

Not for Profit eNews

April 2024



Now, for tomorrow



Welcome to the latest edition of MHA Not for Profit eNews.

It is essential that charity trustees and staff stay informed about the legal landscape that affects our sector. In this issue, we delve into four critical areas.

Firstly, we review the changes introduced by the Economic Crime and Corporate Transparency Act and how they impact charities, what trustees need to know, and practical steps to ensure compliance.

We discussed the latest provisions of the Charities Act 2022 being brought into force in our February 2024 newsletter, and in this edition, we review a notable omission from those provisions, regarding ex-gratia payments.

We also review the Procurement Act 2023 and the Charity Commission's updated Chapter 5: Protecting Charities from Abuse for Extremist Purposes guidance.

As ever, if there are any points you wish to discuss further in this issue please do get in touch.

Best Regards,
MHA Not for Profit team

The Economic Crime and Corporate Transparency Act

The Economic Crime and Corporate Transparency Act (ECCTA) has introduced significant reforms to address economic crime, prevent misuse of UK corporate structures, and enhance corporate transparency and oversight. Here is what charities should be aware of:

1 Applicability

The provisions of ECCTA apply to charities which fall under the following categories:

- Charities formed as a company limited by guarantee or company limited by shares
- Charities with a trading subsidiary established as a company limited by shares
- Charities with a corporate trustee

Note that certain parts of the Act only apply to large companies.

2 Expanded Powers of the Registrar

The Registrar of Companies (Companies House) now plays a more regulatory role, beyond being a mere registrar of information, as new objectives are introduced to improve the accuracy and integrity of register information. These objectives include safeguarding against misleading or unlawful activity related to corporate structures.

3 Offence of Failure to Prevent Fraud

ECCTA imposes a legal duty on organisations to prevent fraud and emphasises the importance of prevention measures. Charities must demonstrate due diligence in preventing fraud to comply with the law.

The following steps can be taken now to prepare for the changes being introduced by the ECCTA:

1. **Review Your Corporate Structure** – Assess whether your charity falls into any of the categories covered by ECCTA, as described above.
2. **Update Internal Policies and Procedures** – Review and update your charity's internal policies related to financial transparency, anti-fraud measures, and money laundering prevention.
3. **Enhance Due Diligence Processes** – Strengthen due diligence processes when dealing with financial transactions and be vigilant about identifying and preventing potential economic crimes.
4. **Train Staff and Trustees** – Educate your charity's staff, trustees, and key personnel about the changes introduced by ECCTA and provide training on fraud prevention, reporting obligations, and compliance.

Compliance with ECCTA is crucial for maintaining transparency, preventing economic crime, and ensuring the effective governance of your charity.

See last month's edition of [eNews](#), in which we noted the changes that ECCTA were bringing to Companies House.

Ex-gratia payments and the Charities Act 2022



On 7 March 2024, the third set of provisions from the Charities Act 2022 came into effect. However, sections 15 and 16, relating to the amendments of the existing ex-gratia regime in section 106 of the Charities Act 2011, were absent from these provisions.

An ex-gratia payment is made by an employer without any legal obligation but out of moral consideration. Normally, ex-gratia payments would breach trust law as they use charitable funds for non-charitable purposes. However, section 106 of the Charities Act 2011 empowered the Charity Commission to authorise such payments when trustees felt morally obliged to make those payments.

The changes in the Charities Act 2022 will provide an increase in authority for charities, permitting them to make ex-gratia payments up to a certain level without the Commission's consent. The limits are income-based and as follows:

- Charities with gross income up to £25,000 can make individual payments of up to £1,000.
- Charities with income over £1 million can make individual payments of £20,000.
- A single payment exceeding the relevant cap still requires the Commission's consent.

These changes, which are expected to come into effect in Autumn 2024, would allow charities to become more flexible when dealing with termination payments.

For details of the changes which recently came in to effect, see our February 2024 edition of [eNews](#).

New Legal Framework for Charities Bidding for Public Contracts

The landscape for charities bidding for public contracts is undergoing significant change with the introduction of the [Procurement Act 2023](#). This new legal framework aims to simplify and enhance transparency in the procurement process.

Currently, the procurement activities of contracting authorities – such as central government, local authorities, and registered housing providers – are governed by the Public Contracts Regulations 2015. These regulations dictate how public contracts for goods, services, or works are awarded. However, the existing framework can be complex and bureaucratic.

The Procurement Act replaces the existing regulations with a streamlined and flexible procurement regime. Here are the key features that charities need to be aware of:

1 Supplier Engagement

Charities can engage with contracting authorities from the pre-procurement market engagement stage. This allows suppliers to understand requirements early on and tailor their bids accordingly.

2 Contract Award

The Act aims to simplify procedures, making it easier for contracting authorities to choose suitable procurement methods. This procedure allows authorities to design their own procurement process while adhering to minimum requirements. The minimum requirements include:

- Contracting authorities must meet their contractual requirements through an advertised competitive contract award process. The process should be based on objective, relevant, and proportionate criteria.
- Authorities must publish contract award notices (CANs) to inform the market about awarded contracts.
- Authorities are required to provide assessment summaries to bidders. These summaries explain how their bids were evaluated and the reasons for the award decision.
- Before entering into a public contract, authorities must observe a 'standstill' period. This allows unsuccessful bidders to challenge the award decision if needed.

3 Contract Management

The Act emphasises transparency and requires greater visibility of supplier performance throughout the contract's lifecycle. Strengthened rules ensure that suppliers are paid promptly.

Charity Commission's Chapter 5: Protecting Charities from Abuse for Extremist Purposes

The Charity Commission's Chapter 5: Protecting Charities from Abuse for Extremist Purposes aims to assist trustees in fulfilling their legal duties under charity law, managing risks, and safeguarding their charities from being exploited for extremism, terrorism, or illegal activities.

Trustees should aim to strike a balance between free expression and protection, ensuring that their charity contributes positively to civil society whilst adhering to legal requirements and safeguarding against misuse. In late March 2024, the Charity Commission updated their guidance, with key changes detailed below:

Definition of Extremism

Extremism is now defined as:

"The promotion or advancement of an ideology based on violence, hatred or intolerance, that aims to:

1. Negate or destroy the fundamental rights and freedoms of others; or
2. Undermine, overturn or replace the UK's system of liberal parliamentary democracy and democratic rights; or
3. Intentionally create a permissive environment for others to achieve the results in (1) or (2)."

Enhanced Scrutiny

The Commission now exercises more rigorous scrutiny over charities susceptible to exploitation for extremist purposes. This entails thorough assessments of charities' activities, finances, and affiliations to detect any signs of extremist influence or misuse.

Guidance and Training

To empower trustees and charity personnel in identifying and addressing potential risks, the Commission provides comprehensive guidance and training programmes. These resources equip them with the knowledge and tools needed to safeguard their organisations from infiltration by extremist elements.

Reporting Obligations

Charities are mandated to promptly report any suspicions or incidents of extremist activity within their organisations. This reporting obligation ensures timely intervention by regulatory authorities to prevent further harm and protect the integrity of the charitable sector.

Educational Outreach

Recognising the importance of raising awareness and fostering resilience against extremist ideologies, the Commission engages in educational outreach initiatives. These efforts aim to promote understanding and critical thinking, empowering individuals to resist manipulation and exploitation by extremist elements.

Charity Sector Annual Return 2022



The **Annual Return 2022** has recently been published by the Charity Commission and it highlights several key trends through combined sector data for financial years ending in 2022.

The total gross income reported by all charities that submitted an annual return increased by 8.48% in comparison to 2021, reaching a staggering £90.3 billion. Simultaneously, the total gross expenditure grew by 9.19%, amounting to £87.4 billion.

For approximately 12,000 charities with an annual income exceeding £500,000, the data suggests that this growth was primarily fueled by a 38% increase in fundraising income – a surge likely influenced by the easing of COVID restrictions. However, for those charities with an income below £500,000, the picture was different: they observed a more modest 3.24% increase in income, while their expenditure rose by a substantial 11.6%.

Notably, smaller charities faced challenges related to government grants. Income from local or national government grants

across all charities declined from £8.2 billion in 2021 to £7 billion in 2022. Additionally, the number of charities receiving such grants decreased by 24%, falling from 35,474 in 2021 to 27,001 in 2022.

Approximately 6,500 charities provided services through government contracts in 2022, with a total value of £9.3 billion. This upward trend has persisted for the fourth consecutive year, representing a 25% increase from the reported value of £7.4 billion in annual returns for 2018.

Furthermore, more charities than ever before reported on reserve levels (triggered when their income exceeds £500,000). However, reserves remained consistent with 2021 figures, totaling £75 billion for the sector, compared to £73 billion in 2021.

Volunteer numbers reported an overall increase, but significant variations were observed across different sectors. Education, environment, conservation, and heritage charities reported substantial growth in volunteer figures. However, religious charities, those providing front-line services, and those supporting armed forces personnel experienced a decline in volunteer participation compared to 2021.

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