



Spring Newsletter

We hope that you find our latest newsletter of interest. If you would like more information about any of the topics covered, please get in touch with us.

Charities Act 2022

New statutory power to amend governing documents

Implementation of the Charities Act 2022, which received Royal Assent in October 2022, has been phased in over 18 months. In early March 2024 a new statutory power was introduced which allows unincorporated charitable trusts or associations to amend any provision in their governing document by passing an appropriate resolution. The previous rules on amending governing documents for unincorporated charities were complicated and often required a Scheme.

Some amendments will constitute “regulated alterations” requiring the consent of the Charity Commission. These are changes to a charity’s objects, trustee benefits and dissolution provisions. There is a new statutory test for making such changes and these will apply to all charities, irrespective of their size or legal form. The test requires the Commission to have regard to the original purposes of the charity, the desirability for the new purposes to be so far as reasonably practicable similar to the purposes being altered, and the need for the charity to have purposes which are “suitable and effective in the light of current social and economic circumstances”. New guidance on amending governing documents has been released by the Commission. If you are thinking of making changes to your governing document, do get in touch with us.

Changes to rules on disposing of charity land

Changes to rules on disposal of charity land (contained in the Charities Act 2022) were introduced in June 2023. These have relaxed some of the rules which apply when trustees dispose of land. Charity trustees remain under a duty to obtain the best price that can be reasonably obtained (unless the disposal is to another charity or is made as a social investment) but there is no longer a requirement to obtain a report from a qualified surveyor, or to advertise the disposal. Initial considerations for trustees when disposing of charity land still apply and include deciding whether this is in the best interests of the charity and whether there is a power to dispose in the charity’s governing document.

Under the new rules, the charity trustees can obtain a report from a “designated advisor” which can include a professional agricultural valuer and a fellow of the National Association of Estate Agents.

Trustees must still need to be satisfied that the person providing advice is experienced and is acting exclusively for the charity, with no conflict of interests. For short leases (under 7 years), trustees must obtain a report from a person who is competent. This could be a trustee, officer or employee of the charity if they have relevant experience. The rules on disposing of charity land are complicated and well beyond the scope of this short article. If you are considering selling or leasing charity land, do get in touch with us.

Changes in company law

There are important changes coming into force under the Economic Crime and Corporate Transparency Act 2023. These will affect charitable companies, community interest companies and trading subsidiaries. The Act, which contains a range of new requirements aimed at tackling economic crime and increasing transparency, is being phased in. In March 2024 provisions came into force aimed at improving the quality of data on the Companies House register of companies and requiring company members to confirm at the point of incorporation that company is being set up for a lawful purpose.

There are new requirements for registered office addresses with all companies required to have an “appropriate address”. This must be an actual address (not a PO address) where documents can be served and acknowledged. Annual confirmation statements will require confirmation that the company’s activities are and will be in the future be lawful.

The registrar of companies has been given greater powers to query and if necessary remove from the register information that appears to be inaccurate, incomplete, false or fraudulent. There will be a range of sanctions including financial penalties which Companies House can use if companies fail to respond to a formal request for more information.

Further changes under the Act will be phased in and include greater transparency of company ownership. The full names of company members will need to be recorded on the register of companies and identity verification will be brought in so that anyone setting up, running or controlling a company in the UK will need to provide their ID to Companies House.

In early May Companies House fees will increase.



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.

Some changes to a governing document are regulated, for example, the objects of the charity, and will need prior Charity Commission consent (see above), while others will be possible by relying on an express power in the document or a statutory power of amendment.

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 in an ever changing world. The training is aimed at new trustees but also acts as a refresher for existing ones. We can deliver training face to face or on Zoom (or equivalent) depending on your preference and at a time to suit you.

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 to charities and not for profit organisations.

For more information go to: www.tessahennessy.co.uk

Our contact details are: email: info@tessahennessy.co.uk

telephone: 01865 723727



Produced by Tessa Hennessy Solicitor © Tessa Hennessy Solicitor,
March 2024

Tessa Hennessy Solicitor is regulated by the Solicitors Regulation Authority
(registration no. 492896)