

Changes in Charity Law 2006



This toolkit provides an overview, information and clarification about the changes in the Charity Law 2006.

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Introduction

Whether you are a small or large voluntary organisation the changes in the Charity Law will have some impact on you. This toolkit has been produced to help you become familiar with and give you an overview of those changes.

The Charities Act 2006 and the Companies Law 2006 have both been revised and amended to meet 21st century needs; giving more clarity and simplifying procedures. The information contained in this toolkit is not exhaustive and further detailed information and guidance notes can be obtained from the Charity Commission (see page 25).

A brief history will give some background information and an understanding of changes that have taken place over time. The original Charity Uses Act came into being in 1601. It was for “the relief of the aged, impotent and poor people”. It goes on to cover a number of issues such as the sick, wounded and soldiers, mariners, schools, churches, orphans, the repair of bridges etc. to name but a few. Little changed until 1853 when the Charity Commission was formed to combat waste and corruption.

In 1958 the Recreational Charities Act was rushed through parliament and was followed by the Charities Act 1960, the Charities Act 1993, the Trustee Act 2000 and finally the Charities Act 2006!

The aim of the Charities Act 2006 is to help your organisation and the Charity Commission deal with matters quickly and efficiently and should free smaller groups from too much ‘red tape’. This Act also introduces a new legal structure for charities, which requires them to be clear about how they benefit the public.

Key Changes

Changes in Charity Law have taken effect over time as described below:

From February 2007 there were changes to the Charity Commission; the registration threshold for small charities was increased and there were changes to audit thresholds and measures relating to trustee liability and insurance. From April 2007 the registration threshold increased to £5,000 and in March 2008 the remuneration of trustees was permitted. In April 2008 new charitable purposes became available and the public benefit test became applicable to all charities. From January 2009 the registration of excepted charities with incomes over £100,000 (e.g. scouts/guides and churches) was implemented.

It is expected that later in 2009 the necessity for exempted charities with income over £100,000 to register (e.g. the Church of England and public schools) will come into effect and that new Charitable Incorporated Organisations will be recognised.

Charitable Purposes

The Charities Act defines a charity as a “body or trust which is for a charitable purpose that provides benefit to the public”.

A purpose or aim of any charity is set out in its governing document (e.g. set of rules, constitution, memorandum and articles or trust deed).

Before the Act became law there were 4 types of charitable purpose:

- The relief of poverty
- The advancement of education
- The advancement of religion
- Other purposes for the benefit of the community.

Charities and their purposes have evolved over time, so it has become necessary to update and extend these charitable aims for a 21st century society whilst clarifying what a charity is considered to be. The Act now lists 13 charitable purposes and removes the presumption that all charities benefit the public, requiring them to produce evidence of this benefit.

New Charitable Purposes

There are 12 specific and 1 general heading. The general heading covers everything which is currently charitable but might not fall under any of the specific headings. Together they cover everything that is charitable:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of arts, culture heritage and science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity
9. The advancement of environmental protection/improvement
10. The relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. 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
13. Other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable.

Public Benefit

Public benefit is very important because it applies to all charities whatever their aims might be. Individual charities must be able to demonstrate that their aims are for the benefit of the public.

There are 2 key principles of public benefit. Within each principle there are important factors that must be considered in all cases.



Principle 1

There must be an identifiable benefit or benefits

- It must be clear what the benefits are
- The benefits must be related to the aims
- Benefits must be balanced against any detriment or harm

Principle 2

Benefit must be to the public, or a section of the public

- The beneficiaries must be appropriate to the aims
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions, or by ability to pay any fees charged
- People in poverty must not be excluded from the opportunity to benefit
- Any private benefits must be incidental

NB. Public benefit decisions are about whether an individual organisation is a charity. They are not about whether particular types of charity or groups of charities, as a whole, are for the public benefit.

How the Changes Affect Your Group

The changes in the Charity Law will affect voluntary and community organisations in a number of ways.

There are changes that aim to reduce 'red tape', making it easier for smaller organisations to operate and there are changes around annual reports, trustees, public collections and fundraising.

Here are the details of some of these changes:

- Smaller unincorporated charities with a gross income of less than £10,000 who do not own land and are not companies will have the power to amend purposes and governing documents without permission from the Charity Commission

- Unincorporated charities can change their "administrative powers and procedures", i.e. the parts that relate to the general running and administration of their organisation, without the Commission's prior consent
- If your charity is a company you can now make some changes without prior approval from the Commission
- The Act has updated its provisions to make it easier for smaller unincorporated charities to transfer property.

Annual Reports

Organisations have a new duty to report on their charity's public benefit in their Trustees' Annual Report. The amount of detail required will depend on the size of your organisation.

Larger Charities

If the annual gross income of your organisation exceeds £500,000, or where income exceeds £100,000 and aggregate value exceeds £2.8million, an audit is required.

Trustees are required to provide more information in their Trustees' Annual Report about significant activities that have taken place in order to carry out the charity's aims for public benefit. This includes the details of aims and strategies, and an explanation of the charity's achievements with reference to the aims and objectives of the organisation.

Smaller Charities

If your organisation has less income than this, you are below the audit threshold. In this case trustees are required to include a brief summary in the Trustees' Annual Report of the main activities that have taken place in order to carry out the charity's aims for the public benefit.

The minimum requirement for charities whose gross income is between £10,000 and £500,000 would be an independent examination of accounts.

Charities (including unincorporated associations) with an annual income of £10,000 or less must prepare accounts and have them available on request.

Trustees

Trustee Liabilities

Trustee liabilities can be of great concern to the trustees or management committee members of small or large voluntary organisations.

The new law gives a new power regarding trustees' liability. Trustees will now be able to apply to the Charity Commission for relief from personal liability. Trustees will not be personally liable for breach of trust or duty if they have acted reasonably and honestly in their duties.

The Act also recognises that it is reasonable for charities to buy trustee indemnity insurance.

When a person has been disqualified as a trustee, the Commission must grant an application to waive the disqualification after five years, unless there is a good reason for not doing so. This applies to trustees who were disqualified for mismanagement and misconduct regarding administration and to charities in England and Wales.

The Role of Trustees

The role of a trustee is still voluntary, however the new Act allows trustees to be paid for providing services and goods if particular conditions are satisfied i.e. that the charity/organisation will benefit. This could be legal work or electrical maintenance for example. In such cases the following conditions must also be met:

- That the governing documents do not have anything in them that prohibits the person from receiving payment
- That the trustees are satisfied that the arrangement is in the best interests of the charity i.e. that it will save the charity money or provide a better service
- That trustees who stand to benefit do not take part in any decision making regarding the agreement
- That the terms are set out in a written agreement
- That the amount is reasonable.

If more than one trustee is being paid, the benefiting trustees must be a minority of the charity's trustees.

Trustees' Expenses

Trustees and volunteers are entitled to have expenses paid by their charity/organisation when carrying out duties on its behalf.

Expenses can for example cover travel (usually 40p per mile if using own vehicle) or postage and telephone/broadband charges. They may also include the reasonable cost of meals, childcare and the care of a dependant. Expenses can also cover translating documents, training materials and publications for the use of the organisation.

It is good practice to have a specific expenses policy designed for your organisation.

Public Collections

Under the new law 2006 public collections will be licensed through the Charity Commission. Before you decide to make any public collections you must make sure that:

- You have the appropriate licences and permissions
- You consider the cost of the appeal and how much in funds you are likely to raise
- Your collector has the correct identification and information for donors
- You have adequate and efficient procedures in place for accounting for the money you have raised.

The law does not require volunteer fundraisers to make a solicitation statement unless fundraising in a public place or door to door.

New licensing schemes should be coming into force in 2009. Contact your local licensing office (see page 24) or the Charity Commission (see page 25) for further details regarding these.



Fundraising

Some of you will be trustees of charities who may want to use professional fundraisers and commercial participators. Here are some of the things you need to know:

The definition of a professional fundraiser is person or business that is paid to raise money for charities.

If your organisation employs a professional fundraiser:

- There must be a detailed statement or contract for the work. The Charitable Institutions (Fund-Raising) Regulations 1994 set out what must be contained in a contract
- You should use a reputable fundraiser, registered with the Institute of Fundraising
- The fundraiser is required to make clear for whom they are fundraising and inform donors that they are paid professional fundraisers, including how much they will get paid and how the amount will be calculated
- The fundraiser must produce full and proper accounts for all the money they have raised and cannot deduct their expenses from donations before they pass them to the charity.



The Charities Act defines a commercial participator as a business engaged in a promotion that involves fundraising for a charity. This could include selling services or goods where a proportion of the fee or price goes to a charity or co-sponsoring a charity event where the business services and goods are also being sold.

If your organisation engages with a commercial participator:

- There must be a contract that states how the funds will be raised and transferred to the charity or charities
- It must be clear which charities or charitable causes will benefit from the promotional venture and how much of the proceeds will go to the charity, charities or charitable causes.



Excepted and Exempted Charities

There are some charities that are currently exempt from Charity Law - these are called Excepted and Exempt Charities.

Excepted Charities are charities that have been excepted from having to register with the Commission either by legislation or the Charity Commission itself, e.g. churches, scout/guide groups and Armed Forces charities. Excepted Charities also include charities that have been under Charity Commission supervision and therefore have to provide information about their activities and can be investigated by the Charity Commission if necessary.

Exempt Charities are charities that are exempt from Charity Commission supervision.

These charities:

- Have the same status and tax benefits as other charities in England and Wales and must comply with general charity law
- Are subject to the jurisdiction of the Courts, cannot register with the Commission and are outside the Commission's monitoring and investigative powers
- Can access the Commission's support powers such as applying for orders to enable them to take action not allowed by their governing document.

However, future changes in the Law will be taking place and a number of organisations will be affected - for example:

- From 31st January 2009 excepted charities with annual income over £100,000 will have to become registered. The Charity Commission plans to have these charities registered by October 2009
- Excepted charities with an annual income of less than £100,000 have until 2012 to register
- There is an Excepted Church Charity Programme – from 31st January 2009 these charities with an annual income of over £100,000 must apply for registration. The Commission plans to have this completed by October 2009
- Armed Forces Charities with income over £100,000 must register.

A New Legal Structure

What is a Charitable Incorporated Organisation?

A Charitable Incorporated Organisation (CIO) is a new legal structure specifically designed for charities. It will meet the needs of charities that wish to benefit from incorporation and limited liability.

What will change with the new Charitable Incorporated Organisations?

- At the present time charitable companies have to register with both the Charity Commission and Companies House because they come under both requirements of charity and company law. This means that charities have to produce 2 sets of accounts and 2 sets of returns. Under the new law you will only have to register with and report your accounts, reports and returns to the Charity Commission
- If you are a large organisation you will have to prepare accruals accounts, or if you are a smaller CIO you will need to prepare receipts and payments accounts (as per the Charities Act 1993)

- There will be no charges for registration and filing information with the Charity Commission
- A CIO must have a constitution which proposed regulations state must be in a form produced by the Charity Commission "or as near to it as circumstances permit". The Office of the Third Sector and The Charity Commission are in consultation regarding these regulations and model constitutions. Draft model constitutions can be found online at:

www.cabinetoffice.gov.uk/third_sector

- It is proposed that the minimum age of a trustee of a CIO should be 16, the same as applies to company directors.

A CIO will not be the right option for some organisations, even though there are a number of advantages. As trustees you need to consider whether or not becoming or converting to a CIO is suitable or beneficial for your organisation. It is therefore important to seek professional advice before making any decisions.

If a charity wishes to convert, the new constitution would have to be sent to the Charity Commission to be approved and registered, after which the original organisation would then have to be wound up.

This new legal structure should be available later in 2009.

Further Information

For further information *Guidance Notes C11 – ‘Trustee expenses and payments’* can be obtained from the Charity Commission (see page 25).

For further information regarding and relating to licences you can contact your local licensing office (see page 24) or the Charity Commission (see page 25).

Further information from the Charity Commission website includes guidance notes for the following:

- Disposing of charity land
- Borrowing and mortgages
- Disposals of charity interests in property.

Useful Publications and Resources

The following publication can be obtained online from the Office of the Third Sector website (see page 24):

Charities Act 2006 – What Trustees Need to Know

These publications can be obtained from the Charity Commission website (see page 25):

CC11 – Trustees Expenses and Payment

CC15a – Reporting and Accounting: The Essentials

CC20 – Charities and Fundraising

Charity Commission News

The Voluntary Sector Legal Handbook by Adirondack & Taylor (published by the Directory of Social Change) is available via Sandy Adirondack’s website -

www.sandy-a.co.uk/books.htm

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CIC Regulator

CIC Team
Room 3.68, Companies House
Crown Way
Maindy
Cardiff CF14 3UZ

Tel: 029 2034 6228 (24-hour voicemail service)
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Email: cicregulator@companieshouse.gov.uk
Web: www.cicregulator.gov.uk

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Crown Way
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DX 33050

Tel: 0303 1234 500 Minicom: 029 2938 1245

Email: enquiries@companieshouse.gov.uk
Web: www.companieshouse.gov.uk

Department for Business Enterprise & Regulatory Reform (BERR)

Ministerial Correspondence Unit
Department for Business, Enterprise & Regulatory Reform
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 5000 Minicom: 020 7215 6740
Fax: 020 7215 0105

Email: enquiries@berr.gsi.gov.uk
Web: www.berr.gov.uk

Fit4funding

93 Lawefield Lane, Wakefield WF2 8SU

Tel: 01924 239063

Email: info@fit4funding.org.uk
Web: www.fit4funding.org.uk

Gambling Commission

Victoria Square House
Victoria Square
Birmingham B2 4BP

Tel: 0121 230 6666 Fax: 0121 230 6720

Email: info@gamblingcommission.gov.uk

Web: www.gamblingcommission.gov.uk

Licensing Office

Horbury Community Centre
Cluntergate, Horbury
Wakefield WF4 5DA

Tel: 01924 302922

Email: licensingoffice@wakefield.gov.uk

Office of the Third Sector

2nd floor
Admiralty Arch
South Side
The Mall
London SW1A 2WH

Tel: 020 7276 0317 / 020 7276 0432

Email: OTSinfo@cabinet-office.x.qsi.gov.uk

Web: www.cabinetoffice.gov.uk/third_sector.aspx

Pay and Employment Rights Service (PERS)

Tel: 01924 428033

Advice Line: 01924 428030

Email: admin@pers.org.uk

Web: www.pers.org.uk

The Charity Commission

PO Box 1227
Liverpool L69 3UG

Tel: 0845 3000 218

Fax: 0151 7031 555

Web: www.charity-commission.gov.uk

Voluntary Action Wakefield District (VAWD)

11 Upper York Street
Wakefield WF1 3LQ

Tel: 01924 367418

Email: ask@vawd.org.uk

Web: www.vawd.org.uk

West Yorkshire Community Accounting Service (WYCAS)

PO Box 1416
Huddersfield HD1 9AJ

Tel: 01484 543251

Email: info@wycas.org.uk

Web: www.wycas.org.uk



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Produced April 2009 by:



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Charity No: 516150 Company No: 01878287