

Charities Act 2022 - 28 February 2022



Summary

The Charities Bill to amend the Charities Act 2011 and the University and College Estates Act 1925 received royal assent last week and passed into law. However that is not the end of the journey as the legislative changes now need to be implemented, some of which will require secondary legislation.

The Charity Commission blog¹ reported on Friday that the Charity Commission will let charities know when each of the relevant provisions come into force and they have updated the relevant pieces of guidance or amended an online service.

The main aims of the Act are to give charities more freedom to govern well and the Charity Commission more power to intervene when they do not. The recommendations have been set out in twelve areas. One of the key themes of the recommendations is to give greater consistency across all charities, however they may be established, in how they may:

- Manage changing purposes and governing documents
- Obtain tailored advice to manage land acquisitions and disposals
- Use permanent endowment
- Remunerate trustees
- Merge

The recommendations also extend the decisions that can be made by trustees without Charity Commission approval, for example, around ex gratia payments and where appeals fail or are over-subscribed.

Charities Act 2022

A new Charities Bill was announced in the Queen's Speech on 11 May 2021. The Bill had been delayed, like many things, due to COVID-19. The Bill brought together proposals which reflected

37 out of the 43 recommendations set out in the [2017 Law Commission report](#)², Technical Issues in Charity Law, to which the Department for Digital, Culture, Media and Sport responded in March 2021. Whilst the recommendations were, at first sight, highly technical; they are intended to make it simpler and easier for charities to respond to opportunities to achieve their charitable purposes in an effective, sustainable and impactful way. The recommendations also maintain important safeguards to ensure the best use of charities' resources³.

The recommendations were divided into twelve areas; some of the key proposals now included in the new Act are highlighted below.

Changing purposes and amending government documents

The proposals aim to bring consistency across all types of charity from unincorporated charity, incorporated charity to CIO when making changes to their charitable purpose. The changes will also mean that an alteration to the objects which does not change the charity's purpose is no longer a regulated change and will not need Charity Commission approval. Charities governed by Royal Charter have also been considered and where such charities do not currently have the power to make changes to the Charter that would be granted, the process of change would also be simplified with the charity being able to seek an indication from the Privy Council as to whether a proposed amendment would be approved before putting the resolution to a vote.

Proceeds of fundraising appeals

Where funds have been raised through a failed appeal (or are surplus to the appeal), it is proposed that trustees do not need to contact donors to offer to return their donation but rather can apply

¹The Charity Commission Blog (<https://charitycommission.blog.gov.uk/2022/02/25/charities-bill-the-next-steps/>)

²Government response to the Law Commission report 'Technical Issues in Charity Law' - GOV.UK (<https://www.gov.uk/government/publications/government-response-to-law-commission-report-on-technical-issues-in-charity-law>)

³Baroness Barran - Minister for Civil Society

a donation in a way that is as near as possible to the donor's intentions (cy-près). This would apply where: the donation does not exceed £120; the total given by that donor does not exceed £120; and the donor has not requested that funds be returned if the appeal fails. Further where the proceeds for failed appeals and from surplus cases are less than £1,000 the trustees should have the power to apply the funds for new purposes in so far as they should be as similar as possible to the original purposes but also be effective and suitable in the light of current social and economic conditions. If the proceeds exceed £1,000 Charity Commission approval will be required.

Acquisitions, disposals and mortgages of charity land

The recommendations here extend the range of specialist advisers who can provide advice to charity trustees in relation to land and streamline the reports and required. An independent valuation of the property concerned is still required. The Law Commission's proposals included the exclusion of wholly-owned subsidiaries from the definition of connected persons for the purposes of property transactions. This proposal was not accepted. Evidence from the Charity Commission's case work was cited as demonstrating that charities frequently fail to appreciate the need to deal with subsidiaries on an arm's length basis and do not appropriately manage conflicts of interest. There was a concern that property may be improperly disposed of through the subsidiary. In addition, the proposal to remove the need to advertise planned disposals of designated land were rejected reflecting the fact that disposals of community land are often controversial generating a significant response from the public that should be considered in trustee decision making.

Permanent endowment

The definition of permanent endowment is to be reformulated for clarity. It is proposed that the power to release permanent endowment restrictions will be available for permanent endowment funds up to a value of £25,000 with a reduced time frame for Charity Commission approval. In addition a statutory power for trustees to borrow up to 25% of a charity's permanent endowment is proposed (to be paid back within 20 years) and for those operating a total return policy for endowments to be permitted to make social investments with a negative or uncertain return from permanent endowment.

Remuneration to trustees for the supply of goods and the power to award equitable allowances

Charity trustees cannot make gains from their position as a trustee but can be paid for services

provided. This is inconsistent and prevents charities from accessing goods which may be offered at more favourable terms by a trustee than elsewhere. The proposals will remove that inconsistency and give the Charity Commission the power to approve remuneration/payments to trustees (or to authorise a trustee to retain a benefit already received) where the trustee has done work for a charity and it would be inequitable for the trustee not to be remunerated for that work.

Ex gratia payments

Currently trustees must seek Charity Commission approval for all ex gratia payments.

The recommendations would allow charities to make small ex gratia payments from £1,000 for the smallest charities with income under £25,000 to £20,000 for charities with income of over £1m in the previous financial year (four thresholds are proposed) without pre-approval from the Charity Commission. As currently required, any ex gratia payments made would need to be disclosed in the financial statements in accordance with the [Statement of Recommended Practice \(SORP\)](#)⁴.

Merged charities

The recommendations around facilitating mergers were accepted, including recommendations that enable charities to amend their governing documents to allow them to merge; to more easily transfer property during a merger; and to allow gifts by will to be made to the new charity even when the old charity is named in the will, which will reduce the need for charities to maintain inoperative 'shell charities' to capture such gifts.

Names

Under the proposals the Charity Commission would have the power to require a charity to stop using a working name (and reject a formal name) where the name is too similar to another existing charity or if the name is inappropriate/offensive.

The Charity Commission would also be within its right to delay entering a charity into the register.

Charity tribunal and the courts

The government response here also supports the Charity Commission in being able to manage any conflicts in any legal proceedings and the recommendation that applications to pursue 'charity proceedings' could be granted by the Court was not accepted. However, recommendations approving that tribunal costs be payable from charity's funds were approved to give trustees protection when pursuing action in the tribunal.

⁴Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) (effective 1 January 2019) 9.24-25 (<https://www.charitySORP.org/>)

Your Charities & non-profit team.



Jayne Rowe
jrowe@pem.co.uk



Kelly Bretherick
kbretherick@pem.co.uk



Judith Pederzoli
jpederzoli@pem.co.uk



Michael Hewett
mhewett@pem.co.uk



Nikki Loan
nloan@pem.co.uk



Kate Millard
cmillard@pem.co.uk



Caroline Fagence
cfagence@pem.co.uk



Gemma Baratte
gbaratte@pem.co.uk



Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk

