of the charity.

The consequences of someone actually crossing the line and being found to be working in an employee/employer relationship, and not as a "pure" volunteer, are considerable. If your volunteer is (in law) an employee, then you will have to (among other things) (1) pay the national minimum wage; (2) offer statutory sick pay when they do not attend; (3) give them their allocated holiday allowance and (4)

ensure that they are not unfairly dismissed (subject to a statutory qualifying period of service).

If you think that at your last mass participation day you had, for example, 100 volunteers through the door, then the financial consequences of treating them all as employees can be stark. As well as the financial costs, there is also the time and effort spent dealing with grievances over someone's status, and the stress and anxiety of defending a claim at the Employment Tribunal. In a number of Tribunal decisions, such as that in the case of *Migrant Advisory Services v Mrs Choudry 1998 (EAT140097)*, it has been shown how easily and unwittingly a charity can turn their volunteers into employees by their own actions.

So how can you avoid volunteers gaining employee status?

A good general rule is to avoid payments being perceived as salary. Any reimbursements for bus and train fares, should be given with a written note that they are to reimburse, and are not in any way being offered as a "benefit" in kind. You should make it clear that you do not intend to create a contract, and make a distinction between your paid employees and your volunteers. Effectively, you should try and reduce the obligations that the volunteers have to the organisation and your obligation to them.

The volunteer agreement can be a clear way in which to ensure your volunteers are aware of their status although again there are pitfalls, and they should be carefully drafted.

The advice is clear, the employment issues raised by volunteers in the non profit sector are complicated, and as usual, you should seek legal advice at the earliest opportunity!

The Balfour + Manson Employment Law Team produce a bi-monthly newsletter. If you would like receive a copy, either by mail or email, please contact Luisa Deas.

luisa.deas@balfour-manson.co.uk

FREE BREAKFAST SEMINAR

Tuesday 10 November 8:30–10:00

Volunteers – Managing the risks

During this free 60-minute seminar we will examine the legal position of volunteers within your organisation with particular emphasis on their status and distinction with employees.

Our employment specialists will give guidance on how to avoid potential claims and grievances. We will also be a look at the pros and cons of volunteer agreements and when they should be used.

This free 60-minute event starts with registration and breakfast at 8.30am. The presentation begins at 9.00am finishing at 10.00am. All events are held at our Frederick Street offices.

To book a place please contact, Luisa Deas, luisa.deas@balfour-manson.co.uk, 0131 200 1402.

THE ENVIRONMENT

If you would prefer to receive charity law MATTERS and any of our other newsletters by email, please contact:

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