

CHARITY **comment**

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Changes to Charity Registration

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The Charities Act 2006 has brought in important changes to how charities are defined and registered. This article describes those changes to the registration process which will affect existing charities as well as those new charities wishing to register with the Charity Commission.

The new definition of charity

The Act introduces a new statutory definition of what purposes are 'charitable'. This clarifies and updates the current law but does not remove any current charitable purposes. The new categories of charitable purpose are:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;
- j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown, of the efficiency of the police, fire and rescue services or ambulance services;
- m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

The increase in the number of new categories does not reflect a general move to allow many more types of organisation to apply for charity status, but instead is an attempt to more clearly codify the purposes which may be charitable.

The public benefit requirement

All charities, both new and existing, will now have to demonstrate that they provide a public benefit. Previously, charities set up for the advancement of education, religion or the relief of poverty benefited from a 'presumption' that they provided a public benefit. This presumption has been removed so all charities should now review their 'public benefit' credentials in light of the new Charity Commission guidance, the first part of which is due to be published in January 2008. Charities will need to demonstrate their 'public benefit' credentials in the trustees' annual report from March 2009 and should be starting to think about this as soon as possible.

Blake Laphorn Tarlo Lyons will be issuing further information as and when the Commission's guidance is published and this can be found on the website www.bllaw.co.uk

Registration threshold

The threshold for registering new charities is now increased to £5,000 annual income. Small charities with an annual income of less than £5,000 may remain on the Charity Commission register, but they also have the option to ask to be removed from the register if they prefer.

Provisions relating to mergers of charities

The Charity Commission will set up and maintain a register of charity mergers which is due to be launched in November 2007 (although at the timing of writing there is still no commencement date). The register will contain details of every 'relevant charity merger' which is notified to the Commission. Charities have an obligation to notify the Commission of certain types of merger and all other 'relevant charity mergers' can be voluntarily registered. Mergers and re-structuring which took place before November 2007 may also be capable of registration. Charities should consider taking advice on registering past mergers with Commission.

When a merger is registered, any gift (e.g. in a will) which is expressed as a gift to one of the pre-merger charities will take effect as a gift to the post-merger charity. This will be of particular benefit to charities which have merged or incorporated in the past but retained a 'shell charity' in order to collect future gifts and legacies. It may now be possible to register these 'shell charities' on the register of mergers and subsequently wind up the charity without the risk of losing future income.

The provisions may also be useful to those charities considering a future merger or re-structuring process as some of the past obstacles in relation to transferring funds from one charity to another are now removed.

Exempt and excepted charities

Charities which were previously 'excepted' or 'exempt' charities for registration purposes, may now be required to register with the Charity Commission. The new provisions are not expected to come into force before 2009. Charities which currently have excepted or exempt status should seek advice on the likely impact of the new provisions and the changes which they might have to make in order to complete the registration process.

Registration on the Scottish Charity Register

Any charity registered in England and Wales which owns or leases premises in Scotland, pays rates or claims relief for non-domestic rates in Scotland, or holds open meetings or charges for events held in Scotland is required to register the charity on the Scottish Charity Register. Failure to register will mean that the charity cannot call itself a charity in Scotland.

The registration process itself is relatively straightforward. However, as part of the process, charities must demonstrate that they meet the 'charity test' in Scotland. This is causing some difficulties as although the test is similar to the test in England and Wales it is not the same. Some charities going through the registration process have been required to amend their governing documents in England and Wales in order to satisfy both charity tests, before being registered in Scotland.

Charities which are registered on both registers will have both a Scottish and an English Charity Number. It is also worth noting that Charities which were previously registered with HMRC in Scotland will be automatically transferred to the new register in Scotland.

Charities which think they might be required to register in Scotland should take advice on the process and the possibility of having to amend their governing documents as soon as possible.

Further information

For further information or advice on the new registration procedures, please contact:

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