

# **Burgis & Bullock**

## **Charities Act 2022**

### **Update November 2022**

At long last, on 31 October 2022, the first tranche of the Charities Act 2022 came into force.

Whilst the changes are largely of an administrative nature or only likely to impact a few very specific situations, two particular areas may impact a number of charities:

#### **Appeal fundraising**

Firstly, the requirement to wait 6 months before spending the money raised (in case donors asked for a refund) has been removed.

However sometimes charities raise too much or too little money for an appeal, or circumstances change, and the donations cannot be used as intended. The Charities Act 2022 simplifies and streamlines the rules in this area.

In respect of surplus funds raised:

- There is a simpler process for obtaining Charity Commission authority to use the funds for an alternative purpose. Trustees may now pass a resolution indicating their decision to use the surplus donations for another charitable purpose. As far as possible the new purpose should be similar to the original one and consideration should also be given to ensure that the need for the new purpose is suitable and effective in the current social and economic circumstances. Evidence supporting the Trustees decision must be kept as you must be able to show and explain the reasons for choosing the new purpose.
- If the donations to be spent on new purposes are less than £1,000 the Trustees may then act without getting Charity Commission authority.
- If the amounts involved are in excess of £1,000 the Charity Commission must first authorise the Trustees' resolution. Details of how to contact the Charity Commission for this authorisation are now available from the Charity Commission or by contacting our offices.

Similar new rules have also been introduced in terms of dealing with donations that are insufficient to carry out the original appeal purpose or the purpose can no longer be achieved due to other constraints. However, these provisions start with the existing premise that in most cases the first duty of the Trustees in this situation is to repay the donors.

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#### Payment to Trustees

It is a fundamental rule that charity trustees are not permitted to make any gain from their position as trustees. A charity's constitution often prohibits any form of payment to Trustees.

Under the Charities Act 2011 there is a limited exception to this rule which allows trustees (or people connected to them) to be paid for services they provide to the charity if certain conditions are met. They were also allowed to be paid for goods directly associated with the provision of these services. Trustees can never be paid for the provision of services as a trustee. Under the new Charities Act 2022 Trustees will now also be able to charge just for the provision of goods provided to the charity, without Charity Commission authority.

The Charity Commission guidance gives the following examples as permissible payments:

- work such as plumbing or painting services and any associated materials.
- the provision of goods such as decorating materials or plumbing parts.
- providing specialist services, such as estate agency or computer consultancy
- providing premises or facilities for occasional use, for example as a meeting room
- administration or secretarial work
- supplying stationery to the charity

However before paying a trustee, or a connected person, for goods or services you must:

- have a written agreement between the charity and the trustee (or connected person) being paid
- specify the exact or maximum amount to be paid
- make sure the trustee does not take part in decisions made by the trustee board regarding any aspect of the agreement
- agree the payment is in your charity's best interests and reasonable for the goods or services provided
- not allow payments or other benefits to half, or more than half, of your trustee board – the number of trustees receiving any payment or benefit must be in the minority
- make sure your charity's governing document doesn't prevent you from paying trustees for goods or services

When deciding whether to pay a trustee for goods or services, Trustees must follow their duty of care as trustees. In practice, this means they should:

- be clear that the payment can be justified in the charity's best interests
- identify and record conflicts of interest and prevent them from affecting the decision
- use reasonable care and skill when making your decision
- decide what you will do if the goods or services aren't satisfactory
- keep records of discussions at meetings and disclose the payment in your accounts

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The next round of changes from the Charities Act 2022 are expected to be implemented in Spring 2023.

These will include changes to how charities may deal with permanent endowment funds and the procedures involving land and property transactions.