

## ENGLAND AND WALES

# Update on the Charities Act 2022

The Charities Act 2022 (the “Act”) received Royal Assent on 24 February 2022. It implements many of the recommendations made by the Law Commission in its 2017 report entitled “Technical Issues in Charity Law” with a view to simplifying charity administration.

Issues covered by the Act include the payment of charity trustees, provisions relating to the disposal of land, the amendment of governing documents and the provision of goods/services by charity trustees. The Department for Digital, Culture, Media and Sport will arrange implementation of the Act and has set out a plan for phased implementation commencing in Autumn 2022 and continuing in Spring 2023 and Autumn 2023, <https://www.gov.uk/guidance/charities-act-2022-implementation-plan>.

The vast majority of the new provisions will be implemented by way of amendment to the Charities Act 2011. We have summarised here the key provisions expected to come into force in Autumn 2022

## CHARITIES ESTABLISHED BY ROYAL CHARTER

The charity trustees of Royal Charter charities will be able to amend the Charter with the consent of the Privy Council in circumstances where they consider it to be expedient in the interests of the charity and where there is no power of amendment in the existing Charter.



The necessary resolution must be passed by at least 75% of the trustees and approved by 75% of the members (where the charity has members). This amendment operates to ease the current situation where Royal Charter charities without an express power of amendment in their Charter are required to petition, and pay for a Supplemental Charter each time they wish to amend the Charter.

## CY-PRÈS POWERS AND CHARITY APPEALS

Where donations have been made to a charity for a specific appeal which has failed, the charity will be able to apply those donations to other charitable purposes (“cy-près”) without having to return the sums to donors. This can be done in four circumstances:

- where the court or Charity Commission considers it would be unreasonable for either:
  - the charity to incur the expense of returning the donations or

- the donor to expect the donation to be returned
- where the charity trustees reasonably believe that the donor has given £120 or less in the financial year in question or
- where the charity has agreed with the Charity Commission to take reasonable steps to contact donor(s) to offer to return donations, but has not identified or found the donor(s) or
- where the donations were made by unidentifiable donors.

The Act also provides that, where the proceeds of the failed appeal amount to £1,000 or less, charity trustees can resolve to apply the proceeds cy-près without the Charity Commission’s permission, [which would otherwise require] a Charity Commission scheme).

Additionally, where a charity has applied the proceeds of a failed appeal cy-près, donors will no longer have a six-month window within which to make a claim for the return of their donation.

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### POWER TO MAKE SCHEMES

A scheme is a legal arrangement that can change or supplement the provisions that would apply to a charity or its funds. The power of the court and the Commission to make schemes in relation to a charity that is a charitable trust will now also apply to other charities, for example a charitable company, CIO Charitable Incorporated Organisation or any other charity.

### EX-GRATIA PAYMENTS

An ex-gratia payment is a payment made as a result of a moral obligation, but not a legal obligation.

The definition of an ex-gratia payment has been amended slightly for the purposes of English charity law so that it covers a situation when charity trustees could “reasonably be regarded” as being under a moral obligation to make it. Previously the charity trustees were required to consider

themselves to be under a moral obligation, removing the ability to delegate the decision making in respect to ex gratia payments. This amendment makes it easier for charity trustees to delegate decision-making in this area.

Furthermore, the charity trustees will now be able to make ex-gratia payments up to certain thresholds without the consent of the Charity Commission or the Court. (Such consent was previously required for all ex-gratia payments by charities). Where the charity’s gross income in its last financial year did not exceed £25,000, the relevant threshold is £1,000. If the charity’s gross income in its last financial year exceeded £25,000 but not £250,000, the relevant threshold is £2,500. If the charity’s gross income exceeded £250,000 but not £1 million, the relevant threshold is £10,000. If the charity’s gross income in its last financial year exceeded £1 million, the relevant threshold is £20,000.

### REMUNERATION OF CHARITY TRUSTEES FOR PROVIDING GOODS TO THE CHARITY

The Act extends current provisions to grant charities the power, without Charity Commission consent, to pay their trustees for providing goods to the charity (whether with or without any accompanying services). Currently, in the absence of Charity Commission consent, charities can only pay trustees for the provision of services, and for goods supplied in connection with the provision of those services.

The Explanatory Notes to the Act suggest, by way of example, that, following implementation of the Act, a charity may pay its trustees to:

- decorate its premises or
- supply materials to be used to decorate its premises or
- do both.

Moreover, charities seeking to pay their trustees for the provision of goods or services may rely on the statutory power in addition to any other power the charity may have to make such payment. The effect of this is that a charity will be able to rely on the statutory power to make a payment irrespective of whether an express power is available within its governing document. This relieves the administrative burden on charities when considering whether to pay their trustees; they may rely on a default statutory power to do so. Nevertheless, charities would be well advised to consult their governing document before paying trustees in any event, to ensure that such payment is not expressly prohibited.



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**TRUST CORPORATION STATUS**

Where a charitable trust has a trustee which is itself a body corporate, that body will automatically be designated a trust corporation. Do note that this provision only applies if the trustee is also a charity. A trust corporation, as sole trustee, can give a valid receipt for the proceeds of sale of land. Where a sole trustee is not a trust corporation, at least two trustees are required to give a valid receipt. The change will mean that where a corporate charity holds land on trust as a sole trustee (so not as part of its corporate property) it will be able to deal with that land on the basis that it is automatically designated a trust corporation. This is anticipated to be a useful change in the area of charity mergers, where a corporate entity is often required to become trustee of land held by an unincorporated charity. It will also avoid the need for the corporate trustee to apply for trust corporation status.

**AUTHORISED COSTS ORDERS**

The Charity Tribunal (both the First-Tier Tribunal and the Upper Tribunal) may make an “authorised costs order” in respect of prospective litigation, following an application by a charity or its trustees. The order, if made, would authorise payment out of the funds of the charity of costs incurred or to be incurred in connection with the proceedings. This allows charity trustees to have advance assurance that any legal costs they incur are a proper use of the charity’s funds and are properly payable out of the charity’s funds. An authorised costs order will be equivalent to a “Beddoe” order that can be obtained from the court in respect of costs that are proposed to be incurred by trustees of a trust.

We will report in due course on the further changes to be implemented in 2023.

In the meantime, do let us know if you have any queries around any of the new provisions.



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