



Charities Act Brings Important Changes

After more than three years in the making, the Charities Bill finally received Royal Assent in Parliament on 8 November and is now the Charities Act 2006.

The Act aims to reform charity law and regulation by:

- enabling charities to administer themselves more efficiently and to be more effective
- reducing regulation of the sector, especially for smaller charities
- placing a clear emphasis on the need for all charities to demonstrate a public benefit
- modernising the role of the Charity Commission

The existing 4 categories of charitable purposes will be expanded to 13. It is arguable that this change is less dramatic than it may appear, since the courts have been steadily expanding the definition of charitable purposes over many years. That said, it is helpful to have the position clarified.

The Act contains 80 sections and 10 schedules. The Act will not come into effect immediately. It will be brought into force in stages starting early in 2007. This article focuses on some of the main provisions.

Public Benefit

Under the Act, all charities will now need to demonstrate not only that their purposes are exclusively charitable, but also that they operate for the public benefit. This marks a change for religious charities and charities for the advancement of education or the relief of poverty, where public benefit was previously presumed, unless there was evidence to the contrary. The debate around what constitutes sufficient public benefit has thrown up some controversy. Public schools were the focus of much of this, with strong calls from some quarters to strip them of their charitable status. The arguments in support of this being that the section of the public that benefits are a narrow class of privileged members of society. But the question of what constitutes public benefit is not restricted to fee-charging charities. In the future, all charities will need to demonstrate public benefit when registering. Existing charities will also need to be aware of the Commission's guidance on public benefit. The Commission has indicated that it will be undertaking a rolling review of existing charities to ensure that public benefit is being provided. Existing charities will need to ensure their objectives are still in line with charity law. They will also need to ensure that their activities are within the powers contained in their governing documents. Charities that have drifted away from their original purposes may face some difficulties with the Commission in the new environment.

Registration

The new income level for mandatory registration is increased from £1,000 to £5,000. Whether a charity has a permanent endowment or land will not matter. This means that if a charity has an income of £5,000 or above it must register with the Commission. Existing charities below this threshold may ask to be removed from the Register, but they will remain charities and will need to comply with charity law.

Exempt charities, such as Industrial and Provident (IPS) societies have not previously been allowed to register because it has been assumed they are adequately regulated by other public bodies such as the FSA or in the case of housing associations, the Housing Corporation. In the past, one of the key attractions for registering as an IPS has been the opportunity to avail of the benefits open to charities, such as the tax exemptions, without being subject to the rigours of Charity Commission scrutiny. This could all be about to change. Although these charities will still be exempt charities, the Act provides that they must now be monitored for compliance with charity law. The Office of the Third Sector will be working with the principal regulators to establish how the new arrangements will work, and to make sure they have the powers needed for this new role. The picture will not be clear for some time but it seems very likely that this will mean increased regulation which will remove one of the key attractions in opting for exempt status in the first place.

Excepted charities, such as religious charities or Boy Scout and Girl Guide charities and some armed forces charities will now have to register with the Commission if they have an annual income of £100k or over. The £100k threshold is an interim level and may be reduced in the next few years. These charities will need to be ready for registration and all that this will mean.

New legal structure

The Act introduces a new form of legal entity: the Charitable Incorporated Organisation (CIO). This is aimed at charities who want the benefits of a corporate structure and limited liability, without the burden of dual registration and regulation. This change has been welcomed but it may not be as significant as some people seem to think. Regulation by Companies House is already relatively light touch. Nonetheless, anything that reduces the administrative burden is welcome, especially for smaller charities. Creating CIOs will require secondary legislation. This is expected later in 2007.

Trustees

Under the Act, trustees will now be able to apply to the Commission as well as the courts for relief from personal liability for a breach of trust, if they have acted honestly and reasonably. Before the Act only the courts could relieve liability in this way. Some people may have been reluctant to become trustees because of the fear of incurring personal liability for honest mistakes. The Act now explicitly allows trustees to take out indemnity insurance to protect themselves, using the charity's funds. In practice, many charities already provided for this in their governing documents. The key change here is that even if there is a prohibition against this in the charity's governing document the trustees can still approach the Commission to have this provision amended. The Act will also make it easier to for the Commission to remove or suspend trustees where appropriate.

Fundraising

Under the Act professional fundraisers will now have to disclose how much they are being paid when they ask for donations. The Act introduces a new system for licensing charitable collections in public. It will apply to all such collections including face-to-face fundraising involving requests for direct debits. The Act will cover a much wider range of collections than previous legislation.

Charity Tribunals

In the past, appeals against a decision by the Commission had to be made to the High Court, which could be difficult and expensive. The Act introduces a new Charity Tribunal aimed at making it easier to appeal against the Commission's decisions.

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