

2022 No. 1109 (C. 88)

CHARITIES

**The Charities Act 2022 (Commencement No. 1, Consequential
and Saving Provision) Regulations 2022**

Made - - - -

26th October 2022

The Secretary of State makes these Regulations in exercise of the powers conferred by section 41(4) and (5) of the Charities Act 2022(a).

Citation and extent

1.—(1) These Regulations may be cited as the Charities Act 2022 (Commencement No. 1, Consequential and Saving Provision) Regulations 2022.

(2) These Regulations extend to England and Wales, subject to paragraph (3).

(3) The amendment brought into effect by paragraph 11(c) of the Schedule has the same extent as the provision that it amends.

Interpretation

2. In these Regulations—

“the 2011 Act” means the Charities Act 2011(b);

“the 2022 Act” means the Charities Act 2022.

Provisions coming into force on 31st October 2022

3. The day appointed for the coming into force of the provisions of the 2022 Act listed in the Schedule is 31st October 2022.

Consequential provision

4. On 31st October 2022, omit regulation 61(4) of the Charitable Incorporated Organisations (General) Regulations 2012(c).

Saving provision

5.—(1) In this regulation—

(a) 2022 c. 6.
(b) 2011 c. 25.
(c) S.I. 2012/3012.

“the 2008 Regulations” means the Charities (Failed Appeals) Regulations 2008(a);

“appointed day” means 31st October 2022;

“court” means—

- (a) the High Court, and
- (b) within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court,

and includes any judge or officer of the court exercising the jurisdiction of the court;

“relevant proceedings” means—

- (a) proceedings on an appeal brought to the Tribunal under section 319 of the 2011 Act(b) against a section 69(1)(a) order, or
- (b) proceedings on an application for judicial review of a decision of the Charity Commission(c) to make or refuse to make a section 69(1)(a) order;

“section 69(1)(a) order” means an order of the Charity Commission made under section 69(1)(a) of the 2011 Act establishing a scheme applying property *cy-près* in accordance with section 67(2) of the 2011 Act;

“the Tribunal” means in relation to any appeal made under the 2011 Act—

- (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the appeal, application or reference, or
- (b) the First-tier Tribunal, in any other case.

(2) For the purposes of this regulation, relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the Tribunal or court for the purpose of commencing the proceedings.

(3) Paragraphs (4) and (5) apply in relation to a charity (“the charity”) if, before the appointed day—

- (a) the charity receives property for specific charitable purposes which fail (“the property”), and
- (b) one or more of the following applies—
 - (i) an advertisement has been published or an inquiry has been made in respect of the property, by or on behalf of the trustees of the charity, as prescribed by the 2008 Regulations for the purposes of section 63(1)(a)(i) of the 2011 Act;
 - (ii) the trustees of the charity have taken the steps prescribed by the 2008 Regulations for the purposes of section 65(5)(a) and (b) of the 2011 Act;

(a) These regulations (available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/354787/failed-appeals-regulations-2008.pdf) were made by the Charity Commission on 12th March 2008 under sections 14(8) and 14(9) and 14A(9) of the Charities Act 1993 (c. 10.). The 2011 Act consolidated various legislative provisions in relation to charities. Sections 14(8) and (9) and 14A(9) are consolidated in sections 66(4) to (6) of the 2011 Act. Section 66(4) confirms that “prescribed” for the purposes of sections 63 and 65 of the 2011 Act means prescribed by regulations made by the Charity Commission. By section 66(5), the Charity Commission may publish any such regulations in such manner as it sees fit. Under section 66(6), the Charity Commission may make provision in such regulations as to the form and content of advertisements which are to be published for the purposes of section 63(1)(a) of the 2011 Act. Hard copies of the regulations may be obtained from the Charity Commission, PO Box 211, Bootle, L20 7YX.

(b) Section 319 of the 2011 Act has effect to give the Upper and First-tier Tribunals powers to hear appeals against certain decisions, directions or orders of the Charity Commission. Schedule 6 to the 2011 Act lists those decisions, directions or orders of the Charity Commission which are subject to appeal to the Tribunals.

(c) The Charity Commission is defined by Schedule 1 to the Interpretation Act 1978 (c. 30.).

- (iii) the trustees of the charity have made an application to the Charity Commission for a section 69(1)(a) order in relation to the charity in respect of the property, but the Charity Commission has not before the appointed day made a decision as to whether to make or refuse to make such an order;
- (iv) the Charity Commission has made a decision to refuse to make a section 69(1)(a) order in relation to the charity in respect of the property and the period for commencing proceedings on an application for judicial review in relation to that decision has not expired;
- (v) the Charity Commission has made a section 69(1)(a) order in relation to the charity in respect of the property and either—
 - (aa) the time limit specified in section 63(5) of the 2011 Act as it had effect immediately before the appointed day has not expired, or
 - (bb) the period for bringing relevant proceedings in relation to the making of the section 69(1)(a) order has not expired;
- (vi) relevant proceedings have been commenced.

(4) Sections 63 to 65 of the 2011 Act and the 2008 Regulations continue to have effect on or after the appointed day in relation to the trustees of the charity in respect of the property and the donors of the property as if section 6 of the 2022 Act had not been commenced.

(5) Section 66 of, paragraph 17 of Schedule 8 to, and Schedule 11 to, the 2011 Act continue to have effect on or after the appointed day in relation to the trustees of the charity in respect of the property and the donors of the property as if paragraphs 13, 14 and 15 of Schedule 2 to the 2022 Act had not been commenced.

26th October 2022

Kamall
Parliamentary Under Secretary of State
Department for Digital, Culture, Media and Sport

SCHEDULE

Regulation 3

Provisions of the 2022 Act coming into force on 31st October 2022

1. Section 4 (power to amend Royal charter).
2. Section 5 (orders under section 73 of the Charities Act 2011: parliamentary procedure).
3. Section 6 (cy-près powers).
4. Section 7 (proceeds of fund-raising: power of charity trustees to apply cy-près).
5. Section 8 (power of the court and the Commission to make schemes).
6. Section 30 (remuneration of charity trustees etc providing goods or services to charity).
7. Section 32 (trustee of charitable trust: status as trust corporation).
8. Section 36 (costs incurred in relation to Tribunal proceedings etc).
9. In section 37 (public notice as regards Commission orders etc)—
 - (a) subsection (1), in so far as it relates to the provisions of section 37 mentioned in sub-paragraphs (b) to (d) below,
 - (b) subsection (2)(a),
 - (c) subsection (2)(b), in so far as it relates to section 67A of the 2011 Act^(a), and
 - (d) subsection (3).
10. Section 40 (minor and consequential provision), in so far as it relates to the provisions brought into force by paragraph 11 of this Schedule.
11. The following paragraphs of Schedule 2 (minor and consequential amendments)—
 - (a) paragraph 1, in so far as it relates to paragraphs 11 and 13 to 15 of Schedule 2,
 - (b) paragraph 11,
 - (c) paragraph 12,
 - (d) paragraph 13,
 - (e) paragraph 14,
 - (f) paragraph 15,
 - (g) paragraph 38, in so far as it relates to paragraphs 39 and 40 of Schedule 2,
 - (h) paragraph 39,
 - (i) paragraph 40, and
 - (j) paragraph 41.

^(a) Section 67A of the 2011 Act is inserted by section 7 of the 2022 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first commencement regulations made under the Charities Act 2022 (c. 6) (“the 2022 Act”).

Regulation 2 defines general terms which are used in the Regulations.

Regulation 3 brings into force a number of sections of, and paragraphs of Schedule 2 to, the 2022 Act, listed in the Schedule, which implement recommendations made by the Law Commission of England and Wales as to technical improvements that could be made to charity law. Many of these improvements are made by way of amendment of the Charities Act 2011 (c. 25) (“the 2011 Act”).

Regulation 4 revokes regulation 61(4) of the Charitable Incorporated Organisations (General) Regulations 2012 (SI 2012/3012), which automatically provided trust corporation status to Charitable Incorporated Organisations. This change is consequential upon the commencement, by regulation 3 and paragraph 9 of the Schedule, of section 32 of the 2022 Act (trustees of charitable trust: status as trust corporation), which renders regulation 61(4) no longer necessary.

Regulation 5 makes saving provision in relation to property provided for charitable purposes which fail (“the property”). This is to ensure that where trustees of charities have commenced steps currently required under sections 63 and 65 of the 2011 Act and the Charities (Failed Appeals) Regulations 2008 (“the 2008 Regs”) in relation to the property before section 6 of the 2022 Act is commenced (which repeals sections 63 to 65, revokes the 2008 Regs and inserts new section 63A of the 2011 Act), those provisions will continue to apply in relation to the charity trustees in respect of the property and to the donors of the property rather than new section 63A.

In addition, where the trustees of charities have made an application to the Charity Commission for an order to be made under section 69(1)(a) of the 2011 Act for a scheme applying the property *cy-près*, the Charity Commission has made or refused to make an order under section 69(1)(a) following such an application, or legal proceedings have been brought in relation to any such decision of the Charity Commission, sections 63 to 65 will continue to apply.

In consequence, regulation 5 ensures that changes to remove references to sections 63 to 65 from section 66 of, paragraph 7 of Schedule 8 to, and Schedule 11 to, the 2011 Act (made by paragraphs 13 to 15 of Schedule 2 to the 2022 Act) do not apply until such time as sections 63 to 65 cease to apply to the charity in respect of the property and the donors of the property.

Paragraph 1 of the Schedule brings into force section 4 (power to amend Royal charters), which inserts a new section 280C into the 2011 Act providing charities established or regulated by Royal charter with a new statutory power to amend their Royal charter. The power is exercisable by resolution and subject to the approval of His Majesty in Council.

Paragraph 2 of the Schedule brings into force section 5 (orders under section 73 of the 2011 Act: parliamentary procedure), which amends section 73 of the 2011 Act so that all orders made under that power are subject to the negative parliamentary procedure.

Paragraph 3 of the Schedule brings into force section 6 (*cy-près* powers), which inserts a new section 63A into the 2011 Act to replace the current regime for dealing with property given for charitable purposes which fail (sections 63 to 65 of the 2011 Act, which are repealed, and the 2008 Regs, which are revoked).

Paragraph 4 of the Schedule brings into force section 7 (proceeds of fund-raising: power of charity trustees to apply *cy-près*), which inserts new section 67A into the 2011 Act to give charity trustees a new power to apply property raised via a fundraising appeal *cy-près* without the need for an order of the Charity Commission under section 69(1)(a) of the 2011 Act.

Paragraph 5 of the Schedule brings into force section 8 (power of the court and the Commission to make schemes), which inserts a new section 75A into the 2011 Act. New section 75A confirms that the power of both the court and the Charity Commission to make schemes extends to charitable companies. Schemes are legal arrangements that change or supplement the provisions that would otherwise apply in respect of a charity or a gift to charity. This power is treated as always having had effect so as not to cast doubt on the validity of any scheme made before the commencement of section 8.

Paragraph 6 of the Schedule brings into force section 30 (remuneration of charity trustees etc providing goods or services to charity), which amends section 185 of the 2011 Act to allow charities to now pay trustees for goods, as well as services, provided that the conditions set out in section 185 are met.

Paragraph 7 of the Schedule brings into force section 32 (trustee of charitable trust: status as trust corporation), which provides automatic trust corporation status to bodies corporate, such as charitable companies or Charitable Incorporated Organisations, when they become trustee of a charitable trust. This will allow the body corporate to deal with land held for the purposes of that charitable trust as a sole trustee.

Paragraph 8 of the Schedule brings into force section 36 (costs incurred in relation to Tribunal proceedings etc), which inserts a new section 324A into the 2011 Act. This will provide the Charity Tribunal (both the First-tier Tribunal and Upper Tribunal) with the power to make orders authorising charity trustees to incur legal costs in relation to legal proceedings and confirming that such costs are a proper use of the charity's funds.

Paragraph 9 of the Schedule brings into force section 37 (public notice as regards Commission orders etc), in part. This section makes amendments to section 337 of the 2011 Act by inserting new subsections (2A), (3A) and (3B). The effect of subsection (2A) is to confirm that where an application for an order from the Charity Commission is made, the Charity Commission may give prior notice of the proposed order. The effect of subsections (3A) and (3B) is to extend the power to give notice (both prior to and after) of the giving by the Charity Commission of written consent. In both cases, the Charity Commission can require the charity which has applied for the order or written consent to give notice (in place of the Charity Commission).

Paragraphs 10 and 11 bring into force section 40 and a number of paragraphs of Schedule 2 (minor and consequential provision), which make consequential provision relevant to the other sections of the 2022 Act commenced by these Regulations.

A de minimis impact assessment has been published on gov.uk alongside the 2022 Act at

https://www.legislation.gov.uk/ukpga/2022/6/pdfs/ukpgaod_20220006_en.pdf

The consequential and saving provisions in these Regulations do not materially change that assessment.

© Crown Copyright 2022

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

£4.90

<http://www.legislation.gov.uk/id/uksi/2022/1109>

ISBN 978-0-34-824032-0



9 780348 240320