



Rollits

LLP

# Charity Law Update

Charities Act 2022

# The Charities Act 2022

**Received Royal Assent on 24 February**

On 11 May 2021 the Queen announced an important piece of legislation for the charity sector as the Government's plans to roll out the Charities Bill. In 2017 the Law Commission published a report "Technical Issues in Charity Law" setting out problems in the legal sphere in which charities operate and making recommendations for improvement. The Charities Bill has now become the Charities Act 2022 although most of the provisions are not yet in force, and we are awaiting news of when these will be implemented to amend charity law.

In this Newsletter we look at some of the key changes which the Act will make to charity law when the provisions are implemented, and how this will impact on charities on a practical level.

We intend to follow this up with a seminar at our offices when the implementation timetable is clear, and details of this will be published on our website and sent out to contacts on our database.



## Charitable Companies - Changes to Charitable Purposes

Provided changes to a charitable company's objects do not alter the substance of the charitable purposes this will not be regarded as a 'regulated alteration' requiring the prior written approval of The Charity Commission. This brings the definition of a 'regulated alteration' for a charitable company's objects in line with that for a charitable incorporated organisation.

The Act also requires The Charity Commission to consider the following factors when deciding whether to give its consent to altering

a charitable company's purposes:

- The purposes of the company when it was established
- The desirability of securing that the purposes of the company are, so far as reasonably practicable, similar to the purposes being altered; and
- The need for the company to have purposes which are suitable and effective in the light of current social and economic circumstances.

## New Statutory Powers of Amendment for Unincorporated Charities Purposes

The Act introduces broad powers for unincorporated charities to amend any provision in their governing documents by resolution of their trustees provided that they are satisfied that amendments are in the best interests of the charity and any changes do not result in the charity ceasing to be charitable at law.

Provisions are retained whereby The Charity Commission is required to give prior written consent to any changes to:

- The charitable purposes of the charity;
- The charity's winding up provisions directing the application of remaining assets upon dissolution of the charity;
- Providing authorisation for the charity trustees or members of the charity, or persons connected with them, to obtain any benefit;

- Alter a restriction that renders property permanent endowment;
- Power for a designated third party to appoint charity trustees unless they have consented to the removal of their power or that third party has ceased to exist; or
- Any amendment that would affect any right directly conferred by the governing document on a named person or the holder of an office or position specified in the governing document (other than that of a trustee or member), unless that person consents to the amendment or is no longer in existence.

In considering whether to give consent to an alteration to an unincorporated charity's purposes The Charity Commission is required to have regard to the same issues as it does for charitable companies and charitable incorporated organisations as specified above.



# Cy-Près Schemes and Failed Fundraising Appeals

The Act includes new provisions to make it easier to enable donations given in response to an appeal for a purpose which can no longer be carried out to be applied for other similar purposes rather than returned to donors, in the following circumstances:

- Where the Court or The Charity Commission decides that it would be unreasonable for the charity to incur expense in taking steps to return the donation, or it would be unreasonable for the donors to expect the donation to be returned;
- Where the trustees reasonably believe that a donor has given £120 or less in a financial year (whether by a single donation or cumulatively over the year), they do not need to contact the donor (unless the donor made a written declaration at the time the donation was made that it must be returned should the appeal fail);
- Where the trustees have agreed steps with The Charity Commission to contact donors to offer the return of their donations and, having followed those steps, has not identified or found a donor;

- Where donations comprise the proceeds of a cash collection made by collection boxes, lottery, competition or similar method where it is not possible to identify individual donors.

The Act will also enable trustees to resolve that proceeds from a failed fundraising appeal are applied to different charitable purposes, without the need to obtain a cy-près scheme from The Charity Commission. The power will be available where proceeds of a fundraising appeal are applicable for similar charitable purposes in the following circumstances:

- An initial failure of an appeal (usually where a charity cannot achieve the purpose of the appeal because it has raised insufficient funds); or
- A subsequent failure of an appeal (where there is surplus after the charity has achieved the purpose of the appeal), where specific circumstances apply.

A majority of the charity's trustees must pass a resolution to agree to applying the funds in similar charitable purposes. Where the proceeds of the appeal exceed £1,000 the resolution will not take effect until The Charity Commission has given prior written consent to it.

## Permanent Endowment

The Act includes provisions to:

- Reformulate the definition of permanent endowment in the Charities Act 2011 to remove inconsistencies and a lack of clarity;
- Permanent endowment will be defined as property that is “subject to a restriction on being expended which distinguishes between income and capital”.

This is intended to capture any fund held subject to a restriction that the capital cannot be expended by any means. However it will not capture:

- Special trust property, such as a fund held subject to a restriction that it can only be expended on a specific purpose (within the charity’s wider purposes); or
- A Fund held subject to a general restriction that only a certain percentage of it (whether capital or income) can be spent each year.

The new definition applies only for the purposes of the various powers of trustees and The Charity Commission to deal with permanent endowment set out in the Charities Act 2011.

The Act also amends the power to release permanent endowment restrictions in the Charities Act 2011.

This includes:

- Ensuring that the amount of any outstanding borrowing from permanent endowment is taken into account when calculating the value of a fund for the purpose of determining whether it falls above or below the £25,000 threshold for obtaining The Charity Commission’s consent;
- Allowing the trustees to use the power to release permanent endowment restrictions on outstanding borrowing from permanent endowment;
- Introducing a new statutory power to enable trustees to borrow up to 25% of the value of permanent endowment, subject to recoupment within 20 years, without having to seek an Order from The Charity Commission;
- Give trustees power, once they have opted into investing on a total return basis under the Charities Act 2011, to further release permanent endowment restrictions to allow them to make social investments with a negative or uncertain financial return.

The Act will also amend the Charities Act 2011 to enable The Charity Commission to make new regulations to govern the use of permanent endowment funds to make social investments.





## | Ex Gratia Payments

The Act will insert provisions into the Charities Act 2011 giving charity trustees a new power to make small ex gratia payments without requiring authorisation from The Charity Commission.

The size of ex gratia payment that the charity trustees will be able to make using the new power will depend on the gross income of the charity in its last financial year as follows:

Gross Income of Charity in Last Financial Year	Size of Ex Gratia Payment Permitted without the Charity Commission's Authorisation
£25,000 or less	£1,000
Over £25,000 but not over £250,000	£2,500
Over £250,000 but not over £1 million	£10,000
Over £1 million	£20,000

The above thresholds apply per payment and not per financial year. This means that as a charity will be able to make any number of ex gratia payments in a year provided individual payments do not exceed the above limits.

# | Charity Land

The Act amends the provisions of the Charities Act 2011 setting out procedures on disposing of and mortgaging charity land.

The procedures were introduced to ensure that charities obtained best value or the best terms when they dispose of or mortgage land and to ensure that trustees take appropriate professional advice.

The main changes which will be of interest to land-holding charities are the changes to the requirements for charity trustees to advertise a proposed disposal in the manner advised in the surveyor's report.

The requirement for the Qualified Surveyors' Report to contain the information prescribed in the Charities (Qualified Surveyors' Report) Regulations 1992 will be replaced with provisions requiring a 'designated adviser' to advise on the following points:

- What sum to expect (or, if an offer has already been made, whether the offer represents the market value of the land);
- Whether (and, if so how,) the value of the land could be enhanced;
- Marketing the land (or, if an offer has already been made, any further marketing that will be desirable); and
- Anything else which could be done to ensure that the terms of the transaction are the best that can reasonably be obtained for the charity.

The designated adviser is also required to self-certify in providing their advice that they:

- Have the appropriate expertise and experience to provide the advice that is required; and
- Do not have any interests that conflicts, or would appear to conflict, with that of the charity.

The Act will also expand the range of people who can give advice to trustees on the disposal of a charity's land to include fellows of:

- The National Association of Estate Agents; and
- The Central Association of Agricultural Valuers.

Therefore advisers will not necessarily have to be members of the Royal Institution of Chartered Surveyors if they fellows of one of the above institutions.

This will be welcome to charities because the costs of obtaining a Qualified Surveyor's report can, on occasion outweigh the benefits to the charity of doing so - particularly for lower value land disposals or transactions where full compliance with the provisions in the Charities (Qualified Surveyors' Reports) Regulations 1992 are disproportionate to the transaction in question.

The Act will also enable qualified charity trustees, officers and employees of the charity to provide a report or advice pursuant to the provisions of the Act on land disposals and mortgaging of charity land, including where they do so in the course of their employment by the charity.



## Connected Persons Land Disposals

The Act will also amend the definition of 'connected person' when The Charity Commission's consent is required for a land disposal to exclude employees of the charity where the disposal is the grant of a short, fixed term or periodic tenancy (of 1 year or less) to use as their home. It will still be necessary for charities to obtain advice on the grant of those leases, but charities will no longer be required to obtain consent from The Charity Commission in these circumstances.

## Appointment of Charity Trustees

The Act will insert a welcome power to enable The Charity Commission to make an order ratifying the appointment or election of charity trustees in situations where there is either:

- Uncertainty as to whether they were properly appointed or elected; or
- Any defect in their appointment or election.

The Charity Commission will only be able to issue such orders with the consent of the person who is the subject of them. However, these powers are very welcome because in situations where there have been doubts, debate or disagreement about whether someone's appointment is valid, The Charity Commission will be able to make a determination ratifying that person's appointment.

## Remuneration of Charity Trustees Providing Goods or Services to the Charity

The statutory power in the Charities Act 2011 for the trustees (or persons connected to them) for supplying services to the charity that are paid out of the charity's funds will be amended. At the moment it is a requirement that goods are supplied in connection with the services and cannot be supplied in isolation under the statutory provisions. However, this Act will correct this anomaly so that goods can also be provided where the conditions in the Act are met and irrespective of whether they are being supplied in connection with the provision of services.

The explanatory notes to the Act illustrate this point by explaining that this will mean that a charity can pay a trustee (or their business) to:

- Decorate the charity's premises;
- Supply paints to decorate the premises; or
- Do both.

The Act states that trustees can rely upon the default statutory power irrespective of any express provision in the charity's governing document.

The Act will also introduce new provisions giving The Charity Commission power to order a charity to remunerate a trustee for work carried out for, or on behalf of, the charity (or to authorise them to keep any unauthorised benefit already received) where it considers it inequitable for them not to be paid or to retain the benefit. The Charity Commission is required to have regard to:

- Whether, if the person had not carried out the work, the charity would have paid someone else to carry it out;
- The level of skill with which the work was carried out;
- Any express provision in the charity's governing document prohibiting the person from receiving the remuneration or retaining the benefit;
- Whether remunerating the person or allowing the person to retain the benefit would encourage breaches of trust or breaches of duty by charity trustees.





## Trust Corporation Status

Where an incorporated charity such as a charitable company or charitable incorporated organisation is appointed as a sole corporate trustee of land or any other property held on charitable trusts, it will be considered a trust corporation for that purpose automatically under the Act and can give a valid receipt for the proceeds of sale or other capital money when disposing of the land and the retiring trustees will be properly discharged from their responsibilities as trustees.

At the moment, trust corporation status is not automatic in these circumstances under the Act and in some cases an application has to be made to the Lord Chancellor's office for trust corporation status.

## Charity Mergers

The Act improves the provisions in the Charities Act 2011 to deal with legacies to a merged charity, where details of the merger have been entered in the Register of Mergers.

Under the current regime, a Will that prevents a legacy to a named charity in a Will be left to that charity if it has ceased to exist at or before the testator's death can result in legacy income being lost to the merged charity even if it has been entered in the Register of Mergers.

For charities that receive a lot of legacy income this can be a concern on merger if the preference is for the transferring charity to be dissolved once the merger has completed. The Act corrects this problem, and should avoid the need to retain the transferring charity as a dormant charity on The Charity Commission's Register in the event that any legacy income slips through the net.

## INFORMATION

If you have any queries on any issues raised in this newsletter, or any charity matters in general please contact Gerry Morrison on 01482 337339 or email [gerry.morrison@rollits.com](mailto:gerry.morrison@rollits.com)

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**The law is stated as at 18 March 2022**

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