

Nearly all provisions of the Charities Act 2022 are now in force

07 March 2024

The Charities Act 2022 is in full force and effect as of 7 March 2024 (with the exception of provisions regarding ex gratia payments - see below).

The third commencement regulation brought into force the following long awaited provisions:

Governing documents

1. A new statutory power for unincorporated charities has been introduced allowing them to amend their governing documents, notwithstanding any other provisions in their governing documents.
2. Charity Commission consent will still be required for certain amendments, such as changes to the charitable objects, the use of property on dissolution of the charity and private benefits for trustees or members). The same criteria will now be applied by the Commission when considering applications for changes to charitable purposes of unincorporated charities, trusts, CIOs and charitable companies. The criteria would appear slightly less favourable than those previously applicable to unincorporated charities, but a unification of the rules should be in the longer term best interest of the sector.
3. Public notice: the Charity Commission can direct a charity to give notice of certain changes to its governing documents, or it can do so itself.
4. The Charity Commission has updated its guidance on '[How to make changes to your charity's governing document \(CC36\)](#)' to reflect the new legislation.

Charity land

1. Specific statements on whether Part 7 of the Charities Act 2011 applies to a disposition of land are to be included in the contract and the conveyance/mortgage.
2. Where this Part 7 applies, a statement is to be included in both the contract and the conveyance/mortgage on how Part 7 was complied with. This statement replaces the charity trustee certificate which had to be included in the conveyance/mortgage and had to be signed by the trustees separately. The compliance statement protects the interests of the purchaser/mortgagee.
3. HM Land Registry has issued [new guidance](#) on the statements to be included in the various documents. To note that the exact wording for statements has changed and that "The previous forms of statement remain relevant to dispositions of charity land made before 7 March 2024 and to dispositions made on or after 7 March 2024 but pursuant to a contract for sale or other disposition made before 7 March 2024."
4. The Charity Commission has updated its guidance '[Sales, leases, transfers or mortgages: what trustees need to know about disposing of charity land \(CC28\)](#)' to reflect all of the changes introduced by the Charities Act 2022 (also see below).

Charity trustees

The Act introduces new powers for the Charity Commission to:

1. Resolve uncertainties or defects in the appointment/election of trustees.
2. Order the payment of a trustee or the retention of an unauthorised benefit received by a trustee where a trustee has already received a benefit in connection with work undertaken by them and where it would be inequitable for the trustee not to be remunerated. Please note that this remains a discretionary power of the Commission which is not intended to fundamentally change the voluntary basis of

trustee engagement but will remain an exceptional and highly circumstantial remedy. The Charity Commission has updated its guidance '[Trustee expenses and payments \(CC11\)](#)' to reflect all of the changes introduced in this respect by the Charities Act 2022.

Charity mergers

Changes now introduced by the Act ensure that the register of charity mergers can properly fulfil its objectives: any legacies left to a charity which has merged in the meantime with another charity should now find their way to the merged charity, as long as the merger has been included on the Charity Commission's register of mergers.

These provisions should result in many shell charities applying for striking off following completion of a merger, which will simplify regulatory post-merger compliance arrangements. The Charity Commission has updated its guidance to reflect the new legislation:

- '[How to merge charities](#)'
- '[How to transfer charity assets to another charity](#)'
- '[How to link charities](#)'
- '[How to close a charity](#)'
- '[Register of merged charities](#)'.

What provisions of the Charities Act 2022 are not yet in force?

Ex-gratia payments

Ex-gratia payments are payments made/approved by charity trustees on behalf of their charity which they feel morally obliged to make, without having the power to make under their governing document.

It's expected that provisions regarding small ex-gratia payments will come into effect in summer 2024.

Small ex-gratia payments can then be made without requiring Charity Commission consent. 'Small' is understood in relation to the charity's gross income: payments without authorisation can be made up to £1,000, in the case of a charity with a gross income of £25,000; £2,500 for a charity with a gross income of more than £25,000 and £20,000 for a charity with a gross income of over £1million.

In January 2024, the Department for Culture, Media and Sport has clarified that any ex-gratia payment which would result in the restitution of objects by charities to an overseas owner must be pre-authorised by the Charity Commission.

In addition, any restitutions by national museums and galleries remain excluded from the ex-gratia regime, as they will remain governed by legislation governing the management of their collections.

Disposing of land

The Universities of Oxford, Cambridge and Durham, as well as their colleges and halls together with Eton and Winchester Colleges need to update their procedures for disposing of land. As of 19 May 2025 they will be subject to Part 7 of the Charities Act 2011, as their current regime (based on the Universities and College Estates Act 1925) will fall away.

Reminder of all the major changes introduced by the Charities Act 2022

The Charities Act 2022 received Royal Assent in February 2022, largely in response to the "Charity Law: Technical Issues in Charity Law" which was issued by the Law Commission in 2017.

Notwithstanding the name of the underlying review, the new legislation addresses technical aspects of charity law which can have a profound impact on the operations, administration and finances of charities.

Amendments were brought into force in three phases and we set out below a reminder of key provisions brought into force in 2022 and 2023 which seem most relevant to our clients:

Disposing of charity land

The Act has:

1. Widened the category of designated advisers who can provide charities with advice on certain disposals.
2. Confirmed that a trustee, officer or employee can provide advice on a disposal if they meet the relevant requirements.
3. Given trustees discretion to decide how to advertise a proposed disposal of charity land.
4. Removed the requirement for charities to get Commission authority to grant a residential lease to a charity employee for short periodic or fixed term tenancy Permanent endowments.

Using permanent endowment

The Act enables charities to spend, in certain circumstances, from a 'smaller value' permanent endowment fund of £25,000 or less without Commission authority. It also allows certain charities to borrow up to 25% of the value of their permanent endowment fund without Commission authority. These welcome changes provide access to cash and resources for charities with large permanent endowments without recourse to external lenders. The Charity Commission has updated its guidance on '[Permanent endowments: rules for charities](#)' to reflect the new legislation.

Paying trustees

Trustees can now be paid for providing services and associated goods, services only or goods only to their charity, provided that certain conditions are met.

Fundraising

Where appeals do not raise enough or too many funds, the requirements for trustees have been simplified, so as to allow them to use any received donations as intended.

Royal Charters

New statutory powers allow Royal Charter institutions to change provisions in their Royal Charter, although the consent of the Privy Council Office remains a pre-requisite. The Charity Commission has updated its guidance "Royal Charter charities" to reflect the new legislation.

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