



Spring Newsletter

Charities Act 2022

The Charities Act 2022 came into force on 31st October. It makes technical and modernising changes to the Charities Act 2011 and Universities and Colleges Estates Act 1925. The provisions are being implemented in three tranches over a 12 month period. Included in the first tranche is a general power for the Charity Commission to require public notice of a consent it has given or an order it has made, and changes to rules on failed appeals (known as cy-pres). It remains to be seen in what circumstances the Commission will use the new power of publicity and how often. Coming into force in Spring 2023 are a new simplified definition of permanent endowment and updated rules on disposal of charity land. The final changes due for implementation in Autumn 2023 will include new rules on amending charity constitutions (which will be welcomed by trustees of non-corporate charities) and remuneration of charity trustees where work has already been undertaken and it would be inequitable for the trustee not to be paid. A full list of the changes and their implementation can be found at: <https://www.gov.uk/guidance/charities-act-2022-implementation-plan>

New guidance for charities on managing financial difficulties

The Charity Commission produces guidance on a range of topics. Guidance issued in late December deals with managing financial difficulties arising from the cost of living crisis. The increase in living costs is impacting not only beneficiaries, placing greater demand on services delivered by charities, but also the bottom line for charities. The guidance is a useful summary of practical steps trustees can take in these times of financial turmoil, from more frequent monitoring of operations and finances, to talking to existing funders about relaxing any restrictions or conditions on current funding. The guidance also flags up the need for trustees to consider options for collaborative working with charities operating in a similar field (pooling resources can reduce costs) or even merging with another charity. If you are experiencing a downturn in income and want to talk through options available to you, do get in touch with us to arrange a no obligation chat.

The full guidance can be viewed at: <https://www.gov.uk/guidance/manage-financial-difficulties-in-your-charity-arising-from-cost-of-living-pressures>

Charity Commission Annual Public Meeting

The annual public meeting of the Commission held in October 2022 revealed the regulator's desire to act proportionately and reasonably with a focus on supporting trustees who make honest and reasonable decisions while investigating those who make dishonest or grossly negligent decisions. With the ongoing squeeze on public funds, the Commission is having to become a more data-led and digital regulator. One of the key areas of work is still the registration of new charities. In 2022, the Commission received over 8,000 new applications with just under 40% being granted charity status. During the same period 45 statutory inquiries were instigated and 5,324 regulatory actions were taken. They also issued 12 official warnings and used their trustee disqualification powers on 14 occasions. There can be a misconception among trustees that the Commission is there to offer help and support them and while this bears some truth, the fact is that they are the regulator of charities with a wide range of powers to investigate misconduct and to take action to recover misappropriated assets. If you have received a non-routine request for information from the Charity Commission and wish to discuss how to respond to this, do get in touch with us.



Is it time to Spring clean your governing document?

When did you last look at your charity's governing document and check whether it is still fit for purpose? It is recommended that you do this at least once every 5 years or sooner if new projects are proposed. It can be tempting for trustees to stray outside the charity's objects (often called "mission drift"), particularly if these include a geographical limitation. Acting outside a charity's objects risks the trustees being in breach of trust.

Administrative provisions in a governing document can also become out of date. In the height of the pandemic many charities discovered that their governing document did not permit virtual meetings although guidance issued by the Charity Commission permitted flexibility on this point during lockdowns. Many charities have opted to continue to hold online meetings for ease of convenience so do check this is permitted under your charity's rules. Some changes to a governing document, for example, the objects of the charity are likely to need prior Charity Commission consent, while others may be possible by relying on an express power in the document or using a statutory power of amendment in the Charities Act 2011.

If you are considering making changes to your governing document or feel that a review would be beneficial, do get in touch with us.

Governance training for boards of trustees

We provide bespoke training to boards of trustees on their duties and responsibilities. We can do this face to face or on Zoom depending on your preference. Please contact us if you are interested in finding out more.

About us

Tessa Hennessy Solicitor is a specialist legal practice providing advice to voluntary and community organisations on a range of constitutional, governance and regulatory issues. Based in Oxford and founded in 2008, we provide a responsive, personal and affordable service. For more information about us go to: www.tessahennessy.co.uk

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