

Charities update: Horizons

January 2023



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Introduction

As we start a new year, we are considering the challenges and opportunities on the horizon for charities and social enterprises.

Looking forward to 2023, there are certainly challenges ahead. The continuing cost-of-living crisis – coming so soon after the Covid-19 pandemic – requires charity leaders to consider how to make maximum use of resources at a time of increasing costs and demand.

There are opportunities ahead too. Some helpful provisions of the Charities Act 2022 should be implemented during the year to make life easier for trustees and cut down on regulation.

In this update, we highlight some further topics that we think will be high on your agendas this year, including how charities can work with corporate partners who are looking to bolster their ESG projects in a way that does not compromise charities' reputations, as well as the latest news on campaigning and election law.

If there are any topics you would like us to cover in future updates, please get in touch.



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Merger Assessment Service

Charities considering a merger are often looking for a quick way of determining whether a merger is a good way forward, before committing time and resources to the process.

Our bespoke Merger Assessment Service offers an easy and good-value solution. Following a review of both organisations, we'll produce tailored recommendations on up to 10 or 12 top-level issues, including:

- Any conflicts between the charitable purposes of the two organisations
- Options for the new charity structure and governance
- Dealing with monies held on restricted funds or for other specific purposes
- Charity Commission consents
- Employment issues
- Branding
- Property-related matters

The assessment costs £1000-£2500 plus VAT, depending on the size of the organisation and complexity of the issues.

If you'd like to find out more, please contact us – details below.



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The cost-of-living crisis



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“Despite a squeeze on funding, charities can diversify income streams and release funds from existing restricted income and assets.”

The cost-of-living crisis has been having a major impact on charities and their beneficiaries for some months now. Many charities are only just recovering from the effects of Covid-19 and are now faced with the fresh challenge of meeting beneficiaries’ needs amid falling income but rising demand and costs.

The Charity Commission **published guidance for charities** in December 2022 about how to manage financial difficulties arising from the crisis. Here we offer some suggestions for trustees to mitigate its impact.

Redefining strategy and purpose

The challenges brought about by the cost-of-living crisis may require charities to reframe their strategy and consider how they can best use their resources to meet their aims and to help those affected. When thinking about changes to strategy it is important for trustees to go back to the objects (or charitable purposes) of the charity as set out in the governing document.

Charities are, in general, only legally permitted to carry out activities that further their purposes. It is permissible for a charity to focus on one particular strand of its

objects. But if you are looking to undertake new activities to meet the challenges of the cost-of-living crisis or to help different groups of people in different areas, then you may need to amend or widen your objects.

Amending objects requires the prior consent of the Charity Commission. The process can be lengthy, so it is best to submit an application well in advance of any change to activities. The commission managed to prioritise applications relating to the Covid-19 crisis, so we hope that they will do the same for changes relating to the cost-of-living crisis. The Charities Act 2022 will introduce changes to the process of amending charitable objects, including introducing a new statutory test for corporate charities (charitable companies and CIOs), which the commission will have to apply when considering whether to give consent. For further details, see our article on The Charities Act 2022, [page 20](#).

Maximising funding

Despite a squeeze on funding, there are ways that charities can seek to diversify income streams and release funds from existing restricted income and assets.

Social investment

Many social banks, foundations and intermediaries offer social investment for charities – whether through loans or quasi equity deals that can help with short-term cashflow issues. Good Finance is a good place to look at potential products in the market.



Grants

Some foundations are offering funding specifically to help charities through the crisis. In terms of existing funding arrangements, if your charity is struggling to meet any project delivery requirements it may be worth asking funders about making changes to delivery times or the scope of grant arrangements.

Public and corporate fundraising

You may be able to diversify your traditional fundraising methods. During the Covid-19 crisis lots of charities looked to new and innovative ways of raising funds, particularly via digital forms of fundraising and things such as prize draws and competitions where the supporter is potentially getting something in return. There has also been a big increase in corporate partnerships, with companies wishing to support campaigns relating to the crisis. With any fundraising activity it is important to ensure that your charity is compliant with the law and Code of Fundraising Practice and that you manage risk appropriately.

Unlocking existing funds

It is worth looking at how your charity may be able to **release existing restricted funds**. Certain funds may be 'designated funds' that have been set aside for a particular project or use, but this is not binding.

Trustees can decide to 'un-designate' them and use the funds for another purpose, such as funding core costs. It may also be sensible to review the charity's restricted funding and endowments to assess whether

- i) a fund is indeed restricted under law (or whether there is more flexibility in spending it);
- ii) it is possible to take steps to change the purpose of a restricted fund; or
- iii) to spend permanent endowment (this may require Charity Commission consent, depending on the amount).

Property

Premises are often one of the biggest costs for charities and therefore it may be worth looking at how your charity can unlock the value of its real estate. If the charity is the freeholder, it has a number of options available, including considering whether now is a good time to sell and realise your property's value, or to let out all or part of it to generate income. If the charity is a tenant, then the first step is to review your lease. If it is coming up for renewal then you may be able to negotiate a better deal with the landlord; or if there is a break clause you could potentially look for more cost-effective premises.

Supporting staff

As well as supporting beneficiaries, charities may also wish to support staff who are struggling with rising rents and food and energy costs. There are a number of ways that a charity may do this, including offering one-off bonuses or loans to help staff meet additional costs, or setting up a hardship fund for those who may need to access support. Non-financial support may include ensuring that existing benefits and employee schemes are publicised and easy to access or providing an extra day's annual leave.

Maintaining good governance

In managing any crisis or when looking to implement strategic change, it is imperative to maintain good governance. It may be necessary for trustees to meet more often in order to assess financial and operational risk, and appropriate minutes should be kept of all key decisions. Trustees should follow relevant Charity Commission guidance, including guidance on **decision making**.



Find out more

Our **online seminar focusing on the cost-of-living crisis**, in October 2022, included a presentation from the Trussell Trust and advice from our team on issues such as campaigning and advocacy, unlocking charity funds, strategies for employee retention and the risks and benefits of disposing of property.

More generative relationships with corporate funders



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“Charities can seek alignment with their objects, as well as cash, and both parties may benefit reputationally as a result.”

Charities may be tempted, faced with the grim economic outlook for 2023, to accept gratefully any donations directed their way. At the same time, there is increased sensitivity to attempts by corporates to burnish their public image in misleading ways (so called white- or greenwashing) and charities need to be wary of becoming unwitting elements of such strategies in a way that might damage their reputation.

Examples might include a corporate that refuses to pay the real Living Wage donating to a charity focused on relieving poverty or homelessness; or a bank that finances international timber and mining operations donating to a charity established to protect and enhance nature. It might be argued that the corporate should avoid causing the sort of hardship or harm the charity is having to address, before offering donations and claiming to support the charity’s goals, and the charity might receive criticism for accepting the donations.

How can charities best approach their relationships with corporate partners?

While such situations can be more nuanced than might first appear, the wider context must be considered. Climate heating, biodiversity loss and their devastating consequences demand that all of us do what we can to avert their worst consequences. This is, of course, a significant additional consideration to take into account.

However, the pressures that push some towards greenwashing activity may also create an opening for charities to develop more generative relationships with their commercial partners. Larger corporations in particular need to address, and to be seen to be addressing, the global challenges of climate heating and biodiversity loss.

Generally, the experience of our clients is that their commercial partners still see their relationships with charities as ones where they write a large cheque and then tell the charity what they expect in return. However, this may be starting to change.

Many corporates are reassessing their supply chains to understand what emissions are being generated within them. They want to know not only about the emissions that relate directly to the matter on which the parties are working, but also what emissions are associated with the other party's activities more broadly. For example, law firms are finding that increasingly they are being asked, when tendering for work with insurance companies or banks, how they are taking into account the environmental impact of their clients' activities. As corporates are (rightly) beginning to ask these questions, they should not be surprised if charities ask it of them.

Some companies might reasonably argue that they could not commit, in a partnership agreement with a charity, not to do certain things in ways which may fetter the discretion of their directors to take decisions in the company's interests. However, they may have already adopted certain policies – such as honouring the Living Wage, or not funding or insuring new oil and gas developments – which they could commit to implementing during the partnership with the charity. This could provide assurance to a charity that they are partnering with a business that is committing to be congruent with the charity's objectives. Charities, in turn, may be more willing to be associated with the positive aspects of their partner's commercial activities – and in so doing, promote those positive elements more generally.



This may feel a significant leap for a single charity to demand in terms of attracting corporate support. However, there are various initiatives in train, particularly in the financial sector, but also in advertising and, in nascent form, in the law, where professional service firms are acknowledging that we need to use our collective influence to shift business as usual.

A new approach?

If the charitable sector adopted a similar approach, that might mean developing principles to govern relationships with commercial partners, so it becomes standard practice for any corporate donation to be accompanied by a commitment to operate their business in a way congruent with the charity's objects and/or for the public benefit.

Some businesses may be unwilling or unable to abide by those principles, but if this meant they were denied the opportunity to be associated with the best known names in the charity sector, they may well reassess their approach. Those businesses that did would have an enhanced benefit in being one of those businesses charities were comfortable engaging with and the charities themselves could be more confident their partnerships were not likely to expose them to reputational risk.

Taking this forward would require charities coming together to work up these principles. It would also be necessary to identify relevant information, so that they could conduct some due diligence on potential commercial partners to determine their suitability to be a partner and what sort of commitment they might reasonably ask of them. The amount and reliability of such information is increasing all the time in line with new disclosure demands on large corporates, and there could be lessons from other sectors to assist in developing the most useful approach for charities.

Making this a reality could mean corporate partners offering charities something much more than just money.



Latest guidance on campaigning



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“Civil society should not let regulatory compliance become an obstacle to advocacy and campaigning.”

After a year of turmoil in Number 10, 2023 should bring more stability to the political sphere – but, with the promise of an election looming, charities will nonetheless be keeping an eye on the political horizon.

After the repeal of the Fixed Term Parliaments Act 2015, the current parliament is due to dissolve no later than January 2025 – but there has been speculation that we could head to the polls sometime in 2024. With this in mind, campaigns and advocacy teams will be conscious that 2023’s party conference season could well be the last one before the next election. Before that, charities will continue to make their voices heard on the pressing issues of 2023 – continuing the campaigning we have seen over the past few months, for example on the impact of the cost-of-living crisis. In 2023, we will also see some significant regulatory changes in this area.

Charity Commission guidance

Charities can be reassured by the Charity Commission’s newly released five-minute guide, **Political activity and campaigning by charities**, which summarises the key principles of the established **Campaigning and political activity guidance for charities (CC9)**. The guide reassures charities that

they can carry out political activity in furtherance of their objects – a message echoed by the new chair of the commission, Orlando Fraser KC, in his **speech at the Charity Commission’s Annual Public Meeting**. Charities can continue to carry out non-political campaigns, including public information campaigns and those focusing on changing corporate behaviour or enforcing existing laws.

The new guide also stresses the need for charities to consider their reputation, and the commission’s view that charities should conduct campaigns with ‘respect and tolerance’. In the current climate of increasing division in public discourse, charities should also refer to the more detailed guidance in CC9, which makes it clear that charities can use emotive or controversial material, provided that they weigh up the risks of doing so.

Ahead of party conference season, campaigns and advocacy teams should also be mindful of the commission’s guidance on engaging with politicians. It is legitimate for charities to do so, but they must ensure that they maintain neutrality, and guard against the perception of party political affiliation. In practice, this can mean trying to engage with politicians across the political spectrum.

Changes to election law

The new Elections Act 2022 makes significant changes to the regulatory framework for non-party campaigners at elections, which could impact charities that carry out regulated campaigning.

While much of the focus on the Act has been on controversial new voter identification requirements, it will also amend and supplement the existing law applying to organisations that engage in issue-based campaigning and advocacy work, both in the run up to elections and more broadly throughout their day-to-day activities.

Once the Act takes effect, more organisations will have to register with the Electoral Commission when engaging in issue-based campaigning. It introduces a new requirement for registration as a ‘lower-tier’ non-party campaigner, for organisations incurring more than £10,000 of regulated spending in the regulated period (normally a year) before a General Election, across the UK. Currently, organisations can incur double that amount of regulated spending in England (£20,000), and also up to £10,000 in Scotland, Wales and Northern Ireland, before being required to register. This includes spending on public-facing

material that could reasonably be regarded as intended to influence voting behaviour.

The Act will also introduce complex new transparency rules for digital campaigning materials, extending the existing rules for printed materials.

The proposed Foreign Influence Registration Scheme

The new Foreign Influence Registration Scheme (in the National Security Bill, currently going through parliament) requires registration of broadly defined ‘political influence activities’ – including lobbying and public advocacy – that is directed by any foreign organisation (including, for example, foreign NGOs), with failure to register being an offence.

This has the potential to affect organisations, including charities, which receive international funding and engage in just a small amount of campaigning or advocacy work, depending on how broadly ‘directed’ is interpreted. Similar requirements will also apply to political influence activities carried out directly by foreign organisations. This could impact charities, such as when inviting international partners to present to

senior government officials at meetings of All Party Parliamentary Groups (APPGs). The registration requirements, if enacted, will sit alongside other, narrower, registration requirements under the consultant lobbying regime (which can in some circumstances already apply to charities, such as those acting as secretariats to APPGs).

The proposals have received criticism from a variety of stakeholders, including business groups and senior lawyers, and it remains to be seen whether any exemptions or flexibilities will be made to the provisions as the Bill progresses.

Where next?

Together with restrictions on protest rights set out in the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Bill, and mooted changes to the Human Rights Act, these changes add to an already complex landscape for charities and campaigners.

However, civil society should not let regulatory compliance become an obstacle to advocacy and campaigning, which has seen so many huge successes over the past few years. Charities are so often at the forefront of positive social change – and, at the end of the day, charities should not be afraid to make their voices heard.

What next from the regulators in 2023?



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Charity Commission

Charities Act 2022

We expect 2023 to be another busy year for the Charity Commission as, alongside its usual casework, the regulator will need to publish new internal and external guidance on changes brought by the Charities Act 2022. Some of the most significant changes to its processes and online forms will be required when the rules on amending governing documents for charitable companies, CIOs and unincorporated charities are brought in (expected in the Autumn, see our article on The Charities Act 2022, [page 20](#).)

New CC online accounts and form changes

At the end of last year, **the Charity Commission announced** information about its plans to launch a new service titled ‘Your Charity Commission Account’, which the Commission hopes will be the new way users access their online services. The regulator has already started inviting a small number of charity contacts to set up their accounts as a test phase, before rolling the system out more widely. With new charity registration application and trustee declaration forms also expected this year – as well as the changes brought by the Charities Act – we could see a lot of change in how both charities and professional advisers interact with the commission this year.

Fundraising Regulator

The Fundraising Regulator is currently reviewing the Code of Fundraising Practice with a view to making updates this year. It undertook a call for information on what changes charities and other stakeholders would like to see to the code at the end of last year and will be holding a full consultation on the proposed changes in Autumn 2023. It will be worth keeping an eye out for, and engaging with the consultation, if your charity undertakes a lot of fundraising.

When the Fundraising Regulator **published its annual complaints report for 2021/22**, we saw an increase in complaints from the previous year (in line with the resumption of public fundraising post-pandemic), although there was a decrease from 2019/20. Charity bags, digital fundraising, collections and addressed mail accounted for the majority of complaints made to the regulator, so it will be interesting to see if this trend continues.

Companies House

The **reforms to Companies House** proposed by the Economic Crime and Corporate Transparency Bill 2022 will lead to significant changes for the company regulator if they become law this year. The proposals include:

- **Introducing identity verification** for all new and existing registered company directors, People with Significant Control, and those delivering documents to the Registrar of Companies;
- **Broadening the Registrar of Companies House's powers**, including new powers to check, remove or decline information submitted to, or already on, the companies register;

- **Providing Companies House with more investigation and enforcement powers** and introducing greater cross-checking of data with other public and private sector bodies.

We will issue further briefings on these issues as they develop.



The Charities Act 2022 – an update



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As we begin 2023, some of the provisions of the Charities Act 2022 are now in force, but more are expected to be introduced in the Spring and the Autumn this year.

To recap, the Act is intended to make life easier for charities by reducing regulation and clarifying grey areas in the law. The Act was given Royal Assent in February 2022, and the first tranche of provisions were introduced in October 2022, including a new regime for dealing with failed appeals and giving trustees a new power to use funds raised by a fundraising appeal *cy-près* for new purposes – with Charity Commission consent if above a financial threshold. (See our blog on [how the Charities Bill approaches failed charity appeals](#)).

Ex gratia provisions delayed

Provisions relating to ex gratia payments, which were expected to come into force at the same time, were indefinitely delayed. The government explained that it had deferred their implementation until it understood the implications for national museums and other charities in relation to the repatriation of cultural property. This is unfortunate, as this has also delayed the introduction of some useful provisions, including permitting small ex gratia payments to be made without Charity Commission consent and enabling delegation of ex gratia decisions by trustees. Many charities welcomed these changes, so we hope they can be implemented before too long.

Spring 2023

Provisions due to come into force in Spring 2023 include **new regulatory provisions about working names, changes relating to permanent endowment and an amended regime for dealing with disposals of charity land.**

Autumn 2023

The provisions that are expected in Autumn 2023 include **changes to the regime for changing charitable objects for companies and CIOs**, certain other changes for CIOs, and a new broad statutory power of amendment **for unincorporated charities.**

Our full series of blogs about the Charities Act 2022 is available **here**. These include our suggestions of which matters trustees should consider before they become law, including: reviewing restricted funds; considering whether to register working names; and looking at amending governing documents under the current regime.



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