
STATUTORY INSTRUMENTS

2022 No. 1109

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

Saving provision

5.—(1) In this regulation—

“the 2008 Regulations” means the Charities (Failed Appeals) Regulations 2008(1);

“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(2) against a section 69(1)(a) order, or
- (b) proceedings on an application for judicial review of a decision of the Charity Commission(3) 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.

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- (1) 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.
 - (2) 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.
 - (3) The Charity Commission is defined by Schedule 1 to the Interpretation Act 1978 (c. 30.).

(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;
 - (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.