

Charities Act 2006

The Act passed into law on 8 November 2006 and is likely to be fully implemented by 2009. The key matters in the Act are as follows:

Defining charity

The Charities Act defines existing charitable purposes. Charities which are currently registered will continue to be so and need take no further action. The presumption of public benefit for charities for the relief of poverty, the advancement of religion and the advancement of education has been removed. The commission will carry out checks into the public character of charities to make sure they exist for the public benefit and issue general and sector specific guidance.

Registration of charities

The Strategy Unit's original recommendation was to raise the income threshold for registration to £10,000. However, this provoked much comment, especially from smaller charities. In response, the Act raises it to £5,000.

Currently exempt and excepted charities

Where there is no suitable alternative regulator, a currently exempt charity will lose its exemption and will come under the Commission's regulation in the normal way. It will have to register but to ease the transition it will initially be subject to a threshold of £100,000 annual income. The Act has ended the current system of exceptions by Regulation or Commission order. Charities excepted in this way will have to register subject to interim threshold of £100,000 to ease the transition.

Audits and independent examinations

Accounts will have to be professionally audited for unincorporated charities with annual income over £500,000; or an annual income over £100,000 and assets exceeding £2.8 million.

Any charity which is not a company and which has an annual income between £250,000 and £500,000 can have its accounts audited or independently examined. The independent examiner must have an appropriate accountancy qualification. If the charity's annual income is below £250,000 the independent examiner does not need to have an accountancy qualification.

For charities which are companies a professional audit will be required if they have either an annual income over £500,000, or assets exceeding £2.8 million. For charities which are companies the equivalent of an independent examination is an accountant's report. The upper limit for which an accountant's report is allowed has been increased to £500,000.

Duty and protection for whistleblowers

Auditors of charity accounts will be protected from the risk of action for breach of confidence or defamation when they communicate relevant information to the Commission. Independent examiners of charity accounts will also be protected. The Act proposes an amendment to the Companies Act 1985 which will introduce the same reporting responsibilities and protections as exist for the auditors of unincorporated charities.

Fundraising

The Act introduces a unified local authority licensing scheme for all types of public charitable collections instead of the several which currently apply. The basic eligibility criteria will apply to all organisations seeking a permit, with a separate 'capacity check' at local level. The definition of 'public place' for the purposes of collecting has previously been ambiguous, with a high street being considered as a 'public place' while railway stations and supermarket forecourts are defined as 'private property'. The Act extends the definition of 'public place' to include these types of areas, doing away with this long-standing anomaly.

Trustee payments

Trustees have been given the power to pay an individual trustee to provide an additional service to the charity if they think it is in the charity's interests to do so. The Act introduces safeguards to prevent this power being abused either unintentionally or deliberately.

Charitable Incorporated Organisations

Charities that wish to have legal personality are currently normally set up as companies. This means that they have to register both with the Charity Commission and with Companies House and provide accounts and returns to both. The Act introduces a new legal form of incorporation which is designed specifically for charities, the Charitable Incorporated Organisation (CIO). CIOs will only have to register with and report to the Charity Commission. Secondary legislation will be published before CIO's can be used.

Mergers

One of the obstacles to charity mergers can be uncertainty as to what will happen to legacies and donations left to charities which may no longer exist. The Charity Commission now keeps a public register of mergers so that gifts and legacies can be automatically transferred to any successor charity.

How we can help

Please contact us if you have any queries on the Charities Act.

For further information on how James Cowper can assist Charities visit:

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