

Not for Profit eNews

February 2024

Now, for tomorrow



Welcome to the latest edition of MHA Not for Profit eNews.

In this month's edition of eNews, we look at the proposed changes in the Charities Act 2022 which are to be brought into force in 'early 2024', including: making changes to governing documents; selling, leasing or otherwise disposing of charity land and; charity mergers.

We also highlight the details of a letter from the Civil Society Group (CSG), which includes the Charity Finance Group, to the Chancellor ahead of the 2024 Spring Budget; the letter sets out four main 'asks' which the CSG argues would, if granted, support and protect the immediate and longer-term financial health of the charity sector.

Finally, we share MHA's HR Solutions Team's considerations of three recent and upcoming changes to employment regulations concerning Right to Work, Carer's Leave and Flexible Working – essential reading for all employers.

As ever, if there are any points you wish to discuss further in this issue please do get in touch.

Best Regards,
MHA Not for Profit team



Charities Act 2022: changes to be introduced in early 2024

We have previously reported on the numerous changes included in the Charities Act 2022, noting that their introduction is being phased over a period of time; changes to rules regarding paying trustees for providing services or goods to the charity, fundraising appeals that do not raise enough or raise too much, and a charity's power to amend Royal Charters became effective from 31 October 2022, and changes to rules regarding charity names and using permanent endowments came into effect on 14 June 2023.

The next phase of changes is scheduled to come into effect in 'early 2024', and the Charity Commission will be releasing updated guidance on the day the provisions are implemented. Until then, the Commission have provided the following [short summaries of the upcoming changes](#), a summary of which is below:

Making changes to governing documents

The Act is introducing a new statutory power that trusts and unincorporated associations will be able to use to make changes to their governing document. The changes include:

- how unincorporated charities must pass trustee and (where they have members) member resolutions when using the new power
- that the Commission will apply the same legal test when deciding whether to give authority to charitable companies, CIOs, and unincorporated charities changing their charitable purposes
- a power for the Commission to give public notice, or to direct a charity to give notice, of regulated alterations to a governing document

Such trusts and unincorporated associations will need to have the Commission's authority to make these 'regulated alterations'.

Selling, leasing or otherwise disposing of charity land

Whilst the following provisions were due to come into force on 14 June 2023, they did not, but will do from early 2024:

- provisions relating to disposals by liquidators, provisional liquidators, receivers, mortgagees or administrators
- provisions relating to the taking out of mortgages by liquidators, provisional liquidators, receivers, mortgagees or administrators
- changes about what must be included in statements and certificates for both disposals and mortgages

Charity mergers

For certain mergers, new rules will allow most gifts to charities that merge to take effect as gifts to the charity they have merged with.

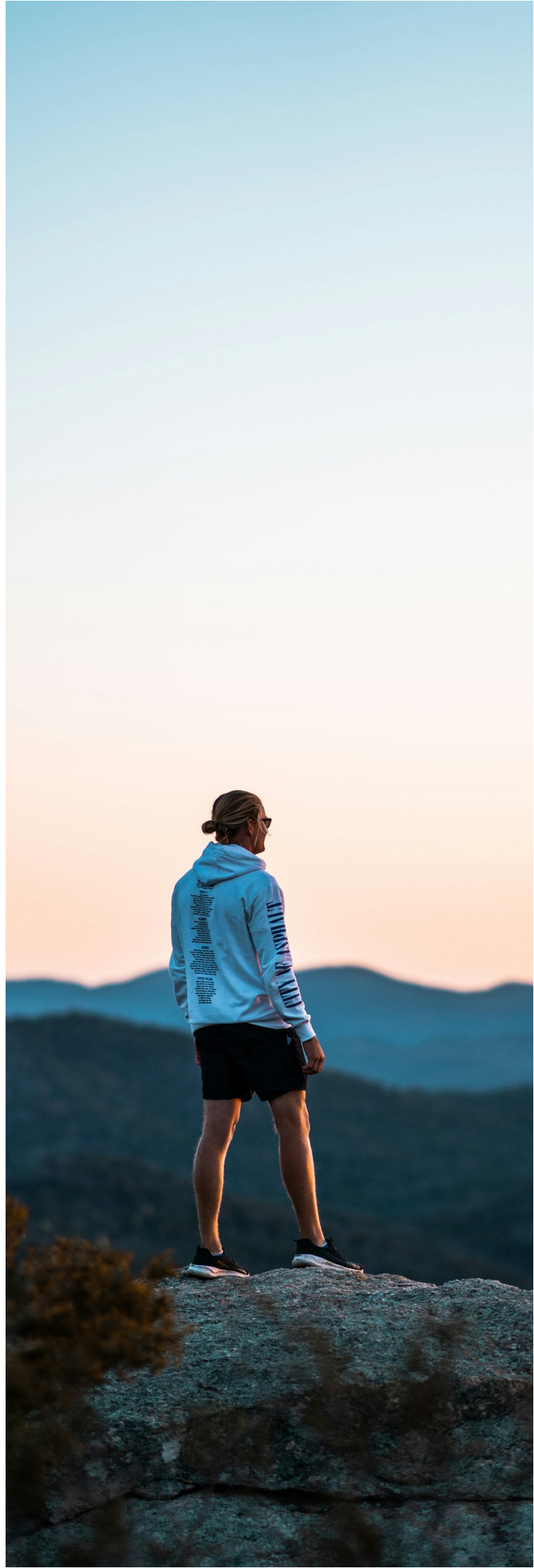
Other provisions

The Act will enable the Commission to:

- authorise a trustee to receive or retain a payment for work completed for the charity where the Commission decides it would be inequitable for a trustee not to be paid
- confirm defective or potentially defective trustee appointments

We will report in more detail on these changes when they are officially brought into force.

Civil Society have also recently [reported](#) on a letter from the Department for Culture, Media and Sport to the Charity Commission concerning museums and charities being allowed to return objects to their country of origin. It was anticipated that the associated change, set out in the Charities Act 2022 and which would have permitted museums to transfer items on 'moral grounds' and without Charity Commission oversight, would have already come into force, but as the letter details: "the potential consequences of these provisions were not made clear by the Law Commission when the bill was introduced." The change is to be amended and reintroduced later in the Autumn of 2024.





Report to the Chancellor ahead of Spring Budget

As part of the Civil Society Group, a group of almost 90 organisations that support the UK charity and voluntary sector, the Charity Finance Group (CFG) has recently written to the Chancellor of the Exchequer setting out its four main policy 'asks' ahead of the Spring Budget on 6 March 2024.

It argues that the asks would support and protect the immediate and longer-term financial health of the charity sector by providing greater financial and operational certainty.

1 Essentials Guarantee

In light of recent research which found that half of those on Universal Credit ran out of food in the last month and couldn't afford to buy more, the first ask is that an 'Essential Guarantee' be introduced. The Guarantee involves the level of Universal Credit being regularly appraised and set to cover the costs of essentials (such as food, utilities and household goods).

2 Delivery of public services

Noting that the voluntary sector is a critical partner in delivering public services (from 2016 to 2020, charities delivered 69% of commissioned homelessness services, for example), but that grants and contracts for these services do not have inflationary uplifts built in, the second ask focuses around ensuring that such grants and contracts are not underfunded and thus posing a threat to charities' ability to deliver public services.

3 Extend funding terms

Comparing the term-length of the UK Shared Prosperity Fund (three years) to that of the EU's Multiannual Financial Framework (seven years), the third ask stresses that long-term funding provides financial certainty for commissioners and providers, it also enables continuity of support for individuals.

4 Streamlining and reviewing the charity tax system

The final ask includes four points concerning the charity tax system. Firstly, it argues that the Government should place a transitional relief mechanism of at least three years for Gift Aid if the basic rate of income tax is reduced so that charitable income is not lost.

Secondly, the letter argues that the removal of inheritance tax incentives, which are under review and result in a significant contribution to the sector's legacy income, would have a detrimental effect on the number of charitable bequests made and the value of legacy gifts to charities.

Thirdly, arguing that charities only make purchases for public benefit, the letter asks for the Government to bring in a new special charity VAT rate, to be applied when charities make purchases, and thus reduce the irrecoverable VAT costs the sector incurs.

Finally, there is the call to extend the charitable rate relief to include wholly-owned trading subsidiaries. This is so that when charities do use these subsidiaries to carry out their activities such, they are not penalised for doing so.

The CFG [comment on the submission](#) on their website.

Right to work processes more important than ever

From 22 January 2024 the penalties for employing illegal workers triple to £60,000 per illegal worker. It has never been more important for charities to have robust right to work processes in place.

The Home Office expects high standards, requiring managers, individuals, and recruitment professionals to possess the necessary skills and information for efficient operations and risk minimisation, encompassing financial, commercial, and reputational aspects. It is crucial, therefore, that charity's and their staff working in the relevant functions understand the right-to-work regulations and ensure compliance in internal processes. In the United Kingdom, employers are required to conduct Right to Work checks to ensure that their employees have the legal right to work in the country. These checks are mandatory, and failure to comply can result in severe penalties, including fines and imprisonment. Here are the key requirements for Right to Work checks in the UK:

1 Verification of Identity

Employers must verify the identity of the prospective employee by obtaining original, acceptable documents such as a passport, national ID card, or biometric residence permit.

2 Checking the Validity of Documents

Employers must ensure that the presented documents are genuine, unaltered, and belong to the individual in question. Checking the expiry dates on documents is crucial to ensure ongoing eligibility to work.

3 Establishing the Right to Work

Different types of documents may be provided to establish the right to work, depending on the individual's immigration status. This could include a visa, residence permit, or proof of settled or pre-settled status under the EU Settlement Scheme.

4 Categorising Workers

Employers need to determine whether their employees have the right to work in the UK and categorise them accordingly, such as British citizens, European Union (EU) nationals, or non-EU nationals with valid work visas.

5 Recording and Retaining Documentation

Employers are required to make a clear copy or record of the documents provided by the employee. This information should be retained throughout the individual's employment and for a specified period after their employment ends.

6 Re-Checking for Employees with Time-Limited Permissions

For employees with time-limited permissions to work in the UK, employers must conduct follow-up checks before the expiry of their current permission.

7 Keeping Up-to-Date with Immigration Rules

Employers should stay informed about changes in immigration rules and adjust their procedures accordingly to maintain compliance.

It's important for employers to follow these guidelines diligently to avoid legal consequences and ensure a workforce that is legally entitled to work in the UK. The specific details of the Right to Work checks may evolve over time, so it's advisable to regularly check for updates from the Home Office or seek legal advice to stay compliant with current regulations. MHA's HR Solutions team can support with auditing how compliant your business is for Right to Work checks, completing Right to Work checks and advising on Immigration matters for individuals requiring visas to work in the UK.

Upcoming changes to Carer's Leave regulations

The amended Carer's Leave Act 2023 is due to come in to force on 6 April 2024. The amendment to the regulations set out a statutory scheme under which eligible employees can apply for up to one week of unpaid carer's leave, in any 12-month period. Key features include:

- The right is granted from the first day of employment.
- It is applicable to employees caring for a dependant with long-term care needs or those desiring time off to provide or arrange care for their dependant.
- Requests can be for consecutive or non-consecutive half-days or full days.

- Employees are required to provide written notice of their intention to take carer's leave, confirming their entitlement and giving notice at least twice the length of the requested leave, or three days if longer.
- Employers can defer a request if it would unduly disrupt business operations. In such cases, employers must provide notice before the scheduled leave, explain the necessity of the postponement, and allow the leave to be taken within one month of the initially requested start date. Rescheduling should be a collaborative decision with the employee.
- Employees are safeguarded against detriment or dismissal due to taking or expressing an intention to take carer's leave, or if the employer believes they are likely to do so.

It is advisable that any relevant existing policies and procedures be updated in readiness for the change in the regulations, and that employees are notified of the changes.

Flexible working



In Summer 2023, the Employment Relations (Flexible Working) Act 2023, received Royal Assent, and it is expected to become effective from Summer 2024. The revised Act includes the following changes to the current Flexible Working Requests process:

- 1** Employees, who are currently limited to making one request within a 12-month period, will now be allowed to make two requests.
- 2** The current requirement for employees to outline the anticipated impact of their request on the employer and suggest potential accommodations will no longer apply.
- 3** Employers, currently obligated to meet with the employee when considering a request, will now directly consult with the employee. If declining the request, the employer must provide reasons and allow the employee an opportunity

to present counterarguments based on statutory grounds such as the need for continuity or inability to provide working during requested times.

- 4** The timeframe for concluding a Flexible Working Request process will be reduced from three months to two.
- 5** Secondary legislation (The Flexible Working (Amendment) Regulations 2023) will also make Flexible Working Requests a “day one” right.

Employers should be aware that refusing a request on statutory grounds, without reasonable justification or full exploration of alternative options, may expose them to claims of indirect sex discrimination.

For assistance, MHA's HR Solutions team can create a Flexible Working Requests policy, offer guidance on individual requests, and provide relevant template letters for conducting meetings.

MHA Not for Profit Contacts



Sudhir Singh

Head of MHA Not for Profit, Partner
E: sudhir.singh@mha.co.uk



London & South East

Stuart McKay, Partner
E: stuart.mckay@mha.co.uk



North West

Nicola Mason, Director
E: nicola.mason@mooreandsmalley.co.uk



South West

Bianca Silva
Head of Education, Partner
E: bianca.silva@mha.co.uk



North East

Rebecca Hughes, Partner
E: rebecca.hughes@mha.co.uk



London

Chris Rising, Internal Audit Director
E: chris.rising@mha.co.uk



South East

Cara Miller, Partner
E: cara.miller@mha.co.uk



Cardiff

Julia Mortimer, Partner
E: julia.mortimer@mha.co.uk



Swansea

Rachel Doyle, Partner
E: rachel.doyle@mha.co.uk

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