Browne Jacobson

Spring has sprung - update on the Charities Act coming into force

30 May 2023

Many provisions of the Charities Act 2022 were announced to come into force in 'spring 2023'. Last week the Department for Digital, Culture, Media and Sport announced that those provisions will now come into force in June 2023 (exact dates tbc).

Here are a couple of new regimes that will be of particular interest to many charities.

Disposition of land

The Charities Act 2022 and the new Charities (Dispositions of Land: Designated Advisers and Reports) Regulations will bring into effect the following key changes for registered charities (which means that academy trusts and universities registered with the Office for Students will remain outside of this regime):

- They will widen the pool of possible advisers (e.g. beyond RICS surveyors) that charities can turn to in order to obtain the written report which remains required prior to disposing of their land
- Where the charity has a suitably qualified trustee on their board, it does not need to seek an external report
- The content of the report can be made proportionate to the size of the transaction in question and need only cover four aspects of the property: its market value, any works that would increase the prize, the marketing recommended by the surveyor, and any other relevant recommendation

Permanent Endowments

Permanent endowment is property comprising capital and income where the charity is only authorised to spend the income and must keep the capital on a permanent basis, unless the charity obtains the consent of the charity Commission to spend it all or it can rely on a statutory authority to do so. The Charities Act 2022 introduces chances to the rules governing permanent endowment which may help charities to turn more permanent endowments into cash without Charity Commission consent.

1. **Spending powers.** One single financial threshold will determine whether Charity Commission consent in required to spend a permanent endowment: if the value (and not the income) of a specific permanent endowment fund remains below £25,000, the charity does not require the Commission's consent to spend the capital as well as the income. In cases where the Charity Commission's consent remains necessary, the time limit for the Commission to respond will be reduced from three months to 60 days.
2. **Borrowing powers.** New provisions will allow charities to borrow up to 25% from a permanent endowment, if
   - 2.1. the trustees are satisfied that it is expedient for the amount to be borrowed in the light of the purposes of the trust of the permanent endowment and of the charity and
   - 2.2. arrangements are in place for the borrowed amount to be repaid within 20 years of borrowing.
   - 2.3. The borrowed amount will not be subject to the restrictions of the permanent endowment and can be spent for any purposes that the charity pursues. However, the repayments on the loan will be subject to the restrictions of the permanent endowment.
3. **Investment powers.** A new statutory power will enable charities that have opted into a total return approach to investment to use permanent endowment to make social investments with a negative or uncertain financial return, provided any losses are offset by other gains.

4. **New statutory amendment powers.** The Charities Act 2022 will bring into force a new statutory amendment power for unincorporated charities to amend provisions in their governing documents by resolution of 75% of the charity trustees. This power will apply to permanent endowments (as unincorporated trusts). It will not enable the trustees to remove all permanent endowment restrictions altogether, but it may facilitate amendments of administrative provisions.

If you want to know more

If you would like to know more about what the Charities Act 2022 means for your charity, please get in touch.

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