

FARRER & Co

Practical application of the Charities Act 2022

ICAEW webinar 29 April 2022



Elizabeth Jones

Eleven years in the making – The Charities Act 2022



Main areas of change

Amending charitable purposes

Amending constitutions of CIOs and unincorporated charities

Disposing of charity land

New Charity Commission powers on charity names

Ex gratia payments

Permanent endowment

Mergers and incorporations

Implementation timetable

Autumn 2022	Spring 2023	Autumn 2023
Ex gratia payments	Disposing of charity land	Amending charitable purposes
Power to amend constitutions of Royal Charter bodies	Permanent endowment	Amending Constitutions
Trust corporation status	Charity names	Charity mergers

Ex gratia payments

- Morally wrong to refuse payment if the charity was an individual

Example : An individual leaves a gift to a charity in her Will but had given instructions to amend the Will but died before the new Will could be executed

-
- Charity trustees currently have no power to make ex gratia payments
- New statutory power to make ex gratia payments up to a certain size.



Ex gratia payments

Current rules:

- No power to authorise ex gratia payments
- Authority is required from the Charity Commission (payments under £1,000 unlikely to be challenged)
- The decision cannot be delegated by trustees
- Application via online form
- Uncertainty as to speed of response and whether authorisation will be given

New rules:

- Statutory power to make ex gratia payments up to £20,000 for larger charities (with a sliding scale for smaller ones)
- The threshold is per payment
- Ability to delegate decision-making to staff or a committee
- Important for trustees to understand what is a moral obligation

Disposing of charity land

- Advice can be taken from a broader range of 'designated advisers' (including certain Estate Agents and Agricultural Valuers)
- The new advice requirement will be simplified so that the report will no longer be so tightly prescribed as at present
- The obligation to advertise is being removed

Changes to the regime for disposing of charity land

Additional flexibility being introduced as to who can provide the advice, what the advice should cover, the form it should take and the requirement to advertise

Disposing of charity land

New rules:

- Report can be provided by certain Estate Agents and Agricultural Valuers, and suitably qualified trustees, officers or employees
- What the report must cover is simplified
- Report need not be in writing (but in most cases a written report would be preferable)
- No automatic requirement to advertise as advised in the report

Current rules:

Obtain and consider a written report on the proposed disposition from a suitably qualified chartered surveyor

Advertise the disposition in whatever manner the surveyor advises

Decide that they are satisfied, having considered the surveyor's report that the terms are the best that can reasonably be obtained

Permanent endowment



What is permanent endowment?

The existing problem: confusing and unhelpful thresholds; complex procedural rules and special trusts

How will the new rules help?

Things to think about

Permanent endowment

Current rules:

- Statutory powers to release permanent endowment
- Two thresholds (income and total value) as to what constitutes a larger pot and what is a smaller pot
- Time limit for Charity Commission response 90 days
- Application via online form

New rules:

- Amendments to the statutory power
- Single threshold (pot of £25,000) applies to decide which power must be used
- Time limit for Charity Commission response reduced to 60 days
- New power to borrow from the permanent endowment
- New total return investment power to make social investments
- Application via online form

Amending charitable purposes

Greater alignment of the regime for charitable companies, CIOs and charitable trust to amend charitable purposes

Changes to objects remain (for the most part) subject to Charity Commission consent.

Amending purposes – current rules

Charitable trusts and unincorporated associations (with no power to amend purposes)

- Charity Commission scheme
- Cy-près circumstance must have arisen
- Spirit of the gift and current social and economic circumstances considered
- Public consultation

Charitable companies and CIOs

- Commission consent required
- Rational decision to change
- New objects do not undermine previous objects

Amending charitable purposes

Similar tests for obtaining Charity Commission consent will apply to:

- CIOs
- Charitable Companies
- Charitable trusts
- Unincorporated associations

In granting consent, Charity Commission must have regard to:

The desirability of securing that the purposes of the charity are, so far as reasonably practicable, similar to the purposes being altered; and

The need for purposes that are suitable and effective in light of current social and economic circumstances

Amending constitutions

Charitable trusts and unincorporated associations

- Current rules: Some uncertainties as to the extent of the current power
- New rules: Statutory power is simplified removing uncertainties.

Charitable Incorporated Organisations (CIOs)

- Current rules: Changes to constitutions only take effect when registered with the Charity Commission (can be long delays)
- New rules: Other than changes needing consent, changes take effect when a valid resolution is passed

Other changes

Fixing the loophole in the Register of Mergers legislation

New powers for the Charity Commission on names

Royal Charter charities have a new power to amend their governing documents

Trust corporation status

Any questions?



Elizabeth Jones
Partner

Tel: 020 3375 7138

Email: Elizabeth.Jones@farrer.co.uk

Farrer & Co LLP
66 Lincoln's Inn Fields
London WC2A 3LH

+44(0)20 3375 7000
enquiries@farrer.co.uk
www.farrer.co.uk

F&
Co