GUIDANCE NOTE: CHARITIES ACT 2016 – NEW AUDIT REQUIREMENTS

This note provides guidance on the audit requirements in the Charities (Protection and Social Investment) Act 2016 which came into force on 1st November 2016. The new audit requirements applies to charities which are reporting in 2018. This would be typically charities with a December 2017 or March 2018 year end.

The Fundraising Regulator and the Charity Commission are seeking to raise awareness of the new audit requirements.

Guidance on the Charities Act 2016 can be found on the Charity Commission website and there is also a list of Frequently Asked Questions on the Fundraising Regulator's website to help fundraisers and auditors further understand their responsibilities with regards to the Act.

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

Sections 13 and 14 of the Charities Act 2016 apply to fundraising and came into force from 1st 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 in relation to fundraising regulators. However, statutory powers will only be considered if the new system of voluntary regulation fails.

2. Annual Report Requirements

Who is affected?

The Charities Act 2016 requirements are mandatory for larger charities whose accounts are subject to audit under section 144 of the Charities Act 2011. Guidance from the Charity Commission titled Charity fundraising: a guide to trustee duties (CC20) aims to help trustees ensure that their charity's fundraising is compliant with the standards required by trustee duties under charity law, wider law and best practice. Good reporting and participation in the voluntary regulatory scheme demonstrates that trustees are taking these responsibilities seriously. We recommend that other charities who choose to have their accounts audited or independently examined and are within the scheme of voluntary regulation also apply this guidance.

Timescale for implementation:

The requirements apply to charities reporting their first financial year starting after 1 November 2016. Typically, charities will report with a financial year ending December 2017 or March 2018 (the majority of charities choose one of these year-end dates).

What charities need to do:

The Act requires that charities must include a statement about the following in their trustees' annual report:

1. The charity's approach to fundraising activity, and in particular whether a professional fundraiser or commercial participator was used.
2. Details of any voluntary fundraising scheme or standards which the charity or anyone fundraising on its behalf has agreed to. This includes the regulation scheme established by the Fundraising Regulator.
3. Any failure to comply with a scheme or standard cited.
4. Whether and how the charity monitored fundraising activities carried out on its behalf.
5. How many complaints the charity or anyone acting on its behalf has received about fundraising for the charity.
6. What the charity has done to protect vulnerable people and others from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity. Here the charity might report whether it has signed up to receiving suppressions under the Fundraising Preference Service.

   In terms of the style of reporting we suggest that charities say something positive about their compliance with the voluntary regulation scheme in their Annual Report. It is to the advantage of the charity to give donors confidence in the charity's compliance with best fundraising practice. Trustees of smaller charities who voluntarily comply with the reporting duty and participate in the fundraising regulatory scheme demonstrate that the charity is seeking to comply with best practice.

What auditors need to do:

Auditors and independent examiners should have regard to the following guidance:

1. As part of the Audit Disclosure Checklist auditors should examine whether charities are disclosing their compliance with the Act for the requirements noted above and document the results and consider the implications for reporting to the Commission. Also independent examiners, when reviewing the trustees' annual report, are recommended to look to see if the trustees have voluntarily made this reporting and if not consider whether to report to the Commission.
2. When advising charities the auditors and independent examiners should make it clear that the Charity Commission under its CC20 Guidance advises that charities should comply with the Code of Fundraising Practice.
3. Where a charity has not signed up to the voluntary regulatory standard then they must explain why they have not chosen to comply with the Fundraising Regulator's scheme of regulation. Non-compliance is not a matter that will lead to a qualification of the charity's

accounts. However it should be commented on in the Management Letter to the Trustees sent by the auditor and included in any advice by the independent examiner.

4. Auditors and independent examiners 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. *(**Note**: Failure to comply with the Charities Act in this regard is not considered to be a matter of "material significance" in line with the advice issued by the regulator in November 2017).* Given the advice to trustees set out in CC20, any non-compliance with the reporting duties stated in charity law will be a matter of interest to the Charity Commission and it will consider use of its powers in individual cases.

3. Review

The Fundraising Regulator will encourage a review of compliance with Charities Act 2016 reporting after the first year of returns.