

BRIEFING NOTE:

27 September 2016

Charities (Protection and Social Investment) Act 2016:

Where are we now?

Provisions which came into force on 31 July 2016

1. Power to make social investments (see also the Charity Commission's interim guidance on social investments):

<https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-interim-guidance>

2. Additional Charity Commission powers exercisable only when a "statutory inquiry" has been opened, including:-
 - power to consider trustees' failure to act;
 - power to consider trustees' wider conduct;
 - power to remove a trustee following an inquiry;
 - power to direct that specified action is not to be taken; and
 - power to direct the winding up of a charity.
3. Additional Charity Commission powers exercisable without the need to open a statutory inquiry:-
 - power to remove a trustee who is disqualified from office (this closes an existing loophole); and
 - the power to direct the application of charity property has been extended so that it applies where the person(s) in control or possession of the property is/are unable to apply it properly, as well as where they are unwilling to apply it properly.

Provisions which will come into force on 1 October 2016

Power to disqualify an individual from acting as a trustee (see below).

Provisions which will come into force on 1 November 2016

1. Agreements with professional fundraisers and commercial participators will need to include additional information as prescribed in the Act.
2. The annual report and accounts of larger charities (those with a gross annual income in excess of £1 million) will need to include additional information about the charity's fundraising activities.

Please see our Fundraising Update of 27 September 2016 for further details regarding the above.

3. Power to give official warnings (see below).

Charity Commission additional power to disqualify an individual from acting as a trustee

The Commission has published a draft policy paper on its proposed use of this new power which went out for consultation in May this year. There has been some criticism of the Commission's proposed approach. The Charity Law Association has firmly recommended that the policy is "rethought and reformulated" and that the implementation of the power (originally scheduled for July this year) is further delayed while this is being addressed. The relevant provisions of the Act will now come into force on 1 October this year, despite the fact that at the time of writing the Commission's revised/finalised guidance is still awaited. We will publish further information in due course.

New Charity Commission power to give official warnings

The Commission is currently considering responses to its public consultation on its proposed approach to exercising this new power. This power will be available to the Commission from 1 November this year. We will publish further information in due course.

Sarah Chiappini
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27 September 2016

This note provides a general summary only and it does not constitute legal advice. It is recommended that specific advice is sought in relation to the particular facts of a given situation.