



For the Voluntary and Community Sector

The Charities Act 2006

The new Charities Act 2006 will be phased in over the next three years, starting in February 2007, and will be reviewed in 2012.

This Information Sheet is designed to give general guidance only on the main elements of the Act. If you need more guidance on how the Act will affect your organisation specifically, you should take further advice; sources of help are listed at the end of the sheet.

The Charity Commission is constantly providing new guidance as the Act comes into force, and it is your responsibility to keep up to date with the changes.

1. Governance and Organisational Structure

1.1 The legal definition of charity

The Act defines a charity as a body or trust which:

- has purposes that are recognised as charitable in law, **and**
- can demonstrate that it exists to benefit the public in some way.

To become a charity, an organisation **must** meet **both** of these criteria.

Charitable Purposes

The current four charity “heads” (relief of poverty; advancement of religion; advancement of education and “any other purpose beneficial to the community”) have been replaced with a new list of 12 charitable purposes, which cover the existing four purposes, plus additional heads updating the range of purposes:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport

- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services, and;
- any other purposes charitable in law

This list covers the majority of purposes which are already charitable; the last category means that everything which is currently charitable is included.

Public Benefit

This requirement, is central to, although not defined by, the new Act, and is likely to become law in early 2008, following consultation during 2007.

Existing Charities Registered with the Charity Commission (CC)

The new Act will affect every charity registered with the CC, as well as others with charitable aims who may now be required to register, as a result of changes to “thresholds” – levels of income at which an organisation is required to act.

From April 2007, trustees of all organisations with charitable purposes with an annual income over £5,000 must:

- **apply to the Charity Commission for registration;**
- **supply the Charity Commission with the information required, and**
- **inform the Commission if the organisation ceases to exist.**

1.2 Changes in Registration

Existing small charities with an annual income of under £5,000:

- **will not be required** to register;
- **must be able to** register if they want to, and
- If registered already, **can to ask to be removed** from the register, but will remain charities and will have to continue to abide by charity law.

Excepted Charities (e.g. some religious and armed forces charities, and Boy Scout and Girl Guide charities) now:

Must register if they have an income of more than £100,000 (and this threshold may reduce in the future);

May register if they wish, if their income below that amount.

Exempt Charities which have not previously been allowed to register with the Commission because they were overseen by other public bodies are now placed into two categories:

1. Organisations already regulated by a body other than the CC (such as the Financial Services Authority), which takes responsibility for ensuring they meet charity law, will remain exempt.

2. If there is no suitable regulator, and the previously exempt charity has an annual income of over £100,000, it **must** register with the CC, and this threshold may reduce.

This change will ensure that previously exempt charities comply with charity law, but the changes are not expected to come into force before 2008.

Industrial and Provident Societies that are also charities will no longer be exempt, unless they are also Registered Social Landlords.

Charitable companies must approach the CC to get prior consent to changes to their memorandum and articles of association, but instances where permission must be sought have been reduced.

1.3 New Structure - Charitable Incorporated Organisation (CIO)

From 2008, organisations newly registering as charities will be able to become incorporated as a CIO without having to register separately both as a charity and a company, having advantages such as reduced personal liability for trustees.

2. Administration

2.1 Mergers

From 2007, the CC will keep a public register of charity mergers; registration will be voluntary, and when registered, gifts and legacies to the previously separate charities will automatically be transferred to the new merged charity.

2.2 Changing Charity Purposes

Charities will be able to change their purposes, with CC consent, as long as the changes are consistent with the original aims of the charity. Smaller, unincorporated charities with an annual income under £10,000 will be able to make some changes without getting approval, but copies of trustees' resolutions must be lodged with the Commission.

2.3 Amendment of Administration Rules

In particular cases, the Act gives the trustees of unincorporated charities power to change parts of their governing document, if this power does not already exist.

3. Money and Finance

3.1 Changing Thresholds for Audit and Independent Examination

The Act simplifies the rules and standardises thresholds about audit:

Charities which are not registered companies

Annual income below £10,000 - Independent examination not required.

Annual income between £10,000 and £500,000 - Annual accounts must be independently examined, (but not necessarily audited unless required by the governing document), but if the income is above £250,000, the independent examiner must have an appropriate accountancy qualification.
Annual income over £500,000, or with assets of over £2.8 million and income over £100k - Accounts must be professionally audited.

Charities which are also registered companies

Annual income below £90,000 and assets under £2.8m – No professional audit or accountant's report required.

Annual income between £90k and £500k and assets under £2.8m - Not required to have their accounts audited if providing an accountant's report.
Annual income over £500k or a balance sheet total (aggregate assets) of over £2.8m - Accounts must be professionally audited.

3.2 Trading Charities Accounts Practice – “Group Accounts”

Charities that carry out trading or charitable activities through companies that they own or control, as good practice (rather than legal requirement) should produce group accounts for the charity and any of its subsidiaries. This will become a legal requirement, following CC consultation on appropriate thresholds.

3.3 Public, Street, and Door to Door Collections

The Act has expanded the definition of a “public place” where collection permits are required, to include:

- any highway, and
- any place to which the public has access that “is not within a building, or if within a building, is a public area within any station, airport or shopping precinct or any other similar public area” e.g. supermarket or station forecourts.

3.4 Licensing

The new public collection licensing scheme is unlikely to take effect before 2009, and will apply to all public collections involving requests for direct debits. When this is introduced, if a charity wants to collect, it **must** have:

- a “certificate of fitness” from the Charity Commission, and
- a permit from the local authority where the collection will take place.

The certificate of fitness will be valid for up to five years and will show that a collection is on behalf of a genuine charitable cause. Local, short-term collections, such as carol singing, will be exempt, but organisers must tell the local authority when and where they will be collecting.

The local authority permit will enable the local authority to make sure that there are not too many collections taking place at the same time, in the same place.

3.5 Fundraising Solicitation Statements

The Act makes two main changes to the existing “solicitation statement” telling potential donors that professional or commercial fundraisers are being paid for their work:

1. the statement must include the actual, or an estimate of, the amount that the fundraiser will be paid for fundraising for the appeal, and
2. employees, officers and trustees (not volunteers) of charities who act as collectors will now also have to make similar statements.

3.6 Transferring the Assets of ‘Failed’ Fundraising Appeals

Previously it has been difficult to transfer funds from appeals which have failed to get enough money to meet their original aim, or where the “beneficiaries” no longer exist. The Act will relax the transfer requirements when charities wish to put such donated funds to other uses, including allowing smaller, unincorporated charities with annual income under £10,000 to transfer their assets to another charity whose objects are similar to their own.

3.7 Use of Permanent Endowments

A permanent endowment is usually either money or property which a charity may not spend or sell in its entirety. The Act allows a wider range of small charities, and larger charities in circumstances agreed by the CC, to spend capital, and not just income generated, from permanent endowments.

4. Trustees

4.1 Payment

Trustees **must not be paid for being trustees**, however, the Act enables a trustee to receive payment if:

- It is for additional, professional services to their usual duties as trustee;
- It is not under a contract of employment, and
- Is in the charity’s best interest, for example because the trustee is offering a better price or service than the alternatives.

Charities must make sure that:

- It is a minority of trustees being paid in this way;
- The amount is be reasonable;
- There is a written agreement between the trustee and the charity, and
- The trust or governing document does not forbid such payments.

4.2 Waiver of Disqualification

If a trustee’s disqualification period has lasted for 5 years or more, and there are no special reasons for not doing so, the CC must now generally grant a waiver for those disqualified and removed from their role for charity misconduct or mismanagement.

This cannot be applied if the trustee is disqualified as a company director, is an undischarged bankrupt or has defaulted on a county court administration order.

4.3 Relief from Personal Liability

The CC continues to take deliberate breaches of trust by trustees very seriously. If a trustee has acted reasonably and in good faith, and mistakes have been honestly made, trustees will be able to apply to the CC **and** the courts for relief from personal liability, where before only the courts could relieve this liability.

4.4 Indemnity Insurance

Trustee indemnity insurance saves trustees from having to personally pay out when claims are made against them, providing there has been no wilful misconduct.

If trustees wish, they will be able to use the charity's funds to take out such insurance without reference to the CC, as long as this is not specifically forbidden in the charity's governing document; if there is such a prohibition, they must approach the CC to amend the document before purchasing such insurance.

4.5 Suspending or Removing Trustees and Others from Membership

When a member of a charity being formally investigated threatens its effective running, the Act allows the CC to make an order to suspend or remove them from membership of the charity and prevent them from seeking re-election.

4.6 Publicity Requirements

The Act eases the publicity requirements when the CC proposes to allow a charity to do things differently. When this element of the Act comes into force, publicity usually will not be required unless absolutely necessary, and gives flexibility where it is required.

5. New Charity Commission Powers

The Act establishes the Charity Commission as a corporate body and for the first time sets out its objectives, functions, and duties. In particular, it provides the CC with the following powers.

5.1 Protection of a charity – Enabling, during an inquiry, the direction of trustees, officers, employees or a charity to take specific actions to protect charity property, or to use it for the intended purpose.

5.2 Ensuring charity property is used correctly – Enabling, without opening a formal inquiry, the direction of trustees unwilling to apply charity property for the intended purpose.

5.3 Deciding charity membership - If the charity applies to the CC to do so, or if needed during a formal inquiry.

5.4 Entering premises and obtaining documents – When, in the course of an inquiry, the CC believes that documents are about to be deliberately destroyed by those involved in a charity, the Commission can:

- get a warrant to enter and search premises and take away material, and
- prevent interference with, or the destruction of, specified documents, make copies of them and get information from the charity about what, and where, such documents are.

6. General

6.1 Whistleblowers

Where auditors identify abuse or significant breaches of trust during the audit process, they are protected from the risk of legal action when passing relevant information to the Commission.

6.2 New Charity Tribunal

The Act will create a new Charity Tribunal which will be able to review any Charity Commission decision, which should make it quicker, easier and cheaper to make an appeal, currently heard only in court.

7. Timetable

The main provisions of the new Charities Act will come into force over the next two years. The following timetable is correct at April 2007, but **it is your responsibility to keep up to date with the changes.**

Numbers in brackets refer to the sections above where you can find more information.

January – June early 2007

- Development of guidance and consultation on the public benefit test (1.1)
 - Initial changes to the registration threshold for small charities, followed by the increase of the registration threshold to £5,000 annual income (1.1, 1.2)
 - The relaxation of publicity requirements relating to schemes (4.6)
 - Changes in charity audit thresholds (3.1)
 - The power for the Commission to determine the membership of a charity (5.3), and to enter premises and seize documents under a warrant (5.4)
 - Waiver of trustee's disqualification (4.2)
- Power for the Commission to relieve trustees and auditors from liability for breach or trust or duty (4.3)
- The ability for charities to purchase trustee indemnity insurance (4.4)
 - The power for unincorporated charities to modify powers or procedures (2.3)

July - December 2007

- Provisions relating to mergers of charities (2.1)
- Introduction of Fundraising Solicitation Statements for charitable institutions, professional fundraisers, and commercial participators (3.5)
- Changes to audit and accounting procedures, group accounts and the accounting regime for small charitable companies (3.1, 3.2)

From January 2008

- Introduction of the new definition of charity and public benefit requirement (1.1)
- Introduction of the Charity Tribunal (6.2)
- New Charity Commission powers to give specific directions for the protection of charity property (5.1), direct the application of charity property (5.2), and give advice and guidance
- Rules affecting the remuneration of trustees providing services to a charity (4.1)
- Introduction of powers for unincorporated charities to transfer all property (3.6), to replace purposes (2.2) or to spend capital (3.7)
- The Charitable Incorporated Organisation (1.3)

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This information sheet is one of a series produced by Norfolk Information, a partnership of second tier organisations supporting the voluntary and community sector in Norfolk.

We have taken all reasonable steps to make sure that this information is current and accurate. We cannot, however, guarantee its accuracy or completeness and therefore cannot accept liability for your acting, or failing to act, on the information given.

For resources, books, ideas and useful information please contact Norwich and Norfolk Voluntary Services on 01603 614474 or email reception@nvs.org.uk

Further Sources of Help

The Charities Act 2006 and Explanatory Notes are available:

- To download from the Office of Public Sector Information website – www.opsi.gov.uk
- In hard copy, published by The Stationery Office.

General Information and Advice

The Charity Commission:

- Website www.charity-commission.gov.uk/
- By phoning Charity Commission Direct on 0845 3000 218
- By email to enquiries@charitycommission.gov.uk
- By post to: Charity Commission Direct, PO Box 1227, Liverpool L69 3UG.

National Council for Voluntary Organisations (NCVO)

- Website www.ncvo-vol.org.uk
- By phone to the Helpdesk on Freephone: 0800 2 798 798
- By email to helpdesk@ncvo.org.uk
- By post to Regent's Wharf, 8 All Saints Street, London, N1 9RL

Norwich and Norfolk Voluntary Services

- Website www.nvs.org.uk
- By phone on 01603 614474
- By email to reception@nvs.org.uk
- By post to: Charing Cross Centre, 17/19 St. John Maddermarket, Norwich NR2 1DN

West Norfolk Voluntary & Community Action (formerly West Norfolk CVS)

- Website www.westnorfolkvca.org/
- By phone on 01553 760568
- By email to info@westnorfolkvca.org
- By post to 16 Tuesday Market Place, King's Lynn PE30 1JN.

Norfolk Rural Community Council

- Website www.norfolkkrcc.org.uk/
- By phone 01362 698216
- By email to nrcc@norfolkkrcc.org.uk
- By post to Ambassador Way, Greens Road, Dereham NR20 3TL