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Charities and Trustees affected by new criminal sanctions

The Reporting on Payment Practices and Performance Regulations 2017 ('RPPPR') and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 came into force on 6 April 2017.

Does it affect you?

The Regulations apply to companies or LLPs meeting any two of the following criteria:

1) a £36 million annual turnover
2) an £18 million balance sheet total
3) 250 employees

A company is defined as any entity formed and registered under the Companies Acts (1985 or 2006). The government's estimate is that 15,000 companies and LLPs will be affected by the Regulations. As a result, some charitable companies will fall under the scope of the Regulations, and will need to be aware of their responsibilities – or face criminal sanctions and associated reputational damage.

The offences

The Regulations create two criminal offences for both the company and its trustees: for a failure to report, and for reporting misleading, false or deceptive information under the Regulations.

What must they do?

A company must submit to the government and publish a report on the terms of its contracts relating to payment period, payment practices and policies, payment performance, and dispute resolution processes. The name of the director or trustee of the company who approved the above information must also be provided. The reports must be made every six months. If the report is not filed within 30 days from the end of each reporting period both the company and every director will commit an offence.

In addition, any person who knowingly or recklessly publishes (or causes to be published) a report or information or makes a statement, which is misleading, false or deceptive in a 'material particular', commits an offence.

The penalty is an unlimited fine.

The defence

It is a defence to a charge of failing to publish a report for a director to demonstrate that she/he took all reasonable steps for the reporting requirements to be met within time.

There is no statutory defence to the Regulation 9(1) false statement offence, although the prosecution will obviously have to prove that the individual acted knowingly or recklessly.

Conclusion

These Regulations are part of a growing trend to criminalise forbidden corporate behaviour and extend that criminal liability to trustees. Other examples include the Money Laundering Regulations 2007 and the Bribery Act 2010. This is a powerful tool to engineer change among corporations.

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