

Charities Act 2006 - updated February 2009

The Charities Act 2006 has brought in important changes to how charities are defined and regulated by their powers and their constitutions. This client information sheet will help you understand the latest legislative changes to charity law and provides updated information about the changes brought in **on 31 January 2009** and the changes expected to be introduced in the future.

This client information sheet summarises:

- the new rules that are already in force including the key changes affecting charities brought in on 31 January 2009
- changes made possible by the Charities Act 2006 for which a longer timeframe for implementation is expected

Recommendations

We recommend that you review the changes set out below, and consider how they affect your charity. You should ensure that all the charity's trustees are aware of the changes and how they affect them. In particular charities should consider the new public benefit requirements that came into force on 1 April 2008. If you have concerns or questions about any of the issues raised in this information sheet we would be happy to discuss these with you.

Further information

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15 February 2009

The Charities Act 2006

Key Provisions

| Provisions introduced on 27 February 2007 | Action points |
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| <p>The new Charity Commission</p> <ul style="list-style-type: none"> ■ The Act sets out the structure of the Charity Commission and clarifies and defines its objectives, functions and duties. | |
| <p>New powers for the Charity Commission – determining membership, and seizing documents under warrant</p> <ul style="list-style-type: none"> ■ The Charity Commission now has the power to determine who the members of a charity are. ■ If it obtains a warrant from a Justice of the Peace, the Charity Commission now has the power to enter premises and seize documents that they believe may be relevant to an inquiry. | |
| <p>Public Benefit Guidance and Consultation</p> <ul style="list-style-type: none"> ■ The Charity Commission is required to develop guidance and consult on the public benefit test. | <ul style="list-style-type: none"> ■ The Charity Commission is expected to issue its top level guidance soon: watch this space! |
| <p>Registration threshold</p> <ul style="list-style-type: none"> ■ The Minister for the Cabinet Office now has the power to make changes to the registration threshold for small charities. Using this, the registration threshold was increased to £5,000 annual income on 23 April 2007. | |
| <p>The relaxation of publicity requirements relating to schemes</p> <ul style="list-style-type: none"> ■ The Charity Commission can now decide on the notice period for a scheme, and can even decide that the notification requirements do not apply to a particular scheme. | |
| <p>Changes to the audit thresholds</p> <ul style="list-style-type: none"> ■ The new thresholds for charities that are not companies: <ul style="list-style-type: none"> - must have a professional audit of accounts if: governing document requires it; or, gross annual income is above £500,000, or annual income is over £100,000 and the charity has assets exceeding £2.8 million - must have independent examination of accounts if annual income is over £10,000. If annual income is over £250,000 the independent examiner must be a member of a professional body named in the Act - charities with an annual income of £10,000 or under must still prepare accounts and have them available on request ■ The new thresholds for charitable companies: <ul style="list-style-type: none"> - must have a professional audit if have an annual income of over £500,000 or assets of over £2.8 million - must have an accountant's report if annual income is between £90,000 and £500,000 and have assets of £2.8 million or less - no need for a professional audit or accountant's report if income is £90,000 or less, unless assets are more than £2.8 million | <ul style="list-style-type: none"> ■ Check whether the changes to the thresholds affect your charity. |

| Provisions introduced on 27 February 2007 | Action points |
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| <p>The participation of Scottish and Northern Irish charities in Common Investment and Deposit Funds</p> <ul style="list-style-type: none"> ■ These funds were already possible for English charities and now Scottish and Northern Irish charities can also participate. | |
| <p>Changes to the restrictions on mortgages of charity land</p> <ul style="list-style-type: none"> ■ The rules on mortgaging charity land have been clarified – it is no longer necessary to obtain a Charity Commission order before entering into: <ul style="list-style-type: none"> – "all monies" loans and overdrafts; and – mortgages to secure the repayment of grants. ■ Trustees must obtain and consider appropriate written advice. Fresh advice is required prior to each drawdown or extension of a loan, overdraft or grant secured by mortgage. | <ul style="list-style-type: none"> ■ Before entering into a mortgage of any sort, you must obtain the required written advice or (in limited circumstances) an order of the Charity Commission. |
| <p>Waiver of trustee's disqualification and the power for the Charity Commission to relieve trustees and auditors from liability</p> <ul style="list-style-type: none"> ■ In certain circumstances the Charity Commission must waive a trustee's disqualification if a trustee applies having been disqualified for five or more years. ■ The Charity Commission has the power to relieve trustees and auditors from liability for breach of trust or duty where they consider that the individual "acted honestly and reasonably and ought fairly to be excused". | |
| <p>The ability for charities to purchase trustee indemnity insurance</p> <ul style="list-style-type: none"> ■ The Act gives all charities the power to purchase trustee indemnity insurance without having to seek the consent of the Charity Commission, provided the insurance meets certain requirements and is not expressly prohibited in the charity's governing document. | <ul style="list-style-type: none"> ■ We have an information sheet providing further information on trustee indemnity insurance: please ask if you would like a copy. |
| <p>The power for unincorporated charities to modify powers or procedures</p> <ul style="list-style-type: none"> ■ Trustees now have the power to alter the <u>administrative</u> provisions in the charity's governing document, even if there is no power to do so in the charity's governing document. If the charity has a separate group of 'members', two thirds of the members must also pass a resolution approving the changes. A copy of the resolution must be sent to the Charity Commission after it has been passed. | <ul style="list-style-type: none"> ■ If you are unsure whether a provision is administrative and can be altered in this way you should seek legal advice. |
| <p>The reserve power to control fundraising by charitable institutions</p> <ul style="list-style-type: none"> ■ This enables regulations to be made to control how fundraising is carried out if self-regulating schemes do not work. | <ul style="list-style-type: none"> ■ Comply with current rules and self-regulation. |
| <p>Powers for the Secretary of State, the Minister for the Cabinet Office, and the National Assembly for Wales to give financial assistance to charitable, philanthropic or benevolent organisations</p> <ul style="list-style-type: none"> ■ Such financial assistance can be by loans, grants, guarantees or incurring expenditure, and on such terms as are considered appropriate. | |

| Provisions introduced on 2 November 2007 | Action points |
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| <p>Provisions relating to mergers of charities</p> <p>These provisions come into force on 28 November 2007</p> <ul style="list-style-type: none"> ■ The Charity Commission will set up and maintain a register of charity mergers. ■ The register will contain details of every 'relevant charity merger' that is notified to the Charity Commission. ■ Charities must notify the Charity Commission if a vesting declaration is made in connection with a relevant charity merger; all other 'relevant charity mergers' can be voluntarily registered. ■ When a merger is registered, any gift (eg in a will) that is expressed as a gift to one of the pre-merger charities will take effect as a gift to the post-merger charity. | <ul style="list-style-type: none"> ■ If considering merging or restructuring, take advice on whether you are undertaking a 'relevant charity merger' and can make a vesting declaration and register. ■ Mergers and restructuring that took place before 28 November 2007 may also be capable of registration. Consider taking advice on registering with the Charity Commission. |
| <p>Statements indicating benefits for charitable institutions, professional fundraisers, and commercial participators</p> <p>These provisions came into force on 1 April 2008:</p> <ul style="list-style-type: none"> ■ Professional fundraisers and commercial participators will be required to provide a more detailed statement when seeking donations from the public. ■ Paid trustees, employees or officers of a charity will be required to provide a statement when collecting in public, explaining: that they are paid by the charity; which charity they are collecting for; and their role in the charity. ■ Volunteer fundraisers will not be required to make a statement. | <ul style="list-style-type: none"> ■ Ensure that the required information is supplied by your employees and any paid trustees or paid officers when they are fundraising. ■ Check that any professional fundraisers or commercial participators you use are aware of the new requirements. |

| Rules introduced on 18 March 2008 | Action points |
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| <p>New powers for the Charity Commission</p> <ul style="list-style-type: none"> ■ The Charity Commission will have the power to remove or suspend trustees from membership of the charity (as well as from their position as trustee). ■ After an inquiry, the Charity Commission will be able to give specific directions for the protection of charity property. ■ Where a charity's property has not been properly applied towards the purposes of the charity, the Charity Commission will be able to direct the application of the property. ■ The Charity Commission will have specific power to give advice and guidance on the written application of a charity trustee. | |
| <p>Remuneration of trustees providing services to a charity</p> <ul style="list-style-type: none"> ■ Charities will be allowed to remunerate trustees who are providing services to the charity, provided certain conditions are met. However, the trustee in question must not be involved in any of the decision making about whether to remunerate and the level of remuneration. | <ul style="list-style-type: none"> ■ Before deciding to remunerate a trustee for services, check that the conditions of the Act are met and ensure that the trustee is not involved in the decision in any way. |
| <p>New powers for unincorporated charities</p> <ul style="list-style-type: none"> ■ If a charity is unincorporated, has an income of up to £10,000, no permanent endowment and does not hold any land for the charity's purposes, then it will be able to: <ul style="list-style-type: none"> - transfer all its property to another charity (if the trustees consider this to be the best way to further its own purposes) - alter its purposes, to other charitable purposes, if the trustees consider this to be in the interests of the charity, and provided the purposes are similar in character to the old purposes | <ul style="list-style-type: none"> ■ Consider using new rules to merge and rationalise funds and subsidiary charities. |
| <p>Relaxation of the rules on spending permanent endowment</p> <ul style="list-style-type: none"> ■ For small charities (gross income of £1,000 or less; or endowment of £10,000 or less) – trustees can spend all or part of the capital of the permanent endowment if they consider that the purposes applicable to it could be carried out more effectively in doing so. ■ For large charities (gross income of over £1,000; <u>and</u> market value of endowment over £10,000) – trustees resolve that purposes applicable to the permanent endowment could be carried out more effectively by spending all or part of the capital as well as the income. The Charity Commission's consent is required: and public notice may be required. | <ul style="list-style-type: none"> ■ Consider using new rules to free up capital value of permanent endowment property (land and funds). |

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| <p>The Charity Tribunal</p> <ul style="list-style-type: none"> ■ The Act establishes a Charity Tribunal, which will hear appeals of decisions made by the Charity Commission. | |
| <p>Changes to Cy Près occasions and Schemes</p> <ul style="list-style-type: none"> ■ The Act relaxes the current 'cy-près' doctrine, allowing the Charity Commission and the Courts greater flexibility when asked by a charity to authorise the use of donated funds where the original purpose for the gift has failed. | <ul style="list-style-type: none"> ■ Consider using new rules to free up funds where the original purposes have failed. |
| <p>Relaxation of restriction on altering memorandum and articles of association of charitable companies</p> <ul style="list-style-type: none"> ■ The Act reduces the circumstances in which charitable companies must seek the Charity Commission's approval to make amendments to their memorandum and articles. ■ Consent will only be needed for changes to the objects clause, or to provisions dealing with the application of property on dissolution, or for the addition of an authorisation for any benefit to be obtained by directors or members of the company (or connected persons). | <ul style="list-style-type: none"> ■ Before making changes to your memorandum and articles, check whether Charity Commission consent is required – if necessary, seek legal advice. |

| Rules introduced 1 April 2008 | Action Points |
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| <p>The new definition of charity and the public benefit requirement</p> <ul style="list-style-type: none"> ■ The Act introduces a new statutory definition of what purposes are 'charitable'. This clarifies and updates the current law but does not remove any current charitable purposes. ■ Once this provision is introduced, all charities (new and existing) will have to demonstrate that they provide a public benefit (previously, charities for education, religion or the relief of poverty benefited from a 'presumption' that they provided a public benefit). | <ul style="list-style-type: none"> ■ All charities should review their 'public benefit' credentials in the light of Charity Commission guidance. ■ See our website for more detailed guidance on public benefit. ■ Charities will need to demonstrate their 'public benefit' credentials in the trustees' annual report. |
| <p>Provisions relating to audit and accounting for charities, including group accounts and changes to the accounting regime for small charitable companies</p> <ul style="list-style-type: none"> ■ It is now a legal requirement for the parent charity of a group to provide group accounts for itself and the subsidiaries under its control, if the combined income is over a certain threshold (to be set out in regulations). ■ The duty of auditors of unincorporated charities to report significant breaches by the charity will be extended to auditors of incorporated charities, independent examiners of charity accounts, and reporting accountants. The duty also applies retrospectively. ■ Section 77 allows the Minister of the Cabinet Office to make amendments to the 1993 and 2006 Charities Acts if required to make them consistent with any changes to company law in relation to company audits and accounts. | <ul style="list-style-type: none"> ■ Check whether the changed audit thresholds affect what is required of your charity. ■ If your charity is a parent charity, ensure you comply with the new requirements for group accounts. |

| Rules introduced on 31 January 2009 | Action Points |
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| <p>Provisions requiring some previously excepted charities to register</p> <ul style="list-style-type: none"> ■ Charities which were previously excepted from the requirement to register with the Charity Commission now need to register if their gross annual income exceeds £100,000 . | <ul style="list-style-type: none"> ■ Check Charity Commission guidance or seek legal advice if you are unsure whether you are now required to register your charity. ■ Apply for registration. |
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| <p>Provisions requiring some previously exempt charities to register</p> <ul style="list-style-type: none"> ■ Certain specified educational institutions (foundation and voluntary aided schools) are required to register with the Charity Commission from 1 October 2009. Previously these charities were exempt from the requirement to register. | <ul style="list-style-type: none"> ■ Check Charity Commission guidance or seek legal advice if you are unsure whether you will then be required to register your charity. ■ Prepare to apply for registration. ■ Blake Laphorn is ready with specially prepared materials, guidance and practical experience to help you if you are affected by this change in the law. |
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| Rules expected to come into force by the end of 2009 | Action Points |
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| <p>The Charitable Incorporated Organisation</p> <ul style="list-style-type: none"> ■ The Act introduces a new limited liability corporate form for charities, the Charitable Incorporated Organisation (CIO). This is a corporate structure, but there is no need to register it separately with Companies House, so the regulatory burden is less. | <ul style="list-style-type: none"> ■ If you are thinking of setting up a new charity, or changing the structure of a current charity, then the CIO may be appropriate – but we would recommend you seek legal advice before deciding on a structure. |

Provisions to be brought in after 2009 without a proposed implementation date

Licensing regime for public charitable collections

Before these provisions can come into force, work remains to be done in preparing and consulting on regulations and guidance. In addition, the Charity Commission will need to equip itself to take on its new role in the regime. Therefore, it is not envisaged that the new licensing regime will come into force before 2009.

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

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