



# Charities Alert

Summer 2019

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# 1. Governance

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## Guidance for charities with a connection to a non-charity

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At the end of March 2019 the Charity Commission published their guidance on how to manage and review a charity's connection to a non-charity.

The guidance recognises that connections can be for a variety of reasons, including:

- providing funding and raising funds
- saving money
- increasing impact
- managing risk
- furthering a charity's purposes.

However, the overall purpose of any connection must be to help the charity to make a positive difference for its beneficiaries.

The guidance applies to a wide range of connections between charities and non-charities, including charities which:

- have non-charity trading subsidiaries
- are regularly funded by a non-charity
- regularly give funding to a non-charity
- work regularly with a non-charity to deliver services, campaigns or other projects
- were set up by a non-charity
- have a non-charity as Trustee
- have a non-charity as its sole or significant member.

The key objective of the guidance is to help Trustees manage their charity's connection with a non-charity in line with the charity's best interests and their legal Trustee duties.



The guidance is set out to cover six principles for managing and reviewing a charity's connections with non-charities.

1. Recognise the risks.
2. Do not further non-charitable purposes.
3. Operate independently.
4. Avoid unauthorised personal benefit and address conflicts of interest.
5. Maintain your charity's separate identity.
6. Protect your charity.

The Commission has emphasised the importance of the guidance and have stated that *"Where the Commission reviews a charity's connection with a non-charity we will expect Trustees to have applied this guidance."* Within the guidance comments are separated between *"must"* which are legal or regulatory requirements or duties that Trustees must comply with and *"should"*

which the Commission regards as good practice and expects Trustees to follow and apply to their charity.

It will therefore be important that Trustees of charities which have one or more connections with non-charities review this guidance to ensure that they are meeting the principles now expected by the Charity Commission. To help Trustees the guidance includes three checklists dealing with different relationships including operating with a subsidiary, charities mainly funded by a non-charity and charities in a regular partnering or other funding relationship.

The guidance can be accessed on the HM.GOV website:

<https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity>

# Legacy notifications to charities

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The Ministry of Justice has announced that a new system alerting charities to when they have been left money in wills is to be established by HM Courts and Tribunals Service (HMCTS) following a decision to end the current paid for arrangement with Smee & Ford.

In an open letter published at the end of January 2019 the Chief Executive of HMCTS stated they had found that the current arrangements were not consistent with the department's legal duties.

HMCTS is working closely with Smee & Ford to ensure that there is as little disruption as possible arising from these changes over the six months' notice period. It has also set up a working group which has invited representatives from ACEVO, NCVO, the Institute of Fundraising and the Institute of Legacy Management to look at options to create a new and sustainable arrangement for providing a notification service to charities going forward.

In her latest letter to charities published on 29 May 2019 the Chief Executive of HMCTS noted that *"I am pleased to tell you that that this effort has made good progress and that, while I am not yet in a position to provide details, I am now confident that an interim solution will be in place to deliver the continuity of service your members have sought."*

Details on the changes and related announcements can be seen on the HM.GOV website:  
<https://www.gov.uk/government/collections/notification-of-charitable-bequests>

# New research into the legacy fundraising market

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In April 2019 Remember A Charity, a consortium of 200 UK charities and part of the Institute of Fundraising, unveiled their UK Legacy Fundraising Market 2019 report which focuses on trends in the legacy fundraising market over the last 10 years.

This research shows that fundraising charities continue to be heavily reliant on income from legacies, which generates 28% of their total voluntary income. It also shows that, although organisations with annual income exceeding £10 million account for the majority (81%) of legacy income, an influx of smaller charities fundraising for legacies is changing the overarching shape of the market.

The report can be seen on the Remember A Charity website:  
<https://cdn.rememberacharity.org.uk/app/uploads/2019/04/UK-Legacy-Marketplace-Summary-Report-Apr-2019-FINAL-v2.pdf>

# Assessing risk for charities working internationally

In May 2019 the International Charities Engagement Team at the Charity Commission published a blog looking at the particular risks that are faced by charities working internationally, including the application of financial sanctions, greater levels of corruption or criminal activity and the presence of terrorists, proscribed groups or designated entities.

The blog identifies that there is no universally recognised criteria for assessing and determining risk and ultimately each charity must decide what is in the best interest of the charity. However it also emphasise that recent events in 2019 demonstrate how practical the Charity Commission PESTLE analysis tool can be when assessing the risk arising from a range of external factors, and their impact on a charity working internationally.

The blog recommends that charities working internationally should have a dynamic risk assessment process which is conducted regularly and includes looking at chapter 2 of the Charity Commission Compliance Toolkit which provides guidance on due diligence, monitoring and verifying the end use of charitable funds.

The blog, which includes links to the Compliance Toolkit, can be seen on the GOV.UK website:

<https://charitycommission.blog.gov.uk/2019/05/03/how-to-assess-risk-for-charities-working-internationally/>



# Tackling charity fraud

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The Fraud Advisory Panel in conjunction with the Charity Commission has published a number of resources on its website to help charity Trustees manage the fraud risks faced by their charity.

These resources include a special report by the Fraud Advisory Panel and Charity Commission “Tackling Charity Fraud – Prevention is Better than Cure” together with a related Tackling Charity Fraud checklist.

The website also includes various documents from the Charity Fraud Awareness Week held in October 2018. It provides their 10 suggested questions for charity Trustees about fraud.

Do we:

1. Know about our responsibility to protect funds?
2. Have a fraud, bribery and corruption policy?
3. Understand our financial systems and the data we hold?
4. Have regular and frank conversations about fraud?
5. Take appropriate steps to know our staff, donors and partners?
6. Regularly review and test our financial safeguards?
7. Promote fraud awareness and understanding?
8. Encourage staff and volunteers to raise concerns?
9. Have a plan to respond to fraud?
10. Know who to tell if a fraud is discovered?

The Department for Digital, Culture, Media and Sport has also published their cyber security breaches survey for 2018 which shows that one in five charities suffered a cyber security breach or attack in the last 12 months.





# Protecting your charity from cybercrime

The government's Cyber Security Breaches Survey 2019 revealed that over two thirds of high income charities had recorded a cyber breach or attack in 2018.

Of those charities affected, the vast majority (over 80%) had experienced a phishing attack, which are fraudulent emails.

The Charity Commission produced another alert in May 2019 emphasising that all charities should be vigilant to the threat of cybercrime. Charities should make sure appropriate defences are in place and raise awareness with their staff and volunteers.

The National Cyber Security Centre (NCSC) has produced some useful guidance on how to protect charities from cybercrime. This includes a separate guide specifically for smaller charities:

<https://www.ncsc.gov.uk/collection/charity>

It also includes as more detailed advice in their Board Toolkit which may be helpful to larger charities:

<https://www.ncsc.gov.uk/collection/board-toolkit>

The alert also emphasises the requirements for prompt, full and frank disclosure of any incidents where charities have fallen victim of cybercrime as part of the serious incident reporting requirements.

# Charity Ethical Principles

NCVO has developed and published a set of four ethical principles for the charity sector. The principles provide an overarching framework for voluntary organisations to guide decision-making, good judgement and conduct.

The principles aim to recognise and resolve ethical issues and conflicts for those who support charities, their governing bodies, and those who work and volunteer in and with them.

The principles set out a framework for the ethical execution of charitable purpose, regardless of the charity's size, type or area of operation. They are aimed at helping charities in their decision making and in developing relevant policies and procedures. They are intended to be complimentary to sector codes such as the Charity Governance Code as well as individual charities' codes of conduct.

The four principles are:

1. Beneficiaries First.
2. Integrity.
3. Openness.
4. Right to be Safe.

For each principle there are three or four suggested actions for charities to help them to uphold the principle.

Although endorsement of these principles is voluntary, all charities are encouraged to reflect on the principles in their work and decision making with the principles being viewed as a benchmark of good practice.

More information on this can be seen on the NCVO website:

[https://www.ncvo.org.uk/images/documents/policy\\_and\\_research/ethics/Charity-Ethical-Principles.pdf](https://www.ncvo.org.uk/images/documents/policy_and_research/ethics/Charity-Ethical-Principles.pdf)

# Charity Digital Code

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The Charity Digital Code of Practice, funded by Lloyds Banking Group and the Co-op Foundation, was launched in November 2018 and aims to help charities increase impact, develop skills and improve sustainability through the use of digital.

Digital is defined as “*Applying the culture, practices, processes and technologies of the Internet era to respond to people’s raised expectations*”.

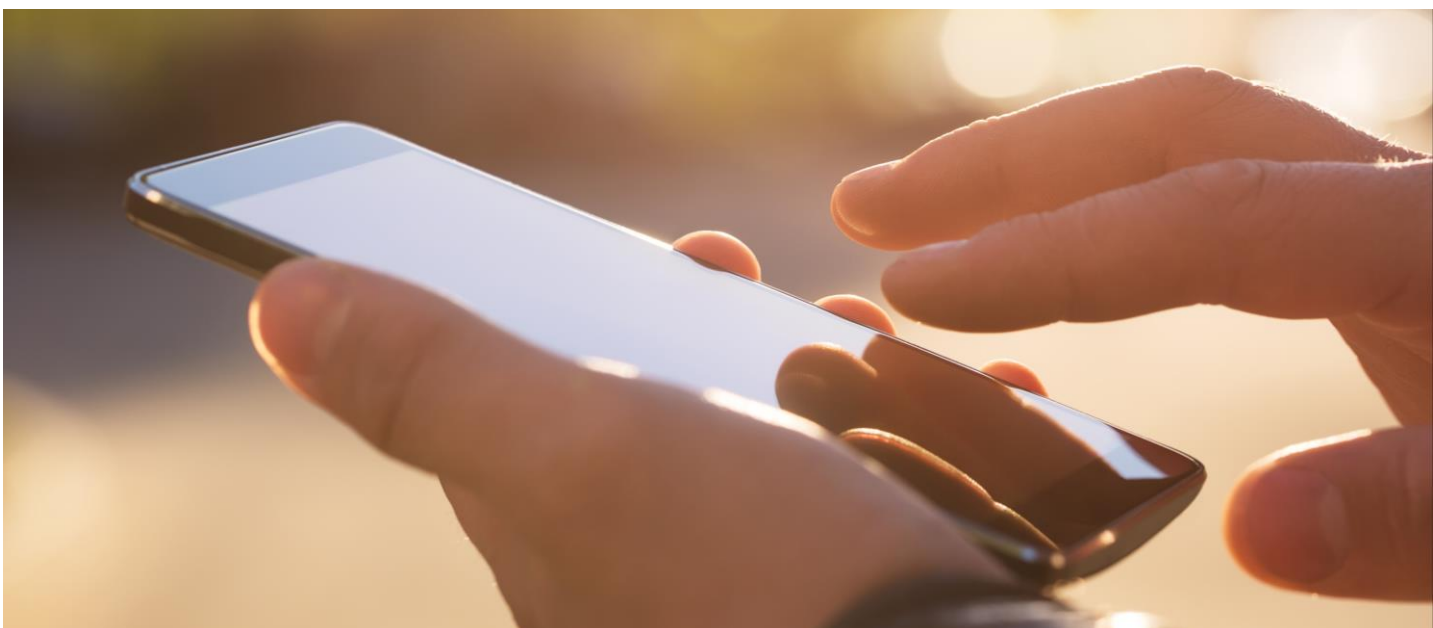
The Code is intended to be used by charities to help benchmark their progress in digital and to inform key decisions in this area. It is broken down into seven key principles. Each one explains why the principle matters, what success looks like and suggested best practice. The latter is set out as a simpler version for smaller charities (annual income under £1m) and a more extensive set of best practice guidance for larger charities. The Code uses the terms 'must' and 'should' to indicate what is seen as the minimum standard of good practice and 'could' to indicate enhanced best practice.

Although adoption is voluntary, the developers of the Code want it to be widely used across the sector and have therefore made it free to access to encourage charities to reuse and share it for non-commercial purposes.

The full code can be accessed from its website: <https://doit.life/charity-digital-code>

The guidance and other charity fraud related publications are available from the Fraud Advisory Panel website:

<https://www.fraudadvisorypanel.org/charity-fraud/resources/>



# 2. Compliance

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# New Code of Fundraising Practice

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On 6 June 2019 the Fundraising Regulator launched a new Code of Fundraising Practice which will come into effect in October 2019 and has been published following a 10 week consultation at the end of 2018. The consultation sought views from the sector about how to make the Code simpler.

The new Code has been structured in three parts.

1. Part 1 deals with Standards which apply to all fundraising.
2. Part 2 deals with Standards which apply to working with others.
3. Part 3 deals with Standards which apply to specific fundraising methods.

The Code continues to set out the responsibilities that apply to any fundraising carried out by charitable institutions and third-party fundraisers in the UK and is supported throughout by four values.

1. Legal – meeting the requirements of the law
2. Open – being open with the public about fundraising processes
3. Honest – acting with integrity not misleading the public about the cause or the way a donation will be used
4. Respectful – demonstrating respect whenever fundraisers have contact with any member of the public.

The Code makes it clear that charities must make sure they meet the standards in the Code and must be able to justify the decisions they make. They must make their staff and volunteers aware of the standards and adequately train and monitor them if the standards are relevant to their responsibilities.

The new Code can be seen on the Fundraising Regulator website:  
<https://www.fundraisingregulator.org.uk/more-from-us/resources/code-fundraising-practice-october-2019>

# Fundraising Preference Service suppression requests

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The Fundraising Regulator has, from 1 March 2019, reduced the time available to action a suppression request from 28 days to 21 days.

From 1 March 2019 any person that makes a request on the service will be told the charity has 21 days to action their request. They will then be able to make a 'follow-up' request after 21 days (previously 28 days) if they still receive direct marketing from the charity. The Regulator will consider complaints about direct marketing received by individuals 28 days after the first suppression request was made.

This change has been made so that the Regulator can remind charities who haven't responded to the request after 21 days to do so within the month or risk breaching the law. Charities should ensure that their internal processes have been updated as necessary to allow the charity to meet this shorter deadline.



## Advice line for whistleblowers

The Charity Commission, as part of its continuing aim to make it easier for charity workers and volunteers to draw serious concerns about their charity to our attention, have in June 2019 opened an advice line specifically for charity whistle-blowers.

Callers to this advice line will receive confidential advice to help them decide what to do about raising a serious concern about their charity, including whether and how to raise their concerns with the Commission. Although created by the Commission the advice line is being operated independently by the specialist whistleblowing charity Protect.

Further details for workers and volunteers on how to get advice from Protect on their free and confidential advice line (0800 055 7214) and on reporting to the Charity Commission can be obtained from the GOV.UK website:

<https://www.gov.uk/guidance/report-serious-wrongdoing-at-a-charity-as-a-worker-or-volunteer>

## Supreme Court hearing on sleep-ins

The Supreme Court has announced that it will hear the latest appeal of the Royal Mencap Society v Tomlinson-Blake on 12 and 13 February 2020, with a decision expected by July 2020.

This case relates to social care workers on sleep-in shifts where they provide overnight on-call support to patients but where they are expected to sleep through the majority of the shift. For these shifts employers historically paid flat-rate fees at rates below the minimum wage. Employment tribunal hearings in 2016 and 2017 ruled that the minimum wage should be applied to the shift time and that relevant workers were entitled to back-pay for historic underpayment.

This was overturned by judges in the Court of Appeal in 2018. However, Unison (representing Tomlinson-Blake) has been granted permission by the Supreme Court to appeal the Court of Appeal ruling.

Following the initial employment tribunal hearing the government published guidance stating that sleep-in shift care workers were entitled to the full minimum wage. However, it updated its guidance last year after the Court of Appeal overturned the ruling, and now says that “*Workers who are expected to sleep for most of a sleep-in shift will get the National Minimum Wage only when they are woken up to perform tasks*”.

However, the government has also included a caveat that if the Supreme Court rules in favour of Tomlinson-Blake, its guidance could change once more. The guidance is on the GOV.UK website:

<https://www.gov.uk/night-working-hours>

# Companies House reforms consultation

In a press release issued in May 2019 the Department for Business, Energy & Industrial Strategy (DBEIS) announced a consultation on proposed major reforms to the Companies House register aimed at tackling misuse and ensuring its accuracy.

The changes aim to ensure that companies, including charitable companies, will be better protected from fraud with improved safeguards over the personal data of on the register and the accuracy of other information on the register.

DBEIS are seeking views from company directors and other officers as well as representative bodies and others. Details of the consultation can be seen on the GOV.UK website:

<https://www.gov.uk/government/consultation/s/corporate-transparency-and-register-reform>



# GDPR and Brexit

Trustees will need to continue to assess the potential impacts of Brexit on their GDPR requirements, particularly if there is a no-deal Brexit. The government recognised this issue and in September 2018 published guidance on “*Data protection if there’s no Brexit deal*”.

However this guidance was withdrawn on 1 March 2019 and the government website now states that “*When the UK leaves the EU there may be changes to the rules governing the use of personal data*”.

We therefore recommend that Trustees will need to monitor the government guidance on this so that any necessary action to ensure continuing GDPR compliance is delivered by the charity. The latest announcement is on the GOV.UK website:

<https://www.gov.uk/guidance/using-personal-data-after-brexit>

The ICO website also has a separate page which they update monthly to highlight and link to what’s new in their Guide to the GDPR. We recommend that charities should also monitor this to ensure they are aware of any updates to the guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/whats-new>

The Institute of Fundraising (IoF) and the Fundraising Regulator have published some charity guidance on the GDPR which has been reviewed and co-badged by the ICO. This provides information on various areas including understanding what the GDPR means for charities and fundraising, as well as giving some tools and templates to help charities put GDPR into practice:

<https://www.fundraisingregulator.org.uk/more-from-us/resources/gdpr-briefing-introduction>

# Update to guidance on reporting serious incidents in charities

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In October 2018 the Charity Commission again updated its guidance on 'How to report a serious incident in your charity'.

The Charity Commission requires charities to report serious incidents that take place within the charity. The reporting needs to cover what happened and, importantly, let the Commission know how the Trustees are dealing with it, even if they have also reported it to the police, donors or another regulator.

The guidance includes information on the responsibility to report, including:

- what is a serious incident
- who should report
- what must you tell the Commission
- when to report.

It also sets out the main categories of reportable incidents and has links to examples and decision making guidance to help Trustees decide what needs to be reported.

Charities have had to report serious incidents to the Commission since 2007 with the most common types of incidents reported being fraud, theft and confirmed safeguarding issues. However, the Commission is still concerned that their casework continues to find serious incidents that should have been reported but where reports were not made. It is therefore important that all Trustees are aware of the current guidance.

The updated guidance can be seen on the GOV.UK website:

<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>





# 3. Financial reporting

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# OSCR Guide to Charity Accounts

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In April 2019 OSCR published an updated version of their Guide to Charity Accounts: <https://www.oscr.org.uk/guidance-and-forms/a-guide-to-charity-accounts/>

This Guide is designed to be relevant for all charities registered in Scotland and gives an overview of the law regarding charities' accounts and essential information relevant to all charities.

While we do not anticipate that this updated guidance will impact on charities which are already preparing and filing compliant accounts, it has been prepared for charity Trustees and others working with charities. Trustees of charities registered in Scotland should therefore consider this updated guidance. It may also be helpful to include this as part of the induction information available for any new Trustees.



# 4. Taxation

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# HMRC widens its challenge on charity advertising VAT

We have seen that HMRC is pursuing its challenge with more charities on digital advertising by providers such as Google and Facebook.

The issue is that for advertising services to be zero rated for VAT when supplied to a charity, the advertising, which may be supplied through either physical or electronic media, must be communicated to the public. For this purpose public means "the general public", although this can be widely interpreted to also include businesses and small groups, such as:

- readers of a trade magazine
- readers of a religious magazine
- people in particular parts of the country who may be targeted by a general poster campaign in their area.



However, for this purpose of the general public does not include selected individuals or groups. These are people who are:

- selected by individual home, business or email address whether named or not
- individually named people, all those at the same address such as family groups or everyone in a particular building.

HMRC are claiming that, because advertising on social media is targeted at selected individuals or groups, it is targeted marketing and not advertising. Because the

suppliers of these services are in the main based overseas, if HMRC's approach is correct reverse charge VAT is due on the relevant expenditure (a Standard Rated supply in the UK). In many cases this could represent a significant cost to a charity.

Although we believe there are arguments to contest this approach, in view of the challenges that are being made by HMRC in this area we suggest that charities should consider their position on these services and seek advice whether or not they have already been challenged by HMRC.

# Registering Charitable Trusts with HMRC

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The Trust Register, set up in 2017 to meet the requirements of the fourth EU money laundering directive, requires that all express trusts with a tax consequence must be registered using the Trust Registration Service. However, because of the tax exemptions available to charities, this has not generally been an issue for charitable trusts.

From April 2020, under the fifth EU money laundering directive (5AMLD), all UK resident express trusts will be required to register, regardless of whether or not they have a tax consequence. The UK has until 10 January 2020 to incorporate 5AMLD into domestic law and then must implement the trust registration requirements by 10 March 2020 - the government has already confirmed that this will happen irrespective of Brexit.

The government issued a consultation (now closed) on the transposition of 5AMLD which identified that 'other legal entities' would typically include charities and this implementation of 5AMLD may therefore require all charitable trusts to register irrespective of whether or not they have any tax liability. Although this should not change the tax position for charitable trusts there are likely to be penalties for failing to register and charitable trusts should therefore monitor these regulations when they are finalised.

## Charity Gift Aid claims

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HMRC, who previously proposed at recent Charity Tax Forum meetings that charities should collect donor forenames and not just initials for inclusion on their Gift Aid claims from April 2019, have now confirmed that this is not currently being made mandatory.

However, they have reiterated the need for Gift Aid declarations (GADs) to include the fullest amount of information from the donors as possible and the requirement to include forenames remains HMRC's objective for the future.

HMRC are therefore strongly encouraging charities to provide full forenames wherever it is practical and possible to do so. Charities should therefore review their Gift Aid declaration forms and inform staff and volunteers about this to seek to collect full forenames in future.

# National Minimum Wage

## – are you getting it right?

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National Minimum Wage (NMW) applies to most workers over school leaving age including casual, part-time and agency workers. It is a criminal offence to not pay an individual NMW and those who do not comply will be publicly named after October 2013.

As a result, many household names are falling victim to the NMW regulations and importantly which payments or deductions from a worker's salary reduce pay for NMW purposes.

The government have said that the “*top five reasons for National Minimum and Living Wage underpayments...were:*”

- *taking deductions from wages for costs such as uniforms*
- *underpaying apprentices*
- *failing to pay travel time*
- *misusing the accommodation offset*
- *using the wrong time periods for calculating pay.”*

In addition for charities there is a risk that they inadvertently give volunteers an employment status. There is also the ongoing legal challenge on the status of employees providing sleep-in services - the current position on this is that workers who are expected to sleep for most of a sleep-in shift will get the NMW only when they are woken up to perform tasks. However, the Supreme Court has set a date in February 2020 to hear an appeal against this ruling.

It is therefore important that charities regularly review and keep up to date with this area. The NMW rates change every April and the current rates alongside common examples which may deduce NMW pay are summarised below.

### **Which deductions reduce can pay below NMW?**

Broadly speaking and under regulation 12(1) of the National Minimum Wage Regulations 2015, if payment from a worker to the employer (or a deduction from worker's pay) is for the employer's use and benefit, then this reduces NMW pay. However, if payment from a worker to the employer (or a deduction from worker's pay) is not for the employer's use and benefit and the worker has free choice on whether to make a purchase, then this does not reduce NMW pay.

Four common deduction examples, including in relation to training costs, are set out below. Note that there is an exception to the above where a deduction is “*in respect of the worker's conduct, or any other event, where the worker...is contractually liable*”.

### **1. Uniforms**

Our experience is that HMRC will treat any requirement for employees to purchase specific work clothes, even from their employer, as a deduction that reduces the average rate of pay. HMRC is and has been targeting employers that require only a simple uniform (e.g. black trousers and white shirt) which can be purchased from any retailer and is applying notional deductions from salary (they have done this with Wagamama, TGI Fridays and Primark in recent times).

For the purposes of calculating the NMW, those theoretical clothing costs would be deducted from the wages received during the first reference period and, if the average rate falls below the prescribed minimum, a breach may be said to have occurred. Therefore, care should be taken in this area. However, if the dress code imposed on employees is vague and less specific, such as smart workwear, then this does not appear to affect NMW.

### **2. Season ticket loans**

Any payments or deductions made to repay the amount of a loan or advance (including season ticket loans) will not reduce NMW pay provided there is supporting documentation covering the terms of the loan agreement and sufficient pay records to show that a genuine loan advance was made and the employee has received the money.

### **3. Pensions via salary sacrifice**

Employer contributions to an employee's pension are not classified as payments to the employee and these payments therefore do not count toward a worker's total remuneration. It is therefore important that any pension salary sacrifice arrangement cannot take the employee's remaining pay below the NMW. However, the same issue does not apply to additional employee contributions because it is the employee's gross salary before any employee pension contributions are made which counts for NMW purposes.

### **4. Training costs**

Training costs are sometimes paid by workers to their employer, or deducted from a worker's pay. If the arrangement is contractual, then any payments or deductions would reduce NMW pay as the expense is incurred in connection with their employment duties as per regulation 13 of the National Minimum Wage Regulations 2015.

However, where an employer makes a deduction from a worker's pay and uses it to pay expenses to a third party for training or other costs at the request of the worker, deductions will not reduce NMW pay. These costs must be a liability of the worker and not a requirement of the employer, and the employer cannot impose an administrative charge for making the deduction.

Note that care should be taken when training expenses are incurred to be in a position to do or secure the job as the same rules may not apply.

### Current rates

The rates for the National Living Wage (employees over 25) and the National Minimum Wage (employees under 25) are below for the current tax year. The rates update every April.

Age	25 and over	21 to 24	18 to 20	Under 18	Apprentice
<b>April 2019</b>	£8.21	£7.70	£6.15	£4.35	£3.90

You should always consider when making any deductions from a worker's pay, or receiving any payments from a worker if these amounts are for the employer's use and benefit and the necessary NMW implications.

The National Minimum Wage Regulations 2015 can be seen on the GOV.UK website: <https://www.legislation.gov.uk/uksi/2015/621/contents/made>



# Withholding Tax risks from a no-deal Brexit

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On 20 March, just nine days before the initial deadline for the UK to leave the EU, HMRC published its guidance on the impact of Brexit on withholding tax (WHT) on interest, royalties and dividends.

Currently, as a member of the EU, the UK benefits from valuable tax reliefs in relation to WHT on interest, royalties and dividends which are paid both to the UK and also from the UK to other EU member states. These reliefs include the EU Interest and Royalties Directive (IRD).

The IRD allows EU companies to make interest and royalty payments to associated organizations within the EU without needing to deduct tax from the payments. If the UK leaves the EU without a deal on October 31 2019, then these valuable reliefs may no longer apply, potentially leaving both UK and EU resident entities with the need to account for WHT on more of the payments they make.

For charities, the loss of the IRD is likely to be a potentially significant change as this could create cash costs to charities receiving payments from EU where the payer may have to withhold tax which the charity cannot recover. For example, if an arts charity lends a collection to a gallery in Europe which pays for the right to display the items, this could be considered to be a royalty payment and WHT may apply.

On a no-deal Brexit, the quantum of tax to be deducted at source will be determined by the level set in the appropriate double taxation treaty between the UK and the EU member state. In some cases, such as the Spanish, French and German treaties, there will continue to be full exemption from WHT although to benefit from the tax treaty a treaty application form will usually be required to be completed and stamped by the overseas EU taxing authority to enable the payer to make the payment at the reduced treaty rate or to be exempted.

The IRD only applies to payments between associated organizations. However, the loss of the IRD has highlighted the need for charities to consider WHT costs on all transactions within the EU.

As the obligation to withhold tax (and any penalties for failure to do this) rest with the paying entity, generally where there is any doubt about whether or not WHT applies a payer will adopt a prudent approach. Therefore charities should consider the following steps before entering any cross border transactions:

- Make sure that any contracts are clear about what service the charity is providing, for example, often management services do not attract WHT whereas Royalty payments may do.
- Discuss and agree in advance with your counterparty the WHT approach to any payments to be made to the charity.
- Where possible price any WHT cost into the contract terms or agree that the payments under the contract will be the net.
- Where WHT is due and cannot be passed on as a cost to the paying party, ensure that any all appropriate paperwork to claim tax treaty rate reductions has been completed in good time.

Further details, including on relevant tax treaties, can be found on the GOV.UK website: <https://www.gov.uk/guidance/changes-to-deduction-of-tax-on-interest-royalties-and-dividends-if-the-uk-leaves-the-eu-without-a-deal>

# Increases to charities' small trading exemption limits

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As announced in the Budget 2018, changes to the charities non-primary purpose trading exemption limit came into effect from the beginning of April 2019.

Whilst a charity does not pay tax on profits that it makes from charitable trading as part of its primary purpose, if a charity carries out trading which does not relate to its primary purpose its profits from this are only exempt from tax if the related turnover is below the small trading tax exemption limits.

Previously the limits of this turnover have been £50,000, or 25% of the total annual turnover if this is lower, down to £5,000 for any charities with total income under £20,000. The new limits increase the maximum allowed non-primary purpose turnover to £80,000 and the level for the smallest charities to £8,000. These changes will come into effect for accounting periods starting on or after 1 April 2019 (6 April 2019 for charitable trusts paying income tax).

The government policy paper notes that *“it is anticipated that this measure will have a positive impact on charities who engage in non-primary purpose trading marginally above the current threshold as they will no longer need to set up a trading subsidiary”*.

We believe that the number of charities with relevant turnover in the range £50,000 to £80,000 in a trading subsidiary will be limited. However, for any charity where this applies it may be worth reviewing the continuing need for the subsidiary company.





## Start the conversation

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