GUIDANCE NOTE : NEW REPORTING REQUIREMENTS CHARITIES ACT 2016

This note provides guidance on the reporting requirements in the Charities (Protection and Social Investment) Act 2016 which came into force for accounting periods beginning on or after 1st November 2016. The new reporting requirements apply to charities which are reporting in 2018. This year it would affect charities with a December 2017 or March 2018 year end.

The Fundraising Regulator, together with the Charity Commission for England and Wales is seeking to raise awareness of the new reporting requirements as they apply in England and Wales.

Guidance on all of the Charities Act 2016 can be found on the Charity Commission for England and Wales website. There is also a list of Frequently Asked Questions to help Trustees further understand their responsibilities with regards to the Act - these are on the Fundraising Regulator website.

The Charities (Protection and Social Investment) Act 2016 in brief

The sections 13 and 14 of the Charities Act 2016 which apply to fundraising came into force for accounting periods beginning on or after 1 November 2016. The three main duties in the Act relate to:

- Charities reporting extra information provided in agreements between charities and professional fundraisers / commercial participators.
- Charities reporting extra Information on compliance with voluntary regulation provided as part of some Charities' annual reports
- Reserve powers to introduce statutory regulation but these have yet to be implemented. They will only be considered if the new system of voluntary regulation fails.

Annual Report Requirements

Who is affected?

The Charities Act requirements are mandatory for larger charities whose accounts are subject to audit under section 144 of the Charities Act 2011. The Charity Commission's (CC20) guidance expects trustee assurance that their charity's fundraising is compliant with the recognised standards of fundraising (set out in the Code of Fundraising Practice) as well as those required under charity law and wider law. Good reporting and participation in the Fundraising Regulator's voluntary regulatory regime demonstrate that trustees are taking these responsibilities seriously. We recommend that other charities signed up to the voluntary regulatory regime also apply this guidance even if there is no requirement to do so - for example, charities registered in Northern Ireland.

When does it need to be implemented?

The requirements apply to charities reporting within the first financial year starting after 1 November 2016. .

What do charities need to do?

The Act requires that any charity required to have its financial statements audited, includes a statement of each of the following for that year in their trustees' annual report:

- FR The charity's approach to monitoring of all activities undertaken by the charity or by any person on behalf of the charity for the purpose of fund-raising. In particular. whether a professional fund-raiser or commercial participator carried on any of those activities.

- FR Whether the charity or any person acting on behalf of the charity was bound by any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, for the activities carried out on behalf of the charity, and, if so, what scheme or standard.

- FR Any failure to comply with a scheme or standard mentioned above (the charity must state if they are not complying).

- FR Whether the charity monitored activities carried on by anyone on behalf of the charity for the purpose of fund-raising, and, if so, how it did so.

- FR The number of complaints received by the charity or a person acting on its behalf about fundraising activities carried out by the charity or someone on behalf of the charity.

- FR What the charity has done to protect vulnerable people and other members of the public from certain behaviour during (or in connection with) such fundraising activities. Such behaviour includes:

    - unreasonable intrusion on a person's privacy;
    - unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity; or
    - placing undue pressure on a person to give money or other property.

For the style of reporting, we suggest charities say something positive about their compliance with the Fundraising Regulator's voluntary regulation scheme in their Annual Report. It can only be to the charity's advantage to give donors confidence about the charity's compliance with best fundraising practice. Trustees of smaller charities who voluntarily comply with the reporting duty, and participate in the regulatory scheme demonstrate that the charity is seeking to comply with best practice. We also believe there are many other advantages to registration. For example, funders are more likely to support charities who are signed up to the Code and have the Fundraising Regulator badge.

What can charities expect from the Charity Commission?

Any non-compliance with reporting duties under charity law will be a matter of interest to the Charity Commission. The Commission has consistently identified the high level of public concern about charity fundraising practices (Public trust and confidence in charities 2016). The Commission expects trustees to follow the guidance set out CC20 so that a charity's fundraising is explained clearly and openly, and fully complies with accounting and reporting obligations. In cases where complaints are made to the Commission, it will consider whether its powers need to be used for individual cases that give rise to regulatory concern.

What can charities expect from their auditors and independent examiners?

Auditors and independent examiners will read the trustees' annual report as they are (broadly speaking) required to report on whether the information given in it is inconsistent with the financial statements. They also have a discretionary right to report matters that may be relevant to the work of charity regulators even if the matter may not be one of material significance. Failure to comply with the Charities Act in this regard is not considered to be a matter of "material significance" according to the advice issued by the regulator in November 2017. Non-compliance by a charity with the reporting requirements outlined above may, therefore, be a matter of concern to auditors and independent examiners.

Review

The Fundraising Regulator will encourage a review of compliance with Charities Act reporting after the first year of returns.