

Charities Act 2011 creates new standard of charity law for England and Wales

The long-awaited Charities Bill to consolidate the whole of charity law for England and Wales has now become law as the **Charities Act 2011**.

The Bill has now completed ALL its stages (the detailed debate was in the Lords - in the Commons it went through as a formality). Royal Assent took place on 14 December 2011.

The Charities Act 2011 will be the most important piece of charity legislation for a generation. As a consolidation act it does not seek to change the law, but it replaces most of three existing Acts:

- The Recreational Charities Act 1958 (which gave charitable status to village halls etc)
- The Charities Act 1993 (which includes much of the Charity Commission's regulatory powers and all the rules on charity accounting etc) and
- The Charities Act 2006 (which creates the new definition of "charity", the provisions for Charitable Incorporated Organisations – CIOs, the Charity Tribunal, and much else).

Whilst the 2006 Act made big changes to charity law, it was worded almost entirely in terms of amendments to the 1993 Act and hence it was practically impossible to follow! By contrast, the Charities Act 2011 has put everything together in a logical order and is relatively readable (if you don't mind reading legislation directly).

The 2011 Act is more than just an editorial process of bringing together amendments - many provisions have been restated in clearer language, complex cross references have been sorted out, the language is inclusive (no more wording which assumes male language for trustees) and much more.

The Charities Act 2011 will, we believe, be a real breath of fresh air for the understanding of charity law and regulation in England and Wales in the same way that the Charities Act 1993 did some eighteen years ago.

The 2011 Act will come into force in three months from Royal Assent – i.e from 14 March 2012 – and the former legislation will then be repealed.

References to Legislation in Documents

Any references to charity legislation in formal documents should therefore be updated to refer to the 2011 Act from March 2012 onwards.

This may include quite general references to legislation if a specific Act is mentioned – for example a grant-making trust whose guidance says:

- *All applications must be accompanied by accounts for your charity complying with the Charities Act 1993*

will need to amend the guidance to say:

- *All applications must be accompanied by accounts for your charity complying with the Charities Act 2011 (or Charities Act 1993 in the case of accounts that were finalised before spring 2012).*

Explicit legal references will also need to be updated in new documents. For example, the normal wording of independent examiner's report on an English charity currently states:

It is my responsibility:

- *to examine the accounts under section 43 of the Charities Act 1993 (the Act);*
- *to follow the procedures laid down in the General Directions of the Charity Commission under section 43(7)(b) of the Act;*

but for reports completed on or after 14 March 2012, the wording should be:

It is my responsibility:

- *to examine the accounts under section 145 of the Charities Act 2011 (the Act);;*
- *to follow the procedures laid down in the General Directions of the Charity Commission under section 145(5)(b) of the Act;*

Note that it is not just a case of altering section numbers: in the example above, the Charity Commission's Directions to independent examiners – formerly mentioned in subsection 7 of section 43 of the 1993 Act are now in subsection 5 of section 145 of the 2011 Act. This is because s.145 of the 2011 Act is purely concerned with independent examination, whereas s.43 of the 1994 Act dealt with audit *and* independent examination.

Fundraising Provisions

Please note that the 2011 Act does NOT restate the law on fundraising as this is not just applicable to charities - it includes other fundraising for good causes. So the fundraising provisions of the Charities Act 1992 and Charities Act 2006 will continue to apply - although in both cases the rules on public collections have not yet been implemented.

Implementation

Just because the 2011 Act takes effect from 14 March 2012 does not mean that all its provisions are immediately in force. As with the Charities Act 2006, many provisions only take effect from the date directed by the relevant Minister, so provisions awaiting implementation remain in the same position. So, for example, CIOs will not come into effect until the relevant secondary legislation has been agreed by Parliament and a Commencement Order made by the Minister for the Cabinet Office.

Size and Availability

Because the Charities Act 2011 is bringing together several existing Acts it is a fairly substantial piece of legislation – it has 358 sections and 11 schedules, coming to 248 pages in printed form – however this is less than the 290 pages needed for the Charities Acts of 1993 and 2006 together. (The number of sections in the 2011 Act is actually slightly greater than some of the legislation it replaces, as some complex sections in the previous Acts are now written more clearly in two or three separate sections, as illustrated above.)

The Act is now available on the Government website www.legislation.gov.uk either as separate html pages or as a PDF. Printed versions are available from www.tsoshop.co.uk price £28.75 plus postage – or can be ordered from bookshops (ISBN is 9780105425113).

FURTHER HELP: *The Kubernews Partnership LLP offers a range of seminars on issues concerning charity regulation and accounting. In particular, we are planning a special half-day seminar in York entitled Understanding the Charities Act 2011 on Wed 14 March 2011 – the day the Act comes into force (just £65 for single places or £59 each for multiple bookings). See www.kubernews.co.uk/seminars.*

This Bulletin is prepared primarily for charities and professional advisers who belong to the [Kubernews Charity Advice Service](http://www.kubernews.co.uk/advice-service) – but may be used by others on an “as is” basis.

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- If your organisation or firm belongs to the *Kubernews Charity Advice Service* (KCAS) and you have any queries on the points mentioned – including issues for your own charity – please contact us at the special e-mail address for this purpose (see covering e-mail). There is no charge for responding to reasonable queries if you belong to the KCAS.
- If you are not currently in KCAS it is possible to register online (see www.kubernews.co.uk/advice-service) and then queries can be raised immediately subject to the terms of the scheme. For other enquires, please e-mail info@kubernews.co.uk.

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