

The Charities
Act 2006:
An Overhaul of
Charity Law



The Charities Bill received Royal Assent on 8 November 2006 and became law. It is now known as the Charities Act 2006 ("the Act"). The reforms are far-reaching and have been largely welcomed by the third sector.

Modernising Charity Law and Charitable Status

Definition of Charity

The Act redefines "Charity". It will be based on the principles of public benefit and an expanded list of charitable purposes.

To qualify as 'charitable', an institution will have to satisfy a two-stage test:

1. it must be established for the public benefit (e.g. not benefit a too narrowly defined class of people such as the members of a particular family or the employees of a particular company); and
2. its purposes as set out in its constitution must fall within one or more of the purposes on the new statutory list.

None of the existing charitable purposes has been removed, but the area has been clarified and expanded. The described purposes are:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown or the efficiency of the police, fire and rescue services or ambulance services, and;
- any other purposes charitable in law.

These changes are expected to come into force in early 2008.

Checks on the 'Public Character' of charities

The Act gives the Charity Commission a new objective; to promote understanding and awareness of the public benefit requirement. A programme of consultation has been tabled as to how the Charity Commission will do this (to be launched on 23 January 2007). The Charity Commission plans to publish its principles

of public benefit in June 2007. In any event, it is likely that it will be harder to register new charities where public benefit is in question.

The Act removes the presumption of public benefit in favour of charities established for the relief of poverty, advancement of education and the advancement of religion. Organisations that have in the past benefited from the presumption will have to actively demonstrate that 'public benefit' is at the heart of their purpose.

The Charity Commission is proposing to carry out public benefit checks on all existing charities, starting with those which charge high fees, to make sure that adequate public benefit is being provided. The Charity Commission has stated that it wants to work with charities and the communities in which they operate to ensure the public benefit requirement is being met. The Commission intends to help charities change their activities and practices if necessary.

The Office of the Third Sector has indicated that these provisions will come into force in 2008, but charities should start preparing now.

Mergers and administration

The Act introduces a package of measures that will facilitate mergers between charities and, more generally, the administration and running of charities.

The Charity Commission will keep a public register of charity mergers, reducing uncertainties when it comes to making donations to merged charities. This will reassure both charities and the donating public that the spirit of legacies will be honoured if a charity merges.

This is expected to be brought into force in the second half of 2007.

Permanent endowment

The Act introduces new criteria for allowing trustees to spend capital and sell property.

The Act permits charity trustees to expend permanent endowment in a wider range of circumstances. Permanent endowment is property or funds that must be held permanently, either to fulfil the charity's purposes or to produce an income for the charity. However, safeguards have been put in place in relation to larger organisations: it must enable the charity to fulfil its purposes more effectively and, if the charity's gross income exceeds £1,000 and the value of the endowment exceeds £10,000 then such expenditure will require Charity Commission approval.

These new powers are expected to be introduced in early 2008.

Charitable Incorporated Organisations

Charitable Incorporation Organisation (CIO) is a new legal form designed specifically for charities, and will be only available to charitable organisations.

The Act introduces the CIO, which is a new vehicle for charities that want a corporate structure. It will allow the charity to hold property and enter into contracts in the charity's name, rather than the names of individual trustees and will have limited liability.

CIOs will only be regulated by the Charity Commission and will not be regulated by Companies House.

The basic framework for the CIO is set out in the Act, while the technical provisions, which might need amendment, will follow in secondary legislation.

The CIO is not expected to be available until at least 2008. This means that unincorporated charities such as charitable trusts, which want to take advantage of the benefits of incorporation now, should consider incorporating as companies limited by guarantee or appointing a corporate trustee.

The Act provides for existing charitable companies to convert to CIOs if they wish to do so.

Governance

Payment of trustees

The Act introduces statutory powers to pay an individual trustee to provide a service to a charity (outside their duties as a trustee) if they reasonably believe it to be in the charity's interests to do so.

The Act includes safeguards to prevent abuse of this power, only a minority of trustees may receive payment and a limit on the amounts that individual trustees can receive by way of payment.

To this end, the Act contains five conditions. In summary, they are:

1. the amount or maximum amount of the payment must be set out in writing;
2. the payment must not exceed what is reasonable in the circumstances;
3. it is in the best interests of the charity for the services to be provided by the trustee for the amount or maximum amount of payment set out in writing;
4. only a minority of the trustees of the charity can receive payment; and
5. the trusts of the charity do not prohibit such payment.

Note, however, that the Act does not allow trustees to be paid simply

for being trustees or to entitle trustees to be appointed to any salaried position within the charity. All conflicts of interest must still be properly managed.

These provisions are expected to come into force in early 2008. In the meantime, trustees should seek legal advice if in doubt as to whether individual trustees can receive payment.

Personal liability of trustees

The Act gives charity trustees a power to apply to the Charity Commission as well as to the High Court for relief from personal liability for breach of trust where they have acted honestly and reasonably.

The Government believes the inclusion of this provision will help some trustees allay their fears in relation to personal liability. It is also hoped that this will encourage new people to become charity trustees who may have been put off by the risk of personal liability. However, the Charity Commission and the courts will still take deliberate breaches of trust very seriously.

This new power is expected to be introduced in early 2007.

Regulation

Registration

The threshold for compulsory registration has been raised to £5,000.

Voluntary registration will be allowed for charities below the new threshold.

This should apply from early 2007.

Excepted charities

Excepted charities with income above the new proposed registration threshold will be required to register.

The Government believes that there is no longer justification for keeping the classes of charity that are currently excepted outside registration with the Commission. The Act therefore includes provisions for ending exception. The initial registration threshold for formerly excepted charities is a gross annual income of £100,000.



Initially, the types of organisation that are likely to be affected include some parochial church councils and armed forces charities. There are plans to reduce the threshold in due course, which will ultimately catch many more currently excepted charities in the net.

These provisions are not expected to come into force before 2008. This is to give the Charity Commission time to prepare for the changes.

Exempt charities

Exempt charities are recognised as charities but are exempt from Charity Commission regulation in many areas.

When the relevant parts of the Act come into force, exempt charities will continue to be regulated by their current regulator, but the Charity Commission will have increased powers of investigation and regulation.

For example, the Charity Commission will be able to investigate exempt charities if asked to do so by their current regulator, and it will be able to appoint and remove charity trustees in instances of misconduct or mismanagement.

Some currently exempt charities will have to register with the Charity Commission, such as industrial and provident societies that are not registered housing associations. To ease the transition only charities with gross annual income over £100,000 will have to register. This is an interim level and may be reduced in the future.

Once again, these provisions are not expected to come into force until early 2008 to enable exempt charities, their current regulators and the Charity Commission time to prepare for the changes.

Charities Tribunal

A new Charities Tribunal will hear appeals against the decisions, directions and orders of the Charity Commission.

Examples of the types of appeals which may be brought before the Tribunal are:

- decisions to enter or not to enter an organisation in the register of charities;
- decisions to remove or not to remove an organisation from the register of charities;
- a decision requiring the name of a charity to be changed;
- a decision to launch an inquiry into a charity; and
- orders in relation to the removal or appointment of trustees.

These are examples only; the list is not comprehensive.

The Tribunal is a significant step in the right direction and will provide a court of first instance for a number of appeals. However, appeals will

be permitted on a point of law only (factual decisions cannot be appealed) and no financial assistance will be available for appellants. The Tribunal will have powers to award appellants costs against the Charity Commission where it has acted unreasonably, but no power to award compensation over and above this.

Nevertheless, it is hoped that the Tribunal will increase the Commission's accountability.

It is expected to be up and running in 2008.

Accounts

The Act provides that some charities will no longer have to have their accounts audited.

Generally, a full audit will be required if charities have gross income over £500,000. The trustees' annual report must give details on the activities of charities' subsidiaries and the Act also provides that in the majority of cases, unincorporated charities with subsidiaries will have to prepare group accounts. In some circumstances, Auditors will also be placed under a duty to report matters to the Charity Commission.

These changes are expected to be implemented in the second half of 2007.

Summary

The Act modernises charity law and brings it up to date with the twenty first century. Many provisions are welcome including the introduction of CIOs and the charity tribunal. However, we must wait and see how these are administered and brought in before we can ultimately measure the Act's success.

The Act will be implemented over the next 18 to 24 months but the first provisions, particularly those related to governance are expected to come into force in early 2007. We will keep you updated through our legal alert publications, website and e bulletins, but charities must get to grips with the new law now to make sure that they are adequately prepared.

If you require any further information about any of the issues raised in this factsheet or on charity law in general please contact Gerry Morrison on 01904 688500 or gerry.morrison@rollits.com

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