
STATUTORY INSTRUMENTS

2009 No. 649

PUBLIC HEALTH, ENGLAND

FINANCIAL ASSISTANCE

The Health and Social Care (Financial Assistance) Regulations 2009

<i>Made</i>	- - - -	<i>11th March 2009</i>
<i>Laid before Parliament</i>		<i>20th March 2009</i>
<i>Coming into force</i>	- -	<i>14th April 2009</i>

The Secretary of State for Health makes the following regulations in exercise of the powers conferred by sections 150 and 161(3) and (4) of the Health and Social Care Act 2008(1).

Citation and commencement

1. These Regulations may be cited as the Health and Social Care (Financial Assistance) Regulations 2009 and shall come into force on 14th April 2009.

Interpretation

2. In these Regulations—

“the 2008 Act” means the Health and Social Care Act 2008;

“charity” has the meaning given in section 1 of the Charities Act 2006(2);

“community interest company” means a company as referred to in section 26 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(3);

“constitution” means—

- (a) in the case of a company, the company’s memorandum and articles of association, and
- (b) in the case of any other body, a written instrument which sets out the purpose, objectives, proposed activities and provisions for the governance of the body, including any

(1) 2008 c.14. See section 156(2) for the definitions of “prescribed” and “regulations”. Until the coming into force of section 1 of the Companies Act 2006 (c.46), “company” for the purposes of the relevant provisions of the 2008 Act and these regulations, means a company as defined by section 735 of the Companies Act 1985 (c.6); see article 14 of the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory and Transitional Provisions) Order 2009 (S.I. 2009/462 (c.31)).

(2) 2006 c.50.

(3) 2004 c.27.

provisions relating to the membership of the body and the distribution of profits and assets;

“distributable profits” means—

- (a) in relation to a company, the company’s profits available for distribution, within the meaning of section 830 of the Companies Act 2006⁽⁴⁾,
- (b) in relation to any other body, its accumulated, realised profits, so far as not previously utilised by distribution, less its accumulated, realised losses, so far as not previously written off;

“financial year” means the 12 month period that a body uses for accounting purposes;

“governmental authority” includes—

- (a) any national, regional or local government in the United Kingdom or elsewhere, including any organ or agency of any such government,
- (b) the European Community, or any of its institutions or agencies, and
- (c) any organisation which is able to make rules or adopt decisions which are legally binding on any governmental authority falling within paragraph (a) or (b);

“political party” includes any person standing, or proposing to stand, as a candidate at any election, and any person holding public office following election to that office;

“political campaigning organisation” means any person carrying on, or proposing to carry on activities—

- (a) to promote, or oppose, changes in any law applicable in the United Kingdom or elsewhere, or any policy of a governmental or public authority (unless such activities are incidental to other activities carried on by that person), or
- (b) which could reasonably be regarded as intended to affect public support for a political party, or to influence voters in relation to any election or referendum (unless such activities are incidental to other activities carried on by that person);

“public authority” includes—

- (a) a court or tribunal, and
- (b) any person certain of whose functions are functions of a public nature;

“realised losses” and “realised profits” means the losses or profits of the business carried on by the body as fall to be treated as realised in accordance with generally accepted accounting practice;

“referendum” includes any national or regional referendum or other poll held in pursuance of any provisions made by or under the law of any state on one or more questions or propositions specified in or in accordance with any such provision;

“remuneration committee” means a body of persons to which a company or other body has delegated the function of setting remuneration policies;

“remuneration policies” means policies as to the remuneration of directors or other senior managers of a company or other body;

“residual assets” means, in relation to the dissolution or winding up of a body, the assets of the body which remain after satisfaction of the body’s liabilities.

(4) 2006 c.46.

Political activities not to be treated as being carried out for the benefit of the community

3.—(1) For the purposes of section 150(1)(a) and (2)(b) of the 2008 Act, the following activities are to be treated as not being activities which a reasonable person might consider are activities carried on for the benefit of the community in England—

- (a) the promotion of, or opposition to, changes in—
 - (i) any law applicable in the United Kingdom or elsewhere, or
 - (ii) the policy adopted by any governmental or public authority in relation to any matter;
- (b) the promotion of, or opposition (including the promotion of changes) to, the policy which any governmental or public authority proposes to adopt in relation to any matter; and
- (c) activities which can reasonably be regarded as intended or likely to—
 - (i) provide or affect support (whether financial or otherwise) for a political party or political campaigning organisation, or
 - (ii) influence voters in relation to any election or referendum.

(2) But activities of the descriptions prescribed in paragraph (1) are to be treated as being activities which a reasonable person might consider are activities carried on for the benefit of the community in England if—

- (a) they can reasonably be regarded as incidental to other activities, which a reasonable person might consider are being carried on for the benefit of the community; and
- (b) those other activities cannot reasonably be regarded as incidental to the activities prescribed in paragraph (1).

Section of the community

4. For the purposes of section 150(1)(a) and (3) of the 2008 Act, any group of individuals may constitute a section of the community if—

- (a) they share a readily identifiable characteristic; and
- (b) other members of the community of which that group forms part do not share that characteristic.

Condition concerning distribution of profits

5.—(1) For the purposes of section 150(1)(b) of the 2008 Act, the prescribed condition is that the constitution of the body must state, or contain provisions which ensure, that not less than 50 per cent of its distributable profits in each financial year will be used or applied for the purpose of the activities of that body.

- (2) The condition prescribed in paragraph (1) does not apply to the following bodies—
 - (a) a company limited by guarantee and registered as a charity in England and Wales;
 - (b) a community interest company registered as a company limited by guarantee; and
 - (c) a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993⁽⁵⁾).

Other conditions to be satisfied by qualifying bodies

6.—(1) Subject to paragraph (2), a body is a qualifying body only if it satisfies the conditions specified in regulations 7 to 9.

(5) 1993 c.10; section 69A was inserted by the Charities Act 2006 (c.50), Schedule 7, paragraph 1.

(2) The conditions specified in regulations 7 and 8 do not apply to the bodies referred to in regulation 5(2).

Condition concerning community benefit

7. The condition specified in this regulation is that the constitution of the body must contain a statement or condition that the body is carrying on its activities for the benefit of the community in England.

Conditions concerning distribution of assets on winding up

8.—(1) The condition specified in this regulation is that the constitution of the body must, where appropriate, contain provisions relating to the distribution of assets which take effect when that body is dissolved or wound up, as specified in paragraph (2).

(2) The provisions referred to in paragraph (1) are ones which—

- (a) require that the residual assets of the body be distributed to those members of the body (if any) who are entitled to share in any distribution of assets on the dissolution or winding up of that body according to those members' rights and interests in that body;
- (b) in the case of a company not limited by guarantee and registered as a charity in England and Wales, provide that no member shall receive an amount which exceeds the paid up value of the shares which the member holds in the company; and
- (c) designate another qualifying body (for the purposes of sections 149 to section 156 of the 2008 Act) to which any remaining residual assets of the body will be distributed after any distribution to members of the body.

Condition relating to unincorporated bodies

9. The condition specified in this regulation is that if the body is an unincorporated body it must have a constitution.

Signed by authority of the Secretary of State for Health.

11th March 2009

Phil Hope
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 149 to 156 of the Health and Social Care Act 2008 (the “2008 Act”) make provision for financial assistance to “qualifying bodies” engaged in the provision of health and social care services, or the provision of connected services to persons providing health and social care. These regulations make further provision in relation to the conditions which must be met if a body is to be a “qualifying body”.

Regulation 3 relates to the ‘community interest test’ in section 150(1)(a) of the 2008 Act; in particular it prescribes political activities which are not to be treated as activities which a reasonable person might consider are carried on “for the benefit of the community”.

Regulation 4 specifies when a group of individuals may be considered to be a section of the community, for the purposes of section 150(1)(a) of the 2008 Act.

Regulation 5 prescribes the condition to be met by qualifying bodies in relation to the distribution of profits, and the type of bodies which are excepted from that requirement.

Regulations 6 to 9 prescribe other conditions which must be satisfied by a body if it is to be a qualifying body, in particular: a requirement that the constitution of the body contains a statement or condition that the body is carrying on activities for the benefit of the community (regulation 7); a condition as to the distribution of assets on dissolution or winding up (regulation 8); and a condition that unincorporated bodies must have a written constitution (regulation 9).

A full impact assessment on the effect that sections 149 and 156 of the 2008 Act and this instrument will have on the costs of business and the voluntary sector is available from the Department of Health, Department of Health Publications, PO Box 777, London, SE1 6XH, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).