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CHARITY NEWS

AUTUMN 2020



Our Charity News includes the latest guidance on coping with the impact of COVID-19, promoting diversity and inclusion within the charity sector and how to report serious incidents to the Charity Regulators. We also consider the impact of recent reporting and tax developments and other pertinent issues, giving you the inside track on the sector's current hot topics and latest guidance.

The newsletter is applicable to the whole of the United Kingdom and makes reference to the three UK charity regulators:

- the Charity Commission for Northern Ireland (CCNI)
- the Office of the Scottish Charity Regulator (OSCR) and
- the Charity Commission for England and Wales (CCEW).

All the articles may be of interest, however to aid you we have included the following key:

Key	
	United Kingdom
	England
	Wales
	Scotland
	Northern Ireland

Hot topics

Covid-19 update



2020 has been a year like no other in living memory, with the coronavirus pandemic having had an extraordinary impact in the UK and across the world. Just as things seemed to be returning to something resembling normality, a series of local lockdowns, more restrictions on socialising, a call to work from home if you can, reimposed quarantine requirements for those arriving from overseas and strengthened social distancing measures were introduced, bringing uncertainty for the foreseeable future. The pressure on the charity sector to deliver much-needed services has never been greater.

The financial implication of the pandemic on charities is immense. A survey undertaken by the Institute of Fundraising, Charity Finance Group and National Council for Voluntary Organisations (NCVO) revealed that charities are expecting the loss of 48% of their voluntary income, and a third of their total income, directly as a result of COVID-19. Over half of charities have had to reduce existing or previous levels of service

as a result, and the strain on charities' reserves is clear for all to see despite the package of financial assistance that has been offered by the government.

Fortunately the government has responded to the continuing crisis by extending some of the temporary measures that were introduced to help businesses in areas such as insolvency law and corporate governance that are also of relevance to the charity sector. You can read about these measures in this newsletter. The Chancellor has also launched his 'Winter Economy Plan', the highlight of which was the Job Support Scheme that will replace the Coronavirus Job Retention Scheme when it comes to an end on 31 October 2020. To qualify for this scheme workers will have to work at least a third of their normal hours which will be paid for by their employer, with the government and employer both paying a third of the normal hours not worked, with the government contribution capped at £697.92 a month. The scheme will run for six months until April 2021 and is open to small and medium-sized employers, with large employers only eligible for the scheme if their turnover has reduced due to the pandemic. For more details on the Job Support Scheme, see the government's factsheet at <https://bit.ly/3n5ECsL>.

For those employers that have been legally required to close as a result of lockdown restrictions, additional support is available, with the government meeting two-thirds of the cost of employees who are unable to work, up to a limit of £2,100 per month. More information on this expansion of the Job Support Scheme can be found here: <https://bit.ly/34UmpX>.

Each of the UK's Charity Regulators continue to issue guidance for charities on issues raised by COVID-19, and although the volume of new guidance has decreased since the early days of the outbreak, updates are made as the situation evolves. Trustees and charity managers should frequently refer to this guidance to ensure that they are able to effectively manage their charity at this difficult time. This guidance can be found online as follows:

CCEW: <https://bit.ly/310HSMO>

OSCR: <https://bit.ly/2SPsTAN>

CCNI: <https://bit.ly/30YUaVO>

Some of this guidance is referred to elsewhere in this edition of Charity News, along with that published by other bodies such as The Fundraising Regulator. For charities that are struggling financially, the guidance from the regulators includes details of issues for trustees to consider, the grant funding that is available and links to other sources of guidance.

How to report serious incidents



Charity law requires trustees to report serious incidents to their regulator as they arise. To assist trustees in determining what matters need to be reported at the current time, CCEW has produced a series of supplementary examples to its existing guidance that consider how the COVID-19 pandemic impacts upon the reporting obligation. Key things to consider include:

- closing premises and suspending services in order to comply with government rules is not a serious incident in itself, it is the impact this has on the charity that is key as to whether a report is required.
- the usual rules regarding the need to report financial losses where they exceed £25,000 or 20% of a charity's income do not apply during the pandemic, rather trustees should focus on the significance of the impact of any losses incurred rather than the amount.

Trustees are reminded that ultimately it is they that are responsible for reporting serious incidents to the regulator, even if delegated to others, and that they should document the decision making process when deciding on whether to make a serious incident report or not.

Guidance by the regulators in Scotland and Northern Ireland mirrors that published by CCEW, and charities in those regions are likely to find the CCEW examples helpful when considering whether they have an obligation to notify their regulator of an incident.

Guidance:

E&W <https://bit.ly/3kWFapt>

Scotland <https://bit.ly/2Ghx59u>

NI <https://bit.ly/2HHS2v1>

Fraud and the pandemic



Charity regulators have warned that the COVID-19 pandemic presents an opportunity for fraudsters, with those charities providing services and supporting local communities during the crisis particularly vulnerable to an increased level of coronavirus related frauds and cyber-attacks.

CCEW has teamed up with The Fraud Advisory Panel (FAP) to issue guidance to charities on how best to protect themselves, highlighting that they need to be extra vigilant in respect of the following types of scams:

- scam emails
- procurement fraud

- mandate or Chief Executive Officer frauds
- unsolicited offers of goods, services or financial support.

The guidance highlights the need to ensure that electronic devices such as laptops and mobile phones are protected from the latest threats and the need to use video conferencing services such as Zoom and Skype securely.



Throughout the pandemic FAP, in conjunction with other parties such as the Cabinet Office and City of London Police, have published frequent updates on emerging threats and trends that organisations need to be aware of and the preventative actions that can be adopted in response. Charities can use this guidance to strengthen their procedures and raise awareness within their organisation on the threats they face.

Guidance:

CCEW: <https://bit.ly/2G0mSP9>

Fraud Advisory Panel: <https://bit.ly/347UqTj>

Fundraising guidance



The Fundraising Regulator and the Chartered Institute of Fundraising have recently published guidance for charities on how they can restart their fundraising activities safely. Prepared in consultation with Public Health England and the Health and Safety Executive, this new guidance sets out key principles to be adopted to ensure that fundraising can be carried out safely and sets out a framework to aid good decision making.

Many charities depend on the income raised from fundraising to be able to carry out their charitable activities but will have seen that income dramatically reduce in recent months. In June the Chartered Institute of Fundraising reported that charities are expecting their voluntary income to reduce by 42% this year on average, which will significantly hamper charities' ability

to carry out many of the vital services they perform. Charities may be keen to recommence their fundraising activities as soon as possible.

The guidance makes clear that fundraising should only restart when it is safe to do so and where the risks associated with the activities can be properly managed. Effective planning of the activities is key, with the need to carry out thorough risk assessments that take into account the latest government guidance so that decisions on whether to fundraise are thoroughly considered and carefully evaluated. Failure to adequately assess the risks involved before commencing any fundraising activity is likely to be a breach of health and safety law and which in serious cases could result in criminal prosecution. Proper oversight over those decisions is essential, so the involvement of the trustees is crucial, as they have ultimate responsibility for the operations of the charity.

It is equally important that charities also have in place plans to stop fundraising in the event that restrictions are put in place once again. This is particularly relevant in areas with local lockdowns.

Safeguarding the public, staff and volunteers is of paramount importance, with appropriate measures implemented that permit social distancing to be observed. Fundraisers are likely to require training in these measures before any activity takes place. Charities should be transparent with the public and others on how they will carry out their fundraising activity responsibly, including how they consider the needs of people in vulnerable circumstances.

In the guidance charities are reminded to not apply undue pressure on donors, many of whom may be under financial pressure of their own at the current time. Fundraisers always need to be polite and respectful, and mindful of how the public may respond to any fundraising activity that is carried out.

In addition to the key principles more detailed guidance on public fundraising has been issued, setting out ways by which charities can carry out fundraising in a safe manner.

Guidance: <https://bit.ly/3ifjvRa>

Transparent and accountable governance



In June CCEW issued an alert for charities, highlighting the importance of transparent and accountable governance. The alert is aimed at larger charities, those with income over £9 million with a complex governance and management structure and where they are a service providing charity where front line staff interact with beneficiaries, some of whom may be

vulnerable. Your charity may not have faced issues in how it is governed and managed historically, but the alert confirms that it is crucial that you are aware of the risks which can result from governance or management failures. The timing of the alert is in response to recent high profile governance failings that have the potential to damage the sector as a whole, at a time when the COVID-19 pandemic is placing considerable strain on many charitable organisations.

The alert reminds trustees of the risks that can result from failures of governance and seeks to help them mitigate those risks by providing guidance on how to implement effective governance. Separate guidance for trustees and executives is included in the alert on risk management, communication and reporting handling complaints, amongst other topics. There is also guidance on safeguarding and guidance for charities that provide services directly to beneficiaries.

Guidance: <https://bit.ly/36iuHKC>

Independent examination



The COVID-19 pandemic will have a significant impact on the independent examination of charity accounts, both on the nature of the work that will need to be performed and the practical difficulties involved. To address these issues the charity regulators have published supplementary guidance for independent examiners for the work they perform during times of national emergency.

The main areas this guidance covers are:

- the impact of the pandemic on obtaining access to the charity's records, particularly when social distancing measures are in place
- access to those in management and control of the charity
- additional risk factors the examiner will need to consider
- implications for the examiner's report
- sign off and filing of accounts.

Examiners will familiarise themselves with this supplementary guidance, but will also be beneficial for small charities subject to independent examination to be aware of the issues it covers. Charities can arrange to have the necessary documentation ready to ensure that the examination process goes as smoothly as possible.

Guidance: <https://bit.ly/36caK8i>

Diversity in the charity sector



It may not feel like it at times, but the pandemic has not been the only news story of 2020. The Black Lives Matter protests that followed the death of George Floyd in the United States showed that race equality remains a major issue in the UK as well, and perhaps one where there is renewed impetus to make lasting changes for the benefit of all.



The charity sector is not immune from these issues, with the recently published NCVO UK Civil Society Almanac 2020 showing that only 9% of the sector's employees came from BAME (Black, Asian and Minority Ethnic) backgrounds, compared to 12% in the public and private sectors and 13% of the overall population. This is consistent with a report published in 2017 by CCEW that revealed the lack of diversity at board level, with 92% of trustees being white, older and with above average levels of income and education.

Why is this important? Apart from the moral and legal arguments to avoid discrimination and promote the same opportunities for all regardless of background, the 2018 report Racial Diversity in the Charity Sector published by the Association of Chief Executives of Voluntary Organisations (ACEVO) identified four other reasons why charities can benefit from having increased diversity in their workforce, namely that they:

- help to prevent 'groupthink' and encourage a greater range of thoughts and ideas
- generate more income and outperform their competitors
- are more innovative
- attract more talent.

Compelling reasons such as these should encourage charities to review their own position and take steps to promote inclusion and diversity to ensure that their leadership, employees and volunteers better reflect the backgrounds of their beneficiaries and society at large. Guidance on how to do so is available on both the NCVO and ACEVO's websites for those charities that are looking to increase diversity and reap the benefits that it brings.

Guidance:

ACEVO <https://bit.ly/2GjTMdi>

NCVO <https://bit.ly/33bwdft>

Enhanced register of charities



Anyone who has used the CCEW register of charities since early September will have noticed that it has undergone a major transformation. As well as a more modern look and feel, the range of information that is presented has also been increased with a view to enhance public understanding of how the charity operates and improve transparency. Additional information that is now presented includes the following:

- the number of staff within a charity with remuneration packages above £60,000
- whether trustees, who are usually volunteers, are paid for their services to the charity
- income from government grants and contracts
- whether the charity utilises the services of a professional fundraiser
- whether the charity has specific policies in place, including in relation to safeguarding.

Most importantly the updated register will show any regulatory alerts to highlight any action taken or underway by CCEW in its role as regulator.

The register has also improved its search function, enabling users to search for charities based in a particular area, and also now enables users to download the register's dataset for research or analysis. Future enhancements are planned that will improve data sharing further.

Guidance: <https://bit.ly/3kXBZYq>

Revitalising trusts



It may sound surprising, but a large number of charities struggle to spend their income on meeting their charitable objectives for the public benefit. Working in conjunction with the UK Community Foundations Network and the CCEW, the 'Revitalising Trusts'

programme seeks to assist inactive or ineffective charities by helping them to identify beneficiaries and spend their income, changing the charity's purpose and governance if necessary to enable it to work more effectively. Charities that have not spent any money in the last five years, or have spent less than 30% of its income over the past five years, may be identified by CCEW for inclusion within the programme.

Where revitalising the charity is not seen as appropriate, an alternative approach is to close the charity down and to transfer any remaining assets to another charity with similar objectives or to a local community foundation. Since its launch in 2018 the programme has revitalised £32 million of funds to help good causes, and has now secured funding to operate for another year.

Guidance: <https://bit.ly/3kVmdNB>

Scottish land-owning charities



A significant proportion of Scotland's land is held by private trusts and charities. To ensure that such land is held for the benefit of everyone in Scotland, the Scottish Land Commission has published a new protocol for charities that own land in Scotland, designed to ensure that the way the land is owned, managed and used is fair and considers the needs and priorities of the local population; encourages positive behaviour by all parties; and actively engages with local communities in decision-making on the way land is utilised.

Specific measures that should be met include ensuring that information on land ownership is publicly available. Whenever significant changes to land use are proposed the Scottish Land Commission's protocol on community engagement should be followed and trustees should, where possible, be appointed from the local area where the land is held.

Guidance: <https://bit.ly/3n187w2>



Accountancy and tax update

The Charity SORP



All charities across the UK who do not prepare receipts and payments accounts should adopt the accounting principles set out in the Statement of Recommended Practice for Accounting and Reporting by Charities ('The SORP') when preparing their financial statements. The SORP is based upon FRS102, The Financial Reporting Standard applicable in the UK and Republic of Ireland, being the underlying reporting framework that underpins Generally Accepted Accounting Practice in the UK. Regular updates are required to ensure that The SORP remains consistent with FRS102 and any changing legislative requirements, and since The SORP's initial release in 2014 there have been two Update Bulletins which have both been reflected in the second edition of The SORP, published in October 2019.

There are no changes to The SORP to report in this edition of Charity News, although two new Information Sheets have been published which are considered below. There is also a proposed change to FRS102 regarding accounting for operating leases which will be of relevance to charities which is discussed below. Readers are also reminded that in March the SORP Committee published guidance on the implications COVID-19 could have on charity reporting. The guidance sets out how to reflect the impact of the outbreak in the trustees' report for issues such as a fall in fundraising income or changes in demand for the charity's services, and how the charity is responding. It also addresses the accounts themselves, covering issues such as going concern, the impact on the measurement of provisions and the disclosure of post balance sheet events. A copy of the guidance can be found using the link: <https://bit.ly/33QS4cu>.

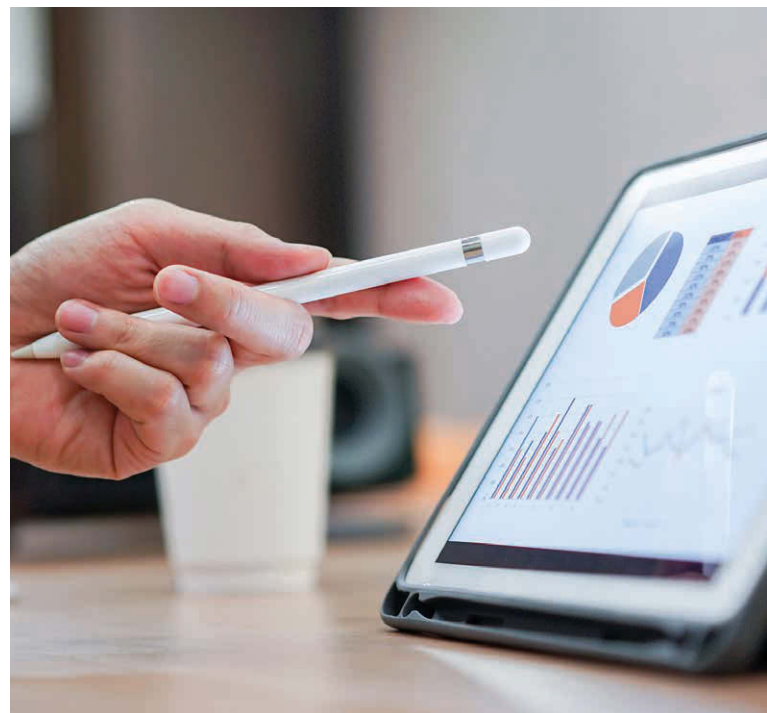
Filing the annual report



To ease the administrative burden on companies during the COVID-19 pandemic a temporary measure to provide additional time for companies to file accounts at Companies House was enshrined in law over the summer with the passing of the Corporate Insolvency and Governance Act 2020. Charitable companies usually have 9 months to file their accounts with Companies House. This is now automatically extended to 12 months for any accounts whose original filing deadline falls between 27 June 2020 and 5 April 2021. For example a charitable company

with a 31 March 2020 year-end would normally have to file its accounts with Companies House by 31 December 2020, this is now automatically extended to 31 March 2021.

This extension will be applied to the original filing deadline, it will not be added to any existing filing extension granted by Companies House.



Note that the automatic extension of the filing deadline does not also apply when submitting the annual report to the charity regulators. Charities that are unable to file their annual return on time should contact their regulator to request a filing extension.

There are also temporary extensions to the filing deadline for the annual confirmation statements and a range of event-driven filings that charitable companies may have to report to Companies House, such as changes to details of directors or the registered office.

Guidance: <https://bit.ly/3cFU9ed>

Charity SORP Information Sheets



Information Sheets are published by the joint SORP-making body and seek to clarify the application of the SORP, or cover matters not addressed in the SORP but are relevant to charity reporting. Two new Information Sheets have been published, although are likely to be of limited application to most charities. However where relevant, preparers of charity accounts should read them.

Information Sheet 5 is of relevance to charitable companies and addresses the implications of a new

requirement to disclose details of energy usage contained within The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018. These new regulations will apply to charitable companies across the UK that meet the Companies Act 2006 definition of a large company, which is broadly defined as one that meets two or more of the following criteria for two consecutive financial years:

- gross annual income of more than £36 million;
- gross assets of more than £18 million; or
- more than 250 employees.

Additional guidance on determining the size of a charitable company is included in Information Sheet 3. Note that charities that do not meet the large company criteria are not prevented from including disclosure on their energy use in their annual report if they believe it will be useful in improving transparency and where it provides the users of the annual report with a greater understanding of the charity's performance.



For accounting periods commencing on or after 1 April 2019, those charitable companies which are subject to these new regulations are required to include as part of the 'Achievements and Performance' part of their trustees' report information on their UK energy use and associated greenhouse gas emissions relating to gas, electricity and transport fuel, including an intensity ratio, and details of any energy efficiency action taken. Alternatively the information could be presented as part of a separate environmental report, although one that is clearly marked as forming part of the charitable company's directors' report.

The guidance included within the Information Sheet explains in greater detail each of the disclosure requirements, as well as the exemption from disclosure that exists for low energy users, such as those which have consumed 40MWh or less of energy during the reporting period. There is also guidance on the application of the regulations to charitable groups. Additionally there is a link to more detailed government guidance that has been published that applied to all organisations that are required to report on their energy usage, not just charities.

Information Sheet 6 confirms that charitable companies registered in the Republic of Ireland are unable to use merger accounting where they enter into a business combination with a third party, the same as charitable companies incorporated in the United Kingdom. Unincorporated charities and Charitable Incorporated Organisations will continue to apply merger accounting to business combinations where the qualifying criteria set out in the Charity SORP are met, as will charitable companies registered outside of the UK and the Republic of Ireland where the local statutory framework does not prevent the use of merger accounting.

Guidance: <https://bit.ly/3kQTTfc>

Future charity SORP developments



At the July meeting of the SORP Committee the timetable and process for the publication of the next version of the Charity SORP was discussed. Future changes to the Charity SORP will be closely tied to more general developments in UK accounting practice and the next update of FRS102, the financial reporting standard upon which the SORP is based. As a result we can now expect that a draft of the next version of the Charity SORP will be published no earlier than July 2022, with a consultation and finalisation process taking up to a year to complete. It is hoped that the next version of the Charity SORP will then be finalised no later than October 2023 and will come into force for accounting periods beginning on or after 1 January 2024. This means the existing version of the Charity SORP will remain in force for a few years yet.

To assist with the future development of The SORP a panel of volunteer convenors has now been appointed that will advise The SORP Committee by offering views and ideas early on in the SORP development process. These convenors each represent an area of the charity sector, ensuring that the views of the widest range of preparers and users of charity accounts are reflected as possible.

Accounting for operating leases



To help with the financial downturn caused by the COVID-19 pandemic many lessees have been granted rent concessions by their landlords. This could take the form of a temporary rent reduction or a rent holiday. Due to a lack of any clear guidance in existing standards there have been differing views as to how concessions such as these should be accounted for, leading to inconsistencies. Some have argued that any concessions granted should be recognised over the remaining lease term, which would provide a similar approach to that adopted in respect of lease incentives designed to encourage a lessor to enter into or renew a lease. Others though believe that this treatment does not adequately reflect the exceptional circumstances that the pandemic has created, and the temporary nature of any concessions being granted.

The Financial Reporting Council (FRC) has now sought to address this issue, amending financial reporting standards to provide clarity on the required approach when rent concessions are granted. These changes will apply to users of FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland, the accounting standard that the Charity SORP is based upon.

Under the amended treatment, lessees will be required to account for any change in lease payments arising from rent concessions over the periods that the change in lease payments is intended to compensate. It will only apply to temporary rent concessions occurring as a direct consequence of the COVID-19 pandemic that meet the following conditions:

- the change in lease payments results in revised consideration for the lease that is less than the consideration that was payable immediately preceding the change
- the reduction in lease payments affects only payments originally due on or before 30 June 2021
- there is no significant change to other terms and conditions of the lease.

This approach is considered by the FRC to best reflect the economic substance of the benefit arising from any rent concessions being granted and their temporary nature and will provide more relevant information for the users of financial statements. It will also provide closer alignment with the treatment of government support schemes available in response to the pandemic accounted for as grant income.

Where the financial statements are prepared in accordance with FRS 102 lessees will be required to disclose the changes in lease payments recognised,

supplementing the existing requirement to disclose future operating lease commitments. They may also need to amend their accounting policy for recognising operating leases to make clear the approach that is being followed.

Lessors will account for rental income on the same basis, recognising the impact of any concessions granted over the period the changes in lease payments are intended to compensate.

This amendment to FRS102 applies for accounting periods beginning on or after 1 January 2020, although earlier adoption is permitted provided that the fact that the entity is doing so is clearly disclosed in the accounts. The final amendments can be found at <https://bit.ly/2Tcawq4>



Gift aid and trading subsidiaries during the pandemic



Many charities will currently be in the process of preparing their accounts for the last financial year, and those with trading subsidiaries will be considering how best to manage their tax position. The usual approach for a subsidiary that has generated profits is to donate that profit to its parent charity, either by gift aid or deed of covenant, which if done within 9 months of the year end can be offset for tax purposes, reducing or even eliminating any corporation tax liability.

The directors of the trading subsidiaries need to be careful though. Whilst the accounts for periods ending before the COVID-19 pandemic took hold may show profits being generated with sufficient cash sitting in the bank, it should not be automatically assumed that these should be passed up to the parent charity. The pandemic may well have had a detrimental impact on the trading subsidiary's results, placing pressure on its financial position. Directors of the trading subsidiary

need to prioritise its solvency and its ability to meet its obligations as they fall due for payment, and this may mean holding back on the payment of the prior year profit to the parent charity. This is certainly true for gift aid donations, which in company law are distributions akin to dividend payments and where the directors have a duty to their company to manage its finances responsibly, and whilst the use of deeds of covenant may appear to place an obligation on the company to pay up its profit there is usually relief from doing so if it would leave the trading subsidiary lacking reserves and in an insolvent position.

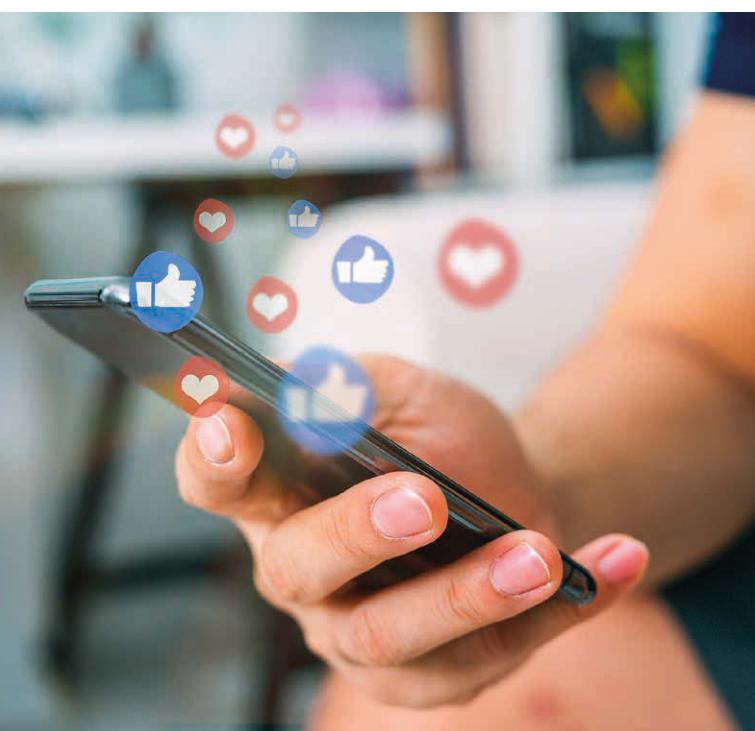
This does mean of course that trading subsidiaries may find themselves in the unusual position of having a tax bill. Whilst this will need to be paid, usually 9 months after the company's year end, it is possible that when the current year's accounts and tax computations are prepared any losses that have been incurred as a result of the pandemic can be carried back and offset against that tax liability, triggering a repayment.

What is clear is that what is usually a straightforward decision for the directors of trading subsidiaries will require a little more thought this year to ensure that the company's finances are accounted for appropriately.

VAT and digital media



The VAT treatment of advertising expenditure is an area where charities receive special treatment as unlike commercial entities the supply of advertising to a charity is zero-rated, which given that many charities are not registered for VAT themselves and therefore unable to recover input tax, can result in a significant cost saving.



The means by which charities conduct their advertising is a rapidly changing one, with increasing use of digital media in recent years to reach new audiences and expand a charity's message. This rapidly developing area has left HMRC trailing a little and has created some uncertainty whether this form of advertising was eligible for the VAT exemption. Following a campaign by the Charity Tax Group, in August HMRC clarified its policy relating to the zero rating for charity advertising that is delivered through digital media in a letter to them, and further clarification was provided in September with publication of Revenue & Customs Brief 13 (2020), which confirmed that the following forms of digital advertising can be zero-rated when supplied to a charity:

- audience targeting
- behavioural targeting
- channel targeting
- content targeting
- daypart targeting
- demographic targeting
- device targeting
- direct placements on third party websites
- location targeting
- lookalike targeting
- pay-per-click adverts
- retargeting.

Not all digital advertising supplied to a charity is zero-rated though. Advertising services are excluded from the zero rate if a member of a public has been selected by or on behalf of the charity to receive the advertising. This will include email advertisements and those posted on social media/subscription website accounts based upon the user's known likes, interests or location.

Guidance: <https://bit.ly/2HKlyAt>

VAT and supplies of e-publications



Charities will often use publications to inform the public about their work and the area in which they operate, and increasingly in an electronic format rather than physical form. Charities will also try to generate extra funds in this way to fund their charitable activities.

Since 1 May 2020 the supply of certain e-publications became zero-rated, mirroring the treatment of more traditional printed supplies of books. HMRC has now updated the guidance provided in VAT Notice 701/10 for this change, confirming that zero-rating will apply unless the e-publication is wholly or predominantly devoted to advertising, audio or video content.

The Notice sets out how to ascertain whether an e-publications qualifies for zero-rating, and charitable organisations that make or receive supplies of e-publications should review this guidance to ensure that VAT is being charged at the correct rate.

Guidance: <https://bit.ly/3cHAVFd>

Charities and the HMRC Trust Registration Service



In January this year legislation came into force to incorporate the EU's Fifth Money laundering Directive into UK law, and expanded the scope of the Trust Registration Service (TRS) by requiring all UK some non-EU resident express trusts to register with the service. At the time it was thought that charitable trusts would fall within this definition and would be required to register.

In a rare piece of good news, following a consultation on how the TRS should operate to reflect the new legislative framework, it has been accepted that the risk that charitable trusts are used for money laundering or terrorist financing activity is low. Draft regulations have now been published that relate to the UK's exit from the EU which exempts registered charities, and those which are not required to register due to being an exempt or excepted charity or due to being small in size from having to register with the TRS, saving them from this onerous obligation. Those charities which operate occupational pension schemes will be pleased to hear that they too will not have to register with the TRS.

Legislative update

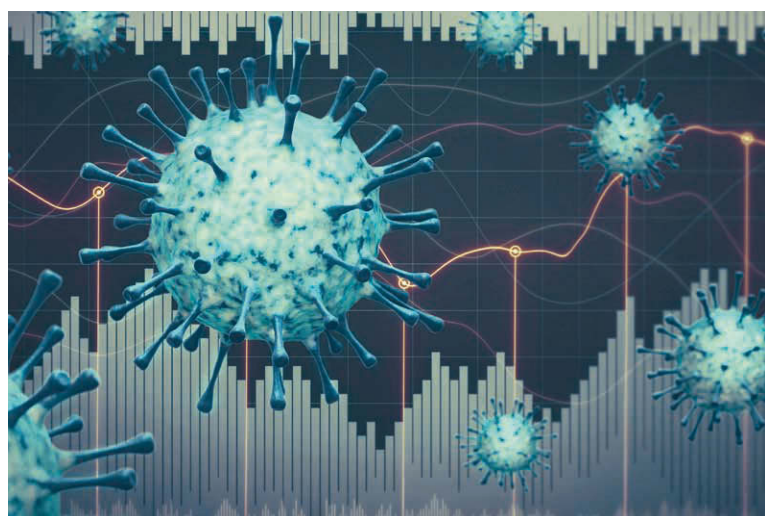
Corporate Governance and Insolvency Act 2020



This new piece of legislation which received Royal Assent on 25 June 2020 and the provisions it contains provide an extension to the deadline for filing accounts and certain other documents at Companies House.

As well as these measures the Act also included a temporary move allowing greater flexibility for the holding of company meetings that would be relevant for those charities that are registered companies and charitable incorporated organisations, allowing for meetings to be held virtually and providing an extension to the period for holding an annual general meeting. These provisions were originally due to lapse on 30 September 2020, but with the effects of the COVID-19 pandemic still being felt and with social distancing measures still in place they have now been extended to 30 December 2020.

The Act also took the opportunity to amend the law relating to insolvency, introducing a new process known as a moratorium, aimed at providing breathing space for otherwise well run businesses that find themselves in financial difficulty. The process will also apply to charities that are incorporated as limited companies or Charitable Incorporated Organisations (CIOs). The moratorium provides protection from creditors for an initial 20 business day period during which time the company has an opportunity to restructure its finances and place it on a more stable footing. The moratorium is designed to be a light touch process that allows the directors to continue to run the business, monitored by an insolvency practitioner who is responsible for guiding the charitable company through the process. If it becomes clear to the monitor though that the charitable company cannot be saved or the charitable company is failing to pay its debts during the moratorium process the monitor can bring the process to an end. If necessary the moratorium period can be extended for a further 20 business day period to allow for more time to complete any necessary restructuring, although any further extension beyond this will generally require the consent of creditors or an application to the Court.



This is not a short-term measure introduced to help businesses affected by the pandemic (although undoubtedly it could prove helpful for many businesses that are struggling at this time) but is a permanent move. The Act did contain several short-term measures though, such as the temporary suspension of wrongful trading provisions, allowing the courts to assume that directors were not responsible for the worsening of a company's finances during the period 1 March to 30 September 2020. There was also temporary relief from statutory demands and winding up orders until 30 September, which has now been extended to 31 December 2020 due to the continuing impact of the pandemic.

Legislation: <https://bit.ly/2Sbw6dQ>