



Charities Act 2006 : General Changes to Charity Administration

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Seminar Handout
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Charities Act 2006 (Ch. A. 2006)

General Changes to Charity Administration

Introduction

Enacted 8th November 2006

Will amend the Charities Acts of 1992 and 1993. It is *not* a 'consolidating' act.

Not all coming into force at once.

Planned timetable for implementation:-

- First Commencement Order – 27th February 2007
- Second Commencement Order – "second half 2007"
- Third Commencement Order – "early 2008"

Also required:-

- Consultation and guidance on the public benefit test – consultation commenced and ends 6/6/2007

Secondary legislation -

- Registration Threshold Order – implemented and effective from 23/4/07
- C.I.O. Regulations - awaited
- Commission Regulations – awaited

Our previous speaker has discussed the new legal framework for *charity regulation*, again some of which is now in force but some of which is still awaited.

On the CD I have provided a copy of the slides and handout I used for a seminar to Interlink RCT on 28 February 2007 which details what came into force under the first commencement order and the best timetable we had at that date for the rest of the provisions of the act. This covers some issues that I will not be dealing with under this session's topic of general changes to Charity Administration.

Small charity matters

Registration changes

23/4/07 (new Section S.3A 1993 Act)

"Small" charities – the *income* threshold which triggers a *requirement to register* is raised to £5,000 from 23 April 2007. (But no charity will be "forcibly" removed from the register).

Other registration changes – the occupation of land or receipt of 'permanent endowment' (capital which cannot be spent as income) will not trigger a requirement for a small charity to register.

Unregistered charities – don't forget HM Revenue & Custom's roles and still must comply with charity law.

Annual Return requirements

Financial years commencing after 27/2/07 – regardless of expenditure level, no annual return now required unless *income* exceeds £10,000 pa.

Transferring assets (expected "early 2008")

Section 40 of the 2006 Act inserts a new Section 74 into the 1993 act in place of the existing.

Will help small registered and small unregistered charities (including excepted and exempt small charities).

For *unincorporated* charities with income in their last financial year of less than £10,000 and not holding “designated land” (ie which *must* be used for the *purposes* of the Charity) the trustees will be able to transfer assets to another charity whose objects are consistent with their own.

This will apply even if the charity’s governing document does not contain an appropriate power to do this.

The Commission *must* be sent a copy of a resolution passed under this new power and they *may* require public notice to be given. The Commission *may* object. All the terms of the section and the new s.74A will need to be complied with for the transfer to be valid.

New s.74B will also apply where the charity has permanent endowment. (That is capital which when given originally, was given on the basis that only the income produced from it could be spent on the charitable purposes).

Changing purposes (expected “early 2008”)

Section 41 of the 2006 Act.

Again, will help small registered and small unregistered charities (including excepted and exempt small charities).

Unincorporated charities with income of less than £10,000 in their last financial year and no “designated land”.

A new s.74C is inserted into the 1993 act.

Trustees will be able to resolve to replace their small charity’s purposes with new purposes as long as:

- The new purposes are charitable
- It is expedient in the interests of the charity to do so

- New purposes are similar in character to those replaced
- They follow the procedure set out in s.74C

Copy of the resolution *must* be sent to the Commission.

Commission *may* require public notice.

The Commission *may* object.

Practically speaking there will be at least a 60 day delay in being able to implement the new purposes.

See example on separate sheet.

Amending Admin rules (27/2/07 – in force now)

This will help both small and large unincorporated charities as the section is not limited.

Power to amend powers and procedures of unincorporated charities (trusts and unincorporated associations). Section 42 Ch. A. 2006 brings in a new section 74D to the 1993 Act. If the governing document either doesn't have an amendment power, or can only be amended in a certain way, this new power enables charity trustees to resolve to change administrative powers and procedures. In the case of an unincorporated association with members other than the trustees, a second resolution will need to be passed at a general meeting of members by not less than a two-thirds majority of those entitled to attend and vote at the meeting. As mentioned, the other powers for unincorporated charities will be brought in by the 'early 2008' Commencement Order.

Use of Permanent Endowment (expected "early 2008")

The 1993 Act already allows the trustees of certain *very* small *unincorporated* charities (with income of less than £1,000 pa and not an exempt charity) to spend their capital but the 2006 Act will allow a wider range of small charities (including exempt charities) to spend their capital and also for larger unincorporated charities to do so in certain circumstances and if the Charity Commission agrees.

A new section 75 will replace the existing s.75 Charities Act 1993 (for small charities) and new sections 75A (larger charities) and 75B are added to the 1993 Act by the 2006 Act section 43.

Very careful consideration will need to be given to meeting the requirements of these sections if the Trustees do wish to spend the capital of the charity.

Registration issues

The changes to registration threshold has already been discussed, but new and existing charities will need to be aware of the changes to be brought in by the "early 2008" commencement order that relate to public benefit as this will affect charities seeking registration and also charities already on the register.

Our previous speaker has dealt with the new description of charitable purposes which will be introduced by section 2 Charities Act 2006 when this section comes into force.

The time for responding to the consultation on public benefit runs out on 6 June 2007.

A related issue is the current Charity Commission Consultation regarding CRB disclosures which ends on 11/5/07. Currently the way in which the Commission implements its policy relating to CRB checks is addressing affecting new registration and I would urge you to look at the consultation on the CC website and respond to it.

Administration

Will it really be easier?

In relation to the occasions upon which a charity might need to approach the Commission, complying with their requirements is likely to be as complex as ever, but the type of occasions when you may need to approach the Commission will be different from the position which existed before the 2006 Act.

The Act has tried to reduce the times when the Commission's *consent* is required. For example, I will mention later the issues of trustee indemnity insurance and remuneration. Also the Act changes when a charity company needs to apply for the Commission's consent for changes to their governing document and once a charity has used the new powers for unincorporated small charities hopefully it won't need to trouble the Commission again for a long time!

Audit thresholds (for accounting years commencing after 27/2/07)

For medium sized charities the threshold above which a professional audit is required is raised to £500,000.

Annual return thresholds

"Medium-sized" charities – the threshold above which a professional audit is required is raised to £500,000 income for financial years *beginning* after 27/02/07.

Land transaction consents

Minor changes brought into s.36 Charities Act 1993 which clarify and hopefully reduce occasions when the Commission's consent is required. I will mention secure grants below.

Public notice

The occasions when a charity will have to give public notice of matters affecting it will be subject to discretion of the Commission rather than being mandatory. The Commission's view is that there will be far fewer occasions when charities will be asked to give public notice reducing administration and also expense.

Register of Mergers ("second half 2007")

- The new Register of Merger provisions designed to make tracing the recipient of legacies and donations after mergers much easier and more certain are to be brought in by s.44 of the 2006 act and will mean that an old charity can safely be removed from the register without a risk of loss.

Secured Grants (27/2/07)

A welcome change for charities which are recipients of *grants* some terms of which are to be secured by a mortgage or charge over the charity's land is brought in by Section 27 of the new Act. This amends S.38 Charities Act 1993 so that the Commission's consent to the charge is not required where the trustees of the charity are able to comply with the statutory 'advice' provisions set out in this section. Until now, this has only applied where the charge was to secure a loan. This has meant legal expense in obtaining Charity Commission consent under Section 38 for secured grants which wouldn't have been incurred if the charity had a potentially more onerous loan!

Trustee Benefits

Indemnity insurance

Trustee Indemnity Insurance – if the trustees of a charity believe it is in the best interests *of the charity* and unless it is expressly prohibited by the governing documentation new section 73F of the 1993 Act permits trustee indemnity insurance to be bought and paid for out of the funds of the charity, subject to the rules set out in the section.

Remuneration ("early 2008") – s.36 & 37 Charities Act 2007 add sections 73A and 73B to the Charities Act 1993

Whilst the Act does *not* allow trustees to be paid for being trustees – which would still require the Commissions consent in the rare circumstances they would permit it – the act allows trustees to agree to pay an individual trustee for *services* (over and above that of acting as a trustee to the charity).

As long as it is not prohibited by the charity's governing document and the provisions of the act are complied with:

- Paid trustees to be in minority
- Amount paid to be reasonable and recorded in writing in agreement
- Best interest of the charity

- In a nutshell – this part of the Act will allow a charity to pay an individual trustee for providing an *additional* service to the charity (i.e. not for just being a trustee), but only if the trustees think it is in the best interests of the charity to do so and as long as the governing document does not expressly prohibit such payment and they abide by the statutory rules.

C.I.O (Charitable Incorporated Organisation)

At present new charities which want a separate legal personality from its trustees (for example for liability reasons) really only have the option of becoming a company (incorporated at Companies House and *also* registered with the Commission).

Some charities are corporate bodies as a result of having been granted a Royal Charter or were set up as Industrial and Provident Societies or were established by act of Parliament, but most have to be Companies Act companies. Section 34 and Schedule 7 of the new act will (when in force) create a new type of corporate body specially for charities and without a dual regulatory burden. The CIO will have a constitution which will have to conform to regulations which have not yet been issued and it will be registered with the Charity Commission which will grant incorporated status.

This briefing note is intended solely as an overview of the law. It was last updated on 27 February 2007. No responsibility can be accepted for the completeness or accuracy of this briefing note and professional advice should be taken in relation to any specific problems.

For further information please contact Giselle Davies, Charity Law Consultant at our Cardiff office on (029) 2023 8239.

Example Sheet - Charities Act 2006

When might small charities benefit from new provisions to be brought in by sections 40 & 41 (expected "early 2008")?

Look on the Charity Commission register for Welsh charities with charitable objects for the benefit of the "blind".

Results: 42 registered charities in this category

"small": 29 (unincorporated and income under £10,000 pa)

nb 1 has made no expenditure in last 7 years &

1 has made no expenditure in last 3 years

Most typical existing objects: eg for talking newspapers / magazine

(14 /42)

".....by the provision of recorded tapes"

Very limiting

- What about CD's; spoken emails; Braille and further technological advancements ?
- Why only newspapers?

Possible similar replacement objects (for section 41 resolution)

"the improvement of the welfare of blind or partially sighted people in particular but not limited to the provision of non visual access to material normally available in printed or other visual form, such as newspapers, books, magazines or training material".

All possible candidates for merger(s) by one or more transferring assets to other(s) (using section 40 resolution)