

In this special issue we bring to you details of the First Commencement Order of the Charities Act 2006.

Introduction

1. This special issue of **charitiesalert** explains the provisions of the Charities Act 2006 that are being brought into force now. It is designed to provide an overview of the provisions that are being commenced and does not constitute guidance on the detail of the relevant provisions. The Charity Commission will be updating its guidance for charities when the provisions come into force, and we recommend that anyone interested in a particular provision that affects charities refer to the Commission's detailed guidance about the operation of that particular provision.

2. The provisions of the Charities Act listed in the Commencement Order will be brought into force from 27 February 2007, save one provision which will be brought into force from 1 April 2007 (see para 8b below). In some cases, although the provision comes into force from 27 February 2007, it may not have immediate effect due to certain transitional provisions. This is particularly the case where requirements relate to financial years: any changes in the requirements will relate to financial years commencing on or after 27 February 2007.

3. The provisions below only affect charities in England and Wales, unless otherwise indicated.

4. The list below indicates the relevant Section from or Schedule to the Charities Act 2006 in relation to the provision that is being commenced.

What provisions that are being commenced will have the most impact on charities?

5. The provisions of the Charities Act 2006 that are being commenced now and will most benefit charities are:

a. The income threshold above which a charity must have a professional audit is being raised from £250,000 to £500,000. The assets thresholds are also doubled (to £2.8M). These changes to the professional audit threshold will apply to financial years of charities beginning on or after 27 February 2007 and affect both unincorporated and incorporated charities. The changes will relieve several thousand charities from the requirement to have a professional audit. (Sections 28 & 32)

b. Ministers will be able to vary the income threshold above which small charities are required to register with the Charity Commission. An Order will be made to increase the threshold from £1,000 to £5,000, which should take effect from the beginning of April 2007. The Order will also remove the requirements for charities that hold permanent endowment or occupy land to register, regardless of their income. This change will remove the requirement to register with the Charity Commission from around 30,000 charities – although registered charities with an income below £5,000 will remain on the register unless they ask the Commission to be removed. (Section 10)

c. Measures to address concerns around the potential personal liability of trustees:

- i. Where it is in the charity's best interests and subject to certain safeguards, trustees will be able to purchase trustee indemnity insurance with the charity's money to indemnify them against personal liability where they have acted in good faith. (Section 39)
- ii. The Charity Commission will have the power to relieve trustees (and charity auditors or independent examiners) of personal liability where they have acted honestly and reasonably, and ought fairly to be excused. Courts already have this power. (Section 38)

What other provisions are being commenced now?

6. The following other provisions that may benefit charities are being commenced now:

- a. All unincorporated charities will now be able to change the rules (powers and procedures) about how they are run, without needing the approval of the Charity Commission, but with particular safeguards for membership charities. (Section 42).
- b. Subject to certain safeguards, charities will no longer need the approval of the Charity Commission when they use their property as security for grants and other transactions. (Section 27)
- c. Where the Charity Commission makes a scheme for a charity, the rules requiring public notification are relaxed, giving the Commission discretion in determining whether or not notification is required. This will relieve many charities from the cost and administrative burden of organising publicity in relation to a scheme. (Section 22)
- d. Common Investment Funds (CIFs) and Common Deposit Funds (CDFs), which are investment vehicles designed specifically for charities, will be allowed to accept investments from charities in Scotland and Northern Ireland. Further regulations may be required in Scotland and Northern Ireland before charities based there are able to invest in CIFs and CDFs. (section 23)
- e. Charities will no longer need to consider their expenditure in determining whether or not they are required to submit an annual return to the Charity Commission. This will apply to all annual returns due in relation to financial years that begin on or after 27 February 2007. (Paragraph 141 of Schedule 8)

7. A large number of provisions relating to the Charity Commission are being commenced now:

- a. The Charity Commission's current constitution is over 45 years old. The Act modernises it to establish the Commission as a body corporate, with new statutory objectives, functions and duties. The Commission's independence is preserved, as it remains a non-Ministerial Department, outside the direction or control of Ministers. The number of board members is increased to 9, to reflect the diversity of the sector the Commission serves. It is required to report annually direct to Parliament, and to hold an open AGM. (Sections 6 and 7, and Schedules 1 and 2)
- b. A large number of amendments to other Acts are consequential to the establishment of the Charity Commission (replacing references to the "Charity Commissioners" with references to the "Charity Commission"). (many paragraphs of Schedule 8)
- c. One of the Commission's new objectives is to promote awareness and understanding of the requirement that the purposes of charities must be for the public benefit. The Act requires the Commission to consult and publish guidance on the public benefit test. (Section 4)
- d. Trustees who are disqualified because they have been removed by the Commission or by the court will be able to apply to the Commission for their disqualification to be waived after five years. The presumption will be that the disqualification should be waived, unless there are special reasons for not doing so. The waiver cannot apply in certain circumstances, such as where the disqualified trustee is disqualified from acting as a company director. (Section 35)

- e. There is a new requirement for the Commission to send a copy of any order it makes under its protective powers under section 18 of the Charities Act 1993, along with the reasons for the making of the order. This must be done as soon as possible after the order is made, although the Commission can suspend the requirement for as long as it believes that complying would prejudice any inquiry or investigation or would not otherwise be in the interests of the charity. (Paragraph 113 of Schedule 8)
- f. The Commission's power to give formal advice is updated. (Section 24)
- g. The Commission is given a new power to determine the membership of a charity, which could be either at the request of the charity or once it has opened an inquiry. (Section 25)
- h. The Commission is given a new power to enter premises and seize documents or information, as part of an inquiry, under a warrant issued by a Justice of the Peace. This power would be used very rarely, and is subject to several safeguards. (Section 26)
- i. The provisions that govern disclosure of information to the Charity Commission, and disclosure of information by the Charity Commission are modernised. In particular, there are tighter controls on the disclosure of Revenue and Customs information. An order-making power to prescribe a similar information-sharing regime for the proposed regulator of charities in Northern Ireland is provided in the Act. (paragraph 104 of Schedule 8, section 72)

8. Several other provisions are being commenced now, including:

- a. A reserve power for the Minister for the Cabinet Office to make regulations controlling fundraising by charitable institutions, which may impose a good practice requirement. The reserve power could be used if self-regulation of fundraising were to fail. Self-regulation of fundraising is a sector-led voluntary scheme being taken forward by the Fundraising Standards Board. Further information is available from www.fsboard.org.uk (Section 69)
- b. An express power for Secretaries of State and the Minister for the Cabinet Office to provide financial assistance to charitable, philanthropic or benevolent organisations. This power is accompanied by a duty to report annually to Parliament on the exercise of the power. It will commence on 1 April 2007. A similar power is introduced for the Welsh Assembly Government, although this power will commence from 27 February, and the duty is to publish an annual report. (Sections 70 and 71)
- c. Several powers for the Minister for the Cabinet Office to make regulations, for example in relation to establishing the Charitable Incorporated Organisation as a legal form for charities. Some similar powers for the Charity Commission to make certain regulations are also brought into force. These pave the way for other parts of the Act to be brought into force. (various provisions)

Will charities have to do anything over and above the current requirements, as a result of these provisions coming into force?

9. Very few of the provisions of the Charities Act 2006 that are being brought into force now will require charities to do anything in addition to what they are currently required to do. There are three provisions worth pointing out:

- a. Trustees are already required to provide a copy of the charity's most recent accounts to anyone on request, although they can charge a reasonable fee to cover costs. The Act extends this existing provision to cover the charity's most recent annual report. (Paragraph 140 of Schedule 8)
- b. The existing offence for persistent failure to submit the trustees' annual return, including copies of the accounts and annual report to the Charity Commission is updated. Under the revised offence each trustee could be liable to prosecution for failure to meet the requirement, and a daily default fine for contravention is introduced. The new offence will apply where the requirement arises on or after 1 April 2008. (Paragraph 142 of Schedule 8)

c. The definition of a "connected person" for the purposes of charity land transactions (covered by section 36 of the Charities Act 1993) is being extended to include a business partner of a charity trustee or of any other person who currently counts as a "connected person". Also a transaction is caught by the provision if the person acquiring the land is a "connected person" either, as at present, at the time the land is transferred or at the time a contract for sale etc. is entered into (Paragraph 178 of Schedule 8)

Where to go for further guidance?

10. Updated guidance on the effect of these changes will be available on the Charity Commission's website: www.charitycommission.gov.uk or by contacting Charity Commission Direct on 0845 300 0218.

Guidance extracted from Order issued by Charities and Sector Development Team, Office of the Third Sector, Cabinet Office, February 2007

For any queries, comments, suggestions for future articles, or if you would like to receive this newsletter via email please send an email to Robert Woolley at robert.woolley@hponline.co.uk

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