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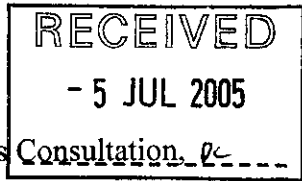
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4 July 2005



Ms Fiona Warne,
Charity Bill Accounts Regulations Consultation, *pc*
Voluntary Issues Unit,
Scottish Executive Development Department,
2-G, Victoria Quay,
Edinburgh, EH6 6QQ.

CONFIDENTIAL

Dear Ms Warne,

CHARITY ACCOUNTING REGULATIONS CONSULTATION PAPER 2005

The Charity Law Sub-Committee of the Law Society of Scotland (“the Sub-Committee”) welcomes the opportunity of commenting on the consultation paper “Charity Accounting Regulations” published by the Scottish Executive and has the following comments to offer:-

The Sub-Committee queries whether the proposed thresholds are the correct ones, and suggested that there might be a third category of charity to which independent examination is optional.

The Sub-Committee is of the view that £250,000 as the proposed new threshold may exclude the majority of charities including some currently audited. While the Sub-Committee’s feeling is that this might be on the high side, it is generally supportive of the aim to reduce compliance burden and costs to charities, which are set out in the consultation paper. Accordingly the Sub-Committee would be happy to see a higher figure.

The Sub-Committee believes that, in practice, it is difficult to find an independent examiner and would welcome clarification as to whether, for example, the case of a law firm producing the accounts for a charity may be regarded as sufficiently independent from the trustees to enable that firm to act as independent examiner, even if they are the retained law agents for the charity. In the Sub-Committee’s experience the current position is that in many cases small charities feel they are seeking a material favour in inviting someone to act as an independent examiner.

Exemptions from accounting requirements

The Sub-Committee notes that the consultation paper does not mention other types of charity which are subject to existing compliance, for example, those which receive funding from other sources such as the Scottish Arts Council or Scottish Executive core funding etc. and for that reason the Sub-Committee is not clear why the proposals to exempt the specific cases of Registered Social Landlords and Higher and Further Education Institutions are different from some of the others.

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INVESTOR IN PEOPLE

/...

Designated Religious Charities

The Sub-Committee is in agreement with the proposal that these charities follow the same accounting regulations as other charities.

£250,000 threshold for audit

On balance the Sub-Committee agrees that this is, in a Scottish context, a relevant threshold.

Should all accounts and reports be in English

The Sub-Committee and the Society support the encouragement of the Gaelic language. However, the Sub-Committee considers that all accounts and reports require to be in English. For that reason the Sub-Committee would prefer that if accounts and reports are to be produced in Gaelic there should be a translation into English lodged with OSCR for public access. Accordingly, the Sub-Committee agrees in the first instance that the primary obligation should be that the accounts should be in English as noted in the consultation paper.

Relation to the Charity SORP

The Sub-Committee agrees with the proposals based on the third option as referred to in the amended paper issued with your letter of 31st May 2005. The difficulties regarding the application of the SORP appears to be addressed in the approach taken for smaller charities since there are interpretation issues for the lay trustee in the case of accounts which are fully consistent with the SORP.

Duty to keep accounting records

The Sub-Committee notes that charity trust records are to be kept for six years. The Sub-Committee is concerned that, in relation to trusts, this may in fact be too short by reference to the general law which provides that trust obligations do not prescribe – they are unprescriptable. However, in practical terms, the Sub-Committee would welcome a shorter period being stated if it is robust enough to deal with the general question. The Sub-Committee would refer to the attached extract from the Prescription and Limitations (Scotland) Act 1973 Schedule 3 paragraph 1e.

Smaller Charities

With regard to the assessment of scale for a charity by reference to its income this could be only a local activity which may be franked with the general charity number for its parent organisation (for example a local Scout Group or Church Sunday school account). Alternatively, it might be regarded as a separate entity for the accounting requirements, but with an obligation to incorporate their information in national or parent organisation accounts.

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Accounting periods

The Sub-Committee considered the position of dormant charities. The Sub-Committee suggests that after a prescribed period of being dormant OSCR might be encouraged to raise this issue. For example after six years of lodging dormant accounts OSCR will have an obligation to enquire and consider whether the practice should be allowed to continue. The Regulations could be amended to reflect this proposition.

The Annual Report contents


The Sub-Committee queries whether all twelve of the suggested items are absolutely necessary for many small charities with, say, income under £10,000. There will be a compliance cost for them to produce such a report in that form and this will detract from the attempt to reduce their compliance burden consistent with a lighter touch approach.

The Sub-Committee is assuming that the SOFA requirements will only apply to those charities with an income over £250,000, but there is reference on page 5 to all charities and this perhaps should be checked out as it is not clear if the last paragraph of the section which starts "for all charities, further disclosure must be given in the notes to the accounts" is to apply only to the above £250,000 income charities. The Sub-Committee is of the view that it is not, since there is a reference to independent examination in item (viii) which again causes the Sub-Committee concern in relation to smaller charities. The same applies in relation to the reference to the balance sheet requirements.

In relation to the paragraph on page 31 regarding "Receipts and Payments basis accounts", the Sub-Committee is concerned that very small charities may require to employ professional accountants now whereas the Treasurer customarily prepared these in the past.

I hope that the above comments are helpful. Should you have any queries please do not hesitate to contact me.

Yours sincerely,



Mrs Moira Shearer
Secretary to the Charity Law Sub-Committee

Enc.

SCHEDULE 2

APPROPRIATE DATES FOR CERTAIN OBLIGATIONS FOR PURPOSES OF SECTION 6

1.—(1) This paragraph applies to any obligation, not being part of a banking transaction, to pay money in respect of—

- (a) goods supplied on sale or hire, or
- (b) services rendered,

in a series of transactions between the same parties (whether under a single contract or under several contracts) and charged on continuing account.

(2) In the foregoing sub-paragraph—

- (a) any reference to the supply of goods on sale includes a reference to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement as defined (in each case) by section 1 of the Hire-Purchase (Scotland) Act 1965; and
- (b) any reference to services rendered does not include the work of keeping the account in question.

(3) Where there is a series of transactions between a partnership and another party, the series shall be regarded for the purposes of this paragraph as terminated (without prejudice to any other mode of termination) if the partnership or any partner therein becomes bankrupt; but, subject to that, if the partnership (in the further provisions of this sub-paragraph referred to as “the old partnership”) is dissolved and is replaced by a single new partnership having among its partners any person who was a partner in the old partnership, then, for the purposes of this paragraph, the new partnership shall be regarded as if it were identical with the old partnership.

(4) The appropriate date in relation to an obligation to which this paragraph applies is the date on which payment for the goods last supplied, or, as the case may be, the services last rendered, became due.

2.—(1) This paragraph applies to any obligation to repay the whole, or any part of, a sum of money lent to, or deposited with, the debtor under a contract of loan or, as the case may be, deposit.

(2) The appropriate date in relation to an obligation to which this paragraph applies is—

- (a) if the contract contains a stipulation which makes provision with respect to the date on or before which repayment of the sum or, as the case may be, the part thereof is to be made, the date on or before which, in terms of that stipulation, the sum or part thereof is to be repaid; and
- (b) if the contract contains no such stipulation, but a written demand for repayment of the sum, or, as the case may be, the part thereof, is made by or on behalf of the creditor to the debtor, the date when such demand is made or first made.

3.—(1) This paragraph applies to any obligation under a contract of partnership or of agency, being an obligation remaining, or becoming, prestable on or after the termination of the relationship between the parties under the contract.

(2) The appropriate date in relation to an obligation to which this paragraph applies is—

- (a) if the contract contains a stipulation which makes provision with respect to the date on or before which performance of the obligation is to be due, the date on or before which, in terms of that stipulation, the obligation is to be performed; and
- (b) in any other case the date when the said relationship terminated.

4.—(1) This paragraph applies to any obligation—

- (a) to pay an instalment of a sum of money payable by instalments, or
- (b) to execute any instalment of work due to be executed by instalments,

not being an obligation to which any of the foregoing paragraphs applies.

(2) The appropriate date in relation to an obligation to which this paragraph applies is the date on which the last of the instalments is due to be paid or, as the case may be, to be executed.

SCHEDULE 3

RIGHTS AND OBLIGATIONS WHICH ARE IMPRESCRIPTIBLE FOR THE PURPOSES OF SECTIONS 7 AND 8 AND SCHEDULE 1

The following are imprescriptible rights and obligations for the purposes of sections 7(2) and 8(2) of, and paragraph 2(h) of Schedule 1 to, this Act, namely—

- (a) any real right of ownership in land;
- (b) the right in land of the lessee under a recorded lease;
- (c) any right exercisable as a *res merae facultatis*;

- (d) any right to recover property *extra commercium*;
- (e) any obligation of a trustee—
 - (i) to produce accounts of the trustee's intromissions with any property of the trust;
 - (ii) to make reparation or restitution in respect of any fraudulent breach of trust to which the trustee was a party or was privy;
 - (iii) to make furthcoming to any person entitled thereto any trust property, or the proceeds of any such property, in the possession of the trustee, or to make good the value of any such property previously received by the trustee and appropriated to his own use;
- (f) any obligation of a third party to make furthcoming to any person entitled thereto any trust property received by the third party otherwise than in good faith and in his possession;
- (g) any right to recover stolen property from the person by whom it was stolen or from any person privy to the stealing thereof;
- (h) any right to be served as heir to an ancestor or to take any steps necessary for making up or completing title to any interest in land.

SCHEDULE 4

ENACTMENTS AMENDED

PART I

AMENDMENT TAKING EFFECT ON EXPIRATION OF THREE YEARS FROM PASSING OF THIS ACT

The Limitation (Enemies and War Prisoners) Act 1945

In subsection (1) of section 1, as substituted for Scotland by paragraph (a) of section 4, in the list of enactments appended to the subsection for the entries relating to the Acts of the Parliament of Scotland 1579 cap. 21, 1669 cap. 14 and 1695 cap. 7, and to section 37 of the Bills of Exchange (Scotland) Act 1772, there shall be substituted the words "section 6 of the Prescription and Limitation (Scotland) Act 1973".

¹ PART II

AMENDMENTS TAKING EFFECT ON PASSING OF THIS ACT

NOTE

¹ As amended by the Prescription and Limitation (Scotland) Act 1984 (c. 45), Sched. 2.

The Carriage by Air Act 1961

In section 11(c), for the words "section six of the Law Reform (Limitation of Actions, &c.) Act 1954" there shall be substituted the words "section 17 of the Prescription and Limitation (Scotland) Act 1973".

The Law Reform (Miscellaneous Provisions) Act 1971

In section 4(2), for the words "section 6 of the Law Reform (Limitation of Actions, &c.) Act 1954" there shall be substituted the words "section 22(1) of the Prescription and Limitation (Scotland) Act 1973".