Charities Spring Update 2022

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Charities Act 2022

The big news for the sector is that new legislation aiming to reduce red tape for charities received Royal Assent on 24 February. The Charities Act 2022 is to be brought into force over the next 18 months. The highlights from the Government's implementation plan published on the 13 April 2022, are set out 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	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
		Sections 33-35: Charity mergers
s.32: Trustee of charitable trust: status as trust corporation	Section 38 and 39: Connected persons	

The sections of the Charities Act 2022 coming into force this year include:

Cy-près powers and schemes

There will be more flexibility for donations to 'failed appeals', to be applied to other, similar charitable purpose rather than returned to donors. This addresses the problem that charities face when the purpose specified in an appeal are not achievable, for example because insufficient funds are raised. The new rules can apply: a) where the Commission decides it would be unreasonable to incur the cost of returning funds, or for donors to expect them to be returned; b) where the trustees believe a donor has given £120 or less over the year; c) where donors cannot be traced or identified having taken reasonable steps to find them, as agreed with the Commission; or, d) in the case of a cash collection, lottery, competition or similar method where it is not possible to identify individual donors

Trustees will also be able decide that proceeds from a failed appeal should be applied to a similar 'cy-près' purpose without the need for a Charity Commission scheme. This power will apply both in the circumstances set out above ('initial failure') or where too much money has raised from a special appeal ('subsequent failure'). Where the amount exceeds £1,000, the resolution will not take effect until the Commission has agreed.

It is still advisable to use clear words in fundraising appeals informing supporters that if their donation cannot be applied to the appeal's stated aims, it will be used for the charity's general purposes.

Small ex-gratia payments

Trustees currently need permission to make a payment out of charity funds on the basis of a moral, rather than legal, obligation. These circumstances often arise in relation to disputed legacies. The Act will allow small ex-gratia payments to be made without Charity Commission consent. 'Small' means by reference to the charity's gross income in its last financial year, up to a maximum of £20,000 where the charity's annual income is over £1million. The thresholds will apply per payment, not per financial year. The statutory test for making an ex-gratia payment will also be modified so that in practice, decision-making can be delegated to employees. Responsibility for ex gratia decisions - as with any decision by a charity - will still rest with the trustees and all ex-gratia payments must be reported in the annual accounts.

Remuneration for provision of goods and services

Although many charities have express powers to pay trustees for goods and services in their governing document, there is a statutory power to pay a charity trustee, or connected person, for providing services to the charity out of its funds, as well as for goods supplied in connection with those services. This power will now be extended to with goods that are not supplied in connection with services. An illustration of the use of the power is where charity trustees agree to pay one of the trustees (or their business) to either decorate the charity's premises; or to supply paint to decorate the premises; or do both. The trustees will still need to check their own constitution and comply with the safeguards prescribed in the Charities Act 2011 s.185 which include a 'statutory agreement' with the trustee or connected business providing the goods and/or services. The provisions don't

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allow payment for services provided by a person in their capacity as a trustee, or under a contract of employment.

Trustee of charitable trust: status as trust corporation

Under the current rules, a charitable corporate body that acts as sole trustee of a charitable trust will only have trust corporation status in limited circumstances, which means that it is often necessary to appoint a second trustee. The 2022 Act will automatically give trust corporation status to any trustee of a charitable trust if they are a 'body corporate' and a charity. For example where a CIO or charitable company holds 'designated' land specifically for charitable purposes, such as a recreation ground, almshouse, church or school. As a sole trustee of property held on trust, a trust corporation can give a valid receipt for any proceeds, for example, on a sale of part of the land. This is a technical but important change to the law.

Other news

The Fundraising Regulator recently announced the launch of a self-reporting pathway for organisations to report fundraising incidents where there may have been a breach of the Code of Fundraising Practice. The Fundraising Regulator has reinforced the Fundraising Preference Service, which can be used by supporters to opt out of direct marketing, following an independent review.

The Charity Commission has just issued a safeguarding alert to raise awareness of the risk of exploitation and abuse of those fleeing the Ukraine conflict. Whilst directed at charities offering humanitarian assistance, either directly or through partners, this is a good opportunity for all charities to check their safeguarding procedures. A useful reminder of these responsibilities is the Commission's 5-minute guide called Safeguarding for charities and trustees.

The salutary lessons for the sector from the Charity Commission recent inquiry work include:

Dream It Believe It Achieve It - trustees who took a 'back seat' failed in their duty to hold their fellow trustees to account and this lack of oversight and scrutiny created a situation where the charity's funds could be misapplied.

Humanity Torbay - trustees' failure to control and prevent inappropriate political material being posted on its social media pages in the name of the charity by the charity's founder amounted to misconduct and/or mismanagement.

Capricorn Animal Rescue and Sanctuary - a series of governance failures including inadequate minute taking and financial controls led to closure of the charity, with some 140 animals being rehomed by the RSPCA. The 'dominant trustee' was disqualified from acting as a trustee for 15 years.

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Keeping Kids Company - this watershed case follows the 2015 collapse of Kids Company which operated a 'high-risk business model' and has so far involved a National Audit Office report, a Parliamentary committee report and a High Court Judgment. The High Court did not make the disqualification orders sought by the Official Receiver against the trustees, with the Judge concluding that able and experienced individuals should not be dissuaded from becoming or remaining trustees. The Commission's inquiry decision contains some interesting, wider points for the sector, including the need for financial planning, Board diversity in all its forms, and periodic refreshment of trustees to bring in new perspectives and avoid complacency whilst maintaining the 'right blend' of skills and experience for the charity's business model.

Challenging times

These regulatory cases will give charities food for thought at a time where the cost of living, staff shortages and inflation are increasing pressures on them. The NCVO's Road Ahead 2022 report may provide a helpful backdrop to your strategy planning. The voluntary sector is well-known for responding creatively to demand and taking advantage of the new opportunities these present. A £2.5billion UK Shared Prosperity Fund was announced recently by the Department for Levelling Up, Housing & Communities to give financial assistance to local partners investing in communities and training to enhance people's life chances. A new pilot service is available on GOV.UK to make it easier to find and apply for government grants.

Further information

If you would like any further information, contact Partner Lisa Watson-Cook by emailing Lisa.Watson-Cook@LA-Law.com or calling 02380 827444.

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