

Level 4 Certificate in Charity Law and Governance

Syllabus

Issue 2

icsa

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Key features

The ICSA Certificate in Charity Law and Governance:

- is aimed at individuals working in charities (registered and unregistered) in England and Wales and in particular, those working in roles affected by legal regulation and governance issues and those with governance responsibilities.
- is a Level 4 qualification – equivalent to first year undergraduate level
- contains six compulsory modules
- is externally assessed – ICSA will set and mark the assessment
- is assessed twice a year – in June and November
- is graded at Pass (P), Merit (M) and Distinction (D) – students whose level of achievement is below Pass will be classified as Fail A, Fail B, Fail C or Fail D, depending on the number of marks achieved.

Students can register for this qualification from October 2015. Study materials are available from January 2016 and the first certification opportunity will be August 2016.

Prior knowledge, skills and understanding

Students do not need to achieve any other qualifications before registering for an ICSA Level 4 Certificate in Charity Law and Governance qualification. No prior knowledge, skills or understanding are necessary. There are no formal entry requirements and the qualifications are suitable for non-degree holders, although it is recommended to be working in a relevant occupation.

Assessment

The modules within the qualification are externally assessed via one closed-book examination that will cover content from each module. The examination is set and marked by ICSA and the pass mark is 50%. See the *Qualification structure* section for further information.

The examination provides independent assessed evidence of learning. It also enables students to demonstrate the range of transferable skills they have developed throughout their programme of study by requiring them to apply their knowledge in unfamiliar contexts.

Module format

Module title

The title describes the content of the module.

Level

All the modules in this syllabus document are at Level 4, which is equivalent to first year undergraduate in the UK.

Module type

All of the modules in this syllabus document are compulsory.

Total hours study time

This is the total number of hours that students are expected to take to study the module. This time incorporates module webinars, self-study with the study text, wider reading and reflection on work experiences, practice assessment tasks and exam preparation.

Introduction

The introduction provides a snapshot of the module and summarises the learning outcomes.

Learning outcomes

The learning outcomes of a module set out what a student is expected to know, understand or be able to do as the result of a process of learning.

Module content

This section identifies the breadth of knowledge, skills and understanding needed to achieve each of the learning outcomes through a programme of study.

Topic

Each learning outcome is broken down further into a series of themes that should be covered in the programme of study for the module.

Exemplification

The content of this section provides the range of subject material to be studied under each topic heading.

Qualification structure

Level 4 Certificate in Charity Law and Governance

This qualification comprises six modules and is assessed via **one** 3-hour (with 15 minutes reading time) closed-book examination which is set and marked by ICSA. Students must pass this paper to be awarded the qualification. The pass mark is 50%.

| Module number | Modules | Total hours study time |
|--------------------|--|------------------------|
| 1 | Charity Law | 33 |
| 2 | Structures and Legal Forms | 33 |
| 3 | Compliance and Regulation | 33 |
| 4 | Governance | 67 |
| 5 | Sources of Income (Generating Resources) | 17 |
| 6 | Stewardship of Funds and Assets | 17 |
| Total hours | | 200 |

Modules

Module 1

Charity Law

Level: 4

Total hours study time: 33

Introduction

The module explores the legal basis of charity law and charity regulation in England and Wales, the core legal elements of what is capable of being 'charitable' under English law and aspects of trust law, charity law and trusteeship.

Students will gain a broad understanding of the legal framework within which the law and regulation of charities and charitable activity in England and Wales is set.

Learning outcomes

In this module you will:

- 1 Know the fundamental legal requirements of 'charitable' status in English law
- 2 Understand the legal framework within which the law and regulation of charities in England and Wales is set
- 3 Understand key legal aspects of charity trusteeship.

Module content

| What needs to be learnt | |
|-------------------------|--|
| Topic | Exemplification |
| English law | <p>Including:</p> <ul style="list-style-type: none"> • modern English law framework – common law, statute law • legal jurisdictions in the UK – England and Wales, Scotland, Northern Ireland: <ul style="list-style-type: none"> • courts, tribunals and the judiciary • United Kingdom Parliament • devolved legislative bodies in the United Kingdom • European Union and European law • charity law: <ul style="list-style-type: none"> • foundations and the modern framework of charity law • principal statutes – Charities Act 1992 (Part II), Trustee Act 2000, Charities Act 2011, Charities (Protection and Social Investment) Act 2016 • role of the courts and other tribunals • charity proceedings as defined in the Charities Act • the Charity Tribunal – types of cases dealt with by the Tribunal • the Charity Commission: <ul style="list-style-type: none"> • legal basis of the Commission • statutory objectives, functions and general duties • charity law and regulation in Scotland and Northern Ireland: <ul style="list-style-type: none"> • charitable purposes • registration of foreign charities |
| 'Charity' in England | <p>Including:</p> <ul style="list-style-type: none"> • legal definition of 'charity' • consequences of the legal status of being a 'charity' • descriptions of charitable purposes as set out in the Charities Act 2011 • recreational and similar trusts • public benefit requirement of charitable purposes: <ul style="list-style-type: none"> • the law that underpins public benefit • the meaning of 'public' • duties and requirements of trustees • differences in Scotland and Northern Ireland • defining 'the poor' and 'poverty' • comparing the legal basis/features of other non-charity community purpose/non-commercial organisations: <ul style="list-style-type: none"> • community interest companies (CICs) • 'mutual' organisations and co-operative societies • friendly societies • registered societies – community benefit societies and co-operative societies • charitable registered societies |

What needs to be learnt

| Topic | Exemplification |
|---------------------------|---|
| | <ul style="list-style-type: none"> • other non-charitable civil society organisations/not-for-profits • beneficiary groups of recreational charities: <ul style="list-style-type: none"> • defining the beneficiary group by reference to ‘protected characteristics’ • the meaning of ‘benefit’ • fee charging for charitable services • private benefits • Charity Commission statutory guidance |
| Charity trustees | <p>Including:</p> <ul style="list-style-type: none"> • legal definition • legal background of trustees’ duties • general duties of trustees in different types of organisation • core role and key responsibilities • reporting requirements • potential liabilities of trustees: <ul style="list-style-type: none"> • breach of trust • dishonesty • insolvency • criminal penalties • other sanctions against charity trustees • managing trustee liability risks • law relating to charity trustees in Scotland and Northern Ireland |
| Trusts and special trusts | <p>Including:</p> <ul style="list-style-type: none"> • foundations of trust law • charitable trusts • relationship of trust law to charity law • law relating to trusts in Scotland • special trusts in charities • permanent endowment • functional permanent endowment • release of permanent endowment restrictions • non-endowed (unrestricted) funds and assets • corporate property |

Module 2

Structures and Legal Forms

Level: 4

Total hours study time: 33

Introduction

This module explores the principle of incorporation and the different legal forms that are available for charities. It outlines group structures and how they work and explains in more detail the legal forms of charitable incorporated organisations and companies limited by guarantee. It also explains the nature of a constitution and its typical content.

Students will gain a broad understanding of the advantages and disadvantages of each legal form, the nature of their constitutions, and a more detailed understanding of the law relating to Charitable Incorporated Organisations and companies limited by guarantee.

Learning outcomes

In this module you will:

- 1 Understand the principle of incorporation
- 2 Know the legal forms and structures available to charities
- 3 Know about the law in the most relevant legal forms
- 4 Understand the nature of a constitution.

Module content

| What needs to be learnt | |
|--------------------------------------|--|
| Topic | Exemplification |
| Different legal forms and structures | <p>Including:</p> <ul style="list-style-type: none"> • features of common legal forms for charities: <ul style="list-style-type: none"> • charitable trusts • unincorporated members' associations • registered societies • chartered bodies • statutory bodies • community benefit societies (CBS) • companies limited by guarantee (CLG) • charitable incorporated organisations (CIO) • advantages and disadvantages of different legal forms of charities • why group structures emerge for some charities • charity subsidiaries: <ul style="list-style-type: none"> • company limited by shares (CLS) • company limited by guarantee (CLG) • community interest company (CIC) |
| Incorporation | <p>Including:</p> <ul style="list-style-type: none"> • definition of incorporation and its legal effect • outline history of incorporation • the development of companies • the veil of incorporation • limited liability: <ul style="list-style-type: none"> • wrongful or fraudulent trading • criminal acts or breaches of statutory duty • acting whilst disqualified • other ways of dealing with liabilities • trustee indemnity insurance • Charity Commission relief • incorporation of trustees |
| Charity constitutions | <p>Including:</p> <ul style="list-style-type: none"> • definition of a constitution • different legal forms of constitution • typical content of a constitution • amending a constitution in different legal forms of charity |

Module 3

Compliance and Regulation

Level: 4

Total hours study time: 33

Introduction

This module explores the regulatory framework for charities and the role of charity regulators across the UK. It explains the requirements for charity registration in England and Wales and criteria for exemptions to registration.

Students will gain a broad understanding of the regulatory requirements for charities and charitable companies, and the reporting and accountability obligations in regard to statutory accounts and reports.

Learning outcomes

In this module you will:

- 1 Understand the role of charity regulators in the UK
- 2 Know how charities are registered in England and the criteria for exemptions
- 3 Understand how to meet the regulatory requirements for charities and charitable companies
- 4 Understand statutory reporting and accountability obligations and how these differ from private sector organisations.

Module content

| What needs to be learnt | |
|---|---|
| Topic | Exemplification |
| Regulators in different parts of the UK | <p>Including:</p> <ul style="list-style-type: none"> • role of the Charity Commission in the UK • role of the Office of the Scottish Charity Regulator (OSCR) • role of the Northern Ireland Charity Commission • role of other regulators in the charity sector: <ul style="list-style-type: none"> • Financial Conduct Authority • Companies House • the Privy Council • how the legal form of a charity determines how they are regulated and by who • the changing nature of regulation • cross border charities |
| Charity registration | <p>Including:</p> <ul style="list-style-type: none"> • process for Charity Commission registration • changing legal form of a charity • limitations on registration • mergers and incorporating a charity • exempt and excepted charities – criteria for exemptions |
| Regulatory frameworks and requirements | <p>Including:</p> <ul style="list-style-type: none"> • Charity Commission regulation of registered charities • regulatory requirements for charities who are exempt from registration with the Charity Commission, e.g. registered societies • Companies House requirements • annual returns to the Charity Commission • differences between annual and event-driven filing • electronic filing with Companies House: <ul style="list-style-type: none"> • confirmation statement • annual reports and accounts • filing requirements for: <ul style="list-style-type: none"> • community benefit societies • charitable companies • registers and records (including minutes) – requirements for different legal forms of charity • location and format of statutory registers • contents of statutory registers for charitable companies: <ul style="list-style-type: none"> • register of members • register of directors • register of secretaries • register of charges |

What needs to be learnt

| Topic | Exemplification |
|-------|---|
| | <ul style="list-style-type: none"> • inspection of the registers for charitable companies • Charity Commission investigations and inquiries: <ul style="list-style-type: none"> • statutory objectives and functions • Charity Commission powers: <ul style="list-style-type: none"> • information gathering powers • temporary protective powers • remedial powers • impact of the Charities (Protection and Social Investment) Act 2016 on powers of the Charity Commission • power to disclose information about charities • other enabling powers under the Charities Act 2011 • challenging Charity Commission decisions: <ul style="list-style-type: none"> • decision review procedure • the First-tier Tribunal (Charity) • registers and records for different legal forms of charity • registers for charitable companies: <ul style="list-style-type: none"> • location and format • contents • other statutory records, e.g. National Insurance, pensions, Health and Safety • legal requirements for retention and inspection of minutes • annual report and accounts: <ul style="list-style-type: none"> • legal obligation for charities to maintain accounting records • legal requirements surrounding transparency • format and content of reports and accounts and the influence of the Statement of Recommended Practice (SORP) • filing – making reports and accounts available to regulators • circulating reports and accounts to members • providing reports and accounts to the public • names and stationary – legal requirements for charities and companies • public reporting and accountability – statutory accounts and reports |

Module 4

Governance

Level: 4

Total hours study time: **67**

Introduction

This module explores the concept of corporate governance, including its history, the current key themes, and its application to charities. It then looks in more detail at the key components of effective governance, including governance processes, boardroom behaviour and the role of the board.

Students should be able to apply the information learnt to an existing charity, enabling them to take the first steps to review and improve governance.

Learning outcomes

In this module you will:

- 1 Understand the history and background to charity governance, including the prevalent standards and codes
- 2 Know the key components of effective governance
- 3 Understand how to apply the principles of effective governance in charities.

Module content

| What needs to be learnt | |
|----------------------------------|---|
| Topic | Exemplification |
| Overview of corporate governance | <p>Including:</p> <ul style="list-style-type: none"> • defining corporate governance • the importance of governance • history of corporate governance in the UK and its relevance to charities: <ul style="list-style-type: none"> • the Cadbury Report • On Trust • the Nolan Report • the UK Corporate Governance Code • recent events, e.g. effects on the charity sector of the collapse of Kids Company and the Select Committee's investigations into BHS and Sports Direct • changes in approaches to governance over time • key current themes in governance • essential codes of governance for charities and other sectors: <ul style="list-style-type: none"> • Good Governance: A Code for the Voluntary and Community Sector • other codes, e.g. National Housing Federation (NHF) Code of Governance, the NHS Foundation Trust Code of Governance • theories of governance: <ul style="list-style-type: none"> • agency theory • stakeholder theory • stewardship theory • policy governance • behavioural governance • how theories of governance 'fit' with the charity sector |
| Meetings | <p>Including:</p> <ul style="list-style-type: none"> • common law definition of a meeting • general meetings: <ul style="list-style-type: none"> • timing • convening • notice and agenda • voting • role and responsibilities of the chair • proxies • quorum • conveying Companies Act provisions • resolutions of members • unanimity rule • electronic communications with members |

What needs to be learnt

| Topic | Exemplification |
|---------------------|--|
| | <ul style="list-style-type: none"> • board meetings: <ul style="list-style-type: none"> • how they are called and who has the power to call them • frequency of meetings • chairing board meetings • notice • quorum • committees, e.g. audit committee, remuneration committee, nominations committee, operations committee • how to make meetings effective: <ul style="list-style-type: none"> • appropriate documentation and information • ensuring the board has a clear understanding of their role • managing hygiene factors, e.g. meeting length, number of breaks, location |
| Boardroom behaviour | <p>Including:</p> <ul style="list-style-type: none"> • roles and responsibilities of trustees • behavioural governance and methods of improving behaviour in board meetings: <ul style="list-style-type: none"> • effective chairing • ensuring participants respect the chair and format of the meeting • avoiding overly formal procedures • adopting some meeting protocols • encouraging trustees to meet socially • considering different styles of board meeting • team behaviour: <ul style="list-style-type: none"> • the need for independent thought and constructive challenge • the impact of different personality types of board members • how to deal effectively with conflict • ensuring effective decision making takes place • other governance considerations: <ul style="list-style-type: none"> • board composition • performance review: <ul style="list-style-type: none"> – of the board and individual trustees – methods of board appraisal • skills analysis of board members • delegation: <ul style="list-style-type: none"> • who is being given authority and what the authority is • methods of delegation • how trustees can monitor the exercise of delegated powers • accountability: <ul style="list-style-type: none"> • what accountability means for charities • key considerations on who charities should be accountable to and what they should be accountable for • guidance on accountability in Good Governance: A Code for the Voluntary and Community Sector • the importance of annual reports and accounts |

Module 5

Sources of Income (Generating Resources)

Level: 4

Total hours study time: 17

Introduction

The module explores some of the most fundamental and common sources of income for charities (the means by which they generate financial resources). It also explores the most important legal and governance issues relating to those sources and the activities involved in accessing them.

Students will gain a broad understanding of the main charity funding sources and their legal and governance implications.

Learning outcomes

In this module you will:

- 1 Understand the main sources of charity funds and how charities generate funds from those sources
- 2 Understand the key differences between sources of income
- 3 Know the key legal and governance issues associated with sources of income for charities.

Module content

| What needs to be learnt | |
|-------------------------|--|
| Topic | Exemplification |
| Trading | <p>Including:</p> <ul style="list-style-type: none"> • the charity regulators' perspective on trading • the public benefit dimension and ensuring that any trading activities are appropriate to an organisation's charitable purposes • primary purpose trading, e.g. a charitable theatre, educational charity providing learning materials for schools • differences between primary and non-primary purpose trading • income generation trading (fundraising trading), e.g. sale of branded goods, sale of seasonal items • mixed purpose trading, e.g. branded promotional items • ancillary trading, e.g. operation of a bar within a charitable theatre • tax and VAT issues associated with trading • terms used by charities to describe their trading activities: <ul style="list-style-type: none"> • social enterprise • charity shops • key issues for trustees in trading matters • other legal rules that impact on trading, e.g. advertising regulations, competition law, data protection |
| Raising funds | <p>Including:</p> <ul style="list-style-type: none"> • defining donations, gifts and fundraising • fundraising – general legal and governance aspects • fundraising appeals • types of fundraising activities and methods and their legal and regulatory implications (including corporate sponsorship, challenge activities, affinity fundraising) • areas of risk for charities when generating funds through fundraising activities • fundraising issues for trustees to consider and effectively manage • the impact of unauthorised, inappropriate and harmful charity fundraising activities • reasons why fundraising appeals may fail • applying principles of the Code of Fundraising Practice • charity sector fundraising self-regulation • the Charity Commission's role over funds raised by charity fundraising • public reporting requirements of fundraising activities • public collections and other public fundraising • fundraising ventures with third parties: <ul style="list-style-type: none"> • commercial participators' and professional fundraisers • requirements under the Charities (Protection and Social Investment) Act 2016 |

What needs to be learnt

| Topic | Exemplification |
|--------------|--|
| | <ul style="list-style-type: none"> • Scotland and Northern Ireland – outline of the legal frameworks |
| Contracting | <p>Including:</p> <ul style="list-style-type: none"> • legal definition and key legal elements of a contract • the concept of legal capacity • constitutional issues • signature and/or execution of contracts • how contracts differ from grant agreements • contracting to provide charitable services • contracting to provide public services • competitive tendering – key legal issues |
| Investments | <p>Including:</p> <ul style="list-style-type: none"> • what is an investment? • financial investments • social impact investments (in furtherance of the charity's charitable purposes) • social investment – Charities (Protection and Social Investment) Act 2016 • ethical investment • charity investment powers – Trustee Act 2000 rules, requirements, restrictions and statutory powers • statutory investment powers for unincorporated charities • Scotland — statutory investment powers for charities according to the Charities and Trustee Investment (Scotland) Act 2005 |

Module 6

Stewardship of Funds and Assets

Level: 4

Total hours study time: 17

Introduction

The module explores the key principles of stewardship of charitable funds and assets, including their protection and correct application. It also examines the role of charity trustees as those principally responsible for this stewardship.

Students will gain a broad understanding of these key principles and how they affect the trustees as they seek to discharge their principal legal duties and responsibilities in practice.

Learning outcomes

In this module you will:

- 1 Understand the key principles of stewardship of charitable funds and assets
- 2 Know the legal responsibilities of trustees with regard to the custodianship of charitable funds and assets
- 3 Understand the relationship between legal principles and governance in practice.

Module content

| What needs to be learnt | |
|--|---|
| Topic | Exemplification |
| Stewardship of funds and assets – key principles | <p>Including:</p> <ul style="list-style-type: none"> • the overriding importance of the charity’s purposes in the stewardship of funds and assets • impact of the public benefit obligations on stewardship • stewardship of restricted funds and endowed funds • the importance of people/human resources in good stewardship and effective operation of the charity: <ul style="list-style-type: none"> • trustees • volunteers • employees • contractors • members • honorary officers • presidents and patrons • donors, funders and other supporters • restrictions on private benefits • trustee and connected persons payments and benefits: <ul style="list-style-type: none"> • payment of trustees for being trustees/employment of trustees • trustees’ expenses • remuneration of trustees for services other than trustee services • directors’ interests (companies): <ul style="list-style-type: none"> • duty to avoid a conflict of interests • duty to disclose an interest in a proposed transaction or arrangement • obligation to disclose an interest in an existing transaction or arrangement • members’/donors’ benefits • conflicts of interest: <ul style="list-style-type: none"> • overview of the common law framework • declared interests and conflicts of interest – serving trustees • constitutions • policies and procedures • regulatory expectations • practical identification of conflicts of interest • managing conflicts of interest |
| Investments | <p>Including:</p> <ul style="list-style-type: none"> • managing charity investments • trustees’ legal duties • the Charity Commission perspective and guidance on investments • investment issues for charitable companies |

What needs to be learnt

| Topic | Exemplification |
|--------------------|---|
| | <ul style="list-style-type: none"> • investment management statutory requirements for unincorporated charities: <ul style="list-style-type: none"> • trustees' general statutory duty of care • investment advice and the Standard Investment Criteria • reporting requirements • legal rules on the use of investment managers (including delegating discretionary management powers to investment managers) |
| Land | <p>Including:</p> <ul style="list-style-type: none"> • defining 'land' in the context of charity law • the importance of trustees taking a strategic approach to the stewardship of land • charity powers to acquire land • proper use and good management of land (including functional permanent endowment/designated land) • disposal of land: <ul style="list-style-type: none"> • disposals regulated by section 117 of the Charities Act 2011 • disposals of designated land • disposals to connected persons • disposals of investment land |
| Controls and risks | <p>Including:</p> <ul style="list-style-type: none"> • strategic planning and management controls – taking account of the stewardship of funds and assets • financial reporting to the trustees – management accounts • financial controls: <ul style="list-style-type: none"> • key risk areas that should be addressed in financial controls (including fraud and other financial risks; reputational risks) • key risk areas for charities • risk approach and key risk controls • the importance of good stewardship of international transactions and activities • serious incident reporting to the Charity Commission • public reporting of risk |



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