

Charities Act 2006: Third Commencement Order

1. This note explains the main provisions of the Charities Act 2006 that are being brought into force by the Third Charities Act 2006 Commencement Order. It is designed to provide the reader with an overview of the main provisions that are being commenced and does not constitute guidance on the detail of the relevant provisions. The Charity Commission will be updating its guidance for charities when the provisions come into force, and we recommend that anyone interested in a particular provision that affects charities refer to the Commission's detailed guidance about the operation of that particular provision.
2. The provisions of the Charities Act 2006 listed in the Commencement Order will be brought into force on 18 March 2008. In some cases, although the provision comes into force from 18 March 2008, it may not have immediate effect due to certain transitional provisions.
3. The provisions below only affect charities in England and Wales, unless otherwise indicated.
4. The list below indicates the relevant Section of or Schedule to the Charities Act 2006, and where relevant the provisions of the Charities Act 1993 ("the 1993 Act") that are amended or replaced, in relation to the provision that is being commenced.
5. The main provisions of the Charities Act 2006 that are being commenced by this Order are:

The Charity Tribunal

6. A new Charity Tribunal is being set up to act as the "court of first instance" for appeals and applications in respect of certain decisions of the Charity Commission (Section 8 and Schedules 3 and 4 which insert new sections and schedules into the Charities Act 1993). It will also be able to determine matters of charity law on reference from the Attorney General, or the Charity Commission with the Attorney General's consent.
7. New Section 2A of the 1993 Act provides for the creation of the Tribunal, its constitution and jurisdiction. The decisions of the Charity Commission which can be appealed to the Tribunal are listed in new Schedule 1C to the 1993 Act, which also sets out who is eligible to appeal against each type of decision.
8. New Section 2B of the 1993 Act, inserted by Section 8(1) covers the membership of the Tribunal and appointments to it; its staff and facilities; the composition of its panels, who are to exercise its functions; and its practice and procedures. The Secretary of State for Constitutional Affairs has made [The Charity Tribunal Rules 2008](#) (S.I. 2008/221) which govern the practice and procedure of the Tribunal and came into force on 27 February 2008.

9. New Section 2C of the 1993 Act sets out the right of Appeal from the Tribunal to the High Court.
10. New Section 2D of the 1993 Act makes provision for the Attorney General to intervene in proceedings before the Tribunal or on an appeal from the Tribunal to which the Attorney General is not a party. This reflects the Attorney General's constitutional role as protector of charity.
11. Further information about the Charity Tribunal can be obtained from its website: www.charity.tribunals.gov.uk

Changes to the Cy-Près doctrine

12. The cy-près doctrine is a well-established legal principle that applies when charitable purposes can no longer be fulfilled or when property given for a particular purpose cannot be used for that purpose. The court or the Commission may in certain circumstances alter the purposes for which the original gift was given to enable it to be applied cy-près. In general, purposes for which charitable property is held can currently be changed by the court or by the Commission to purposes which are as close as possible to the original purposes. The doctrine of cy-près is being reformed by the following provisions:
 - a. Section 13 of the 1993 Act sets out the circumstances in which the original purposes of a charitable gift can be altered to enable the property or part of it to be applied cy-pres. Section 15 of the 2006 Act amends section 13 of the 1993 Act. The effect of these amendments is to require the Commission, when making a scheme to alter the purposes for which charity property is to be applied, to take into account not only the spirit of the gift of the property but also the social and economic circumstances prevailing at the time of the proposed alteration in the purpose.
 - b. Section 14 of the 1993 Act makes specific provision for the application cy-pres of property given for charitable purposes generally by an unknown donor or a donor who has given up his right to have the property returned to him. Currently the court has the power to direct in certain circumstances that property is to be treated as belonging to unidentified donors. Section 16 of the 2006 Act amends section 14 so that the Commission will also have the power to decide whether property is to be treated as belonging to donors who cannot be identified.
 - c. Section 17 inserts new section 14A into the 1993 Act. This applies to property (which includes money) given for specific charitable purposes in response to an appeal which contains a certain type of statement. The statement is to the effect that unless, at the time of making his donation, the donor asks by making a "relevant

declaration” to be given the chance to reclaim his donation if the specific purposes for which he is giving it fail in future, the donation will be applied cy-près. Regulations to be made by the Charity Commission will set out the steps that charities must take to contact the donors that have made a “relevant declaration” in such circumstances to ascertain their wishes. Section 17 has already been commenced for the purpose of enabling the Commission to make the necessary regulations. The remainder of the section will come into force on 18 March 2008, once the Commission has made its regulations.

- d. Section 18 alters the cy-près rule. It inserts new section 14B into the 1993 Act, the power of the court or the Commission to make schemes for the application of property cy-pres will have to be exercised in accordance with this section. The court or the Commission, when making a scheme changing the charitable purposes for which particular property given to a charity is to be applied, is to have regard to certain matters. One of those matters is the desirability of choosing new purposes which are close to the original purposes; but that is not paramount. The court or the Commission must give equal weight to two other matters. One of these is the spirit of the gift by which the property came to the charity. The other is the need to ensure that the charity has purposes which are suitable and effective in the light of current social and economic circumstances.

Charity Commission powers

13. New section 18A applies where the Charity Commission has made an order suspending or removing from office a charity trustee, trustee, officer, agent or employee who is a member of the charity. The Charity Commission – at any time after it has started a statutory inquiry into a charity – will, dependent on the order it has made under section 18 of the 1993 Act, be able to make an order suspending or removing from the membership of a charity any trustee, officer, agent or employee of that charity. This is to prevent the situation where a person who has been suspended or removed from office can use his membership of the charity to help vote himself back into, or reacquire in other ways, the office from which he has been suspended or removed.
14. Section 20 inserts new section 19A into the 1993 Act to give the Charity Commission a new power to give specific directions for protection of charity. This gives the Commission a power to direct the charity, or its trustees, officers or employees to take a specific action which the Commission considers is expedient in the interests of the charity. This power is only available to the Commission after it has opened a statutory inquiry into a charity, and certain other requirements have been satisfied.

15. Section 21 inserts new section 19B into the Charities Act 1993. This gives the Charity Commission, in certain specified circumstances, the power to make an order directing a person who is in possession or control of charity property to apply that property as specified in the Commission's order.

Trustee remuneration in specific circumstances

16. Trustees or persons connected with a trustee will be allowed to be paid for providing services to a charity if certain conditions are satisfied (Section 36, which inserts new sections 73A and 73B into the 1993 Act). This does not apply to payment for being a trustee or for any type of contractual employment with the charity nor does it apply to other types of remuneration authorised under the trusts of the charity, an order of the court or Commission or other statutory provisions. There are also several important safeguards to prevent misuse of this power.
17. Where a trustee (or connected person) is entitled to receive remuneration under an agreement or a proposed agreement under section 73A, the relevant trustee is disqualified from acting as a trustee in relation to decisions or other matters about that agreement (Section 37, which inserts new section 73C into the 1993 Act). Where a trustee has acted whilst disqualified under this section, the Charity Commission may make an order preventing them from being remunerated, or if they have already received the benefit, requiring it to be repaid to the charity.

Modified powers for charities

18. Section 31 amends section 64 of the 1993 Act. The process for charities that are companies to change their governing document is being simplified. Charitable companies wishing to change their governing document must follow the requirements set out in that document, and the requirements of the Companies Acts. However, they will now need the Charity Commission's consent only for specific amendments that concern the essential character of the charity.
19. The power to transfer an unincorporated charity's property to one or more other charities is modified and certain elements are extended (Section 40, which substitutes for existing section 74 of the 1993 Act three new sections 74, 74A, and 74B). The power is available to unincorporated charities with an annual income of £10,000 or less and that do not hold land on trust to be used for the charity's purpose(s). New section 74B makes specific provision for such a transfer where the charity has a permanent endowment (property which is subject to a restriction preventing its expenditure).
20. The power for small unincorporated charities (those with an income of less than £10,000 and that do not hold designated land) to change their

purposes is modified (Section 41, which inserts new section 74C into the 1993 Act).

21. The current regime for the spending of capital by very small unincorporated charities is modified and extended (Section 43, which substitutes a new section 75 in the 1993 Act). It provides a simpler test for trustees in making such a resolution, and removes the requirement for the Charity Commission's concurrence with the trustees' resolution. Section 75A, also inserted in the 1993 Act by section 43 provides the same power in relation to larger capital funds with a single purpose, but subject to some further safeguards because of the larger sums involved. Special provisions are made by new section 75B for charities where the Commission has directed that a special trust of a charity is to be treated as a distinct charity to expend capital.

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