

Stop Press - Charities Act 2006

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CATEGORY:
ARTICLE

This briefing note summarises the main provisions of the Charities Act 2006 ('the Act'), which received Royal Assent today.

The provisions of the Act are expected to come into force in stages over the next two to three years. The Office of the Third Sector is expected to announce a provisional timetable. It is unlikely that any of the provisions will come into force before January 2007.

Definition of Charity

The Act provides a statutory definition of 'charity' as a body or trust that is established solely to promote, for the public benefit, one or more of the thirteen charitable purposes listed in the Act as follows:

- 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
- any other purposes charitable in law

Any purpose that is currently regarded as charitable will remain so but the Act removes the presumption of public benefit that is currently applied to organisations established for the relief of poverty, the advancement of religion and the advancement of education.

When these provisions of the Act come into force, any organisation wishing to be registered as a charity will have to demonstrate that their activities, or proposed activities, provide a benefit to the public.

Charity Commission and Charity Tribunal

Formerly the power to regulate charities was vested in a number of individual Charity Commissioners who acted through the Charity Commission. The Act establishes the Charity Commission ('**the Commission**') as a statutory corporation with a range of objectives, functions, duties and powers.

The Act also provides for the establishment of a Charity Tribunal to hear appeals against certain decisions of the Commission and to take referrals on the operation and application of charity law from the Commission and the Attorney General.

Registration of Charities

The Commission will continue to maintain the register of charities but there will be a few changes. The income threshold for mandatory registration for charities will be increased to £5,000, though smaller charities will also be allowed to register voluntarily.

Charities previously excepted from registration (for instance, some religious charities, Boy Scout and Girl Guide charities and some armed forces charities) with incomes exceeding £100,000 must also register.

While exempt charities (for instance, some universities and national museums and galleries) will not be registered, they will be subject to increased regulation by the Commission.

Use of charity assets for other charitable purposes - 'cy-près' applications

When it is not possible or practical for a charitable trust to use its assets for its existing objects, its trustees may apply to the Commission for a scheme to change its objects to allow the assets to be applied 'cy-près' for purposes that are different from, but similar to, the purposes for which the property was originally given. Before the Act, the Charity Commissioners could only consider the '*spirit of the gift*' when deciding whether to apply a cy-près scheme. Under the Act, the Commission may also consider the social and economic circumstances prevailing at the time the alteration of the purposes is proposed.

Trustees

There are new powers regarding the assistance and supervision of trustees by the Court and the Commission. These include new powers for the Commission to suspend or remove a trustee's membership of a charity when their trusteeship is suspended or removed and to direct charity trustees to take certain actions in administering their charity. Charity trustees will be able to request advice and guidance from the Commission on matters relating to the performance of their duties and the administration of the charity and a trustee following such guidance will be deemed to have acted in accordance with their duties.

Currently trustees may only receive remuneration or arrange for the purchase of trustee indemnity insurance if authority is given by the Commission or the governing document of the charity. The Act allows trustees to be remunerated for the provision of services, other than services provided in their capacity as trustee, to the charity and to obtain trustee indemnity insurance provided certain conditions, similar to those contained in existing guidance, are fulfilled.

Charity Mergers

The Act will facilitate the merger of charities by simplifying the process of transferring property from one charity to another, creating a register of charity mergers and providing that gifts, such as legacies, that donors make to the former charities will be deemed to be gifts to the new merged charity.

Charitable Incorporated Organisation

There is provision for a new legal form for charities – the Charitable Incorporated Organisation – which will be regulated by the Commission and will have many of the advantages of a company limited by guarantee, such as limited liability and the ability to enter into contracts in its own name, without the added burden of companies law regulation.

Fundraising

There are changes to the rules requiring statements to be made to donors and consumers by professional fundraisers and commercial participators. There are also new powers for the Secretary of State to give financial assistance to charities.

The Act modifies the licensing system for public charitable collections. Charities that wish to hold public collections will be required to apply to the Commission for a Public Collections Certificate and obtain a permit from the Local Authority if the collection will be carried out in a public place as described in the Act or notify the Local Authority if the collection will be carried out door to door.