



AUTHOR / KEY CONTACT

Charities Update Spring 2023



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Like the Spring sunshine, our client newsletter summarising developments in the sector is later than usual – we have been waiting for some news on the second phase of implementation of the new Charities Act. A June implementation has just been announced! We hope you will find this and the other topics covered interesting.

Charities Act 2022 – ongoing implementation

The Charities Act 2022 is being implemented in tranches, the second of which is due this Spring and is to come into effect in June 2023 (we do not know the exact date yet). [A brief summary of the provisions](#) which will be implemented next month is as follows:

Simplification of disposals of charity land. Provisions to be implemented include:

- The advisers who may provide charities with advice on disposals of land are to be widened – trustees, officers, or employees may provide this advice to the charity, subject to certain criteria.
- Trustees are to be given discretion as to how to advertise disposals of land.
- The requirement for charities to get Charity Commission approval to grant a residential lease to a charity employee is to be removed.

Permanent Endowment powers will be introduced. These include:

- Charities will be allowed to spend from a Permanent Endowment fund of £25,000 or less without

Commission authority when certain circumstances apply.

- Charities will be able to borrow up to 25% of the value of their Permanent Endowment fund without Commission approval.
- Charities which have opted into a “total return approach” to investment will be able to use PE to make social investments with a negative or uncertain financial return, provided any losses are offset by other gains.

The Charity Commission will also be given further powers in relation to charity names. The following provisions due to be implemented at the same time have been deferred and are now due to come in by the end of 2023:

- Changes about what must be included in conveyancing documents when a charity makes a disposal of property.
- The provisions relating to disposals and mortgages by charity liquidators, receivers, mortgagees or administrators.

New Charity Commission Guidance

The Commission has announced some new or updated guidance:

- [Revised guidance on internal financial controls](#) has recently come out. The new sections cover using mobile payment systems and accepting hospitality.
- Redesigned [guidance on investment matters](#) is to be made available by Summer 2023 after the High Court decision in 2022 on responsible/ethical investment.

The Commission’s draft Guidance on ‘[Charities and Social Media](#)’, which has caused extensive debate in the sector, was defended in [a speech by Chair Orlando Fraser](#) at the ACEVO leadership conference in March.

Inquiries

The Charity Commission has just announced the results of its [multi-charity inquiry into 'double-defaulter' charities](#). This highlights that failure to meet accounting obligations is generally indicative of wider governance failures. The Commission takes timely and accurate reporting very seriously as it believes this increases public trust in charities and will also assist funders and beneficiaries in understanding how the charity works.

A number of [investigations](#) have been announced this year, and [several inquiry reports published](#) - these are always worth reading as they contain wider lessons for the sector. The 'big ticket' issues are good governance, financial controls and a prudent approach to arrangements with third-party businesses.

Following the statutory [inquiry into Hospice Aid](#), the Fundraising Regulator issued [guidance on charities working with others](#), specifically professional fundraisers.

Other Charity Commission News

For financial years ending on or after 1 January 2023, there will be a [new Annual Return form](#) - it will contain more questions, but the Commission has promised new guidance on completing the form.

You should also be aware of the rollout of its new '[My Charity Commission Account](#)', intended to improve online communications with the Commission. Three types of account will be available - an administrator account, a trustee account and a third party account (where the charity wishes to nominate someone, like an adviser, to access online services on its behalf).

The Revitalising Trusts Programme is a collaborative project between the Commission, UK Community Foundations, and the government to get dormant funds sitting in the accounts of inactive charities back into circulation. This project was outlined by the Commission [CEO's recent speech to the Trustee Exchange](#), focusing on engaging with trustees and avoiding internal disputes in charities, which appear to be on the rise.

Some of you may have followed in The Times the rather public feud between trustees of the Actors' Benevolent Fund. As such disputes are likely to harm reputation and donations, all charities should review their governance and dispute-resolution procedures.

The Charity Commission was also recently involved in the '[big help out' trustee recruitment drive](#) on 8 May 2023 to tie in with the Coronation's emphasis on community and volunteering. 6 million people volunteered on the day, which was considered a great success on bringing the public's attention to the benefits of volunteering.

Forthcoming legislation

The [Economic Crime and Corporate Transparency Bill](#) will affect dealings with Companies House. So if your charity is established as a company or has a trading subsidiary, you need to be aware that Companies House will take on a greater regulatory role and bring in new ID verification requirements.

The government has announced plans for [a new statutory Protect Duty](#). A bill has not yet been put to Parliament, but the idea is to place a duty on owners and operators of certain venues to take reasonable steps to keep people safe from terrorist attacks. Charities likely to be affected include museums, churches, theatres, hospitals and schools.

Economic and social issues

The effects of the cost of living crisis are still acutely felt across the charity sector, whether impacting cash flow, demand for services or increased difficulty in finding staff and volunteers in many sectors. The Charity Commission has published [guidance on managing financial difficulties arising from the crisis](#). The March 2023 budget did provide some help for charities; see [commentary by the NCVO](#) and [Charity Finance Group](#).

A recent [article in the Guardian](#) highlighted the sharp drop in volunteers since the pandemic. To assist charities meet their duties towards volunteers, HSE has recently published [health & safety guidelines](#). Problems in recruiting charity staff have also been highlighted in a [Civil Society](#) article.

In another [recent Guardian article](#), Almshouse charities have been in the news for all the right reasons!

Gift aid

We understand from the [Chartered Institute of Taxation](#) that HMRC will be writing to charities about their Gift Aid claims on aggregated donations.

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.