




AUTHOR / KEY CONTACT

Charities Autumn Update 2022



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Charities Act 2022 – Spring 2023 Tranche

In our Spring Update, we outlined the first sections of the new Charities Act coming into force this Autumn. No actual date has yet been announced. The next tranche of the Act's provisions due to come into force in Spring 2023 is as detailed below.

Autumn 2022	Spring 2023	Autumn 2023
Sections 6-8: Cy-près and schemes	Sections 9-14 and 35a: Permanent endowment	Sections 1-3: Charity constitutions
S15-16: Ex gratia payments. (The Commission has just announced a deferral of implementation as further consideration is needed)	Sections 17-23: Charity land	s.29: Powers relating to appointments of trustees
s.30: Remuneration of charity trustees etc providing goods or services to charity	Sections 25-28: Charity names	s.31: Remuneration of charity trustees etc
s.32: Trustee of charitable trust: status as a trust corporation	Section 38 and 39: Connected persons	Sections 33-35: Charity mergers

The provisions of the Charities Act 2022 due to coming into force in Spring of next year include:

Permanent Endowment

The new Act will amend the definition of “permanent endowment” to any property “subject to a restriction on being expended which distinguishes between income and capital”.

The aim of the legislation is not only to simplify the definition but clarify when restrictions on spending permanent endowment (PE) may be lifted without Charity Commission oversight. If the market value of a fund is £25,000 or less then Charity Commission consent to lifting the restriction on PE will not be required. The amount of any outstanding borrowing from PE is taken into account when determining whether the fund falls above or below the threshold. However, this is coupled with the introduction of a new power for trustees to release in full or in part the obligation to repay any borrowing from PE provided they are satisfied that removing this obligation means that the purposes of the trust can be carried out more effectively.

Another new power makes borrowing from PE (up to 25% of the available fund) possible, provided trustees are satisfied it is expedient to do so in light of the purpose of the PE and the charity itself, and that arrangements are in place to repay the fund within 20 years.

The current difficulty in applying PE to social investments is also being addressed. A social investment is when a relevant act of a charity is carried out with a view to both directly furthering the charity's purposes, and (b) achieving a financial return for the charity. The new power will be available where charities use the statutory total return investment approach, i.e. where the trustees have decided in accordance with the relevant Charities Act provisions that any increase in the value of an investment is to be used as income.

Charity Land

The Charities Act 2011 currently restricts the disposal of charity land to ensure that the charities obtain the best possible terms and are protected from making sales at an undervalue. Disposals include mortgages and the grant or surrender of leases.

The Charities Act 2022 confirms that the restrictions on dispositions of land apply only where the whole of the land being disposed of is owned by a charity solely for its benefit, or, in the case of an unincorporated charity, on trust solely for that charity. The restrictions will no longer apply in the context of administration/liquidation or where the charity is one of several owners/beneficiaries (e.g. under a will).

When disposing of land, charities are currently obliged under s119 of the Charities Act 2011, to obtain a valuation report from an RICS-qualified surveyor. The Charities Act 2022 widens the category of appropriate advisers and replaces the term 'qualified surveyor' with 'designated adviser'. Officers, trustees and employees of a charity who can act as designated advisers will be able to provide reports or give advice on a proposed disposition.

Charity Commission consent will no longer be required for disposals to an employee of a charity ('connected person') under a periodic or short fixed-term lease for use as their home.

To protect purchasers of charity land, there is to be a new requirement that Charities Act statements are included at an earlier stage of the transaction. Such statements will need to be included in the contract as well as the conveyance but can be given by the same individual(s) executing the documents on behalf of the charity, as opposed to the charity trustees having to give a separate certificate in that capacity.

Charity Names

The Charities Act 2022 creates a distinction between a charity's "formal name" (the official name of the charity) and "working name" (the working name used as a label for a charity). Currently, the Charity Commission has the power to direct a charity to change its formal name or refuse or delay its application for registration. However, the 2022 Act will extend this power to a charity's working name. There will be a right of appeal. Where a charity is

a company, its name may be changed via a directors' resolution instead of a resolution of the members.

Other news

Charity fraud awareness week is 17-21 October 2022. The Commission has released [guidance to help charities combat fraud and cybercrime](#).

[Trustee week](#) 7-11 November will also present many opportunities for learning and discussion.

[Public trust and confidence research](#) conducted by the Commission in Spring 2022 identified four public expectations that are worth noting:

- That a high proportion of charities' money is used for charitable activity
- That charities are making the impact they promise to make
- That the way they go about making that impact is consistent with the spirit of 'charity'
- That all charities uphold the reputation of charity in adhering to these.

[Bullying and harassment](#) A cross-sector working group looked at roles and responsibilities in dealing with this safeguarding issue. It reported in August 2022 that trustees must recognise that there is no place for bullying and harassment in charities and that they have a central role to ensure their charity has clear policies and that allegations are handled appropriately.

Trustees are recommended to read the [Charity Commission Chair's speech](#) outlining the Commission's response to the cost of living crisis, their regulatory approach and new guidance [on campaigning and political activities](#).

Interesting regulatory compliance cases

[The Everlasting Arms Ministries](#): This inquiry into the charity's financial management, the sale of property and conflicts of interest / unauthorised benefits to trustees, highlighted the importance of taking decisions jointly (collectively) and recording them properly, so there is no doubt about what was decided and why, particularly for important or controversial decisions.

[Double-defaulters](#): The Commission's class inquiry looked at several charities which had failed to submit annual documents for two years or more. They regard this as mismanagement and/or misconduct in the administration of the charity - it may also be a criminal offence. These cases highlight the importance of accountability and

filing on time.

[Achiezer](#): Both the trustees were found to have committed serious misconduct and displayed poor financial management by making significant payments to a company of which they were partners. The case points out that conflicts of interest are more likely when there are only a small number of trustees on the board, when trustees are closely related, or when the charity has dealings with connected organisations. It is vital that trustees avoid becoming involved in such situations and put in place policies and procedures to identify and manage such conflict.

[Operation Ark](#): This regulatory compliance case examined whether the actions and efforts of Nowzad, the British animal welfare charity, to evacuate both animals and people from Afghanistan upon the withdrawal of international military forces, fell within the scope of charity law and the charity's purposes. The Commission found that it did.

Further information

This newsletter is for guidance only and should not be relied upon as legal advice – please contact Partner and Head of Charities & Non-Profit Sector [Lisa Watson-Cook](#) by emailing Lisa.Watson-Cook@LA-Law.com or calling 023 8082 7444 to seek advice specific to your circumstances.