



The Charities Act 2006

The Charities Act, passed on 8 November 2006, has been widely welcomed by both the Charity Commission and the charitable sector. It paves the way to a clearer and more modern framework for charities and a clear role for the Commission to ensure compliance and strengthen accountability. The Act represents a modernisation of the legal framework within which charities operate. It will empower the charitable sector and allow charities to operate with greater freedom and flexibility to respond to changes in society.

The Act creates a clear definition of charity, emphasising public benefit; improves the governance and accountability of the Charity Commission; benefits thousands of smaller charities by reducing the burden of regulation on them; and will address inconsistencies in the regulation of public collecting.

The proposals in the Act will ensure that charities remain at the heart of society with a more enabling regulatory framework and the independent oversight of a modern regulator, securing a high level of public trust and confidence.

Key parts of the Act:

Charitable Purposes

The Act lists a wide range of purposes which may be charitable, providing greater clarity over what is charitable, and better reflecting the diversity of the charitable sector. The thirteen descriptions of charitable purposes cover the present areas of charity:

- 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.

They aim to clarify the scope of charitable aims for a modern society while being broad enough to provide the flexibility to keep up with future development and change through case law. If an organisation's purposes have already been accepted as charitable, they will continue to be so.

Public Benefit

The Act requires organisations to pass two tests if they are to be charities: firstly, that their objects are charitable, and secondly that they operate for the public benefit. For the first time the law will require charities which advance education, religion or relieve poverty to explicitly demonstrate they deliver public benefit. The law has previously presumed this to be the case for these types of charities.

The Act does not contain any new definition of public benefit or suggest how charities should demonstrate public benefit. Decisions on how the public benefit test will operate will, rightly, rest with the Commission as the independent regulator for charities in England and Wales, based on underlying case law.

The new public benefit test is not a green-field site. Our decisions must be based on underlying case law. But we will follow the courts' approach and develop our decisions on public benefit in the context of changing economic and social conditions, including public attitudes. We will therefore consult widely on the principles of public benefit, ways in which charities might demonstrate their public benefit, and how this might be assessed.

Objectives of the Charity Commission

The Charity Commission itself will have new statutory objectives which clearly set out our role as a modern regulator with a duty to facilitate and support charitable activity in society. The Commission will:-

- Increase public trust and confidence in charities
- Promote awareness and understanding of the operation of the public benefit requirement
- Promote compliance by charity trustees with their legal obligations
- Promote the effective use of charitable resources
- Enhance the accountability of charities to donors, beneficiaries and the general public

The Act also makes provision for the Commission to be established as a body corporate with a clear legal identity and modern governance arrangements. We have already begun work to reposition the organisation to ensure that we are properly equipped to fulfil our future role.

The Commission welcomes the provisions in the Act to expand our Board to a total of 9 (including the Chair of the Commission). This will allow us to recruit up to four new non-executive Board members which will ensure a broader range of skills and experience. It will also enable us to better reflect the diversity of the sector and of society.

The Government recognise that the Charity Commission must be seen as an independent organisation and have stated that the Commission's independence is of paramount importance for the proper regulation of charities and to ensure continued high levels of public confidence in the charity sector. The Commission will continue to have complete independence in making decisions and exercising our powers in relation to charities.

The Charity Tribunal

The Act will create a new Charity Tribunal which will deal with appeals against and reviews of Commission decisions and referrals from the Commission or Attorney General involving the operation or application of charity law. The Act provides for the Lord Chancellor to make rules about the Tribunal to facilitate its operation.

Currently in order to appeal against a decision of the Commission, the case must be taken to the High Court. The new Charity Tribunal will make it easier and less expensive for charities to challenge the Commission's decisions.

The Charity Tribunal will not relate to the Commission's customer service complaints which are dealt with by internal procedures and an independent reviewer.

Charitable Incorporated Organisations (CIOs)

At present charities can be set up with a corporate structure but this means that they normally fall within the requirements of company law as well as charity law. The framework of company law was designed primarily for commercial organisations and may not always be suitable for charities. The proposals for a new legal form of incorporation designed specifically for charities will enable them to have the reduced risk of a company structure, without the burden of dual regulation.

The CIO will bring a number of de-regulatory benefits to the many charities for whom it will be appropriate including:-

- charities will register only with the Commission
- less onerous reporting requirements
- lower costs – registration is free
- simpler constitutional form
- more straightforward arrangements for merger and reconstruction
- EC company law directives will not apply

Registration of Charities

The Act will change the shape of the Charity Commission's register of charities to address the need for increased transparency in the sector. This is tempered with a wish not to overburden charities with inappropriate administrative duties.

Small Charities with an annual income of less than £1,000 do not currently have to register unless they have a permanent endowment or the use or occupation of land. The threshold for mandatory registration will rise to £5,000 and this will become the only criterion for registration. This measure will cut administrative costs for small charities, whilst charities with incomes between £1,000 and £5,000 will be able to stay on the register if they want to.

Existing Charity legislation makes provision for some charities, for example some Christian religious denominations, to be **excepted from the requirement to register** on a discretionary basis by either the Secretary of State or the Charity Commission. The Act makes provision for excepted charities with an annual income above an interim threshold of £100,000 per annum to be required to register with the Commission. Charities with incomes below the £100,000 threshold will retain their excepted status.

Exempt charities benefit from the same advantages as registered charities but with an exemption from registration with the Charity Commission and its supervisory role. The original grounds for the exemption of certain charities from the requirement to register have been that they are adequately supervised by another Government department or public authority (eg. Universities; Museums). There is however, no mechanism for monitoring their compliance with charity law.

Under the Act some exempt charities will have to register. Others will have their compliance with basic charity law monitored by a 'principal regulator'. For different groups of these charities the principal regulator will be the body who supervises the charities for other functions. This system will minimise the burden of dual regulation by the Commission and the principal regulator whilst providing a mechanism for monitoring the compliance of exempt charities with charity law. Where it has not been possible to identify a principal regulator, exempt charities will lose their status and will register with the Commission.

Modernising Charities

Flexible use of Endowments - The trustees of charities which have permanent endowment funds can use the income from the fund but they cannot usually spend the capital. The Act proposes extending the circumstances in which charities can spend such capital. The process of enabling small charities to spend capital will be made easier and larger charities will be able to spend capital in certain circumstances provided the Commission agrees.

Mergers - The Charity Commission encourages all charities to consider the possibility of working with or merging with another charity as a way of providing a better service to beneficiaries. The Act will establish a register of charity mergers and will facilitate charity mergers by speeding up the process of transferring property from one charity to another and by preserving gifts made to the charity that has ceased to exist for the benefit of the merged charity. In response to concerns expressed during the Lords debates, charities wishing to take advantage of the merger provisions must confirm to the Charity Commission that they have made proper arrangements to discharge their liabilities.

Charity Trustees

The Act includes a power which will allow charity trustees to receive payment for providing additional professional or business services to the charity. A number of safeguards will be put in place to ensure that the principle of voluntary trusteeship is preserved.

Measures in the Act will provide a statutory power for trustees to take out trustee indemnity insurance using the charity's funds. This means that trustees will no longer need an explicit power from the Commission before buying trustee indemnity insurance. This will help charities who have had difficulties when prospective trustees have been discouraged by the prospect of unlimited liability for breach of trust.

Public Charitable Collections/Fundraising

The licensing role for both street and house to house collection currently rests with local authorities and in London with the Metropolitan Police. This system is widely considered to be out of date and difficult to use and there is a lack of clarity about how direct debit solicitation should be dealt with.

The Act provides for a more coherent unified licensing system for public charitable collections. The new licensing regime will have the following key features:-

- A **unified system** which will cover all types of public charitable collections.
- Extension of the **definition of public space** – privately owned land to which the public has unrestricted access, such as station ticket halls and shopping precincts will be covered, giving greater protection to the public.
- **Face to face fundraising** (direct debit solicitation) will be included in the regime.
- **Public Collections certificates** will be issued by the Charity Commission. This is a new function for the Commission and will reduce the burden on local authorities as the Commission will decide whether an organisation is fit to collect.
- Local Authorities will issue **permits for public place collections** with the prerequisite that the applicant must hold a public collections certificate issued by the Commission. Local Authority decisions as to whether to issue a permit or not will only relate to capacity.
- **Door to door collectors** will be required to inform the local authority that a collection is taking place, but they will not need a permit.
- **Short-term, local collections** will not have to obtain either a certificate or a permit but will have to let the local authority know about it. This is designed to ensure that small scale activities such as carol singing are not affected.
- The Commission will have the **power to suspend or withdraw** a certificate, although monitoring and enforcement of bogus activity will continue to be primarily the responsibility of trading standards and the police.

Although the Charities Act was passed on 8 November 2006, it will take some time for all the changes it introduces to come into force. Some will take effect in early 2007, but many others will require secondary legislation or guidance before they take effect. There are a number of changes to our powers which will be reviewable by the Charity Tribunal (for example, our decisions on charitable status, the use of many of our protective powers, and the Charitable Incorporated Organisation) so they won't be introduced until early 2008 when we're expecting the Tribunal to be up and running.

The Office of the Third Sector has published an Implementation Plan, which indicates when various provisions will come into force:

www.cabinetoffice.gov.uk/third_sector/documents/charity_reform/implementation_plan.pdf