

Charity Fact Sheet

Charities Act 2006



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Introduction

The Charities Act 2006 ('the Act') became law on 8 November 2006. It makes amendments to the Charities Act 1993 (for non-incorporated charities) and the Companies Act 1985 (for charitable companies). The Act contains 80 sections and 10 schedules and is divided into 4 parts (including chapters).

The Act reflects both the changes in society and the charity sector over the last decade and releases charities from some of the previous regulatory requirements, enabling them to adapt to new needs in society and new and effective ways of working. There are many opportunities on offer for charities that want to grow and develop in different ways.

Implementation is being led by the Office of the Third Sector in the Cabinet Office, working with the Charity Commission ('the Commission'). A substantial part of the Act came into force in 2007 and 2008, and subsequent provisions will be implemented in 2009 or later.

New descriptions of charitable purposes

The Act defines a charity as a body or trust which:

- is for a charitable purpose, and
- is for the public benefit

It includes descriptions of the main purposes which are charitable:

- 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 recognised as charitable purposes under existing charity law or analogous to or within the spirit of those purposes or the purposes listed above.

This list covers the majority of purposes which are already charitable; the last category means that everything which is currently charitable is included.

Public Benefit

The Act emphasises the requirement that all charities must also exist for the public benefit.

The Commission is accordingly promoting the awareness and understanding of the public benefit requirement by issuing both general and more specific guidance for charities falling into certain categories (e.g. Religion, Education, Relief of Poverty and, notably, those charities charging fees).

For accounting periods commencing on or after 1 April 2008 there is also a requirement that the trustees' annual report includes certain information in connection with public benefit including on "awareness" statement by the trustees.

Full details of all matters relating to public benefit are available on the Commission's website, including examples of trustees' annual reports incorporating the required information.

New thresholds for registration

Previously, small charities which had an annual income of £1,000 or less did not have to register unless they had a permanent endowment or the use, or occupation, of land.

The Act removes the permanent endowment or land requirement and raises the income threshold to £5,000. Therefore, if any organisation is charitable and has an annual income of £5,000 or more it must be registered with the Commission. This has taken effect from 23 April 2007 (Section 10 brought into force by the first commencement order on 27 February 2007).

Charities under this threshold will be able to register voluntarily if they want to. Existing charities under this threshold will be able to ask to be removed from the register, but they will still remain charities and have to abide by charity law.

Exempt charities

Exempt charities have not previously been required to register with the Commission because it has been assumed that they were adequately overseen by other public bodies, such as the Financial Services Authority or Housing Corporation. The Act now ensures that these charities are also monitored for their compliance to charity law.

The Act puts previously exempt charities into two categories:

- Those already regulated by a body other than the Commission, which has agreed to take responsibility for ensuring they meet charity law. These charities will continue to be exempt and will be regulated by their current regulator, now known as a 'principal regulator'. The Commission will be able to investigate these charities if their principal regulator asks it to.
- If no suitable regulator exists then a previously exempt charity will stop being exempt and will have to register with the Commission. To ease the transition, only these charities with an annual income of over £100k will have to register. All these charities will come under the Commission's jurisdiction. The £100k threshold for registration is an interim level and may be reduced in the future, but this will not happen for at least 5 years when there will be a review of the Act.

(Registration will be required after 1 October 2009).

Excepted charities

Some groups of charities were excepted from registering with the Commission. Examples include some religious charities, Boy Scout and Girl Guide charities and some armed forces charities.

The Act requires some of these charities to register with the Commission from 31 January 2009. Again, initially only excepted charities with an annual income of £100k or over will have to register. Those under the £100k threshold will not have to register but will come under the Commission's jurisdiction. This £100k threshold is an interim level and may be reduced in the future, but this also will not happen for at least 5 years when there is a review of the Act (effective from 31 January 2009).

While the Commission is registering the large numbers of formerly excepted and exempt charities that it will have to register, the current law which enables the Commission to exercise its discretion in relation to applications for voluntary registration will continue in force. Once those excepted and exempt charities that are required to register have been registered, the provision in the Act requiring the Commission to register charities that apply for voluntary registration will be commenced.

Freedom for smaller charities to evolve and change

Under previous legislation, charities could make changes to their purposes through resolutions agreed with the Commission. The new Act liberalises and extends these powers.

It allows smaller, unincorporated (non-company) charities with income of less than £10k a year to take certain actions, outlined below, without having to come to the Commission for permission. The Commission will still require copies of the resolutions passed by the trustees to make these changes.

Transferring assets

Trustees of these charities can transfer their charity's assets to another charity whose objects are consistent with their own. (Section 40 - came into force on 18 March 2008).

Changing a charity's purposes

Trustees can also replace their charity's purposes with new purposes that make more sense in today's society as long as the changes are consistent with what the charity was set up to do. So, for example, a charity set up to relieve sickness can update its purposes to participate in a health promotion scheme to encourage healthy living. (Section 41 - came into force on 18 March 2008).

Amending administrative rules

The Act gives the trustees of all non-company charities power to pass a resolution to alter the parts of their charity's governing document which set out how they administer their charity, for example the number of trustees needed to form a quorum at meetings. They will only need to use this power if it is not already included in the charity's governing document. (Section 42 - came into force on 27 February 2007).

Effective use of permanent endowment

Permanent endowment can be either charitable funds or property, such as land or a building, which a charity cannot spend or sell in its entirety. Trustees of permanently endowed charities can use the income generated by permanent endowment but, except for very small charities, they cannot usually spend the capital.

The Act now allows a wider range of smaller charities to spend the capital, and for larger charities power to do the same in certain circumstances and if they agree. (Section 43 - came into force on 18 March 2008).

Flexibility for transferring the assets of 'failed' appeals or trusts

Charities occasionally run appeals that fail to get enough money to meet their original aim and funds can exist for which there are no longer any beneficiaries. The 'cy-pres' (literally 'near to') doctrine has previously restricted the Commission's and the court's ability to allow charities to use these 'failed' funds in flexible ways.

The Act allows the Commission and the courts to take into account current social and economic circumstances when approached by charities seeking more freedom in how they can use donated money when they cannot use it as originally planned, but it will also take into account the spirit in which the original donation was made. (Sections 15-18 - came into force on 18 March 2008).

Charitable companies

Previously charitable companies had to approach the Commission to get prior consent if they wanted to make changes to their memorandum and articles of association. The Act cuts down the occasions where they will have to seek the Commission's permission before making these changes, helping these charities make amendments more quickly and easily. (Section 31 - effective from 18 March 2008).

Making it easier to merge

One of the obstacles to charity mergers can be uncertainties about what will happen to legacies and donations which were left to those charities which 'disappear' as the result of a merger.

The Commission will now keep a public register of charity mergers. Registering a merger will be voluntary. When a merger is registered, gifts and legacies to the previously separate charities will automatically be transferred to the new merged charity. This will reassure both charities and the donating public that the spirit of legacies will be honored if a charity merges. (Section 44 – to commence in November 2007).

New corporate structure for charities

Charities which want a corporate structure currently have to register both as a charity and as a company, which means they have to meet the dual regulatory burdens of both the Commission and Companies House.

The Act creates a new vehicle for these charities – the Charitable Incorporated Organisation (CIO). A CIO will have the advantages of a corporate structure, such as reduced personal liability for trustees, without the burden of dual regulation. Creating CIOs will require additional, secondary legislation.

Work is ongoing to develop the secondary legislation that will be required to provide much of the detail for the CIO. The Commission is also developing model constitutions for association and foundation type CIOs. The Office of the Third Sector and the Commission have jointly published a consultation on the draft regulations and model constitutions in 2008. The provisions (of section 34 and Schedule 7) are expected to come into force in 2009/2010.

Payment of trustees

The Act does not allow trustees to be paid for being trustees. Voluntary trusteeship still remains a key principle of charity.

However, the Act allows trustees to pay an individual trustee for providing an additional service to the charity – if they think it is in the best interest of the charity – without having to approach the Commission for authorisation to do so.

However, there are several important points to note including:

- the number of trustees receiving payment in this way must be in a minority
- the amount paid must be reasonable and set out in a written agreement between the trustee and the charity; and
- the trusts or governing document must not contain any specific provision forbidding this type of payment

(sections 36 and 37 - came into force on 18 March 2008).

Publicity requirements for schemes

When the Commission proposes to make a scheme to allow a charity to do things that will affect the way they carry out their purposes or the way they are run, the charity currently

has to advertise this at least one month in advance, usually in local papers. This gives charities an additional administrative burden and is often disproportionate to the change proposed.

The Act gives the Commission discretion to decide whether publicity for a scheme is needed or not, with a default that it won't be needed unless absolutely necessary. Even if the Commission feels publicity is needed, it can choose the length of notice period and whether publicity must occur in the local area of the charity. This will have the practical effect of fewer instances where publicity is needed and shorter notice periods. (Section 22 - came into force on 27 February 2007).

Waiver of trustee's disqualification

The Commission will generally have to grant a waiver for disqualified trustees who were removed from their role for misconduct or mismanagement in a charity, as long as the disqualification period has lasted for 5 years or more, and there are no special circumstances for not doing so.

The Commission cannot grant it if the trustee is disqualified as a company director, is an undischarged bankrupt or has defaulted under a county court administration order. (Section 35 - came into force on 27 February 2007).

Relief from personal liability for trustees

Before the Act, only the courts could relieve trustees of personal liability.

The Act allows charity trustees to apply to the Commission, as well as the courts, for relief from personal liability for a breach of trust where the trustee has acted honestly and reasonably.

This obviously only applies where mistakes have been honestly made. The Commission and the courts will still take deliberate breaches of trust by trustees very seriously. (Section 38 - came into force on 27 February 2007).

Trustee indemnity insurance

Trustee indemnity insurance covers trustees from having to personally pay out when claims are made against them, such as health and safety breaches which cause an employee injury, as long as the mistake was honestly made and not the result of willful misconduct.

In practice, trustees are not held liable in this way for honest mistakes but anxiety about the possibility may have made people reluctant to become trustees. There was also the issue that the charity's funds should not be used to pay for insurance which would benefit trustees.

The Act allows trustees to take out trustee indemnity insurance using the charity's funds without the Commission's permission, as long as there is no provision in the charity's governing document which specifically forbids this. If there is a specific prohibition in the charity's governing document then trustees will need to approach the Commission so that the Commission can amend this before they can buy trustee indemnity insurance. (Section 39 - came into force on 27 February 2007).

Accounts and external scrutiny; New thresholds

The Act introduced new thresholds regarding the nature of external scrutiny required and commenced the process of creating similar thresholds for both non-company and company charities. Most notably the gross income level required for audits was raised from £250,000 to £500,000 although there is also a further test if assets are above a certain level.

These thresholds started to take effect for accounting periods commencing on or after 27 February 2007. However, since then further changes have been made to certain thresholds depending on accounting dates. Details of these thresholds are given in an appendix to this factsheet.

There are two thresholds which remain unchanged, namely:

- Accounting records: These must be kept if the gross income is above £1,000
- Annual Returns to the Commission: These must be submitted if the gross income is above £10,000

The threshold for submitting accounts and trustees annual reports to the Commission has been raised from £10,000 to £25,000 for accounting periods ending on or after 1 April 2009. All charitable companies have to prepare accruals accounts, but unincorporated charities are able to prepare receipts and payments accounts if their income is less than £100,000 (increasing to £250,000 for accounting periods ending on or after 1 April 2009).

Charities will no longer need to consider their expenditure in determining whether or not they are required to submit an annual return to the Commission. This will apply to all annual returns due in relation to financial years that begin on or after 27 February 2007.

Group accounts

The parent charity is legally required to prepare its own entity accounts but previously there was no legal basis for preparing group accounts. The Act now requires a parent charity to provide group accounts which include its subsidiaries. There will be consultation to help decide at what threshold level group accounts should be required by law as opposed to good practice. (Section 30 and Schedule 6 – came into force for accounting periods beginning on or after 1 April 2008).

Protecting whistleblowers

The Act takes up the provisions in the Charities (Accounts and Reports) Regulations 1995 regarding the duty to make a written report to the Commission where the activities or affairs of a charity would be likely to be of 'material significance for the exercise by the Commission of its functions under Sections 8 or 18 of the Act (power to institute inquiries, and power to act for the protection of charities).

The Act ensures that auditors of charity accounts will be protected from the risk of action for breach of confidence or defamation when they pass on relevant information to the Commission. Independent examiners of charity accounts will also be protected. (Sections 29 and 33 – came into force for accounting periods beginning on or after 1 April 2008).

Suspending or removing trustees and others from membership of charities

When the Commission has serious causes for concern about a charity and opens an inquiry, occasionally a trustee, employee or other agent of the charity threaten the property or continued administration of the charity. This happens very rarely, but it can make it more difficult to conclude the inquiry as quickly as the Commission would like and can damage the charity's reputation.

There are times in formal inquiries when the Commission has to suspend or remove a person from their position as trustee, officer, agent or employee. The Act allows the Commission to make an order to suspend or remove the person from membership of the charity and so prevent them from seeking election to their former position. This power is unlikely to be used often but it will be helpful in those rare instances when a member of a charity under investigation threatens its effective running. (Section 19 – came into force on 18 March 2008).

Specific directions for protecting a charity

The Act allows the Commission to direct trustees, officers, employees or a charity organisation to take specific actions to protect a charity, when an inquiry is open.

This will be used in those rare circumstances where the Commission has found that misconduct or mismanagement has occurred in the charity and it needs to ensure that actions are taken to protect the charity's property or to make sure that it is used for the purposes for which it was intended. (Section 20 – came into force on 18 March 2008).

Ensuring charity property is used correctly

On rare occasions, charity trustees are unwilling to apply charity property for its intended purposes. The Act enables the Commission to deal with this by giving it a power to direct them to do so. The Commission can use this power without opening a formal inquiry. (Section 21 – came into force on 18 March 2008).

Deciding a charity's membership

The Act gives the Commission the power to decide who a charity's members are, either if the charity applies to them to do so or if they need to find out during the course of an inquiry.

The power also allows the Commission to appoint someone else to do this, for example, the person who is appointed to undertake the inquiry. (Section 25 – came into force on 27 February 2007).

Entering premises and obtaining documents

There are – very rarely – times when documents are deliberately destroyed by those involved in a charity when the Commission tells them that an inquiry is being opened. Where the Commission have reason to believe this might happen, the Act gives it the power to get a warrant from a Justice of the Peace to enter and search premises and take away specified material, including electronic material.

It also gives the Commission the power to prevent interference with, or the destruction of, specified documents, make copies of them and get information from the charity about what, and where, such documents are.

These powers can only be used as part of an inquiry and the Commission will have to satisfy the Justice of the Peace that it has strong reason to believe the documents are at risk before they will grant a warrant. (Section 26 – came into force on 27 February 2007).

Fundraising solicitation statements

Currently professional fundraisers and commercial participators fundraising for charities must have a written agreement with the charity, and must make a statement telling potential donors that they are getting paid when they ask for money. This is so that potential donors can make an informed choice about giving.

The Act makes two main changes to these 'solicitation statements':

- they will have to include the amount the professional fundraiser or commercial participator will be paid for fundraising for the appeal, or
- if the specific amount is not known, to give a reasonably accurate estimate of what they'll receive.

Slightly different statements will also have to be made by employees, officers and trustees of charities who act as collectors. This does not apply to volunteers. (Sections 67 and 68 – came into force on 1 April 2008).

Public charitable collections

The Act provides for a new system for licensing charitable collections in public. It applies to all such collections, including face-to-face fundraising, involving requests for direct debits.

There is a new role for the Commission in checking whether charities and other organisations are fit and proper to carry out public collections and the Commission will be responsible for issuing public collections certificates, valid for up to five years. The Commission will need to develop the regulations and guidance needed to take on this new role. It is not envisaged that this function will be taken on for some years.

Collections in public places

Previous legislation referred to 'street' collections. The Act extends this to collections in 'public places' which includes some privately owned land, such as railway station ticket halls and supermarket forecourts. Once a charity has a public collections certificate it will be able to apply to a local authority for a permit to hold collections at certain times in certain places in that local authority area.

Local authorities will ensure that there are not too many collections taking place at the same time, in the same place.

Door to door collections

Previous legislation referred to 'house to house' collections. The Act refers instead to 'door to door' collections, to make clear that this includes business premises.

A charity with a public collections certificate will be able to conduct door to door collections without permission from a local authority, but it must inform the local authority that the collection is taking place.

Local, short-term collections

Some collections will be exempt from licensing and will not require either a certificate or permit, but organisers will have to notify the local authority that the collection is taking place; so small scale activities should not be disproportionately affected.

The Office of the Third Sector and the Commission need to do more detailed work in preparing and consulting on regulations and guidance. In addition, the Commission must be equipped to take on its new role. **The licensing scheme will not come into force before 2009.** (Sections 44 to 66).

New Charity Tribunal

Sometimes charities and others affected by a legal decision the Commission have made feel that the decision is wrong and want to challenge it. In order to appeal against a decision by the Commission, the case previously had to be taken to the High Court, which is difficult and expensive.

The Act creates a new Charity Tribunal to deal with appeals against, and reviews of, legal decisions by the Commission. It will also take referrals from the Commission or the Attorney General which involve the operation or application of charity law.

The Charity Tribunal will not deal with customer service complaints. These will continue to be dealt with by the Commission's internal complaints system and the Independent Complaints Reviewer. (Section 8 and Schedules 3 and 4: came into force on 18 March 2008).

Changes to the restrictions on mortgages of charity land

A relaxation relating to seeking the approval of the Charity Commission when charities use their property as security for grants and other transactions. (Section 27 came into force on 27 February 2007).

Other commitments

There were several other commitments made during the passage of the Charities Bill:

- Preparation of a **plain language guide to the Charities Act**, aimed particularly at small charities. This was developed jointly by the Office of the Third Sector and the Charity Commission and was published in May 2007 "*Charities Act 2006: What trustees need to know*". Hard copies are available by calling 0845 015 0010 and quoting URN 07/Z2.
- Consolidation of charity law is a matter for the Law Commission which has accepted into its work programme the Consolidation of charity statute law. Preparatory work will be done during 2008 but do not expect the Consolidation Act or Acts to be enacted until 2009 or later.

- A review of existing Secondary Legislation under the Charities Acts 1992, and 1993, with a view to identifying whether any existing regulations can be simplified. This review is ongoing.
- A review of the impact of the public benefit requirement within three years of the public benefit requirement coming into force.
- An evaluation of the impact of the Charities Act 2006 within five years of Royal Assent is required by section 73. Ministers would appoint the person to undertake the review, which would report to Parliament on the impact of the Act.

And Finally

It is emphasised that there are many other provisions within the Act and, indeed, more detail within those sections which are mentioned in this factsheet. It is therefore essential, before taking any action under the Act, that reference is made to the Act itself or proper professional guidance sought from your accountant, solicitor or other appropriate person.

Charities: External Scrutiny Thresholds

(Appendix to Charities Act Factsheet)

Table 1: Accounting Period Commencing on/after 27 February 2007			
Non-Companies		Companies	
Up to £10,000	None required	Up to £90,000	None required
£10,001-£500,000	IE	£90,001-£500,000	Accountants Report
Above £500,000 or assets over £2.8m and gross income over £100,000	Audit	Above £500,000 or assets over £2.8m	Audit

Table 2: Accounting Period Commencing on/after 1 April 2008			
Non-Companies		Companies	
Identical to Table 1 (above)		Up to £10,000	None required
		£10,001-£500,000	IE *
		Above £500,000 or assets over £2.8m and gross income over £100,000	Audit

Table 3: Accounting Period Ending on/After 1 April 2009			
All Charities			
Up to £25,000		None required	
£25,001-£500,000		IE permitted *	
Above £500,000 or assets over £3.26m and gross income over £250,000		Audit	

* If the gross income is over £250,000 the examiner must be qualified.

