



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Draft Charities Bill



Draft Charities Bill

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

May 2004

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Foreword from the Home Secretary



When the Government published its response to the Strategy Unit's review of the legal and regulatory framework for charities and the not-for-profit sector in July 2003, I gave an undertaking that we would publish a Charities Bill in draft as soon as possible. I know that the voluntary and community sector and other stakeholders have been eagerly awaiting the emergence of the draft Bill since then and I am pleased that we are now publishing it for pre-legislative scrutiny.

The Government recognises and greatly values the role the voluntary and community sector plays as a force for good in society. One of the most important contributions Government can make to facilitating and promoting the activities of the sector is by creating a modern legislative framework for it, which will enable the sector to operate in a dynamic and innovative fashion and which will preserve and build on the very considerable trust and esteem in which the public hold the sector. We believe that the measures contained in the draft Bill meet those aims. They closely reflect and take forward our response to the Strategy Unit review. They take account of further helpful contributions which we have received from key stakeholders and, in particular, the responses to the consultation we conducted on the regulation of public collections. We are grateful for all the assistance we have had with finalising the detail of the proposals now contained in the draft Bill. This document also contains explanatory notes on the draft clauses and a regulatory impact assessment.

The Government readily acknowledges the complexity of charity law and the challenges we face in attempting to devise a legal and regulatory framework which meets the needs of what is a continually evolving area of our national life. The draft Bill doesn't represent a definitive answer for a diverse sector. We need to test and refine our proposals before legislation is introduced into Parliament. We welcome the very important role that will be played by the Joint Committee who will examine our proposals in some detail. The Members of the Committee bring to their task of scrutiny a wealth of experience of the

work of the sector, and an understanding of the barriers to its further expansion and how these might best be tackled without compromising its integrity. The Committee will, I am sure, seek views from a wide audience and will take evidence from the key players in the sector. The draft legislation will receive rigorous and constructive examination. The outcome of the Committee's deliberations will be of considerable assistance to us in refining our proposals for the finalised Bill. I look forward to receiving their report.

David Blunkett

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NOTE ON THE JOINT COMMITTEE

The two Houses of Parliament have established a Joint Committee on the Draft Charities Bill. The remit of the Committee is to consider the draft Bill, and to report on it to both Houses by the end of September 2004. The Committee will proceed in the normal manner of Select Committees, by holding hearings and receiving written evidence. The Committee will publish a report making recommendations.

The Joint Committee will invite interested organisations and individuals to submit written evidence. The Committee is working to a very tight timetable. Oral evidence has to be taken in June. If written evidence is going to influence those sessions it needs to be sent in as soon as possible - **by 21 June** if possible. Submissions received after that date will still be considered by the Committee but are bound to have less influence on the inquiry.

Submissions should take the form of a memorandum and should have numbered paragraphs. An indicative length would be 1,000 - 1,200 words, memoranda which exceed five pages should be accompanied by a one-page summary. Submissions may be accompanied by background material (perhaps already published elsewhere) which would not be reprinted by the Joint Committee. Written evidence should be sent, if possible in MS Word or rich text format, by e-mail to scrutiny@parliament.uk. A single hard copy (single-sided, unbound) should also be sent to Francene Graham, Scrutiny Unit, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. Fax 020 7219 838.

Details of the Joint Committee's inquiry will be available on the website http://www.parliament.uk/parliamentary_committees/jcdchb.cfm

Draft Charities Bill

Charities Bill

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A
B I L L

TO

Amend the law about charities; to make further provision about fund-raising carried on in connection with charities and other institutions; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

MEANING OF "CHARITY" AND "CHARITABLE PURPOSE"

1 Meaning of "charity"

- (1) For the purposes of the law of England and Wales, "charity" means a body or trust which— 5
- (a) is established for charitable purposes only, and
 - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.
- (2) Subsection (1) does not apply in relation to any reference to a charity in any other enactment if the term is defined by or by virtue of any such enactment. 10
- (3) A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601 (c. 4) or the preamble to it shall be construed as a reference to a charity as defined by this section.

2 Meaning of "charitable purpose"

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which— 15
- (a) falls within subsection (2), and
 - (b) is for the public benefit (see section 3).
- (2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes— 20

-
- (a) the prevention or relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) the advancement of health;
 - (e) the advancement of citizenship or community development; 5
 - (f) the advancement of the arts, heritage or science;
 - (g) the advancement of amateur sport;
 - (h) the advancement of human rights, conflict resolution or reconciliation;
 - (i) the advancement of environmental protection or improvement;
 - (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; 10
 - (k) the advancement of animal welfare;
 - (l) any other purposes within subsection (4).
- (3) In subsection (2) –
- (a) paragraph (d) includes the prevention or relief of sickness, disease or human suffering; 15
 - (b) paragraph (e) includes –
 - (i) rural or urban regeneration, and
 - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities, 20
 - (c) in paragraph (g) “sport” means sport which involves physical skill and exertion; and
 - (d) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.
- (4) The purposes within this subsection (see subsection (2)(l)) are – 25
- (a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law;
 - (b) any purposes that may reasonably be regarded as analogous to any purposes falling within any of those paragraphs or paragraph (a) above; and 30
 - (c) any purposes that may reasonably be regarded as analogous to any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.
- (5) Where any of the terms used in any of paragraphs (a) to (f) or (h) to (k) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision. 35
- (6) In this section –
- “charity law” means the law relating to charities in England and Wales; and 40
 - “existing charity law” means charity law as in force immediately before the day on which this section comes into force.
- 3 The “public benefit” test**
- (1) This section applies in connection with the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose. 45

- (2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In this Part any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales. 5
- (4) Subsection (3) applies subject to subsection (2).

PART 2

REGULATION OF CHARITIES

CHAPTER 1 10

THE CHARITY COMMISSION

Establishment of Charity Commission

4 The Charity Commission

- (1) After section 1 of the Charities Act 1993 (c. 10) ("the 1993 Act") insert—
"1A The Charity Commission 15
 - (1) There shall be a body corporate to be known as the Charity Commission for England and Wales (in this Act referred to as "the Commission").
 - (2) In Welsh the Commission shall be known as "Comisiwn Elusennau ar gyfer Lloegr a Cymru". 20
 - (3) The functions of the Commission shall be performed on behalf of the Crown.
 - (4) The provisions of Schedule 1A to this Act shall have effect with respect to the Commission."
- (2) Schedule 1 (which inserts the new Schedule 1A into the 1993 Act) has effect. 25
- (3) The office of Charity Commissioner for England and Wales is abolished.
- (4) The functions of the Charity Commissioners for England and Wales and their property, rights and liabilities are by virtue of this subsection transferred to the Charity Commission for England and Wales.
- (5) Any enactment passed or made before the coming into force of this section has effect, so far as necessary for the purposes of or in consequence of the transfer effected by subsection (4), as if any reference to the Charity Commissioners for England and Wales or to any Charity Commissioner for England and Wales were a reference to the Charity Commission for England and Wales. 30
- (6) Section 1 of, and Schedule 1 to, the 1993 Act cease to have effect. 35
- (7) Schedule 2 (which contains supplementary provision relating to the establishment of the Charity Commission for England and Wales) has effect.

Commission’s general objectives, functions etc.

5 The Commission’s objectives, general functions and duties

After section 1A of the 1993 Act (inserted by section 4 above) insert—

“1B The Commission’s regulatory objectives

- (1) The Commission has the regulatory objectives set out in subsection (2). 5
- (2) The regulatory objectives are—
 - 1. The public confidence objective.
 - 2. The compliance objective.
 - 3. The social and economic impact objective.
 - 4. The accountability objective. 10
- (3) Those objectives are defined as follows—
 - 1. The public confidence objective is to increase public trust and confidence in charities.
 - 2. The compliance objective is to increase compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. 15
 - 3. The social and economic impact objective is to enable and encourage charities to maximise their social and economic impact.
 - 4. The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public. 20

1C The Commission’s general functions

- (1) The Commission has the general functions set out in subsection (2).
- (2) The general functions are—
 - 1. Determining whether institutions are, or are not, charities. 25
 - 2. Encouraging and facilitating the better administration of charities.
 - 3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein. 30
 - 4. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its regulatory objectives.
 - 5. Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission’s functions or meeting any of its regulatory objectives. 35
- (3) The Commission’s fourth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under section 3 above. 40
- (4) The Commission’s fifth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions. 45

1D The Commission’s general duties

- (1) The Commission has the general duties set out in subsection (2).
- (2) The general duties are –
 1. So far as is reasonably practicable the Commission must, in performing its functions, act in a way –
 - (a) which is compatible with its regulatory objectives, and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
 2. In performing its functions the Commission must have regard to the need to use its resources in the most efficient and economic way.
 3. In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

1E The Commission’s incidental powers

- (1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions.
- (2) However, nothing in this Act authorises the Commission –
 - (a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or
 - (b) otherwise to be directly involved in the administration of a charity.
- (3) Subsection (2) does not affect the operation of section 19A or 19B below (power of Commission to give directions as to action to be taken or as to application of charity property).”

CHAPTER 2

THE CHARITY APPEAL TRIBUNAL

6 The Charity Appeal Tribunal

- (1) After section 2 of the 1993 Act insert –

“PART 1A

THE CHARITY APPEAL TRIBUNAL

2A The Charity Appeal Tribunal

- (1) There shall be a tribunal to be known as the Charity Appeal Tribunal (in this Act referred to as “the Tribunal”).
- (2) The provisions of Schedule 1B to this Act shall have effect with respect to the Tribunal.

2B Practice and procedure

- (1) On an appeal to the Tribunal the Commission shall be the respondent.

-
- (2) In determining an appeal the Tribunal –
- (a) shall consider afresh the decision, direction or order appealed against, and
 - (b) may take into account evidence which was not available to the Commission. 5
- (3) The Lord Chancellor may make rules –
- (a) regulating the exercise of the right to appeal to the Tribunal,
 - (b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.
- (4) Rules under subsection (3)(a) above may, in particular, make provision specifying – 10
- (a) steps which a person must take before appealing to the Tribunal (and the period within which those steps must be taken),
 - (b) the period following the Commission’s final decision, direction or order within which such appeals may be made, 15
 - (c) the manner in which such appeals are to be made.
- (5) Rules under subsection (3)(b) above may, in particular, make provision –
- (a) for the President or a legal member of the Tribunal (see paragraph 1(2)(a) of Schedule 1B to this Act) to determine interlocutory or ancillary matters, 20
 - (b) about the disclosure of documents,
 - (c) about evidence,
 - (d) about the admission of members of the public to proceedings,
 - (e) about the representation of parties to proceedings, 25
 - (f) about the withdrawal of applications,
 - (g) about the recording and promulgation of decisions,
 - (h) about the award of costs.
- (6) Rules of the Lord Chancellor under this section – 30
- (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Section 86(3) below applies in relation to rules of the Lord Chancellor under this section as it applies in relation to regulations and orders of the Secretary of State under this Act. 35
- 2C Appeal from Tribunal**
- (1) A party to proceedings before the Tribunal may appeal to the High Court on a point of law against a decision of the Tribunal.
- (2) An appeal under this section may be brought only with the permission of – 40
- (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the High Court.
- (3) For the purposes of subsection (1) above –
- (a) the Attorney General is to be treated as a party to all proceedings before the Tribunal, and 45

- (b) rules under section 2B(3) above may include provision as to who else is, and is not, to be treated as a party to proceedings before the Tribunal.

2D Intervention by Attorney General

- (1) This section applies to any proceedings – 5
 - (a) before the Tribunal, or
 - (b) on an appeal from the Tribunal, to which the Attorney General is not a party.
- (2) The Tribunal or, in the case of an appeal from the Tribunal, the court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General. 10
- (3) A direction under subsection (2) may be made by the Tribunal or court –
 - (a) of its own motion, or
 - (b) on the application of any party to the proceedings. 15
- (4) The Attorney General may –
 - (a) intervene in the proceedings in such manner as he thinks necessary or expedient, and
 - (b) argue before the Tribunal or court any question in relation to the proceedings which the Tribunal or court considers it necessary to have fully argued. 20
- (5) Subsection (4) applies whether or not the Tribunal or court has given a direction under subsection (2).”
- (2) Schedule 3 (which inserts the new Schedule 1B into the 1993 Act) has effect.
- (3) Schedule 4 (which contains provision about appeals to the Tribunal against decisions, directions and orders of the Charity Commission) has effect. 25

CHAPTER 3

REGISTRATION OF CHARITIES

General

- 7 Registration of charities** 30
 - For section 3 of the 1993 Act substitute –
 - “3 Register of charities**
 - (1) There shall continue to be a register of charities, which shall be kept by the Charity Commission.
 - (2) The register shall be kept by the Commission in such manner as it thinks fit. 35
 - (3) The register shall contain –
 - (a) the name of every charity registered in accordance with section 3A below (registration), and

-
- (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.
- (4) The Commission shall remove from the register –
- (a) any institution which it considers is no longer a charity, and
 - (b) any charity which has ceased to exist or does not operate. 5
- (5) If the removal of an institution under subsection (4)(a) above is due to any change in its trusts, the removal shall take effect from the date of that change.
- (6) Where the Commission intends to remove from the register a charity constituted as a CIO, it must give 3 months' notice of its intention – 10
- (a) in such manner, and
 - (b) to such persons or descriptions of persons, as may be prescribed by regulations made by the Secretary of State.
- (7) If a charity is for the time being registered under section 3A(6) below (voluntary registration), the charity – 15
- (a) may be removed from the register at any time, and
 - (b) shall be so removed if the charity so requests.
- (8) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times. 20
- (9) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 3B below (applications for registration) shall, so long as the charity remains on the register –
- (a) be kept by the Commission, and
 - (b) be open to public inspection at all reasonable times, 25
- except to the extent that regulations made by the Secretary of State otherwise provide.
- (10) Where any information contained in the register is not in documentary form, subsection (8) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times. 30
- (11) If the Commission so determines, subsection (8) shall not apply to any particular information contained in the register that is specified in the determination.
- 3A Registration of charities** 35
- (1) Every charity must be registered in the register of charities unless subsection (2) below applies to it.
- (2) The following are not required to be registered –
- (a) any exempt charity (see Schedule 2 to this Act);
 - (b) any charity which for the time being – 40
 - (i) is permanently or temporarily excepted by order of the Commission, and
 - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000;
 - (c) any charity which for the time being – 45

- (i) is, or is of a description, permanently or temporarily excepted by regulations made by the Secretary of State, and
 - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000; and 5
 - (d) any charity (other than one constituted as a CIO) whose gross income does not exceed £5,000.
- (3) For the purposes of subsection (2)(b) above –
- (a) any order made or having effect as if made by the Commission under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day has effect as from that day as if made under subsection (2)(b) (and may be varied or revoked accordingly); and 10
 - (b) no order may be made under subsection (2)(b) so as to except on or after the appointed day any charity that was not excepted immediately before that day. 15
- (4) For the purposes of subsection (2)(c) above –
- (a) any regulations made or having effect as if made by the Secretary of State under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day have effect as from that day as if made under subsection (2)(c) (and may be varied or revoked accordingly); 20
 - (b) such regulations shall be made under subsection (2)(c) as are necessary to secure that all of the formerly specified institutions are excepted under that provision (subject to compliance with any conditions of the exception and the financial limit mentioned in that provision); but 25
 - (c) otherwise no regulations may be made under subsection (2)(c) so as to except on or after appointed day any description of charities that was not excepted immediately before that day. 30
- (5) In subsection (4)(b) above “formerly specified institutions” means –
- (a) any institution falling within section 3(5B)(a) or (b) of this Act as in force immediately before the appointed day (certain educational institutions); or
 - (b) any institution ceasing to be an exempt charity as a result of the amendments made by section 9 of the Charities Act 2005. 35
- (6) A charity within –
- (a) subsection (2)(b) or (c) above, or
 - (b) subsection (2)(d) above,
- may, at its request, be registered in the register of charities. 40
- (7) The Secretary of State may by order amend –
- (a) subsection (2)(b) and (c) above, or
 - (b) subsection (2)(d) above,
- by substituting a different sum for the sum for the time being specified there. 45
- (8) The Secretary of State may only make an order under subsection (7) above –

-
- (a) so far as it amends subsection (2)(b) and (c), if he considers it expedient to so with a view to reducing the scope of the exception provided by those provisions;
- (b) so far as it amends subsection (2)(d), if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception provided by that provision. 5
- (9) In this section “the appointed day” means the day appointed for the coming into force of section 7 of the Charities Act 2005 (registration of charities). 10
- (10) In this section any reference to a charity’s “gross income” shall be construed, in relation to a particular time –
- (a) as a reference to the charity’s gross income in its financial year immediately preceding that time, or
- (b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity’s gross income in such financial year of the charity as is specified in the determination. 15
- (11) The following provisions of this section –
- (a) subsection (2)(b) and (c), 20
- (b) subsections (3) to (5), and
- (c) subsections (6)(a), (7)(a), (8)(a) and (9),
- shall cease to have effect on such day as the Secretary of State may by order appoint for the purposes of this subsection.
- 3B Duties of trustees in connection with registration 25**
- (1) Where a charity required to be registered by virtue of section 3A(1) above is not registered, it is the duty of the charity trustees –
- (a) to apply to the Commission for the charity to be registered, and
- (b) to supply the Commission with the required documents and information. 30
- (2) The “required documents and information” are –
- (a) copies of the charity’s trusts, or (if they are not set out in any extant document) particulars of them,
- (b) such other documents or information as may be prescribed by regulations made by the Secretary of State, and 35
- (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees) –
- (a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and 40
- (b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts. 45
- (4) Nothing in subsection (3) above requires a person –

- (a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court,
 - (b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or
 - (c) if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document. 5
- (5) Where a copy of a document relating to a registered charity is not required to be supplied to the Commission as the result of subsection (4) above, a copy of the document shall be open to inspection under section 3(9) above as if supplied to the Commission under this section.” 10

8 Interim changes in threshold for registration of small charities

- (1) At any time before the commencement of section 7 above, the Secretary of State may by order amend section 3 of the 1993 Act (the register of charities) so as to— 15
- (a) replace section 3(5)(c) (threshold for registration of small charities) with a provision referring to a charity whose gross income does not exceed such sum as is prescribed in the order, and
 - (b) define “gross income” for the purposes of that provision.
- (2) An order under subsection (1) is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (3) Subsection (1) does not affect the existing power under section 3(12) of that Act to increase the financial limit specified in section 3(5)(c).
- (4) This section ceases to have effect on the day on which section 7 above comes into force. 25

Exempt charities: registration and regulation

9 Changes in exempt charities

- (1) Schedule 2 to the 1993 Act (exempt charities) is amended as follows.
- (2) In paragraph (a) (general exemption by reference to law existing prior to Charities Act 1960) after “1855” insert “(but see Note 1)”. 30
- (3) In paragraph (b) (certain specified universities and schools)—
- (a) for “the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle,” substitute “any college or hall in the university of Newcastle and”, and
 - (b) omit “and the colleges of Winchester and Eton”. 35
- (4) Before paragraph (i) insert—
- “(h) a higher education corporation;”.
- (5) After paragraph (i) insert—
- “(j) a further education corporation;”.

-
- (6) In paragraph (w) (exemption for institutions administered by or on behalf of institutions exempted under preceding provisions) after “last-mentioned institution” insert “(but see Note 2)”.
- (7) Omit paragraph (x) (Church Commissioners and institutions administered by them). 5
- (8) In paragraph (y) (industrial and provident societies etc.) for the words from “and any” onwards substitute “and which is also registered in the register of social landlords under Part 1 of the Housing Act 1996;”.
- (9) Omit paragraph (zb) (the National Lottery Charities Board).
- (10) At the end insert— 10
“Notes
1. Paragraph (a) above does not include—
 (a) any institution whose property consists of or includes property falling within the Methodist Church Funds Act 1960,
 (b) the representative body of the Welsh Church or property administered by it, or 15
 (c) any institution whose property consists of or includes property falling within the Church Funds Investment Measure 1958.
2. Paragraph (w) above does not include any students’ union.”
- (11) In section 24 of the 1993 Act (schemes to establish common investment funds), in subsection (8) (fund is to be a charity and, if the scheme admits only exempt charities, an exempt charity) omit the words from “; and if the scheme” onwards. 20
- 10 Increased regulation of exempt charities under 1993 Act**
- The 1993 Act is amended in accordance with Schedule 5 (which has effect for increasing the extent to which exempt charities are subject to regulation under that Act). 25
- 11 General duty of principal regulator in relation to exempt charity**
- (1) This section applies to any body or Minister of the Crown who is the principal regulator in relation to an exempt charity. 30
- (2) The body or Minister must do all that it or he reasonably can to meet the compliance objective in relation to the charity.
- (3) The compliance objective is to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity. 35
- (4) In this section—
 (a) “charity trustees” and “exempt charity” have the same meaning as in the 1993 Act; and
 (b) “principal regulator”, in relation to an exempt charity, means such body or Minister of the Crown as is prescribed as its principal regulator by regulations made by statutory instrument by the Secretary of State. 40
- (5) Regulations under subsection (4)(b) may make such amendments of any enactment as the Secretary of State considers appropriate for the purpose of

facilitating, or otherwise in connection with, the discharge by a principal regulator of the duty under subsection (2).

- (6) No regulations may be made under subsection (4)(b) unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

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CHAPTER 4

APPLICATION OF PROPERTY CY-PRÈS

Cy-près occasions

12 Application cy-près by reference to current circumstances

- (1) Section 13 of the 1993 Act (occasions for applying property cy-près) is amended as follows. 10
- (2) In subsection (1)(c), (d) and (e)(iii), for “the spirit of the gift” substitute “the appropriate considerations”.
- (3) After subsection (1) insert –
- “(1A) In subsection (1) above “the appropriate considerations” means – 15
- (a) (on the one hand) the spirit of the gift concerned, and
 - (b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.”

13 Application cy-près of gifts by donors unknown or disclaiming

- (1) Section 14 of the 1993 Act (application cy-près of gifts of donors unknown or disclaiming) is amended as follows. 20
- (2) In subsection (4) (power of court to direct that property is to be treated as belonging to donors who cannot be identified) after “court”, in both places, insert “or the Commission”.

14 Application cy-près of gifts made in response to certain solicitations

25

After section 14 of the 1993 Act insert –

“14A Application cy-près of gifts made in response to certain solicitations

- (1) This section applies to property given –
- (a) for specific charitable purposes, and
 - (b) in response to a solicitation within subsection (2) below. 30
- (2) A solicitation is within this subsection if –
- (a) it is made for specific charitable purposes, and
 - (b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift. 35

- (3) A “relevant declaration” is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, he wishes the trustees holding the property to give him the opportunity to request the return of the property in question (or a sum equal to its value). 5
- (4) Subsections (5) and (6) below apply if—
- (a) a person has given property as mentioned in subsection (1) above,
 - (b) the specific charitable purposes fail, and
 - (c) the donor has made a relevant declaration. 10
- (5) The trustees holding the property must take the prescribed steps for the purpose of—
- (a) informing the donor of the failure of the purposes,
 - (b) enquiring whether he wishes to request the return of the property (or a sum equal to its value), and 15
 - (c) if within the prescribed period he makes such a request, returning the property (or such a sum) to him.
- (6) If those trustees have taken all appropriate prescribed steps but—
- (a) they have failed to find the donor, or
 - (b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value), 20
- section 14(1) above shall apply to the property as if it belonged to a donor within paragraph (b) of that subsection (application of property where donor has disclaimed right to return of property).
- (7) If— 25
- (a) a person has given property as mentioned in subsection (1) above,
 - (b) the specific charitable purposes fail, and
 - (c) the donor has not made a relevant declaration,
- section 14(1) above shall similarly apply to the property as if it belonged to a donor within paragraph (b) of that subsection. 30
- (8) For the purposes of this section—
- (a) “solicitation” means a solicitation made in any manner and however communicated to the persons to whom it is addressed,
 - (b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and 35
 - (c) where any appeal consists of both solicitations that are accompanied by statements within subsection (2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless he proves otherwise. 40
- (9) Subsections (7) to (10) of section 14 shall apply for the purposes of this section as they apply for the purposes of section 14.”

Schemes

15 Cy-près schemes

(1) After section 14A of the 1993 Act (inserted by section 14 above) insert –

“14B Cy-près schemes

(1) The power of the court or the Commission to make schemes for the application of property cy-près shall be exercised in accordance with this section. 5

(2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied – 10

(a) for such charitable purposes, and

(b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,

as it considers appropriate, having regard to the matters set out in subsection (3). 15

(3) The matters are –

(a) the spirit of the original gift,

(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and 20

(c) the need for the relevant charity to be able to make a significant social and economic impact.

The “relevant charity” means the charity by or on behalf of which the property is to be applied under the scheme.

(4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes. 25

(5) In this section references to property given include the property for the time being representing the property originally given or property derived from it. 30

(6) In this section references to the transfer of property to a charity are references to its transfer –

(a) to the charity, or 35

(b) to the charity trustees, or

(c) to any trustee for the charity, or

(d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the scheme may provide.” 40

(2) The amendment made by subsection (1) applies to property given for charitable purposes whether before or on or after the day on which this section comes into force.

CHAPTER 5

ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

Directions by Commission

16 Power to give specific directions for protection of charity

- (1) After section 19 of the 1993 Act insert – 5

“19A Power to give specific directions for protection of charity

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 8 above with respect to any charity, it is satisfied as mentioned in section 18(1)(a) or (b) above.

- (2) The Commission may by order direct – 10
- (a) the charity trustees,
 - (b) any trustee for the charity,
 - (c) any officer or employee of the charity, or
 - (d) (if a body corporate) the charity itself,

to take any action specified in the order which the Commission 15
 considers to be expedient in the interests of the charity.

- (3) An order under this section –
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but 20
 - (b) may not require any action to be taken which is expressly prohibited by any Act of Parliament or by the trusts of the charity or is inconsistent with its purposes.

- (4) Anything done by a person or body under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.” 25

- (2) The amendment made by subsection (1) applies whether the inquiry under section 8 of the 1993 Act was instituted before or on or after the day on which this section comes into force. 30

17 Power to direct application of charity property

After section 19A of the 1993 Act (inserted by section 16 above) insert –

“19B Power to direct application of charity property

- (1) This section applies where the Commission is satisfied –
- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity, and 35
 - (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity. 40

- (2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.
- (3) An order under this section –
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but 5
 - (b) may not require any action to be taken which is expressly prohibited by any Act of Parliament or by the trusts of the charity.
- (4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.” 10

Publicity relating to schemes

18 Relaxation of publicity requirements relating to schemes etc.

For section 20 of the 1993 Act substitute – 15

“20 Publicity relating to schemes

- (1) The Commission may not –
- (a) make any order under this Act to establish a scheme for the administration of a charity, or
 - (b) submit such a scheme to the court or the Secretary of State for an order giving it effect, 20
- unless, before doing so, the Commission has complied with the publicity requirements in subsection (2) below.
- This is subject to any disapplication of those requirements under subsection (4) below. 25
- (2) The publicity requirements are –
- (a) that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice;
 - (b) that, in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish or in a community in Wales, the Commission must communicate a draft of the scheme to the parish or community council (or, where a parish has no council, to the chairman of the parish meeting). 30
- (3) The time when any such notice is given or any such communication takes place is to be decided by the Commission. 35
- (4) The Commission may determine that either or both of the publicity requirements is or are not to apply in relation to a particular scheme if it is satisfied that –
- (a) by reason of the nature of the scheme, or 40
 - (b) for any other reason,
- compliance with the requirement or requirements is unnecessary.
- (5) Where the Commission gives public notice of any proposals under this section, the Commission –

-
- (a) must take into account any representations made to it within the period specified in the notice, and
- (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable. 5
- (6) Where the Commission makes an order under this Act to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times – 10
- (a) at the Commission’s office, and
- (b) if the charity is a local charity, at some convenient place in the area of the charity.
- Paragraph (b) does not apply if the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally.
- (7) Any public notice of any proposals which is to be given under this section – 15
- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission think sufficient and appropriate, and
- (b) is to be given in such manner as the Commission think sufficient and appropriate. 20

20A Publicity for orders relating to trustees or other individuals

- (1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than – 25
- (a) an order relating to the official custodian, or
- (b) an order under section 18(1)(ii) above,
- unless, before doing so, the Commission has complied with the publicity requirement in subsection (2) below.
- This is subject to any disapplication of that requirement under subsection (4) below. 30
- (2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.
- (3) The time when any such notice is given is to be decided by the Commission. 35
- (4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.
- (5) Before the Commission makes an order under this Act to remove without his consent – 40
- (a) a charity trustee or trustee for a charity, or
- (b) an officer, agent or employee of a charity,
- the Commission must give him not less than one month’s notice of its proposals, inviting representations to be made to it within a period specified in the notice. 45

This does not apply if the person cannot be found or has no known address in the United Kingdom.

- (6) Where the Commission gives notice of any proposals under this section, the Commission—
- (a) must take into account any representations made to it within the period specified in the notice, and 5
 - (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.
- (7) Any notice of any proposals which is to be given under this section— 10
- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission think sufficient and appropriate, and
 - (b) (in the case of a public notice) is to be given in such manner as the Commission think sufficient and appropriate. 15
- (8) Any notice to be given under subsection (5)—
- (a) may be given by post, and
 - (b) if given by post, may be addressed to the recipient’s last known address in the United Kingdom.
- 20B Publicity relating to orders subject to appeal 20**
- (1) Where the Commission makes an order against which an appeal may be brought under section 19C above, the Commission must either—
- (a) give public notice of the order, or
 - (b) give notice of it to every person entitled to appeal against it under that section, 25
- unless the Commission are satisfied that for any reason it is unnecessary to do either of those things.
- (2) Any notice of any order which is to be given under subsection (1) above—
- (a) is to contain such particulars of the order, or such directions for obtaining information about it, as the Commission think sufficient and appropriate, and 30
 - (b) (in the case of a public notice) is to be given in such manner as the Commission think sufficient and appropriate.
- (3) Any notice to be given under subsection (1)(b) above— 35
- (a) may be given by post, and
 - (b) if given by post, may be addressed to the recipient’s last known address in the United Kingdom.”

Common investment schemes

- 19 Participation of Scottish and Northern Irish charities in common investment schemes etc. 40**
- (1) After section 24(3) of the 1993 Act (common investment schemes) insert—
- “(3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the

- participating charities) to such extent as the trustees appointed to manage the fund may determine.
- (3B) In this section “appropriate body” means –
- (a) a recognised body within the meaning of Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, or 5
 - (b) a charity within the meaning of the Charities Act (Northern Ireland) 1964,
- and, in the application of subsections (1) and (4) to (6) above in relation to a scheme which contains provisions authorised by subsection (3A) above, “charity” includes an appropriate body.” 10
- (2) In section 25(2) of that Act (application of provisions of section 24 to common deposit funds) for “subsections (2) to (4)” substitute “subsections (2), (3) and (4)”.
- (3) At the end of section 25 add –
- “(4) A common deposit scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine. 15
- (5) In this section “appropriate body” means –
- (a) a recognised body within the meaning of Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, or 20
 - (b) a charity within the meaning of the Charities Act (Northern Ireland) 1964,
- and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4) above, “charity” includes an appropriate body. 25
- (6) “The relevant provisions” are –
- (a) subsection (1) above, and
 - (b) subsections (4) and (6) of section 24 above, as they apply in accordance with subsections (2) and (3) above.” 30

*Advice and guidance***20 Power to give advice and guidance**

For section 29 of the 1993 Act substitute –

“29 Power to give advice and guidance

- (1) The Commission may, on the written application of a person to whom subsection (2) below applies, give that person its opinion or advice in relation to any matter – 35
- (a) relating to the performance of any duties of his in relation to the charity concerned, or
 - (b) otherwise relating to the proper administration of the charity. 40
- (2) This subsection applies to –
- (a) any charity trustee,
 - (b) any trustee for a charity, or

- (c) any officer, agent or employee of a charity.
- (3) A person who acts in accordance with any opinion or advice given by the Commission under subsection (1) above (whether to him or to another person to whom subsection (2) applies) is to be taken, as regards his responsibility for so acting, to have acted –
 - (a) in accordance with his trust (if he is a trustee), or
 - (b) in accordance with the trusts of the charity (in any other case).
- (4) But subsection (3) above does not apply to a person if, when so acting, either –
 - (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or
 - (b) a decision of the court has been obtained on the matter or proceedings are pending to obtain one.
- (5) The Commission may, in connection with its second general function mentioned in section 1C(2) above, give such advice or guidance with respect to the administration of charities as it considers appropriate.
- (6) Any advice or guidance so given may relate to –
 - (a) charities generally,
 - (b) any class of charities, or
 - (c) any particular charity,and may take such form, and be given in such manner, as the Commission considers appropriate.”

Powers of entry

21 Power to enter premises

After section 31 of the 1993 Act insert – 25

“31A Power to enter premises

- (1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by an employee of the Commission, that there are reasonable grounds for believing that each of the conditions in subsection (2) below is satisfied. 30
- (2) The conditions are –
 - (a) that an inquiry has been instituted under section 8 above;
 - (b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or furnished under section 9(1) above; and 35
 - (c) that, if the Commission were to make an order requiring the document or information to be so produced or furnished –
 - (i) the order would not be complied with, or
 - (ii) the document or information would be removed, 40
tampered with, concealed or destroyed.
- (3) A warrant under this section is a warrant authorising the employee of the Commission named in it –
 - (a) to enter and search the premises specified in it;

- (b) to take such other persons with him as the Commission considers are needed to assist him in doing anything that he is authorised to do under the warrant;
- (c) to take possession of any documents which appear to fall within subsection (2)(b) above, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents; 5
- (d) to take possession of any computer disc or other electronic storage device which appears to contain information falling within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information. 10
- (e) to take copies of, or extracts from, any such documents or information;
- (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found; 15
- (g) to require any such person to give him such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (e) above. 20
- (4) Entry and search under such a warrant must be at a reasonable hour.
- (5) The employee of the Commission authorised under such a warrant (“the authorised person”) must also comply with subsections (6) and (7) below.
- (6) The authorised person must, if required to do so, produce— 25
- (a) the warrant, and
- (b) documentary evidence that he is an employee of the Commission,
- for inspection by the occupier of the premises or anyone acting on his behalf. 30
- (7) The authorised person must make a written record of—
- (a) the date and time of his entry on the premises;
- (b) the number of persons (if any) who accompanied him onto the premises;
- (c) the period for which he (and any such persons) remained on the premises; 35
- (d) what he (and any such persons) did while on the premises; and
- (e) any document or device of which he took possession while there.
- (8) Any document or device of which possession is taken under this section may be retained by the Commission for such period as appears to it to be necessary for the purposes of the relevant inquiry under section 8 above. 40
- (9) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable— 45
- (a) to the person from whose possession it was taken, or

- (b) to any of the charity trustees of the charity to whom it belonged or related.
- (10) A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence and liable on summary conviction – 5
 - (a) to imprisonment for a term not exceeding 3 months, or
 - (b) to a fine not exceeding level 5 on the standard scale, or both.”

CHAPTER 6

AUDIT OR EXAMINATION OF ACCOUNTS

10

22 Annual audit or examination of accounts of unincorporated charities

- (1) Section 43 of the 1993 Act (annual audit or examination of accounts of unincorporated charities) is amended as follows.
- (2) For subsection (1) substitute – 15
 - “(1) Subsection (2) below applies to a financial year of a charity if –
 - (a) the charity’s gross income in that year exceeds £500,000; or
 - (b) the charity’s gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.
 - “The accounts threshold” means £100,000 or such other sum as is for the time being specified in section 42(3) above.” 20
- (3) In subsection (2) (accounts required to be audited) for paragraph (a) substitute –
 - “(a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the charity were a company, or”. 25
- (4) In subsection (3) (independent examinations instead of audits) –
 - (a) for the words from “and its gross income” to “subsection (4) below)” substitute “but its gross income in that year exceeds £10,000,”; and
 - (b) at the end insert – 30
 - “This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.”
- (5) After subsection (3) insert –
 - “(3A) If subsection (3) above applies to the accounts of a charity for a year and the charity’s gross income in that year exceeds £250,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is a member of – 35
 - (a) a body for the time being specified in section 249D(3) of the Companies Act 1985 (reporting accountants); or 40
 - (b) the Chartered Institute of Public Finance and Accountancy.”

- (6) For subsection (8) substitute –
- “(8) The Secretary of State may by order –
- (a) amend any of subsections (1), (3) and (3A) above by substituting a different sum for any of the sums specified there;
- (b) amend subsection (3A) by adding the name of a body to the list in that subsection or by removing or altering the name of a body for the time being included in that list.” 5
- (7) The amendments made by this section apply in relation to any financial year of a charity which begins on or after the day on which this section comes into force. 10
- 23 Duty of auditor etc. of unincorporated charity to report matters to Commission**
- (1) After section 44 of the 1993 Act insert –
- “44A Duty of auditors etc. to report matters to Commission**
- (1) This section applies to a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above. 15
- (2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter – 20
- (a) which relates to the activities or affairs of the charity or of any connected institution or body, and
- (b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of their functions under section 8 or 18 above, 25
- he must immediately make a written report on the matter to the Commission.
- (3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter – 30
- (a) which does not appear to him to be one that he is required to report under subsection (2) above, but
- (b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of their functions, 35
- he may make a report on the matter to the Commission.
- (4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity. 40
- (5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.
- (6) In this section “connected institution or body”, in relation to a charity, means – 45

- (a) an institution which is controlled by, or
 - (b) a body corporate in which a substantial interest is held by, the charity or any one or more of the charity trustees acting in his or their capacity as such.
- (7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule. 5
- (8) Nothing in this section applies to a charity which is a company.”
- (2) After section 69 of that Act insert –
“69A Duty of auditors etc. to report matters to Commission 10
 - (1) Section 44A(2) to (7) above shall apply in relation to a person acting as –
 - (a) an auditor of a charitable company appointed under Chapter 5 of Part 11 of the Companies Act 1985 (auditors), or
 - (b) a reporting accountant appointed by a charitable company for the purposes of section 249C of that Act (report required instead of audit), 15as they apply in relation to a person such as is mentioned in section 44A(1).
 - (2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as reference to his acting in the capacity mentioned in subsection (1) of this section. 20
 - (3) In this section “charitable company” means a charity which is a company.”
- (3) The amendments made by this section apply in relation to matters (“pre-commencement matters”) of which a person became aware at any time falling –
 - (a) before the day on which this section comes into force, and
 - (b) during a financial year ending on or after that day, 25as well as in relation to matters of which he becomes aware on or after that day. 30
- (4) Any duty imposed by or by virtue of the new section 44A(2) or section 69A(1) must be complied with in relation to any such pre-commencement matters as soon as practicable after this section comes into force.

CHAPTER 7

CHARITABLE COMPANIES 35

24 Relaxation of restriction on altering memorandum etc. of charitable company

- (1) Section 64 of the 1993 Act (alteration of objects clause etc.) is amended as follows.
- (2) For subsection (2) substitute –
 - “(2) Where a charity is a company, any regulated alteration by the company – 40
 - (a) requires the prior written consent of the Commission, and

- (b) is ineffective if such consent has not been obtained.
- (2A) The following are “regulated alterations” –
- (a) any alteration of the objects clause in the company’s memorandum of association,
 - (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and 5
 - (c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them. 10
- (2B) For the purposes of subsection (2A) above –
- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section; and 15
 - (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(6) and (7) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.” 20
- (3) In subsection (3) (documents required to be delivered to registrar of companies), for “any such alteration” substitute “a regulated alteration”.

25 Annual audit or examination of accounts of charitable companies

- (1) In section 249A(4) of the Companies Act 1985 (c. 6) (circumstances in which charitable company’s accounts may be subject to an accountant’s report instead of an audit) – 25
- (a) in paragraph (b) (gross income between £90,000 and £250,000) for “£250,000” substitute “£500,000”; and
 - (b) in paragraph (c) (balance sheet total not more than £1.4 million) for “£1.4 million” substitute “£2.8 million”. 30
- (2) In section 249B(1C) of that Act (circumstances in which parent company or subsidiary not disqualified for exemption from auditing requirement), in paragraph (b) (group’s aggregate turnover not more than £350,000 net or £420,000 gross in case of charity), for “£350,000 net (or £420,000 gross)” substitute “£700,000 net (or £840,000 gross)”. 35
- (3) The amendments made by this section apply in relation to any financial year of a charity which begins on or after the day on which this section comes into force.

CHAPTER 8

40

CHARITABLE INCORPORATED ORGANISATIONS

26 Charitable incorporated organisations

Schedule 6, which makes provision about charitable incorporated organisations, has effect.

CHAPTER 9

CHARITY TRUSTEES ETC.

Remuneration of trustees etc.

27 Remuneration of trustees etc. providing services to charity

After section 73 of the 1993 Act insert – 5

“73A Remuneration of trustees etc.

- (1) This section applies to remuneration for services provided by a person to or on behalf of a charity where –
- (a) he is a charity trustee or trustee for the charity, or
 - (b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit. 10

This is subject to subsection (7) below.

- (2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity. 15

- (3) Condition A is that the amount or maximum amount of the remuneration –
- (a) is set out in an agreement in writing between –
 - (i) the charity or its charity trustees (as the case may be), and 20
 - (ii) the relevant person,under which the relevant person is to provide the services in question to or on behalf of the charity, and
 - (b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question. 25

- (4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement. 30

- (5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is –
- (a) a person in respect of whom an agreement within subsection (3) above is in force, or 35
 - (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or
 - (c) a person connected with a person falling within paragraph (a) or (b) above, 40

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

- (6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.
- (7) Nothing in this section applies to—
- (a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or 5
 - (b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8). 10
- (8) The provisions or orders within this subsection are—
- (a) any provision contained in the trusts of the charity,
 - (b) any order of the court or the Charity Commission,
 - (c) any statutory provision contained in or having effect under an Act of Parliament other than this section. 15
- (9) Section 73B below applies for the purposes of this section.
- 73B Supplementary provisions for purposes of section 73A**
- (1) This section applies for the purposes of section 73A above.
- (2) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements. 20
- (3) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).
- (4) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it. 25
- (5) In section 73A—
- “benefit” means a direct or indirect benefit of any nature;
 - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question; 30
 - “remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);
 - “services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services. 35
- (6) For the purposes of section 73A the following persons are “connected” with a charity trustee or trustee for a charity—
- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee; 40
 - (b) the spouse of the trustee or of any person falling within paragraph (a);
 - (c) an institution which is controlled—
 - (i) by a charity trustee or trustee for the charity or by any person falling within paragraph (a) or (b), or 45

- (ii) by two or more persons falling within sub-paragraph (i), when taken together.
 - (d) a body corporate in which –
 - (i) any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or 5
 - (ii) two or more such persons, when taken together, have a substantial interest.
- (7) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.” 10

28 Disqualification of trustee receiving remuneration by virtue of section 27

After section 73B of the 1993 Act (inserted by section 27 above) insert –

“73C Disqualification of trustee receiving remuneration under section 73A

- (1) This section applies to any charity trustee or trustee for a charity –
 - (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or 15
 - (b) who is connected with a person who is or would be so entitled.
- (2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement. 20
- (3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.
- (4) A person who does any act which he is disqualified from doing by virtue of subsection (2) above is guilty of an offence and liable – 25
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both. 30
- (5) It is a defence for a person charged with an offence under subsection (4) above to prove that he believed on reasonable grounds that, at the time when he did the act in question, he was not such a person as is mentioned in subsection (1) above. 35
- (6) Where the Commission is satisfied –
 - (a) that a person has done any act which he was disqualified from doing by virtue of subsection (2) above, and
 - (b) that he has received from the charity any remuneration under the agreement in question, 40it may by order direct him to repay to the charity the whole or part of any such remuneration.
- (7) To the extent that the remuneration consists of a benefit in kind, the Commission may by order direct the person to pay to the charity the

whole or part of the monetary value (as determined by it) of the benefit in kind.

- (8) Any of the following may appeal to the Tribunal against an order under subsection (6) above –
- (a) the Attorney General, 5
 - (b) the person subject to the order,
 - (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order.
- (9) The Tribunal may –
- (a) dismiss the appeal, 10
 - (b) quash the order, or
 - (c) substitute for the order another order of a kind that the Commission could have made.
- (10) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal). 15
- (11) Subsections (5) to (7) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.”

Liability of trustees etc.

29 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty 20

- (1) After section 73C of the 1993 Act (inserted by section 28 above) insert –
- “73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty**
- (1) This section applies to a person who is or has been –
- (a) a charity trustee or trustee for a charity, 25
 - (b) an auditor of a charity’s accounts appointed under section 43 above or under Chapter 5 of Part 11 of the Companies Act 1985, or
 - (c) an independent examiner or reporting accountant appointed in respect of a charity’s accounts. 30
- (2) If the Commission consider –
- (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but 35
 - (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,
- the Commission may make an order relieving him wholly or partly from any such liability. 40
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.

- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) This section does not affect the operation of –
- (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees), 5
 - (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
 - (c) section 44(3) above (which applies that section to auditors of unincorporated charities etc.).”
- (2) The amendment made by subsection (1) applies to a breach of trust or breach of duty occurring before the day on which this section comes into force as well as to one occurring on or after that day. 10

CHAPTER 10

POWERS OF UNINCORPORATED CHARITIES

30 Power to transfer all property 15

For section 74 of the 1993 Act substitute –

“74 Power to transfer all property of unincorporated charity

- (1) This section applies to a charity if –
- (a) its gross income in its last financial year did not exceed £10,000,
 - (b) it does not hold any designated land, and 20
 - (c) it is not a company or other body corporate.
- “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) The charity trustees of such a charity may resolve for the purposes of this section – 25
- (a) that all the property of the charity should be transferred to another charity specified in the resolution, or
 - (b) that all the property of the charity should be divided, in the manner specified in the resolution, between two or more other charities specified in it. 30
- (3) Any charity so specified may be either a registered charity or a charity which is not required to be registered.
- (4) But the charity trustees of a charity (“the transferor charity”) do not have power to pass a resolution under subsection (2) above unless they are satisfied – 35
- (a) that it is expedient in the interests of furthering the purposes for which the property is held by transferor charity for the property to be transferred in accordance with the resolution, and
 - (b) that the purposes of any charity to which property is to be transferred under the resolution are wide enough to encompass 40 the purposes of the transferor charity.

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- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it. 5
- (7) Having received the copy of the resolution, the Commission –
- (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
- (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 10
- (8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to –
- (a) the circumstances in and by reference to which they have decided to act under this section, or
- (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution. 15
- (9) Subject to the provisions of section 74A below, a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was sent to the Commission. 20
- (10) Where such a resolution has taken effect, the charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred –
- (a) is to be held by the charity to which it is transferred (“the transferee charity”) in accordance with subsection (11) below, but
- (b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity; 25
- and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned. 30
- (11) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for purposes which are similar in character to those of the transferor charity. 35
- But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property. 40
- (12) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity – 45

- (a) in the transferee charity, in its charity trustees or in any trustee for that charity, or
 - (b) in any other person nominated by those charity trustees to hold property in trust for that charity.
- (13) The Secretary of State may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there. 5
- (14) In this section references to the transfer of property to a charity are references to its transfer –
- (a) to the charity, or 10
 - (b) to the charity trustees, or
 - (c) to any trustee for the charity, or
 - (d) to a person nominated by the charity trustees to hold it in trust for the charity,
- as the charity trustees may determine. 15

74A Resolution not to take effect or to take effect at later date

- (1) This section deals with circumstances in which a resolution under section 74(2) above either –
- (a) does not take effect under section 74(9) above, or
 - (b) takes effect at a time later than that mentioned in section 74(9). 20
- (2) A resolution does not take effect under section 74(9) above if before the end of –
- (a) the period of 60 days mentioned in section 74(9) (“the 60-day period”), or
 - (b) that period as modified by subsection (3) or (4) below, 25
- the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.
- “On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 74 above has not been complied with in connection with the resolution. 30
- (3) If under section 74(7) above the Commission direct charity trustees to give public notice of a resolution, the 60-day period –
- (a) stops running as from the date on which the direction is given to the charity trustees, and 35
 - (b) does not start running again until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees (or until any later date applying under subsection (4) below).
- (4) If under section 74(8) above the Commission direct charity trustees to provide any information or explanations, the 60-day period –
- (a) stops running as from the date on which the direction is given to the charity trustees, and
 - (b) does not start running again until the date on which the information or explanations is or are provided to the Commission (or until any later date applying under subsection (3) above). 40 45

- (5) Subsection (6) below applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (3) and (4) above exceeds 120 days.
- (6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.” 5

31 Power to replace purposes

After section 74A of the 1993 Act (inserted by section 30 above) insert—

“74B Power to replace purposes of unincorporated charity

- (1) This section applies to a charity if—
- (a) its gross income in its last financial year did not exceed £10,000, 10
 - (b) it does not hold any designated land, and
 - (c) it is not a company or other body corporate.
- “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution. 15
- (3) Any replacement purposes so specified must be purposes that are charitable in law. 20
- (4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) above unless they are satisfied—
- (a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and
 - (b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced. 25
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution. 30
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.
- (7) Having received the copy of the resolution, the Commission—
- (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and 35
 - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 40
- (8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
- (a) the circumstances in and by reference to which they have decided to act under this section, or 45

- (b) their compliance with any condition or requirement imposed by or under this section in connection with the resolution.
- (9) Subject to the provisions of section 74A above (as they apply in accordance with subsection (10) below), a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it received by the Commission. 5
- (10) Section 74A above applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 74, except that any reference to section 74(7), (8) or (9) is to be read as a reference to subsection (7), (8) or (9) above. 10
- (11) As from the time when a resolution takes effect under subsection (9) above, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.
- (12) The Secretary of State may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.” 15

32 Power to modify powers or procedures

After section 74B of the 1993 Act (inserted by section 31 above) insert –

“74C Power to modify powers or procedures of unincorporated charity

- (1) This section applies to any charity which is not a company or other body corporate. 20
- (2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity –
 - (a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or 25
 - (b) regulating the procedure to be followed in any respect in connection with its administration,should be modified in such manner as is specified in the resolution.
- (3) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees. 30
- (4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution passed at a general meeting of the body by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution.
- (5) Where – 35
 - (a) the charity trustees have passed a resolution under subsection (2), and
 - (b) (if subsection (4) applies) a further resolution has been passed under that subsection,the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution. 40
- (6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution.”

CHAPTER 11

POWERS TO SPEND CAPITAL AND MERGERS

Spending of capital

33 Power to spend capital

For section 75 of the 1993 Act substitute – 5

“75 Power of smaller charities to spend capital

- (1) This section applies where –
 - (a) a charity (“the relevant charity”) has an endowment fund which does not consist of or include designated land,
 - (b) either – 10
 - (i) the relevant charity is not a company or other body corporate, or
 - (ii) a charity to which subsection (2) below applies administers the fund as trustee for the relevant charity, and 15
 - (c) the financial condition in subsection (3) below is met.

“Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) This subsection applies to a charity if – 20
 - (a) it is a company,
 - (b) it is constituted as a CIO, or
 - (c) it is a registered society within the meaning of the Industrial and Provident Societies Act 1965.
- (3) The financial condition in this subsection is met if – 25
 - (a) the relevant charity’s gross income in its last financial year did not exceed £1,000, or
 - (b) its gross income in that year exceeded that amount but the market value of the endowment fund does not exceed £10,000.
- (4) Where the condition in subsection (5) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 30
- (5) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 35
- (6) Once the charity trustees have passed a resolution under subsection (4) above, the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in that subsection. 40
- (7) The fund may be so expended as from such date as is specified for this purpose in the resolution.

- (8) The Secretary of State may by order amend subsection (3) above by substituting a different sum for any sum specified there.
- (9) In this section –
- “endowment fund”, in relation to a charity, means –
 - (a) the whole of the charity’s permanent endowment if it is all subject to the same trusts; or 5
 - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject; 10
 - “market value”, in relation to an endowment fund, means –
 - (a) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or 10
 - (b) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose. 15

75A Power of larger charities to spend capital

- (1) This section applies where –
- (a) a charity (“the relevant charity”) has an endowment fund which does not consist of or include designated land, 20
 - (b) either –
 - (i) the relevant charity is not a company or other body corporate, or
 - (ii) a charity to which section 75(2) above applies administers the fund as trustee for the relevant charity, and 25
 - (c) the financial condition in section 75(3) above is not met.
- “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 30
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 35
- (4) Subsections (5) to (10) below apply where the capital of the endowment fund consists entirely of property given –
- (a) by or under the will of a particular individual, or
 - (b) by a particular institution (by way of grant or otherwise). 40
- (5) In such a case the charity trustees –
- (a) must send a copy of the resolution to the Commission, together with a statement of their reasons for passing it, and
 - (b) may not implement the resolution without the concurrence of the Commission. 45
- (6) Having received the copy of the resolution the Commission may –

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- (a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
- (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 5
- (7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
- (a) the circumstances in and by reference to which they have decided to act under this section, or 10
- (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (8) When considering whether to concur with the resolution the Commission must take into account— 15
- (a) any evidence available to them as to the wishes of the donor of the gift mentioned in subsection (4) above, and
- (b) any changes in the circumstances relating to the charity since the gift was made (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates). 20
- (9) The Commission must not concur with the resolution unless it is satisfied—
- (a) that its implementation would accord with the spirit of the gift mentioned in subsection (4) above (even though it would be inconsistent with the restrictions mentioned in subsection (2) above), and 25
- (b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution. 30
- (10) Before the end of the period of three months beginning with the date on which the Commission receives the copy of the resolution, the Commission must notify the charity trustees in writing either—
- (a) that the Commission concurs with the resolution, or
- (b) that it does not concur with it. 35
- (11) Once the charity trustees—
- (a) have passed a resolution under subsection (2) above, and
- (b) (in a case where subsections (5) to (10) above apply) have been notified by the Commission that it concurs with the resolution, the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in subsection (2). 40
- (12) The fund may be so expended as from such date as is specified for this purpose in the resolution.
- (13) In this section “endowment fund” has the same meaning as in section 75 above. 45

75B Power to spend capital subject to special trusts

- (1) This section applies where—
- (a) a charity (“the relevant charity”) is a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity for the purposes of this section, and 5
 - (b) it has an endowment fund which does not consist of or include designated land.
- “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 10
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 15
- (4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—
- (a) by or under the will of a particular individual, or 20
 - (b) by a particular institution (by way of grant or otherwise).
- subsections (5) to (10) of section 75A above apply in relation to the resolution and that gift as they apply in relation to a resolution under section 75A(2) and the gift mentioned in section 75A(4).
- (5) Once the charity trustees— 25
- (a) have passed a resolution under subsection (2) above, and
 - (b) (in a case where section 75A(5) to (10) above apply in accordance with subsection (4) above) have been notified by the Commission that it concurs with the resolution,
- the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in subsection (2). 30
- (6) The fund may be so expended as from such date as is specified for this purpose in the resolution.
- (7) The Secretary of State may by order amend subsection (4) by substituting a different sum for the sum specified there. 35
- (8) In this section “endowment fund” and “market value” have the same meaning as in section 75 above.”

Mergers

34 Merger of charities

After section 75B of the 1993 Act (inserted by section 33 above) insert –

“75C Register of charity mergers

- (1) The Commission shall establish and maintain a register of charity mergers. 5
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with such procedures as it may determine. 10
- (4) In this section “relevant charity merger” means –
 - (a) a merger of two or more charities whereby one of them (“the transferee”) has transferred to it all the property of the other or others, each of which (a “transferor”) ceases to exist on or after the transfer of its property to the transferee, or 15
 - (b) a merger of two or more charities (“transferors”) whereby both or all of them cease to exist on or after the transfer of all of their property to a new charity (“the transferee”).
- (5) A notification under subsection (3) above may be given at any time after – 20
 - (a) the transfer of property involved in the merger has taken place, or
 - (b) (if more than one transfer of property is so involved) the last of those transfers has taken place. 25
- (6) Each of the entries in the register shall –
 - (a) specify when any transferor ceased to exist, and
 - (b) contain such other particulars of the merger as the Commission thinks fit.
- (7) The register shall be open to public inspection at all reasonable times. 30
- (8) Where any information contained in the register is not in documentary form, subsection (7) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (9) This section applies to relevant charity mergers taking place before the day on which section 34 of the Charities Act 2005 comes into force as well as to ones taking place on or after that day. 35

75D Effect of registering charity mergers

- (1) This section applies where a relevant charity merger is registered in the register of charity mergers. 40
- (2) Any gift which –
 - (a) is expressed as a gift to the transferor, and
 - (b) takes effect on or after the registered termination date,

- takes effect as a gift to the transferee.
- (3) Where the merger took place before the day mentioned in section 75C(9) above, subsection (2) above—
- (a) does not apply to any gift that took effect before that day, but
 - (b) otherwise applies to gifts made before or after the merger is registered. 5
- (4) Subsection (5) below applies to a declaration which—
- (a) is made by deed for the purposes of this section by the charity trustees of the transferor,
 - (b) is made in contemplation of the merger, and 10
 - (c) is to the effect that all of the transferor’s property is to vest in the transferee.
- (5) The declaration operates on the registered termination date to vest all of the transferor’s property in the transferee, without the need for any further document transferring it. 15
- (6) In this section—
- “registered termination date”, in relation to a transferor, means the date recorded under section 75C(6) above as the date when the transferor ceased to exist,
 - “relevant charity merger” has the same meaning as in section 75C. 20
- (7) In this section any reference to the transferor, in relation to a registered charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 75C above.
- (8) In this section any reference to the transferee, in relation to a registered charity merger, is a reference to— 25
- (a) the transferee (within the meaning of section 75C above), if it is a company or other body corporate, and
 - (b) otherwise, to the charity trustees of the transferee (within the meaning of that section).”

PART 3 30

FUNDING FOR CHARITABLE, BENEVOLENT OR PHILANTHROPIC INSTITUTIONS

Fund-raising

35 Statements indicating benefits for charitable institutions and fund-raisers

- (1) In the Charities Act 1992 (c. 41) (“the 1992 Act”) section 60 (fund-raisers required to indicate institutions benefiting and arrangements for remuneration) is amended as follows. 35
- (2) In subsection (1) (statements by professional fund-raisers raising money for particular charitable institutions), for paragraph (c) substitute—
- “(c) the method by which the fund-raiser’s remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.” 40
- (3) In subsection (2) (statements by professional fund-raisers raising money for

- charitable purposes etc.), for paragraph (c) substitute –
- “(c) the method by which his remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.”
- (4) In subsection (3) (statements by commercial participators raising money for particular charitable institutions), for paragraph (c) substitute – 5
- “(c) the notifiable amount of whichever of the following sums is applicable in the circumstances –
- (i) the sum representing so much of the consideration given for goods or services sold or supplied by him as is to be given to or applied for the benefit of the institution or institutions concerned, 10
- (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by him as is to be so given or applied, or 15
- (iii) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so given or supplied.”
- (5) After subsection (3) insert –
- “(3A) In subsections (1) to (3) a reference to the “notifiable amount” of any remuneration or other sum is a reference – 20
- (a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; and
- (b) otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.” 25
- (6) The amendments made by this section apply in relation to any solicitation or representation to which section 60(1), (2) or (3) applies and which is made on or after the day on which this section comes into force.
- 36 Reserve power to control fund-raising by charitable institutions 30**
- (1) After section 64 of the 1992 Act insert –
- “64A Reserve power to control fund-raising by charitable institutions**
- (1) The Secretary of State may make such regulations as appear to him to be necessary or desirable for or in connection with regulating charity fund-raising. 35
- (2) In this section “charity fund-raising” means activities which are carried on by –
- (a) charitable institutions,
- (b) persons managing charitable institutions, or
- (c) persons or companies connected with such institutions, 40
- and involve soliciting or otherwise procuring funds for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes.
- But “activities” does not include primary purpose trading.

- (3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where –
- (a) those institutions,
 - (b) the persons managing them, or
 - (c) persons or companies connected with such institutions,
- are engaged in charity fund-raising. 5
- (4) A “good practice requirement” is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that –
- (a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;
 - (b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;
 - (c) it does not result in undue pressure being placed on persons to donate funds;
 - (d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).
- 10 15
- (5) The matters are –
- (a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution;
 - (b) any use to which funds donated in response to the fund-raising are to be put by such an institution or company;
 - (c) the activities, achievements or finances of such an institution or company.
- 20 25
- (6) Regulations under this section may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. 30
- (7) For the purposes of this section –
- (a) “funds” means money or other property;
 - (b) “general charitable, benevolent or philanthropic purposes” means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions;
 - (c) the persons “managing” a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution; and
 - (d) a person is “connected” with a charitable institution if he is an employee or agent of –
 - (i) the institution,
 - (ii) the persons managing it, or
 - (iii) a company connected with it,or he is a volunteer acting on behalf of the institution or such a company. 35 40 45
- (8) In this section “primary purpose trading”, in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where –

- (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the institution; or
 - (b) the work in connection with the trade is mainly carried out by beneficiaries of the institution.”
- (2) In section 77(4) of the 1992 Act (consultation requirements), after “64” insert “, 64A”.

Public charitable collections

37 Regulation of public charitable collections

For section 65 of the 1992 Act substitute –

- “65 Regulation of public charitable collections** 10
- (1) This Part regulates public charitable collections, which are of the following two types –
- (a) collections in a public place; and
 - (b) door to door collections.
- (2) In this Part – 15
- (a) “public charitable collection” means (subject to section 65A) a charitable appeal which is made –
 - (i) in any public place, or
 - (ii) by means of visits to houses or business premises (or both); 20
 - (b) “charitable appeal” means an appeal to members of the public to give money or other property (whether for consideration or otherwise) which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes; 25
 - (c) a “collection in a public place” is a public charitable collection that is made in a public place, as mentioned in paragraph (a)(i);
 - (d) a “door to door collection” is a public charitable collection that is made by means of visits to houses or business premises (or both), as mentioned in paragraph (a)(ii). 30
- (3) An appeal to members of the public (other than one falling within section 65A(1)) is a public charitable collection for the purposes of this Part if –
- (a) it consists in or includes the making of an offer to sell goods or to supply services, or the exposing of goods for sale, to members of the public, and 35
 - (b) it is made as mentioned in sub-paragraph (i) or (ii) of subsection (2)(a) and in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes. 40
- (4) Subsection (3) shall not be taken to prejudice the generality of subsection (2)(b).
- (5) In this section –
- “business premises” means any premises used for business or other commercial purposes; 45

- “house” includes any part of a building constituting a separate dwelling;
- “public place” means –
- (a) any highway, and
 - (b) (subject to subsection (6)) any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either –
 - (i) is not within a building, or
 - (ii) if within a building, is a public area within any station, airport or shopping precinct or any other similar public area.
- (6) In subsection (5), paragraph (b) of the definition of “public place” does not apply to –
- (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or
 - (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question.
- 65A Charitable appeals that are not public charitable collections**
- (1) A charitable appeal is not a public charitable collection if the appeal –
- (a) is made in the course of a public meeting; or
 - (b) is made –
 - (i) on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or
 - (ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise); or
 - (c) is made on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land and the occupier is the promoter of the collection; or
 - (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.
- (2) For the purposes of subsection (1)(c) “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.
- (3) For the purposes of subsection (1)(d) a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.
- 65B Other definitions for purposes of Part 3**
- (1) In this Part –
- “charitable purposes”, in the context of a reference to charitable, benevolent or philanthropic purposes, has the meaning given by section 2 of the Charities Act 2005;
 - “collector”, in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made

- by him alone or with others and whether made by him for remuneration or otherwise);
- “local authority” means the council of a district, of a London borough or of a Welsh county or county borough, the Common Council of the City of London or the Council of the Isles of Scilly; 5
- “prescribed” means prescribed by regulations under section 73;
- “proceeds”, in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to the charitable appeal in question; 10
- “promoter”, in relation to a public charitable collection, means –
- (a) a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or 15
- (b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection,
- and associated expressions shall be construed accordingly.
- (2) The functions exercisable under this Part by a local authority shall be exercisable – 20
- (a) as respects the Inner Temple, by its Sub-Treasurer, and
- (b) as respects the Middle Temple, by its Under Treasurer;
- and references in this Part to a local authority or to the area of a local authority shall be construed accordingly.” 25

38 Restrictions on conducting collections

For section 66 of the 1992 Act (and the cross-heading before that section) substitute –

“Restrictions on conducting collections

- 66 Restrictions on conducting collections in a public place** 30
- (1) A collection in a public place must not be conducted in the area of a local authority unless –
- (a) the promoters of the collection hold a certificate of fitness in force under section 66E in respect of the collection in that area, and 35
- (b) the collection is conducted in accordance with a permit issued by the authority under section 68.
- (2) Subsection (1) does not apply to a public charitable collection which is an exempt collection in relation to the area of the authority by virtue of section 66B (local, short-term collections). 40
- (3) Where –
- (a) a collection in a public place is conducted in contravention of subsection (1), and
- (b) the circumstances of the case do not fall within section 66B(4),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

66A Restrictions on conducting door to door collections

- (1) A door to door collection must not be conducted in the area of a local authority unless the promoters of the collection – 5
- (a) hold a certificate of fitness in force under section 66E in respect of the collection in that area, and
 - (b) have notified the authority of the matters mentioned in subsection (3), and provided the authority with a copy of the certificate mentioned in paragraph (a), not later than one month before the day on which the collection commences (but not more than six months before that day). 10
- (2) Subsection (1) does not apply to a door to door collection which is an exempt collection in relation to the area of the authority by virtue of – 15
- (a) section 66B (local, short-term collections), or
 - (b) section 66C (door to door collections of goods).
- (3) The matters referred to in subsection (1)(b) are –
- (a) the purpose for which the proceeds of the appeal are to be applied; 20
 - (b) the date or dates on which the collection is to be conducted;
 - (c) the locality within which the collection is to be conducted; and
 - (d) such other matters as may be prescribed.
- (4) Where –
- (a) a door to door collection is conducted in contravention of subsection (1), and 25
 - (b) the circumstances of the case do not fall within section 66B(4) or 66C(3),
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.” 30

39 Exemptions from requirement to obtain certificates of fitness or permits in respect of collections

After section 66A of the 1992 Act (inserted by section 38 above) insert –

“Exemptions from requirement to obtain certificate of fitness or permit 35

66B Exemption for local, short-term collections

- (1) A public charitable collection is an exempt collection in relation to the area of a local authority if –
- (a) the appeal is for a purpose that is local in character;
 - (b) the appeal is conducted within the prescribed period of time; 40
 - (c) the promoters have notified the local authority of the matters mentioned in subsection (2) not later than one month before the day on which the collection commences (but not more than six months before that day); and

- (d) the local authority have not notified the promoters under subsection (3) at least 14 days before the day on which the collection is to commence that the collection is not an exempt collection under this section.
- (2) The matters referred to in subsection (1)(c) are – 5
- (a) the purpose for which the proceeds of the appeal are to be applied;
 - (b) the date or dates on which the collection is to be conducted;
 - (c) the place at which, or the locality within which, the collection is to be conducted; and 10
 - (d) such other matters as may be prescribed.
- (3) The local authority may notify the promoters that the collection is not an exempt collection under this section if –
- (a) the local authority are not satisfied that the appeal is for a purpose that is local in character; or 15
 - (b) they are not satisfied that the appeal is to take place within the prescribed period of time.
- (4) Where –
- (a) a collection in a public place is conducted otherwise than in accordance with section 66(1) or a door to door collection is conducted otherwise than in accordance with section 66A(1), and 20
 - (b) paragraphs (a) and (b) of subsection (1) above apply in respect of the collection, but the promoters do not notify the local authority as mentioned in paragraph (c) of that subsection, 25
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 66C Exemption for door to door collections of goods**
- (1) A door to door collection is an exempt collection in relation to the area of a local authority if – 30
- (a) the appeal is for goods only, and
 - (b) the promoters of the collection have notified the local authority of the matters mentioned in subsection (2) not later than 14 days before the day on which the collection commences (but not more than six months before that day). 35
- (2) The matters referred to in subsection (1)(b) are –
- (a) the purpose for which the proceeds of the appeal are to be applied;
 - (b) the date or dates on which the collection is to be conducted; 40
 - (c) the locality within which the collection is to be conducted; and
 - (d) such other matters as may be prescribed.
- (3) Where –
- (a) a door to door collection is conducted otherwise than in accordance with section 66A(1), and 45
 - (b) paragraph (a) of subsection (1) above applies in respect of the collection, but the promoters do not notify the local authority as mentioned in paragraph (b) of that subsection,

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (4) In this section “goods” includes all personal chattels other than things in action and money.” 5

40 Certificates of fitness

- (1) After section 66C of the 1992 Act (inserted by section 39 above) insert –

“Certificates of fitness

66D Applications for certificates

- (1) A person or persons proposing to promote public charitable collections (other than exempt collections) in the area of one or more local authorities may apply for a certificate of fitness in respect of the collections in that area or those areas. 10
- (2) The application is to be made – 15
- (a) in the case of an application in respect of collections in the area of one local authority only, to that local authority, and
 - (b) in any other case, to an appropriate local authority (see subsections (4) and (5)).
- (3) The application must – 20
- (a) be made not less than one month before the first of the collections commence;
 - (b) specify the areas in respect of which the certificate is sought;
 - (c) specify the period for which the certificate is sought (which must be no more than 5 years); and
 - (d) contain such other information as may be prescribed. 25
- (4) A local authority is an appropriate local authority for the purposes of making an application under this section if subsection (5) is satisfied in relation to – 30
- (a) the authority, and
 - (b) the person making the application or, where there is more than one such person, at least one of those persons.
- (5) This subsection is satisfied in relation to a local authority and such a person if – 35
- (a) the person is an individual and the authority is the local authority for the area in which the individual has his usual residence, or
 - (b) the person is a charity and the authority is the local authority for the area in which the charity has its registered address, or
 - (c) the person is a body (other than a charity) and the authority is the local authority for the area in which the body has its principal place of business or where it principally conducts its activities. 40
- (6) In this section –

“charity” means a charity within the meaning of the Charities Act 1993;

“exempt collection” means a public charitable collection which is an exempt collection by virtue of section 66B or section 66C;

“registered address”, in relation to a charity, means the address in respect of the charity contained in the register of charities under section 3 of the Charities Act 1993. 5

66E Determination of applications and issue of certificates

- (1) On receiving an application for a certificate under section 66D in respect of any proposed public charitable collections, the local authority – 10
- (a) must consult the chief officer of police for the police area which comprises or includes the area of the local authority, and
 - (b) may make such other inquiries as they think fit.
- (2) After making inquiries under subsection (1), the local authority must determine the application by either – 15
- (a) issuing a certificate in respect of the collections, or
 - (b) refusing the application on any of the grounds specified in section 66F(1).
- (3) A certificate issued under this section – 20
- (a) must specify such matters as may be prescribed, and
 - (b) shall, subject to section 66G, be in force for –
 - (i) the period specified in the application in accordance with section 66D(2)(c), or
 - (ii) such lesser period as the local authority think fit. 25
- (4) Where a local authority refuse to issue a certificate, they must serve on the applicant written notice of their decision to do so and of the reasons for their decision.
- (5) Such a notice must also state the right of appeal conferred by section 66H(1) and the time within which such an appeal must be brought. 30

66F Grounds for refusing to issue a certificate

- (1) The grounds on which an application for a certificate of fitness may be refused are –
- (a) that the applicant has been convicted of a relevant offence;
 - (b) where the applicant is a person other than a charitable, benevolent or philanthropic institution for whose benefit the collections are proposed to be conducted, that the local authority are not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections; or 35 40
 - (c) that it appears to the local authority that the applicant, in promoting any other collection authorised under this Part or under section 119 of the 1982 Act, failed to exercise the required due diligence.
- (2) For the purposes of subsection (1) – 45
- (a) a relevant offence is –
 - (i) an offence under section 5 of the 1916 Act;

- (ii) an offence under the 1939 Act;
 - (iii) an offence under section 119 of the 1982 Act or regulations made under it;
 - (iv) an offence under this Part or regulations made under section 73 below; 5
 - (v) an offence involving dishonesty;
 - (vi) an offence of a kind the commission of which would, in the opinion of the local authority, be likely to be facilitated by the issuing to the applicant of a certificate under this section; and 10
- (b) the required due diligence is due diligence—
- (i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were fit and proper persons;
 - (ii) to secure that such persons complied with the provisions of regulations under section 73 below or (as the case may be) section 119 of the 1982 Act; or 15
 - (iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised. 20
- (3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) shall be construed as a reference to any of the applicants.
- (4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 73 below or (as the case may be) under section 119 of the 1982 Act. 25
- (5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised— 30
- (a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or
 - (b) under the 1939 Act (collection of money or other property by means of visits from house to house), 35
- as it applies to his conduct in relation to a collection authorised under this Part, but subject to the modifications set out in subsection (6).
- (6) The modifications are—
- (a) in the case of a collection authorised under regulations made under the 1916 Act— 40
 - (i) the reference in subsection (2)(b)(ii) to regulations under section 73 below shall be construed as a reference to the regulations under which the collection in question was authorised, and
 - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority shall be construed as a reference to any written authority provided to a collector pursuant to those regulations; and 45
 - (b) in the case of a collection authorised under the 1939 Act—

- (i) the reference in subsection (2)(b)(ii) to regulations under section 73 below shall be construed as a reference to regulations under section 4 of that Act, and
- (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority shall be construed as a reference to badges or certificates of authority in a form prescribed by such regulations. 5
- (7) In subsections (1)(c) and (5) a reference to a collection authorised under this Part is a reference to a public charitable collection that – 10
- (a) is conducted in accordance with section 66 or section 66A (as the case may be), or
- (b) is an exempt collection by virtue of section 66B or section 66C.
- (8) In this section – 15
- “the 1916 Act” means the Police, Factories, &c (Miscellaneous Provisions) Act 1916;
- “the 1939 Act” means the House to House Collections Act 1939; and
- “the 1982 Act” means the Civic Government (Scotland) Act 1982.
- 66G Withdrawal etc of certificates**
- (1) A local authority may withdraw a certificate issued by them under section 66E where subsection (2) or (3) applies. 20
- (2) This subsection applies where – 25
- (a) the local authority have reason to believe there has been a change in the circumstances which prevailed at the time when they issued the certificate, and
- (b) they are of the opinion that, if the application for the certificate had been made in the new circumstances, they would not have issued the certificate.
- (3) This subsection applies where the local authority have reason to believe that information furnished to them by the promoter (or, where there is more than one promoter, by any of them) for the purposes of the application for the certificate was false in a material particular. 30
- (4) Where a local authority withdraw a certificate, they must serve on the promoter written notice of their decision to do so and of the reasons for their decision. 35
- (5) Such a notice must also state the right of appeal conferred by section 66H(2) and the time within which such an appeal must be brought.
- (6) Where a local authority so withdraw a certificate, the certificate shall nevertheless continue to have effect as if it had not been withdrawn – 40
- (a) until the time for bringing an appeal under section 66H(2) has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

66H Appeals

- (1) An applicant for a certificate under section 66D may appeal to a magistrates' court against a decision of the local authority to refuse to issue the certificate.
- (2) A person to whom a certificate has been issued under section 66E may appeal to a magistrates' court against a decision of the local authority under section 66G to withdraw the certificate. 5
- (3) An appeal under subsection (1) or (2) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 shall apply to the proceedings. 10
- (4) Any such appeal shall be brought within 14 days of the date of service on the person in question of the relevant notice under section 66E(4) or (as the case may be) section 66G(4); and for the purposes of this subsection an appeal shall be taken to be brought when the complaint is made. 15
- (5) An appeal against the decision of a magistrates' court on an appeal under subsection (1) or (2) may be made to the Crown Court.
- (6) On an appeal to a magistrates' court or the Crown Court under this section, the court may confirm, vary or reverse the local authority's decision and generally give such directions as it thinks fit, having regard to the provisions of this Part and of regulations under section 73. 20
- (7) It shall be the duty of the local authority to comply with any directions given by the court under subsection (6); but the authority need not comply with any directions given by a magistrates' court—
 - (a) until the time for bringing an appeal under subsection (5) has expired, or
 - (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.” 25
- (2) Section 72 of the 1992 Act (orders made by Charity Commissioners) ceases to have effect. 30

41 Permits to conduct collections in a public place

- (1) Sections 67 to 69 and 71 of the 1992 Act (permits to conduct public charitable collections) are amended as follows.
- (2) In section 67(1) (applications for permits) for “public charitable collection” substitute “collection in a public place (other than a collection that is an exempt collection under section 66B)”. 35
- (3) For subsections (2) and (3) of section 67 substitute—
 - “(2) Any such application—
 - (a) shall specify the date or dates in respect of which it is desired that the permit, if issued, should have effect (which, in the case of two or more dates, shall not span a period of more than 12 months); 40
 - (b) shall be accompanied by a copy of the certificate of fitness in force under section 66E in respect of the proposed collection in the area of the local authority; and 45

- (c) shall contain such information as may be prescribed.
- (3) An application under this section shall be made at least 14 days before the day (or the first of the days) on which the collection is to take place (but not more than six months before that day, or the first of those days), except as provided in subsection (3A). 5
- (3A) Where—
- (a) an application has been made in accordance with section 66D for a certificate of fitness in respect of the collection in the area of the authority, but
- (b) no determination on the application has been made under section 66E by the beginning of the period of 14 days mentioned in subsection (3) above, 10
- the application for a permit under this section shall be made as soon as practicable before the day (or the first of the days) on which the collection is to take place.” 15
- (4) In section 67, omit subsection (4).
- (5) In section 68(1) (determination of applications and issue of permits)—
- (a) for “public charitable collection” substitute “collection in a public place”, and
- (b) for “for the period” substitute “in respect of the date or dates”. 20
- (6) In section 69(1) (refusal of permits)—
- (a) for “a public charitable collection” substitute “a collection in a public place”;
- (b) in paragraph (b) for “public charitable collection is already authorised (whether under section 68 or otherwise)” substitute “collection in a public place is already authorised under this Part”; and 25
- (c) omit paragraphs (c) to (g).
- (7) After subsection (2) of section 69 insert—
- “(2A) In this section a reference to a collection in a public place authorised under this Part is a reference to a collection in a public place that— 30
- (a) is conducted in accordance with section 66, or
- (b) is an exempt collection by virtue of section 66B.”
- (8) Omit subsections (3) to (5) of section 69.
- (9) In section 71(1) (appeals) for “public charitable collection” substitute “collection in a public place”. 35

42 Regulations

- (1) Section 73 of the 1992 Act (regulations) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make regulations— 40
- (a) prescribing matters which are to be notified to a local authority under section 66A, section 66B or section 66C;
- (b) prescribing a period of time for the purposes of section 66B(1)(b);

- (c) prescribing information which is to be contained in applications made under section 66D or section 67;
 - (d) prescribing the matters which are to be specified in a certificate of fitness under section 66E(3)(a);
 - (e) making provision as to conditions which may be imposed under section 68(2);
 - (f) for the purpose of regulating the conduct of public charitable collections.”
- (3) In subsection (2) for “(1)(b)” substitute “(1)(f)”.
- 43 Offences** 10
- (1) Section 74 of the 1992 Act (offences) is amended as follows.
- (2) In subsection (2) for “the fourth level” substitute “level 5”.
- (3) For subsection (3) substitute –
- “(3) Any person who –
 - (a) for the purposes of an application made under section 66D or section 67, or
 - (b) for the purposes of section 66A, section 66B or section 66C, knowingly or recklessly furnishes any information which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- (4) Omit subsections (3A) and (3B). 15 20

Grants

- 44 Power of Secretary of State to give financial assistance to charitable, benevolent or philanthropic institutions**
- (1) The Secretary of State may give financial assistance by way of grants or loans to any charitable, benevolent or philanthropic institution whose operations are carried on wholly or mainly in England. 25
- (2) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.
- (3) Those terms and conditions may, in particular, include provision as to – 30
- (a) the purposes for which the assistance may be used;
 - (b) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State, and the manner in which that is to be done;
 - (c) the making of reports to the Secretary of State regarding the uses to which the assistance has been put; 35
 - (d) the keeping, and making available for inspection, of accounts and other records;
 - (e) the carrying out of examinations by the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the assistance has been used; 40

- (f) the giving by the institution of financial assistance by way of grants or loans to other persons on such terms and conditions as the institution or the Secretary of State considers appropriate.
- (4) A person receiving assistance under this section must comply with the terms and conditions on which it is given, and compliance may be enforced by the Secretary of State. 5
- (5) The Secretary of State may make arrangements for –
- (a) assistance under subsection (1) to be given, or
 - (b) any other functions of his under this section to be exercised,
- by some other person. 10
- (6) Arrangements under subsection (5) may make provision for the functions concerned to be so exercised –
- (a) either wholly or to such extent as may be specified in the arrangements, and
 - (b) either generally or in such cases or circumstances as may be so specified,
- but do not prevent the functions concerned from being exercised by the Secretary of State. 15
- (7) As soon as possible after 31 March in each year, the Secretary of State must make a report on the exercise of powers under this section during the period of 12 months ending on that day. 20
- (8) The Secretary of State must lay a copy of the report before each House of Parliament.
- (9) In this section “charitable, benevolent or philanthropic institution” means –
- (a) a charity, or
 - (b) a body or trust (other than a charity) which is established for charitable, benevolent or philanthropic purposes.
- and “charity” and “charitable purposes” have the meaning given by sections 1 and 2. 25

PART 4

30

FINAL PROVISIONS

45 Consequential amendments, repeals and transitional provisions

- (1) Schedule 7 (which contains minor and consequential amendments) has effect.
- (2) Schedule 8 (which contains repeals, including repeals of spent enactments) has effect. 35
- (3) The Secretary of State may by order made by statutory instrument make such incidental, consequential, transitional or supplementary provision as he considers necessary or expedient –
- (a) for the general purposes, or any particular purposes, of this Act, or
 - (b) in consequence of any of its provisions or for giving full effect to it. 40
- (4) An order under subsection (3) may amend or repeal any enactment.

- (5) No order may be made under subsection (3) unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.

46 Expenses

- There shall be paid out of money provided by Parliament –
- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act; 5
 - (b) any expenditure incurred by the Charity Commission by virtue of this Act; and
 - (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment. 10

47 Interpretation

- In this Act –
- “the 1992 Act” means the Charities Act 1992 (c. 41);
 - “the 1993 Act” means the Charities Act 1993 (c. 10);
 - “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30). 15

48 Short title, commencement and extent

- (1) This Act may be cited as the Charities Act 2005.
- (2) Apart from –
 - (a) section 11(4) to (6), 20
 - (b) section 45(3) to (5), and
 - (c) this section,this Act does not come into force until such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order under subsection (2) – 25
 - (a) may appoint different days for different purposes or different areas;
 - (b) make such provision as the Secretary of State considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (4) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates. 30
- (5) Subject to that, this Act extends to England and Wales only.

SCHEDULES

SCHEDULE 1

Section 4

THE CHARITY COMMISSION

1 After Schedule 1 to the 1993 Act insert—

“SCHEDULE 1A

Section 1A

5

THE CHARITY COMMISSION

Membership

- 1 (1) The Commission shall consist of a chairman and at least four, but not more than eight, other members.
- (2) The chairman and other members shall be appointed by the Secretary of State. 10
- (3) The Secretary of State shall exercise the power in sub-paragraph (2) so as to secure that—
- (a) at least two members have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990, and 15
- (b) so far as reasonably practicable, at least one member has knowledge of the interests of persons in Wales and has been appointed following consultation with the National Assembly for Wales. 20

Terms of appointment and remuneration

- 2 The chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.
- 3 (1) An appointment of a person to hold office as chairman or one of the other members of the Commission shall be for a term not exceeding five years. 25
- (2) A person holding office as chairman or other member—
- (a) may resign that office by giving notice in writing to the Secretary of State, and 30
- (b) may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour.
- (3) The Secretary of State shall consult the National Assembly for Wales before removing a person appointed following consultation with it. 35

- (4) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.
- 4 (1) The Commission shall pay to its chairman and its other members such remuneration, and such other allowances, as may be determined by the Secretary of State. 5
- (2) The Commission shall, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member of the Commission, or 10
- (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If the Secretary of State determines that there are special circumstances which make it right for a person ceasing to hold office as chairman or other member of the Commission to receive compensation, the Commission shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State. 15
20

Staff

- 5 (1) The Commission—
- (a) shall appoint a chief executive, and
- (b) may appoint such other staff as it may determine.
- (2) The appointment of a chief executive requires the approval of the Minister for the Civil Service as to the chief executive's terms and conditions of service. 25
- (3) The appointment of other staff requires the approval of that Minister as to their numbers and terms and conditions of service.

Committees

- 6 (1) The Commission may establish committees and any committee of the Commission may establish sub-committees. 30
- (2) The members of a committee of the Commission may include persons who are not members of the Commission (and the members of a sub-committee may include persons who are not members of the committee or of the Commission). 35

Procedure etc.

- 7 (1) The Commission may regulate its own procedure (including quorum).
- (2) The validity of anything done by the Commission is not affected by a vacancy among its members or by a defect in the appointment of a member. 40

Performance of functions

- 8 Anything authorised or required to be done by the Commission may be done by—
- (a) any member or member of staff of the Commission who is authorised for that purpose by the Commission, whether generally or specially, 5
 - (b) any committee of the Commission which has been so authorised.

Evidence

- 9 The Documentary Evidence Act 1868 shall have effect as if— 10
- (a) the Commission were mentioned in the first Schedule to that Act,
 - (b) any member or member of staff of the Commission authorised to act on behalf of the Commission were specified in the second column of that Schedule in connection with the Commission, and 15
 - (c) the regulations referred to in that Act included any document issued by or under the authority of the Commission.

Annual report 20

- 10 (1) As soon as practicable after the end of each financial year the Commission shall make a report to the Secretary of State on—
- (a) the discharge of its functions,
 - (b) the extent to which, in its opinion, its regulatory objectives (see section 1B of this Act) have been met, and 25
 - (c) the management of its affairs, during that year.
- (2) The Commission shall—
- (a) lay a copy of each such report before Parliament, and
 - (b) arrange for it to be published. 30
- (3) In sub-paragraph (1) above, “financial year” means—
- (a) the period beginning with the date on which the Commission is established and ending with the next 31st March following that date, and
 - (b) each successive period of 12 months ending with 31st March. 35

Annual public meeting

- 11 (1) The Commission shall hold a public meeting (“the annual meeting”) for the purpose of enabling a report under paragraph 10 above to be considered. 40
- (2) The annual meeting shall be held within the period of three months beginning with the day on which the report is made to the Secretary of State.

- (3) The Commission shall organise the annual meeting so as to allow –
- (a) a general discussion of the contents of the report which is being considered, and
 - (b) a reasonable opportunity for those attending the meeting to put questions to the Commission about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates. 5
- (4) But subject to sub-paragraph (3) above the annual meeting is to be organised and conducted in such a way as the Commission considers appropriate. 10
- (5) The Commission shall give reasonable notice of the annual meeting.
- (6) That notice shall –
- (a) give details of the time and place at which the meeting is to be held, 15
 - (b) set out the proposed agenda for the meeting,
 - (c) indicate the proposed duration of the meeting,
 - (d) give details of the Commission’s arrangements for enabling persons to attend, and 20
 - (e) be published by the Commission in the way appearing to it to be most suitable for bringing the notice to the attention of the public.
- (7) If the Commission proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5) above it shall – 25
- (a) give reasonable notice of the alteration, and
 - (b) publish the notice in the way appearing to it to be best calculated to bring it to the attention of the public.”
- Parliamentary Commissioner Act 1967 (c. 13)* 30
- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation), for “Charity Commission.” substitute “Charity Commission for England and Wales.”
- House of Commons Disqualification Act 1975 (c. 24)*
- 3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), insert at the appropriate place – 35
- “The Charity Commission for England and Wales.”
- Northern Ireland Assembly Disqualification Act 1975 (c. 25)*
- 4 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), insert at the appropriate place – 40
- “The Charity Commission for England and Wales.”

SCHEDULE 2

Section 4

ESTABLISHMENT OF THE CHARITY COMMISSION: SUPPLEMENTARY

- 1 In this Schedule –
 “commencement” means the coming into force of section 4, and
 “the Commission” means the Charity Commission for England and Wales. 5

Appointments to Commission

- 2 (1) The person who immediately before commencement was the Chief Charity Commissioner for England and Wales is on commencement to become the chairman of the Commission as if duly appointed under paragraph 1 of Schedule 1A to the 1993 Act. 10
- (2) Any other person who immediately before commencement was a Charity Commissioner for England and Wales is on commencement to become a member of the Commission as if duly appointed under that paragraph.
- (3) A person who becomes a member of the Commission by virtue of this paragraph is to continue to be deemed to be employed in the civil service of the Crown and shall continue to hold office on the same terms (but subject to any necessary modifications). 15
- (4) Accordingly –
 (a) paragraphs 2 and 3 of Schedule 1A to the 1993 Act, and 20
 (b) paragraphs 3 and 4 of Schedule 1 to this Act,
 shall not apply in relation to such a person.

Effect of transfers under section 4

- 3 (1) Anything which –
 (a) has been done by or in relation to the Commissioners, and 25
 (b) is in effect immediately before commencement,
 is to be treated as if done by or in relation to the Commission.
- (2) Anything (including legal proceedings) which –
 (a) relates to anything transferred by section 4(4), and
 (b) is in the process of being done by or in relation to the Commissioners, 30
 may be continued by or in relation to the Commission.
- (3) But nothing in section 4 or this paragraph affects the validity of anything done by or in relation to the Commissioners.
- (4) In this paragraph “the Commissioners” means the Charity Commissioners for England and Wales (and includes any person acting for them by virtue of paragraph 3(3) of Schedule 1 to the 1993 Act). 35

First annual report of Charity Commission

- 4 (1) This paragraph applies if there is a period of one or more days which –
 (a) began on the day after the end of the last year for which the Charity Commissioners for England and Wales made a report under section 1(5) of the 1993 Act, and 40
 (b) ended on the day before commencement.

- (2) The first report made by the Commission under paragraph 10 of Schedule 1A to the 1993 Act shall also be a report on the operations of the Charity Commissioners for England and Wales during the period mentioned in subparagraph (1).

SCHEDULE 3

Section 6

5

THE CHARITY APPEAL TRIBUNAL

- 1 After Schedule 1A to the 1993 Act (inserted by Schedule 1 to this Act) insert—

“SCHEDULE 1B

Section 2A

THE CHARITY APPEAL TRIBUNAL

10

Membership

- 1 (1) The Tribunal shall consist of the President and its other members (if any).
(2) The Lord Chancellor shall appoint a person to be President of the Tribunal and may appoint—
(a) legal members of the Tribunal, and
(b) ordinary members of the Tribunal. 15
(3) A person may be appointed as the President or a legal member of the Tribunal only if he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990. 20
(4) A person may be appointed as an ordinary member of the Tribunal only if he appears to the Lord Chancellor to have appropriate knowledge or experience relating to charities.

Deputy President

25

- 2 (1) The Lord Chancellor may appoint a legal member as deputy President of the Tribunal.
(2) The deputy President—
(a) may act for the President when he is unable to act or unavailable, and
(b) shall perform such other functions as the President may delegate or assign to him. 30

Terms of appointment and remuneration

- 3 (1) The members of the Tribunal shall hold and vacate office as such in accordance with the terms of their respective appointments. 35
(2) A person holding office as a member of the Tribunal—
(a) may resign that office by giving notice in writing to the Lord Chancellor, and

- (b) may be removed from office by the Lord Chancellor on the ground of incapacity or misbehaviour.
- 4 (1) The Lord Chancellor may pay to the members of the Tribunal such remuneration, and such other allowances, as he may determine.
- (2) The Lord Chancellor may – 5
- (a) pay such pension, allowances or gratuities as he may determine to or in respect of a person who is or has been a member of the Tribunal, or
- (b) make such payments as he may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person. 10
- (3) If the Lord Chancellor determines that there are special circumstances which make it right for a person ceasing to hold office as a member of the Tribunal to receive compensation, the Lord Chancellor may pay to him a sum by way of compensation of such amount as may be determined by the Lord Chancellor. 15

Staff and facilities

- 5 The Lord Chancellor may make staff and facilities available to the Tribunal.

Panels

- 6 (1) The functions of the Tribunal shall be exercised by panels of the Tribunal.
- (2) Panels of the Tribunal shall sit at such times and in such places as the President may direct.
- (3) Before giving a direction under sub-paragraph (2) above the President shall consult the Lord Chancellor. 25
- (4) More than one panel may sit at a time.
- 7 (1) The President shall make arrangements for determining which of the members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function. 30
- (2) Those arrangements shall, in particular, ensure that each panel consists of –
- (a) the President,
- (b) a legal member,
- (c) the President sitting with two other members, 35
- (d) a legal member sitting with two other members,
- (e) with the consent of the parties to the proceedings, the President sitting with one other member, or
- (f) with the consent of the parties to the proceedings, a legal member sitting with one other member, 40
- (and references in paragraphs (d) and (f) to other members do not include the President).
- (3) The President shall publish arrangements made under this paragraph.

Practice and procedure

- 8 (1) Decisions of the Tribunal may be taken by majority vote.
(2) Where paragraph 7(2)(e) applies the President shall have a casting vote.
(3) Where paragraph 7(2)(f) applies and the panel consists of a legal member and an ordinary member, the legal member shall have a casting vote. 5
(4) The President shall make and publish arrangements as to who is to have a casting vote where paragraph 7(2)(f) applies and the panel consists of two legal members. 10
- 9 The President may, subject to rules under section 2B of this Act, give directions about the practice and procedure of the Tribunal.”
- 2 In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53) (tribunals under general supervision of Council), before paragraph 7 insert— 15

“Charities | 6A. The Charity Appeal Tribunal constituted under section 2A of, and Schedule 1B to, the Charities Act 1993.”

SCHEDULE 4

Section 6

20

APPEALS TO CHARITY APPEAL TRIBUNAL

- 1 The 1993 Act is amended as follows.
- 2 (1) Section 4 (claims and objections to registration) is amended as follows.
(2) For subsection (3) substitute—
- “(3) The persons mentioned in subsection (3A) below may appeal to the Tribunal against a decision— 25
(a) to enter or not to enter an institution in the register of charities, or
(b) to remove or not to remove an institution from the register.
- (3A) The persons mentioned in this subsection are— 30
(a) the Attorney General,
(b) the institution,
(c) the persons who are or claim to be the charity trustees of the institution,
(d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the decision. 35
- (3B) The Tribunal may—
(a) dismiss the appeal, or
(b) quash the decision.

- (3C) If the Tribunal quashes the decision it may in addition –
- (a) remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal), or
 - (b) direct the Commission to rectify the register.” 5
- (3) In subsection (4), for “High Court” substitute “Tribunal”.
- (4) In subsection (5), omit “, whether given on such an appeal or not”.
- 3 In section 6 (power of Commission to require change of charity’s name), after subsection (7) insert –
- “(7A) Any of the following may appeal to the Tribunal against a direction given under this section – 10
- (a) the Attorney General,
 - (b) the charity,
 - (c) the charity trustees of the charity,
 - (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the direction. 15
- (7B) The Tribunal may –
- (a) dismiss the appeal,
 - (b) quash the direction, or
 - (c) substitute for the direction another direction of a kind that the Commission could have given.” 20
- 4 After section 8 insert –
- “8A Appeals against decisions to institute inquiries**
- (1) Subsection (2) applies in relation to any institution –
- (a) which is or may be affected by an inquiry with regard to charities instituted under section 8 above, 25
 - (b) with regard to which an inquiry has been so instituted, or
 - (c) which is a member of a class of charities with regard to which an inquiry has been so instituted.
- (2) Any of the following may appeal to the Tribunal against the decision to institute the inquiry – 30
- (a) the Attorney General,
 - (b) the institution,
 - (c) any person who has control or management of the institution. 35
- (3) An appeal may be brought under subsection (2) above only on the ground that the institution is not a charity.
- (4) If the Tribunal determines that the institution is a charity it shall dismiss the appeal.
- (5) If the Tribunal determines that the institution is not a charity it shall – 40
- (a) direct the Commission to end the inquiry, or
 - (b) direct that the inquiry is not to consider the institution.”

- 5 In section 16 (concurrent jurisdiction of Commission and High Court), omit subsections (11) to (14).
- 6 In section 18 (power of Commission to act for protection of charities), omit subsections (8) to (10).
- 7 After section 19B (inserted by section 17) insert – 5
- “19C Appeals against orders made under sections 16 to 19B**
- (1) An appeal against an order made by virtue of section 16(1) above may be made to the Tribunal –
- (a) by the Attorney General,
 - (b) in a section 16(1)(a) case, by the charity or its charity trustees, 10
 - (c) in a section 16(1)(b) case, by any person discharged or removed by the order,
 - (d) by any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (2) An appeal against an order made under subsection (1) or (2) of section 18 above may be made to the Tribunal – 15
- (a) by the Attorney General,
 - (b) by the charity or its charity trustees,
 - (c) in a section 18(1)(i) case, by any person suspended by the order, 20
 - (d) in a section 18(2)(i) case, by any person removed by the order,
 - (e) by any person not mentioned in paragraph (a), (b), (c) or (d) above who is or may be affected by the order.
- (3) An appeal against an order made under section 18(4) above may be made to the Tribunal by – 25
- (a) the Attorney General,
 - (b) any charity trustee removed by the order,
 - (c) the charity of which he was a charity trustee,
 - (d) the remaining charity trustees of that charity,
 - (e) any person not mentioned in paragraph (a), (b), (c) or (d) 30 above who is or may be affected by the order.
- (4) An appeal against an order made under section 18(5) above may be made to the Tribunal by –
- (a) the Attorney General,
 - (b) the charity in respect of which the charity trustee was appointed, 35
 - (c) the charity trustees of the charity,
 - (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (5) An appeal against an order made under section 19A(2) above may be made to the Tribunal – 40
- (a) by the Attorney General,
 - (b) by the charity or its charity trustees,
 - (c) in a section 19A(2)(b) case, by any trustee for the charity who is subject to the order, 45

- (d) in a section 19A(2)(c) case, by any officer or employee of the charity who is subject to the order,
- (e) by any person not mentioned in paragraph (a), (b), (c) or (d) above who is or may be affected by the order.
- (6) An appeal against an order made under section 19B(2) above may be made to the Tribunal by – 5
- (a) the Attorney General,
- (b) any person who is subject to the order,
- (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order. 10
- (7) The Tribunal may –
- (a) dismiss the appeal,
- (b) quash the order in whole or in part,
- (c) substitute for all or part of the order another order of a kind that the Commission could have made, 15
- (d) add to the order an order of a kind that the Commission could have made.
- (8) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 20
- 8 In section 69 (investigation of accounts), after subsection (3) insert –
- “(3A) Any of the following may appeal to the Tribunal against an order under subsection (1) above –
- (a) the Attorney General,
- (b) the company which is subject to the order, 25
- (c) the directors of the company,
- (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (3B) An appeal may be brought under subsection (3A) above only on the ground that the company is not a charity. 30
- (3C) If the Tribunal determines that the company is a charity it shall dismiss the appeal.
- (3D) If the Tribunal determines that the company is not a charity it shall quash the order.”
- 9 In section 72 (disqualification for being trustee of charity), after subsection (5) insert – 35
- “(5A) Any of the following may appeal to the Tribunal against a decision under subsection (4) above to waive, or not to waive, a person’s disqualification –
- (a) the Attorney General, 40
- (b) the person who applied for the waiver,
- (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the decision.
- (5B) The Tribunal may –
- (a) dismiss the appeal, 45

- (b) quash the decision, or
 - (c) substitute for the decision another decision of a kind that the Commission could have made.
- (5C) If the Tribunal quashes the decision it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 5
- 10 In section 73 (acting as charity trustee while disqualified), after subsection (5) add—
- “
 - (6) Any of the following may appeal to the Tribunal against an order under subsection (4) above— 10
 - (a) the Attorney General,
 - (b) the person subject to the order,
 - (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order.
 - (7) The Tribunal may— 15
 - (a) dismiss the appeal,
 - (b) quash the order, or
 - (c) substitute for the order another order of a kind that the Commission could have made.
 - (8) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 20
- 11 Omit section 92 (appeals from Commissioners).

SCHEDULE 5

Section 10

EXEMPT CHARITIES: INCREASED REGULATION UNDER 1993 ACT 25

Power to require charity’s name to be changed

- 1 In section 6 of the 1993 Act (power of Commission to require charity’s name to be changed) omit subsection (9) (exclusion of exempt charities).

Power to institute inquiries

- 2 In section 8(1) of the 1993 Act (power of Commission to institute inquiries with regard to charities but not in relation to any exempt charity) after “any exempt charity” insert “except where this has been requested by its principal regulator (within the meaning of section 11 of the Charities Act 2005).” 30

Power to call for documents etc.

- 3 In section 9 of the 1993 Act (power of Commission to call for documents and search records) omit subsection (4) (exclusion of documents relating only to exempt charities). 35

Concurrent jurisdiction of Commission with High Court

- 4 (1) Section 16 of the 1993 Act (concurrent jurisdiction of Commission with High Court for certain purposes) is amended as follows.
- (2) In subsection (4)(c) (application for Commission to exercise powers may be made by Attorney General except in case of exempt charity) omit “in the case of a charity other than an exempt charity,”. 5
- (3) In subsection (5) (jurisdiction exercisable in case of charity which is not an exempt charity and whose annual income does not exceed £500) omit “which is not an exempt charity and”.

Further powers of Commission 10

- 5 In section 17(7) of the 1993 Act (expenditure by charity on promoting Parliamentary Bill needs consent of court or Commission except in case of exempt charity) omit the words from “but this subsection” onwards.

Power to act for protection of charities

- 6 In section 18 of the 1993 Act (power of Commission to act for protection of charities) for subsection (16) substitute – 15
- “(16) In this section –
- (a) subsections (1) to (3) apply in relation to an exempt charity, and
- (b) subsections (4) to (6) apply in relation to such a charity at any time after the Commission have instituted an inquiry under section 8 with respect to it, 20
- and the other provisions of this section apply accordingly.”

Power to give directions about dormant bank accounts

- 7 In section 28 of the 1993 Act (power of Commission to give directions about dormant bank accounts of charities), omit subsection (10) (exclusion of accounts held by or on behalf of exempt charity). 25

Proceedings by persons other than Commission

- 8 (1) Section 33 of the 1993 Act (charity proceedings by persons other than Commission) is amended as follows. 30
- (2) In subsection (2) (proceedings relating to a charity other than an exempt charity must be authorised by the Commission) omit “(other than an exempt charity)”.
- (3) In subsection (7) (participation by Attorney General in proceedings relating to charity other than exempt charity) omit “(other than an exempt charity)”. 35

Power to order disqualified person to repay sums received from charity

- 9 In section 73 of the 1993 Act (consequences of person acting as charity trustee while disqualified), in subsection (4) (power of Commission to order disqualified person to repay sums received from a charity other than an exempt charity) omit “(other than an exempt charity)”. 40

SCHEDULE 6

Section 26

CHARITABLE INCORPORATED ORGANISATIONS

PART 1

NEW PART 8A OF AND SCHEDULE 5A TO CHARITIES ACT 1993

- 1 After Part 8 of the 1993 Act insert the following new Part – 5

“PART 8A

CHARITABLE INCORPORATED ORGANISATIONS

Nature and constitution

69A Preliminary

- (1) In this Act, a charitable incorporated organisation is referred to as a “CIO”. 10
- (2) A registered charity may be constituted as a CIO in accordance with this Part.
- (3) A charity which is not a registered charity may not be constituted as a CIO. 15

69B Charitable incorporated organisations

- (1) A CIO shall be a body corporate.
- (2) A CIO shall have a constitution.
- (3) A CIO shall have a principal office, which shall be in England or in Wales. 20
- (4) A CIO shall have one or more members.
- (5) The members may be –
- (a) liable to contribute to the assets of the CIO if it is wound up, or
 - (b) not so liable. 25

69C Constitution

- (1) A CIO’s constitution shall state –
- (a) its name,
 - (b) its purposes,
 - (c) the address of its principal office, and 30
 - (d) whether or not its members are liable to contribute to its assets if it is wound up, and (if they are) up to what amount.
- (2) A CIO’s constitution shall make provision –
- (a) about who is eligible for membership, and how a person becomes a member, 35
 - (b) about the appointment of one or more persons (to be called “Trustees”) who are to be charged with the general control

- and management of the CIO’s administration, and about any conditions of eligibility for becoming one, and
- (c) containing directions about the application of property of the CIO on its dissolution.
- (3) A Trustee may, but need not, be a member; a member may, but need not, be a Trustee; and those who are members and those who are Trustees may, but need not, be identical. 5
- (4) A CIO’s constitution shall also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Secretary of State. 10
- (5) A CIO’s constitution –
- (a) shall be in English if its principal office is in England,
- (b) may be in English or in Welsh if its principal office is in Wales.
- 69D Name and status** 15
- (1) The name of a CIO shall appear in legible characters –
- (a) in all business letters of the CIO,
- (b) in all its notices and other official publications,
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the CIO, 20
- (d) in all conveyances purporting to be executed by the CIO, and
- (e) in all bills rendered by it and in all its invoices, receipts, and letters of credit.
- (2) In subsection (1)(d), “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land. 25
- (3) Subsection (5) applies if the name of a CIO does not include –
- (a) “charitable incorporated organisation”, or
- (b) “CIO”, with or without full stops after each letter, or
- (c) a Welsh equivalent mentioned in subsection (4) (but this option applies only if the CIO’s constitution is in Welsh), 30
- and it is irrelevant, in any such case, whether or not capital letters are used.
- (4) The Welsh equivalents referred to in subsection (3)(c) are –
- (a) “sefydliad corfforedig elusennol”, or 35
- (b) “SCE”, with or without full stops after each letter.
- (5) If this subsection applies, the fact that a CIO is a CIO shall be stated in legible characters in all the documents mentioned in subsection (1).
- (6) The statement required by subsection (5) shall be in English, except that in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh. 40
- 69E Offences connected with name and status**
- (1) A charity trustee of a CIO or a person on the CIO’s behalf who issues or authorises the issue of any document referred to in paragraph (a), 45

- (b), (d) or (e) of section 69D(1) above which fails to comply with the requirements of section 69D(1), (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A charity trustee of a CIO or a person on the CIO’s behalf who signs or authorises to be signed on behalf of the CIO any document referred to in paragraph (c) of section 69D(1) above which fails to comply with the requirements of section 69D(1), (5) or (6)– 5
- (a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) is personally liable to the holder of the bill of exchange (etc) for the amount of it, unless it is duly paid by the CIO. 10
- (3) A person who holds any body out as being a CIO when it is not (however it is done) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he believed on reasonable grounds that the body was a CIO. 15

Registration

69F Application for registration

- (1) Any one or more persons (“the applicants”) may apply to the Commission for a CIO to be constituted and for its registration as a charity. 20
- (2) The applicants shall supply the Commission with–
- (a) a copy of the proposed constitution of the CIO,
- (b) such other documents or information as may be prescribed by regulations made by the Secretary of State, and 25
- (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) The Commission shall refuse such an application if–
- (a) it is not satisfied that the CIO would be a charity at the time it would be registered, or 30
- (b) the CIO’s proposed constitution does not comply with one or more of the requirements of section 69C above and any regulations made under that section.
- (4) The Commission may refuse such an application if– 35
- (a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not), or
- (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 6(2) above (power of Commission to require change in charity’s name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on). 40

69G Effect of registration

- (1) If the Commission grants an application under section 69F above it shall register the CIO to which the application related as a charity in the register of charities.
- (2) Upon the registration of the CIO in the register of charities, it becomes by virtue of the registration a body corporate—
 - (a) whose constitution is that proposed in the application,
 - (b) whose name is that specified in the constitution, and
 - (c) whose first member is, or members are, the applicants referred to in section 69F above.
- (3) All property for the time being vested in the applicants (or, if more than one, any of them) on trust for the charitable purposes of the CIO (when incorporated) shall by virtue of this subsection become vested in the CIO upon its registration.
- (4) The entry relating to the charity’s registration in the register of charities shall include—
 - (a) the date of the charity’s registration, and
 - (b) a note saying that it is constituted as a CIO.
- (5) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

Conversion, amalgamation and transfer

69H Conversion of charitable company or registered friendly society

- (1) The following may apply to the Commission to be converted into a CIO, and for the CIO’s registration as a charity, in accordance with this section—
 - (a) a charitable company,
 - (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965.
- (2) But such an application may not be made by a company or registered society having a share capital if any of the shares are not fully paid up.
- (3) Such an application is referred to in this section and section 69I below as an “application for conversion”.
- (4) Subsections (2) to (4) of section 69F above apply in relation to an application for conversion as they apply to an application for a CIO to be constituted, but in those subsections “the applicants” shall be construed as meaning the company or registered society.
- (5) In addition to the documents and information referred to in section 69F(2) above, the company or registered society shall supply the Commission with—
 - (a) a copy of a resolution of the company or registered society that it be converted into a CIO, and
 - (b) a copy of a resolution of the company or registered society adopting the proposed constitution of the CIO.

- (6) The resolution referred to in subsection (5)(a) shall be –
 - (a) a special resolution of the company or registered society, or
 - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution. 5
- (7) In the case of a registered society, “special resolution” has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965.
- (8) In the case of a company limited by guarantee which makes an application for conversion (whether or not it also has a share capital), the proposed constitution of the CIO shall provide for the CIO’s members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable. 10
- (9) That amount shall not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up. 15
- (10) Subsection (3)(b) of section 69F above shall have effect, in relation to an application for conversion made by such a company, as if the requirements of subsections (8) and (9) of this section were a requirement of section 69C above.
- (11) In subsection (1), “charitable company” means a company which is a charity. 20

69I Conversion: supplementary

- (1) If the Commission grants an application for conversion, it shall –
 - (a) register the CIO to which the application related in the register of charities, and 25
 - (b) send to the appropriate registrar a copy of the resolution of the converting company or registered society referred to in section 69H(5)(a) above, and a copy of the entry in the register relating to the CIO.
- (2) The registration of the CIO in the register shall, for so long as the appropriate registrar has not yet acted as required by subsection (3), include a note saying that its constitution as a CIO has not yet taken effect. 30
- (3) The appropriate registrar shall –
 - (a) register the documents sent to him under subsection (1)(b), and 35
 - (b) cancel the registration of the company in the register of companies, or of the society in the register of friendly societies.
- (4) When the appropriate registrar acts as required by subsection (3), the company or registered society is thereupon converted into a CIO, being a body corporate –
 - (a) whose constitution is that proposed in the application for conversion, 40
 - (b) whose name is that specified in the constitution, and 45

- (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall by virtue of this subsection be cancelled, and no former holder of any cancelled share shall have any right in respect of it after its cancellation. 5
- (6) Subsection (5) does not affect any right which accrued in respect of a share before its cancellation. 10
- (7) The entry relating to the charity’s registration in the register shall include—
- (a) a note that it is constituted as a CIO,
- (b) the date on which it became so constituted, and
- (c) a note of the name of the company or society which was converted into the CIO. 15
- (8) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.
- (9) In this section, the “appropriate registrar” means—
- (a) in the case of an application for conversion by a charitable company, the registrar of companies, 20
- (b) in the case of an application for conversion by a registered society, the Financial Services Authority.
- 69J Amalgamation of CIOs**
- (1) Any two or more CIOs (“the old CIOs”) may, in accordance with this section, apply to the Commission to be amalgamated, and for the incorporation and registration as a charity of a new CIO (“the new CIO”) as their successor. 25
- (2) Such an application is referred to in this section and section 69K below as an “application for amalgamation”. 30
- (3) Subsections (2) to (4) of section 69F above apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, but in those subsections—
- (a) “the applicants” shall be construed as meaning the old CIOs, and
- (b) references to the CIO are to the new CIO. 35
- (4) In addition to the documents and information referred to in section 69F(2) above, the old CIOs shall supply the Commission with—
- (a) a copy of a resolution of each of the old CIOs approving the proposed amalgamation, and 40
- (b) a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO.
- (5) The resolutions referred to in subsection (4) shall be passed—
- (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or 45

- (b) unanimously by the CIO’s members, otherwise than at a general meeting.
- (6) The date of passing of such a resolution is –
 - (a) the date of the general meeting at which it was passed, or
 - (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO’s constitution or in regulations made under paragraph 13 of Schedule 5A to this Act deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it). 5
- (7) Each old CIO shall – 10
 - (a) give notice of the proposed amalgamation in the way (or ways) that in the opinion of its charity trustees will make it most likely to come to the attention of those who would be affected by the amalgamation, and
 - (b) send a copy of the notice to the Commission. 15
- (8) The notice shall invite any person who considers that he would be affected by the proposed amalgamation to make written representations to the Commission not later than a date determined by the Commission and specified in the notice.
- (9) In addition to the grounds mentioned in section 69F(3) above as applied by subsection (3) of this section, the Commission shall refuse an application for amalgamation if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes. 20
- 69K Amalgamation: supplementary 25**
 - (1) If the Commission grants an application for amalgamation, it shall –
 - (a) register the new CIO in the register of charities, and
 - (b) cancel the registration of the old CIOs.
 - (2) Upon the registration of the new CIO it thereupon becomes by virtue of the registration a body corporate – 30
 - (a) whose constitution is that proposed in the application for amalgamation,
 - (b) whose name is that specified in the constitution, and
 - (c) whose first members are the members of the old CIOs immediately before the new CIO was registered. 35
 - (3) Upon the cancellation of the registration of the old CIOs –
 - (a) all the property, rights and liabilities of each of the old CIOs shall become by virtue of this subsection the property, rights and liabilities of the new CIO, and
 - (b) each of the old CIOs shall be dissolved. 40
 - (4) The entry relating to the registration in the register of the charity constituted as the new CIO shall include –
 - (a) a note that it is constituted as a CIO,
 - (b) the date of the charity’s registration, and
 - (c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs. 45

- (5) A copy of the entry in the register shall be sent to the charity at the principal office of the new CIO.

69L Transfer of CIO’s undertaking

- (1) A CIO may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution. 5
- (2) Where a CIO has passed such a resolution, it shall send to the Commission—
- (a) a copy of the resolution, and
- (b) a copy of a resolution of the transferee CIO agreeing to the transfer to it. 10
- (3) Subsections (5) and (6) of section 69J above apply to the resolutions referred to in subsections (1) and (2)(b) as they apply to the resolutions referred to in section 69J(4).
- (4) Having received the copy resolutions referred to in subsection (2), the Commission— 15
- (a) may direct the transferor CIO to give public notice of its resolution in such manner as is specified in the direction, and
- (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO. 20
- (5) The resolution shall not take effect until confirmed by the Commission. 25
- (6) The Commission shall refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor CIO.
- (7) If the Commission confirms the resolution— 30
- (a) all the property, rights and liabilities of the transferor CIO shall become by virtue of this subsection the property, rights and liabilities of the transferee CIO in accordance with the resolution, and
- (b) the transferor CIO shall be dissolved.

Winding up, insolvency and dissolution 35

69M Regulations about winding up, insolvency and dissolution

- (1) The Secretary of State may by regulations make provision about—
- (a) the winding up of CIOs,
- (b) their insolvency,
- (c) their dissolution, and 40
- (d) their revival and restoration to the register following dissolution.
- (2) The regulations may, in particular, make provision—

- (a) about the transfer of a CIO’s property and rights (including property and rights held on trust for the CIO) to the official custodian or another person or body,
 - (b) requiring any person in whose name any stocks, funds or securities are standing in trust for a CIO to transfer them into the name of the official custodian, 5
 - (c) about the disclaiming of title to any of a CIO’s property,
 - (d) about the application of a CIO’s property cy-près,
 - (e) about the reversal on a CIO’s revival of anything done on its dissolution. 10
- (3) The regulations may –
- (a) apply any enactment which would not otherwise apply, either without modification or with modifications specified in the regulations,
 - (b) disapply, or modify (in ways specified in the regulations) the application of, any enactment which would otherwise apply. 15
- (4) In subsection (3), “enactment” includes a provision of subordinate legislation within the meaning of the Interpretation Act 1978.

Miscellaneous

69N Power to transfer all property of unincorporated charity to one or more CIOs 20

Section 74 below (power to transfer all property of unincorporated charity) applies with the omission of paragraph (a) of subsection (1) in relation to a resolution by the charity trustees of a charity to transfer all its property to a CIO or to divide its property between two or more CIOs. 25

69O Further provision about CIOs

The provisions of Schedule 5A to this Act shall have effect with respect to CIOs.

69P Regulations 30

- (1) The Secretary of State may by regulations make further provision about the administration of CIOs.
- (2) The regulations may, in particular, make provision about –
 - (a) the execution of deeds and documents,
 - (b) the maintenance of registers of members and of charity trustees. 35
- (3) Subsections (3) and (4) of section 69M above apply for the purposes of this section as they apply for the purposes of that.”

2 After Schedule 5 to the 1993 Act insert the following new Schedule –

“SCHEDULE 5A

Section 69O

FURTHER PROVISION ABOUT CHARITABLE INCORPORATED ORGANISATIONS

Powers

- | | | |
|---|--|---|
| 1 | (1) Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. | 5 |
| | (2) The CIO’s charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. | |

Constitutional requirements

10

- | | | |
|---|--|----|
| 2 | A CIO shall use and apply its property in furtherance of its purposes and in accordance with its constitution. | |
| 3 | If the CIO is one whose members are liable to contribute to its assets if it is wound up, its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract – | 15 |
| | (a) to which the CIO and each of its members was a party, and | |
| | (b) which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution. | 20 |
| 4 | Money payable by a member to the CIO under the constitution is a debt due from him to the CIO, and is of the nature of a specialty debt. | |

Third parties

- | | | |
|---|---|----|
| 5 | (1) Sub-paragraphs (2) and (3) are subject to sub-paragraph (4). | 25 |
| | (2) The validity of an act done (or purportedly done) by a CIO shall not be called into question on the ground that it lacked constitutional capacity. | |
| | (3) The power of the charity trustees of a CIO to act so as to bind the CIO (or authorise others to do so) shall not be called into question on the ground of any constitutional limitations on their powers. | 30 |
| | (4) But sub-paragraphs (2) and (3) apply only in favour of a person who gives full consideration in money or money’s worth in relation to the act in question, and does not know – | |
| | (a) in a sub-paragraph (2) case, that the act is beyond the CIO’s constitutional capacity, or | 35 |
| | (b) in a sub-paragraph (3) case, that the act is beyond the constitutional powers of its charity trustees, | |
| | and (in addition) sub-paragraph (3) applies only if the person dealt with the CIO in good faith (which he shall be presumed to have done unless the contrary is proved). | 40 |
| | (5) A party to an arrangement or transaction with a CIO is not bound to inquire – | |

- (a) whether it is within the CIO’s constitutional capacity, or
 - (b) as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so.
- (6) If a CIO purports to transfer or grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the CIO’s act. 5 10
- (7) In any proceedings arising out of sub-paragraphs (2) to (4), the burden of proving that a person knew that an act—
 - (a) was beyond the CIO’s constitutional capacity, or
 - (b) was beyond the constitutional powers of its charity trustees,lies on the person making that allegation. 15
- (8) In this paragraph—
 - (a) references to a CIO’s lack of “constitutional capacity” are to lack of capacity because of anything in its constitution, and 20
 - (b) references to “constitutional limitations” on the powers of a CIO’s charity trustees are to limitations on their powers under its constitution, including limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO’s members, and “constitutional powers” is to be construed accordingly. 25
- 6 (1) Nothing in paragraph 5 prevents a person from bringing proceedings to restrain the doing of an act which would be—
 - (a) beyond the CIO’s constitutional capacity, or 30
 - (b) beyond the constitutional powers of the CIO’s charity trustees.
- (2) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CIO. 35
- (3) Sub-paragraph (2) does not prevent the Commission from exercising any of its powers.
- 7 Nothing in paragraph 5(3) affects any liability incurred by the CIO’s charity trustees (or any one of them) for acting beyond his or their constitutional powers. 40
- 8 Nothing in paragraph 5 absolves the CIO’s charity trustees from their duty to act within the CIO’s constitution and in accordance with any constitutional limitations on their powers.

Duties

- 9 It is the duty of—
 - (a) each member of a CIO, and
 - (b) each charity trustee of a CIO, 45

to exercise his powers, and (in the case of a charity trustee) to perform his functions, in his capacity as such, in the way he decides, in good faith, would be most likely to further the purposes of the CIO.

- 10 Each charity trustee of a CIO shall in the performance of his functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular – 5
- (a) to any special knowledge or experience that he has or holds himself out as having, and
 - (b) if he acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession. 10

Personal benefit and payments

- 11 (1) A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, he did not disclose to all the charity trustees of the CIO any material interest of his in it or in any other person or body party to it (whether that interest is direct or indirect). 15 20
- (2) Nothing in sub-paragraph (1) confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO.
- 12 A charity trustee of a CIO – 25
- (a) is entitled to be reimbursed by the CIO, or
 - (b) may pay out of the CIO's funds, expenses properly incurred by him in the performance of his functions as such.

Procedure

- 13 (1) The Secretary of State may by regulations make provision about the procedure of CIOs. 30
- (2) Subject to – 35
- (a) any such regulations,
 - (b) any other requirement imposed by or by virtue of this Act or any other enactment, and
 - (c) anything in the CIO's constitution,
- a CIO may regulate its own procedure.
- (3) But a CIO's procedure shall include provision for the holding of a general meeting of its members, and the regulations referred to in sub-paragraph (1) may in particular make provision about such meetings. 40

Amendment of constitution

- 14 (1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment). 45

- (2) Such a resolution may be passed –
 - (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the CIO’s members, otherwise than at a general meeting. 5
- (3) The date of passing of such a resolution is –
 - (a) the date of the general meeting at which it was passed, or
 - (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO’s constitution or in regulations made under paragraph 13 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it). 10
- (4) The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO’s ceasing to be a charity. 15
- (5) Subject to paragraph 15(6) below, a resolution containing an amendment which would make any regulated alteration is to that extent ineffective unless the prior written consent of the Commission has been obtained to the making of the amendment.
- (6) The following are regulated alterations – 20
 - (a) any alteration of the CIO’s purposes,
 - (b) any alteration of any provision of the CIO’s constitution directing the application of property of the CIO on its dissolution,
 - (c) any alteration of any provision of the CIO’s constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them. 25

Registration and coming into effect of amendments

- 15 (1) A CIO shall send to the Commission a copy of a resolution containing an amendment to its constitution, together with a copy of the constitution as amended, by the end of the period of 15 days beginning with the date of passing of the resolution (see paragraph 14(3)). 30
- (2) Except as mentioned in sub-paragraph (3), an amendment to a CIO’s constitution does not take effect until it has been registered. 35
- (3) An amendment takes effect immediately on the passing of the resolution containing it if the amendment consists solely of a change in the address of the CIO’s principal office; but this does not apply if – 40
 - (a) the change of address is from a Welsh one to an English one, and
 - (b) the CIO’s registered constitution is in Welsh.
- (4) The Commission shall refuse to register an amendment if – 45
 - (a) in the opinion of the Commission the CIO had no power to make it (for example, because the effect of making it would be that the CIO ceased to be a charity, or that the CIO or its constitution did not comply with any requirement

- imposed by or by virtue of this Act or any other enactment), or
- (b) the amendment would change the name of the CIO, and the Commission could have refused an application under section 69F above for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in subsection (4) of that section. 5
- (5) The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the consent referred to in paragraph 14(5) had not been obtained. 10
- (6) But if the Commission does register such an amendment, paragraph 14(5) does not apply.
- (7) Any of the following may appeal to the Tribunal against a decision to refuse to register an amendment – 15
- (a) the Attorney General,
- (b) the CIO,
- (c) the charity trustees of the CIO,
- (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the decision.
- (8) The Tribunal may – 20
- (a) dismiss the appeal, or
- (b) quash the decision.
- (9) If the Tribunal quashes the decision it may in addition – 25
- (a) remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal), or
- (b) direct the Commission to register the amendment.”

PART 2

OTHER AMENDMENTS OF CHARITIES ACT 1993

- 3 The 1993 Act is further amended as follows. 30
- 4 In section 45 (annual reports), after subsection (3A) insert –
- “(3B) But in the case of a charity which is constituted as a CIO –
- (a) the requirement imposed by subsection (3) applies whatever the gross income or total expenditure of the charity is, and
- (b) subsection (3A) does not apply.” 35
- 5 In section 48 (annual returns), in subsection (1A), at the end add “(but this subsection does not apply if the charity is constituted as a CIO)”.
- 6 (1) Section 49 (offences) is amended as follows.
- (2) The existing text is renumbered as subsection (1).
- (3) In that subsection (as so renumbered), after “imposed” insert “in relation to a charity other than one constituted as a CIO”. 40
- (4) After that subsection add –
- “(2) Subsections (3) to (5) apply in relation to a charity which is constituted as a CIO.

- (3) If any requirement imposed –
(a) by section 45(3) above (taken with section 45(3B) and (4)), or
(b) by section 47(2) or 48(2) above,
is not complied with, each person who immediately before the date
for compliance specified in the section in question was a charity
trustee of the CIO shall be guilty of an offence and liable on summary
conviction to the penalty mentioned in subsection (4). 5
- (4) The penalty is –
(a) a fine not exceeding level 4 on the standard scale, and
(b) for continued contravention, a daily default fine not
exceeding 10% of level 4 on the standard scale for so long as
the person in question remained a charity trustee of the CIO. 10
- (5) It is a defence for a person charged with an offence under subsection
(3) to prove that he took all reasonable steps for securing that the
requirement in question would be complied with in time.” 15
- 7 In section 86 (regulations and orders), in subsection (4), for “or 45” substitute
“, 45, 69M or 69P”.
- 8 In section 97 (general interpretation), in subsection (1), at the appropriate
place insert –
“ “CIO” means charitable incorporated organisation;”. 20

SCHEDULE 7

Section 45

MINOR AND CONSEQUENTIAL AMENDMENTS

Education Reform Act 1988 (c. 40)

- 1 For section 125A of the Education Reform Act 1988 substitute –
“125A Charitable status of a higher education corporation” 25
A higher education corporation shall be a charity within the meaning
of the Charities Act 1993 (and in accordance with Schedule 2 to that
Act is an exempt charity for the purposes of that Act).”

Further and Higher Education Act 1992 (c. 13)

- 2 For section 22A of the Further and Higher Education Act 1992 substitute – 30
“22A Charitable status of a further education corporation”
A further education corporation shall be a charity within the
meaning of the Charities Act 1993 (and in accordance with Schedule
2 to that Act is an exempt charity for the purposes of that Act).”

Charities Act 1992 (c. 41)

- 3 In section 58(2)(c) of the 1992 Act (interpretation of Part 2) for “to be treated
as a promoter of such a collection by virtue of section 65(3)” substitute “a 35

promoter of such a collection by virtue of paragraph (b) of the definition of “promoter” in section 65B(1)”.

Charities Act 1993 (c. 10)

- 4 The 1993 Act has effect subject to the following amendments.
- 5 (1) Section 2 (official custodian for charities) is amended as follows. 5
- (2) For subsection (2) substitute –
- “(2) Such individual as the Commission may from time to time designate shall be the official custodian.”
- (3) In subsection (3), for “Commissioners” (in both places) substitute “Commission”. 10
- (4) In subsection (4) –
- (a) for “officer of the Commissioners” substitute “member of the staff of the Commission”, and
- (b) for “by them” substitute “by it”.
- (5) In subsection (7), for “report to be made by the Commissioners to the Secretary of State for any year” substitute “Commission’s annual report”. 15
- 6 In section 16(5) (concurrent jurisdiction of Commissioners with High Court), for “income from all sources does not in aggregate” substitute “gross income does not”.
- 7 In section 44(3) (application of section 727 of Companies Act 1985 to auditors etc.) omit “by a charity”. 20
- 8 (1) Section 46 (special provisions as respects accounts etc. of excepted charities) is amended as follows.
- (2) In subsection (3) for “section 3(5)(c) above” substitute “section 3A(2)(d) above”. 25
- (3) In subsection (4) for the words from “(other than” onwards substitute “which –
- (a) is excepted by section 3A(2)(b) or (c) above, and
- (b) is not registered.”
- (4) In subsection (8) – 30
- (a) for “section 3(5)(c) above” substitute “section 3A(2)(d) above”, and
- (b) for “section 3(5)(b) above” substitute “section 3A(2)(b) or (c) above”.
- 9 For the heading preceding section 74 substitute “*Miscellaneous powers of charities*”.
- 10 In section 80(1) (supervision by Commissioners of certain Scottish charities) for paragraph (c) and the “and” preceding it substitute – 35
- “(c) sections 19 to 19B, and
- (d) section 31A.”.
- 11 In section 88 (enforcement of orders of Commission) after paragraph (b) insert – 40
- “(ba) to an order of the Commission under section 19A or 19B above; or”.
- 12 In section 89 (other provisions as to orders of Commissioners) at the end

- add –
- “(5) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made.”
- 13 In section 93 (miscellaneous provisions as to evidence), for subsection (3) substitute – 5
- “(3) Evidence of any order, certificate or other document issued by the Commission may be given by means of copy which it retained, or which is taken from a copy so retained, and evidence of an entry in any register kept by it may be given by means of a copy of the entry, if (in each case) the copy is certified in accordance with subsection (4). 10
- (4) The copy shall be certified to be a true copy by any officer of the Commission generally or specially authorised by the Commission to act for that purpose.
- (5) A document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.” 15
- 14 In section 96(1) (construction of references to a “charity” etc.) for the definition of “charity” substitute –
- ““charity” has the meaning given by section 1 of the Charities Act 2005;”. 20
- 15 In section 97(1) (interpretation) –
- (a) in the definition of “charitable purposes”, for “charitable according to the law of England and Wales;” substitute “charitable purposes as defined by section 2 of the Charities Act 2005;”; 25
- (b) for the definition of “the Commissioners” substitute –
- ““the Commission” means the Charity Commission;”; and
- (c) at the appropriate place insert –
- ““the Tribunal” means the Charity Appeal Tribunal;”. 30
- School Standards and Framework Act 1998 (c. 31)* 30
- 16 The School Standards and Framework Act 1998 has effect subject to the following amendments.
- 17 (1) Section 23 is amended as follows.
- (2) In subsection (1) (certain school bodies to be charities that are exempt charities) omit “which are exempt charities for the purposes of the Charities Act 1993”. 35
- (3) After that subsection insert –
- “(1A) Any body to which subsection (1)(a) or (b) applies is an institution to which section 3A(4)(b) of the Charities Act 1993 applies (institutions to be excepted from registration under that Act).” 40
- (4) In subsection (2) (connected bodies that are to be exempt charities) for the words from “also” onwards substitute “be treated for the purposes of section 3A(4)(b) of the Charities Act 1993 as if it were an institution to which that provision applies.”

- (5) In subsection (3) (status of certain foundations) for the words from “which (subject” onwards substitute “, and is an institution to which section 3A(4)(b) of the Charities Act 1993 applies.”
- 18 In Schedule 1 (education action forums), in paragraph 10, for the words from “which is” onwards substitute “within the meaning of the Charities Act 1993, and is an institution to which section 3A(4)(b) of that Act applies (institutions to be excepted from registration under that Act).” 5

SCHEDULE 8

Section 45

REPEALS

| <i>Short title and chapter</i> | <i>Extent of repeal</i> | |
|--------------------------------|--|----------------------------|
| Charities Act 1960 (c. 58) | The whole Act. | 10 |
| Charities Act 1992 (c. 41) | Part 1 (so far as unrepealed). Section 67(4). In section 69, in subsection (1) paragraphs (c) to (g), and subsections (3) to (5). Section 72. Section 74(3A) and (3B). | 15 |
| Charities Act 1993 (c. 10) | Section 1. In section 4(5), the words “, whether given on such an appeal or not”. Section 6(9). Section 9(4). In section 16, in subsection (4)(c) the words “in the case of a charity other than an exempt charity,”, in subsection (5) the words “which is not an exempt charity and”, and subsections (11) to (14). In section 17(7), the words from “but this subsection” onwards. Section 18(8) to (10). In section 24(8), the words from “; and if the scheme” onwards. Section 28(10). In section 33, in each of subsections (2) and (7) the words “(other than an exempt charity)”. In section 44(3), the words “by a charity”. Section 61(7). In section 73(4), the words “(other than an exempt charity)”. Section 92. | 20 25 30 35 40 |
| | In section 96, in the definition of “exempt charity” in subsection (1) the words “(subject to section 24(8) above)”, and subsection (4). Schedule 1. In Schedule 2, in paragraph (b) the words “and the colleges of Winchester and Eton”, and paragraphs (x) and (zb). In Schedule 6, paragraph 29(7) and (8). | 45 |

| <i>Short title and chapter</i> | <i>Extent of repeal</i> | |
|--|---|----|
| National Lottery etc. Act 1993 (c. 39) | In Schedule 5, paragraph 12. | |
| Local Government (Wales) Act 1994 (c.19) | In Schedule 16, paragraph 99. | 5 |
| Deregulation and Contracting Out Act 1994 (c. 40) | Section 28. | |
| Teaching and Higher Education Act 1998 (c. 30) | Section 41. In Schedule 3, paragraph 9. | |
| School Standards and Framework Act 1998 (c. 31) | In section 23(1), the words “which are exempt charities for the purposes of the Charities Act 1993”. In Schedule 30, paragraph 48. | 10 |

Explanatory Notes on the Draft Clauses

Explanatory Notes

INTRODUCTION

These Explanatory Notes relate to the draft Charities Bill published on 27 May 2004. They have been prepared by the Home Office to help the reader of the Bill and to inform debate about it. They do not form part of the Bill.

These notes should be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a provision in the Bill does not seem to require any explanation or comment, none is given.

BACKGROUND

In July 2001 the Prime Minister commissioned a review of the law and regulation of charities and other not-for-profit organisations. The review was carried out by the Prime Minister's Strategy Unit and was published (as "Private Action, Public Benefit") in September 2002. It was not a statement of settled Government policy but an analysis of the strengths and weaknesses of the current legal and regulatory framework accompanied by a series of recommendations, addressed to the Government, for change. Before responding to these recommendations the Government sought views on them through an open public consultation which ran from September 2002 to January 2003.

In July 2003 the Government published "Charities and Not-for-Profits: a Modern Legal Framework", which:

- summarised the results of the public consultation on the Strategy Unit's recommendations; and
- stated the Government's acceptance of almost all of the recommendations and explained how the accepted recommendations were to be taken forward.

This draft Bill will implement a majority of the accepted recommendations, with the remainder to be (or, in some cases, having already been) implemented either through other legislation or by administrative action.

OVERVIEW OF THE BILL'S CONTENT AND STRUCTURE

The Bill has 48 clauses and seven Schedules and is divided into four Parts.

Part 1 (clauses 1-3) deals with the definition of a charity and of charitable purposes.

Part 2 (clauses 4-34) deals with the regulation of charities and is divided into 11 Chapters as follows:

- Chapter 1 (clauses 4-5 and Schedules 1-2) covers the objectives, functions and constitution of the Charity Commission, which is established by the Bill as the regulatory body for charities;
- Chapter 2 (clause 6 and Schedules 3-4) covers the creation of a tribunal to hear appeals against some types of decision made by the Charity Commission;
- Chapter 3 (clauses 7-11 and Schedule 5) covers the registration of charities, including new arrangements for the registration of larger excepted charities and for the regulation exempt charities. (Excepted charities are charities not at present obliged to register with the Charity Commission, though they are regulated by it. Exempt charities are charities at present neither registered with nor regulated by the Commission);
- Chapter 4 (clauses 12-15) covers changes to the rules governing the application, by scheme, of charity property “cy-près”. Charity property is said to be applied “cy-près” when it is used for purposes different from, but close to, the purposes for which it was originally given;
- Chapter 5 (clauses 16-21) covers the assistance and supervision of charities by the court and the Charity Commission. It includes new powers for the Commission:
 - to direct charity trustees to take certain actions in administering their charity;
 - to direct charity trustees to apply the charity’s property in a certain way;
 - to give advice and guidance to charity trustees; and
 - in the course of statutory investigations, to enter premises and take possession of information and documents.

Chapter 5 also includes a provision relaxing the rules on the advertising of schemes and a provision to allow Common Investment Funds and Common Deposit Funds to accept investments from Scottish and Northern Irish charities.

- Chapter 6 (clauses 22-23) covers the audit and examination of the accounts of unincorporated charities and the duties of auditors and examiners of those charities;
- Chapter 7 (clauses 24-25) affects charitable companies only, covering changes to the rule restricting amendments to their constitutions, and the audit and examination of their accounts;

- Chapter 8 (clause 26 and Schedule 6) covers the Charitable Incorporated Organisation, a new legal form for charities;
- Chapter 9 (clauses 27-29) covers changes to the rules on the remuneration of charity trustees, and the relief of trustees from personal liability for breach of trust or duty;
- Chapter 10 (clauses 30-32) covers changes to the rules under which small unincorporated charities may transfer their property to other charities, replace their current charitable purposes with new ones, or modify their constitutional powers or procedures;
- Chapter 11 (clauses 33-34) covers the spending of capital endowment funds by charities, and the registration of mergers between charities;

Part 3 (clauses 35-44) deals with fundraising by, and the funding of, charities and other benevolent or philanthropic organisations. It covers:

- (clause 35) changes to the rules requiring statements to be made to donors and consumers by, respectively, professional fundraisers and commercial participators;
- (clause 36) a reserve power for the Secretary of State to regulate fundraising;
- (clauses 37-43) the arrangements for the regulation of public charitable collections;
- (clause 44) a power for the Secretary of State to give financial assistance to charitable, benevolent and philanthropic organisations by way of grants or loans.

Part 4 (clauses 45-47) contains the final provisions, covering:

- (clause 45 and Schedules 7 and 8) consequential amendments, repeals and transitional provisions;
- (clause 46) expenses;
- (clause 47) interpretation;
- (clause 48) short title, commencement and extent.

TERRITORIAL EXTENT

Except for the purposes of a small number of amendments to other statutes, the Bill extends to England and Wales only. The law and regulation of charities is now a devolved matter in both Scotland and Northern Ireland, but even before devolution each of those territories had its own body of charity law different from the law applying in England and Wales.

COMMENTARY ON CLAUSES

Many of the provisions in this Bill amend the Charities Act 1992 and the Charities Act 1993, which are referred to below as “the 1992 Act” and “the 1993 Act” respectively.

Clauses 1 – 3 – Meaning of “charity” and “charitable purposes”

The preamble to the Statute of Charitable Uses 1601 (sometimes known as the Statute of Elizabeth I) contained a list of purposes or activities that is sometimes described as the first statutory definition of charitable purposes, but that list (because it was in the preamble, not the body of the Act) did not form part of the statute law. It was, in effect, a list of purposes or activities that the State believed were of general benefit to society, and to which the State wanted to encourage private contributions.

The list in the preamble to the 1601 statute has nevertheless formed the foundation of the modern definition of charitable purposes, which has developed entirely through case law. This has come about because the courts, in considering whether or not a particular purpose was charitable in law, have tended to look for an analogy between the purpose under consideration and the 1601 list, and to recognise the purpose as charitable if an analogy with the 1601 list could be found.

Clause 1 provides a general statutory definition of charity for the purposes of the law for the first time. It follows the definition of charity in the Charities Act 1993.

Clause 1(1) establishes the meaning of charity. By specifying that a body or trust is a charity if established for charitable purposes “only”, clause 1(1)(a) preserves the current rule to the effect that a body or trust which has non-charitable as well as charitable purposes is not a charity.

Clause 1(1)(b) excludes bodies or trusts outside England and Wales from the scope of charity as defined by the Bill since the jurisdiction of the High Court extends only to England and Wales.

Subsections (2) and (3) of clause 1 deal with references to a charity in legislation apart from this Bill. Subsection (3) covers legislation and documents in which a charity is defined by reference to the Charitable Uses Act 1601 or the preamble to that Act and provides for that definition to be supplanted by the one in this Bill. Subsection (2) covers all other definitions of charity in legislation apart from this Bill and preserves those definitions.

Clause 2 of the Bill contains the first statutory definition of charitable purpose; however this definition still relies on a considerable body of case law.

The meaning of “charitable purposes” is supplied by clause 2(1), which provides that a purpose is charitable if it meets two criteria:

- that it falls under one or more descriptions or “heads” of charity in clause 2(2); and
- that it is for the public benefit.

Each of the paragraphs in clause 2(2) is a description or “head” of charity rather than a fully-stated purpose in itself. Under each of those descriptions lie a range of purposes all of which fit the description but each of which is a different purpose in its own right. The list of descriptions, taken as a whole with the purposes underlying the descriptions, encompasses everything which is charitable.

The list of descriptions of charity in subsection (2) of clause 2 contains 11 specific descriptions (paragraphs (a) to (k)) and one general description (paragraph (l)) which brings in the purposes described in subsection (4). The list of specific descriptions covers the great majority of purposes that are recognised as charitable but does not cover everything: paragraph (a) of subsection (4) covers those purposes that are currently recognised as charitable but that do not fall under any of the specific descriptions in paragraphs (a) to (k).

Paragraphs (b) and (c) of clause 2(4) cover purposes that are analogous to any other charitable purposes (ie purposes falling within any of paragraphs (a) to (k) of subsection (2), existing charitable purposes, or purposes which themselves have been recognised as charitable under subsection (4)(b) or (c)). These provisions enable the meaning of “charitable purpose” to be expanded in the future by allowing the possibility of new charitable purposes to be recognised.

Subsection (5) of clause 2 preserves the existing meaning of the terms used in the specific descriptions in subsection (2) or (3) of that clause with the exception of the description in paragraph (g), the advancement of amateur sport.

Clause 3 deals with public benefit. Under the existing law there is a presumption that purposes for the relief of poverty, the advancement of education, or the advancement of religion – in other words the purposes that would fall under paragraphs (a) to (c) of clause 2(2) – are for the public benefit. No other purposes benefit from that presumption. Subsection (2) of clause 3 abolishes the presumption, putting all charitable purposes on the same footing.

Subsection (3) make clear that the term “public benefit”, wherever it occurs in clauses 1-3, refers to the existing concept in charity law in England and Wales.

[Note: The Recreational Charities Act 1958 declares charitable certain purposes connected with the provision of recreational and other facilities in the interests of social welfare. The Government is presently considering whether or not the 1958 Act is fully compatible with the European Convention on Human Rights. The definition of charitable purposes in this draft Bill does not expressly cover the purposes declared charitable by the 1958 Act.]

Clause 4 and Schedules 1 and 2 – The Charity Commission

Currently the Charity Commission has no legal existence as a body: the functions that are usually described as “the Charity Commission’s” functions are in fact functions held by the Charity Commissioners for England and Wales (the “Commissioners”) personally. Subsection (1) of this clause inserts a new section, 1A, into the 1993 Act. Section 1A(1) creates a new body corporate called the Charity Commission for England and Wales, with an equivalent name in Welsh. Subsection (3) of section 1A establishes the Commission as a Government department.

Other provisions in clause 4 transfer the Commissioners’ functions to the new body (subsection (4)), abolish the office of Charity Commissioner (subsection (3)), and ensure that references to the Commissioners in other enactments passed before the commencement of this clause are, from its commencement, understood as references to the new Commission (subsection (5)).

Subsection (7) of clause 4 gives effect to Schedule 2 of the Bill, which contains provisions to deal with aspects of the transition between the Commissioners and the new Commission.

Provisions for the new Commission’s membership, staffing, committees, procedures, and annual reporting are in Schedule 1A to the 1993 Act, inserted by Schedule 1 to the Bill and given effect by clause 4(2) of it.

Clause 5 deals with the new Commission’s objectives, functions, duties and incidental powers by inserting provisions (sections 1B, 1C, 1D and 1E) into the 1993 Act covering those matters respectively.

Clause 6 – The Charity Appeal Tribunal

Under the existing law, a right of appeal to the High Court exists in relation to some decisions of the Charity Commissioners. This clause creates a new tribunal to act as the “court of first instance” for appeals against certain decisions of the new Charity Commission.

Subsection (1) of clause 6 provides for a new Part 1A of the 1993 Act to be inserted after section 2 of the 1993 Act. Part 1A contains new sections 2A to 2D covering, respectively, the creation of the tribunal; its practice and procedure (which establishes (section 2B(1)) that the Charity Commission is to be the respondent on appeal to the tribunal whereas at present the Attorney General is the respondent on appeal against the Commissioners to the High Court); appeals from the tribunal to the High Court; and the powers of the Attorney General to intervene in proceedings before the tribunal, or on appeal from the tribunal to the High Court, where he is not a party to those proceedings.

Subsection (2) of clause 6 gives effect to Schedule 3, which inserts the new Schedule 1B into the 1993 Act. Schedule 1B covers the membership of the

tribunal and appointments to it; its staff and facilities; the composition of its panels, who are to exercise its functions; and its practices and procedures.

Subsection (3) of clause 6 gives effect to Schedule 4, which makes various amendments to the 1993 Act. These amendments give rights of appeal to the tribunal against specified decisions of the Commission, prescribing, in the case of each specified decision, which persons have the right of appeal and what powers the tribunal has in relation to the appeal or to the Commission's decision or action which is the subject of the appeal.

Clause 7 – Registration of Charities

Clause 7 substitutes three new sections – 3, 3A and 3B – for existing section 3 of the 1993 Act. New section 3 deals with the register of charities, which the Charity Commission must continue to keep. Section 3 prescribes the content of the register and the circumstances in which the Commission must or may remove charities, or institutions which are no longer considered to be charities, from it.

Section 3A prescribes the requirements for the registration of charities, making different provision for different descriptions or classes of charity.

Section 3B deals with the duties of charity trustees in connection with registration.

Sections 3 and 3B in effect reproduce, in a new structure, provisions of existing section 3. The registration requirements in section 3A represent a substantial change by comparison with the registration requirements in existing section 3.

Section 3A begins (subsection (1)) with the general rule that every charity must be registered. Subsection (2) then provides that four classes or descriptions of charity (specified in paragraphs (a) to (d) of that subsection) are not required to be registered. These are:

- (paragraph (a)) exempt charities. The institutions specified in Schedule 2 to the 1993 Act are not deemed or confirmed by that Schedule to be charities but, so far as they are charities, they are exempt charities. Clause 9 of the Bill (see below) makes amendments to Schedule 2;
- (paragraphs (b) and (c)) charities – usually known as excepted charities – that are excepted either by order made by the Charity Commission (paragraph (b)) or by regulations made by the Secretary of State (paragraph (c)). In a change to the existing position, under which no excepted charity is required to register, an excepted charity will be required to register if its gross income exceeds £100,000;
- paragraph (d) charities (other than CIOs – see clause 26) whose gross income does not exceed £5,000. This financial threshold is designed to

release the smallest charities, defined by their income, from the registration requirement; currently the equivalent threshold in section 3 is £1,000. At the same time the requirement in existing section 3, that a charity must register if (regardless of the level of its income) it possesses a permanent endowment or uses or occupies land, is not reenacted. The combined effect of raising the threshold and not reenacting that requirement is to release several thousand small charities from the duty to register. However, such charities may (subsection 6 of section 3A) register if they wish.

Subsection (3) of clause 3A provides that orders made before the commencement date of this clause (“the appointed day”) to except charities from the registration requirement are to have effect as if they were made under subsection (2)(b) of clause 3A. This means that a charity comprised in such an order will have to register if its gross income exceeds £100,000. Subsection (3) also prevents the Commission from making an order to create any new exceptions after the appointed day.

Subsection (4) makes similar provision in relation to charities excepted by regulations made by the Secretary of State, except that it allows him to make regulations which have the effect of excepting from the registration requirement those formerly-exempt charities whose income does not exceed £100,000.

Clause 8 – Interim Changes in threshold for registration of small charities

This clause allows the Secretary of State to bring about the effect of the changes described above for paragraph (d) of clause 3A(2) before the commencement of that provision.

Clause 9 – Changes in exempt charities

This clause amends Schedule 2 to the 1993 Act, to remove some specified institutions from that Schedule and to include other specified institutions in that Schedule. The effect of removing the specified institutions is that they will no longer be exempt charities. The inclusion of certain institutions, specified in subsections (4) and (5), is a technical change that will have no effect on the exempt status of the institutions.

Clause 10 – Increased regulation of exempt charities under 1993 Act

This clause gives effect to the amendments to the 1993 Act specified in Schedule 5. These amendments apply to exempt charities provisions of the 1993 Act which formerly did not apply to them. The Charity Commission’s power to institute inquiries into exempt charities under section 8 of the 1993 Act (conferred by paragraph 2 of Schedule 5) is limited: the Commission may only exercise that power, in relation to an exempt charity, on the request of the charity’s principal regulator (see note on clause 11).

Clause 11 – General duty of principal regulator in relation to exempt charity

This clause gives the Secretary of State power (subsection (4)(b)) to make regulations prescribing a body or a Minister of the Crown as the principal regulator of an exempt charity. A body or Minister prescribed as a principal regulator of an exempt charity will have, in relation to that charity, the duty (subsections (2) and (3)) to do all that it or he reasonably can to increase compliance by the charity trustees with their legal obligations as such.

Subsection (5) will allow the Secretary of State to make regulations amending enactments for certain purposes. These could include the purpose of giving a principal regulator any new statutory powers that it needs to carry out its duty to meet the compliance objective in relation to the exempt charity(ies) for which it is principal regulator. The Secretary of State's regulations are (subsection (6)) subject to the affirmative resolution procedure.

Clause 12 – Application cy-près by reference to current circumstances

This clause amends section 13 of the 1993 Act by substituting 'the appropriate considerations' for 'the spirit of the gift' in that section. The effect is to require the Charity Commission, when making a scheme to alter the purposes for which charity property is to be applied, to take into account not only the spirit of the gift of the property but also the social and economic circumstances prevailing at the time of the proposed alteration in the purpose.

Clause 13 – Application cy-près of gifts by donors unknown or disclaiming

This clause, by amending section 14(4) of the 1993 Act, gives the Charity Commission the power to decide whether property is to be treated as belonging to donors who cannot be identified. Under the existing law only the court has that power.

Clause 14 – Application cy-près of gifts made in response to certain solicitations

This clause inserts a new section, section 14A, into the 1993 Act. Section 14A applies to property (which includes money) given for specific charitable purposes in response to a solicitation – ie an appeal – containing a certain type of statement. The statement is described in subsection (2) and is to the effect that unless, at the time of making his donation, the donor asks (by making a "relevant declaration" as described in subsection (3)) to be given the chance to reclaim his donation if the specific purposes for which he is giving it fail in future, the donation will be applied cy-près.

Subsections (4)-(6) set out the process to be followed where the purposes have failed and where the donor has made a relevant declaration. The trustees holding the property must notify the donor that the purposes have failed and ask him whether he wants the property (or a sum equal to its value) returned. If he does, the trustees must return it to him. If either the trustees cannot find

the donor, or the donor indicates that he does not wish the property returned, then the property can be applied cy-près as if the donor had disclaimed his right to have it returned to him.

Subsection (7) applies where the purposes have failed and where the donor has not made a “relevant declaration”. It allows the property to be applied cy-près as if the donor had disclaimed his right to have it returned to him.

Paragraph (b) of subsection (8) makes clear that this section applies both where the donor has received something of value in return for his donation and where he has not. Paragraph (c) makes clear that where an appeal consists of some solicitations which contain the statement described in subsection (2) and some which do not contain that statement, the donor (unless he proves otherwise) will be regarded as having responded to a solicitation containing the statement.

Clause 15 – Cy-près schemes

This clause alters the cy-près rule. The cy-près rule is a well-established legal rule that applies when the purposes for which charitable property is held are being changed by the court or by the Charity Commission. The occasions on which charitable purposes can be changed to new purposes by the court or the Commission are set out in section 13 of the 1993 Act, as amended by clause 12 of this Bill. At present the cy-près rule requires the new purposes to be as close as practicable (bearing in mind the reason why the need to change the purposes arose in the first place) to the original purposes.

Clause 15 alters the cy-près rule by inserting into the 1993 Act a new section 14B, subsection (1) of which requires the court or the Commission to act, when making a scheme to change charitable purposes, in accordance with the remaining provisions (ie subsections (2) to (6)) of new section 14B.

Subsection (2) of new section 14B requires the court or the Commission, when making a scheme changing the charitable purposes for which particular property given to a charity is held, to have regard to certain matters (see next paragraph). This applies either when the scheme is transferring the property from one charity to another or when there is no transfer and the scheme simply changes the purposes of the charity that holds the property. “Property given” to a charity includes (by virtue of subsection (5)) both the property in the form in which it was originally given and any property derived from it. The effect is that if, for example, a piece of land was given to a charity, then sold by the charity, the money representing the proceeds of the sale would also count as the “property given”.

The three matters to which the court or the Commission must have regard in those circumstances are set out in subsection (3) of new section 14B. One of those matters is the desirability of choosing new purposes which are close to the original purposes; but that is not paramount. The court or the Commission must give equal weight to the other two matters. One of these is the spirit of the gift by which the property came to the charity. The other is the need to

ensure that, once the scheme has been made, the property can be used to make a significant social and economic impact.

Subsection (4) of new section 14B allows the court or the Commission, when making a scheme which transfers a charity's property to another charity, to require the trustees of the receiving charity to use the property for purposes as similar as practicable to the original purposes for which the property was held. This to cover cases where the original purposes are still useful but the court or the Commission believe that the property can be more effectively used in conjunction with other property.

Clause 16 – Power to give specific directions for protection of charity

Subsection (1) of this clause inserts into the 1993 Act a new section 19A, which gives the Charity Commission power to make an order directing that particular action be taken. The circumstances in which the Commission may make such an order are specified by subsection (1) of new section 19A.

Subsection (1) of new section 19A allows an order to be made if, at any time after the start of an inquiry under section 8 of the 1993 Act into a charity, the Commission is satisfied that the condition mentioned in either paragraph (a) or paragraph (b) of section 18(1) of the 1993 Act has been met. These conditions are, respectively:

- that there is or has been any misconduct or mismanagement in the administration of the charity; or
- that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity.

Subsection (2) of new section 19A specifies the persons to whom the Commission's order may give a direction. "Charity trustees" in paragraph (a) attracts the definition of "charity trustees" in section 97(1) of the 1993 Act: the persons having the general control and management of the administration of a charity. Paragraph (b) covers a person who is a trustee for the charity but who is not a "charity trustee" within that definition. An example would be a custodian trustee of the charity's property.

Subsection (3) of new section 19A is to prevent the Commission from directing a person to do something which is expressly prohibited by an Act of Parliament or by the charity's own constitution.

Subsection (2) of clause 16 allows an order to be made whether the inquiry in question was started before or after this clause comes into effect.

Clause 17 – Power to direct application of charity property

This clause inserts into the 1993 Act a new section 19B, which gives the Charity Commission, in certain circumstances, power to make an order directing a particular application of property held by or on trust for a charity.

Subsections (1) and (2) of new section 19B, in combination, set out the circumstances in which this power is exercisable.

Subsection (3) makes clear that the Commission's order will specify how the property is to be applied by the person to whom the direction in the order is given.

Subsection (4) is to prevent the Commission from directing a person to do something which is expressly prohibited by an Act of Parliament. But it will allow the Commission to direct a person to do something which he would not have power to do under the charity's own constitution.

Clause 18 – Relaxation of publicity requirements relating to schemes etc.

This clause substitutes for section 20 of the 1993 Act, which sets out the procedures to be followed by the Charity Commissioners for giving publicity to schemes and certain orders, a new section 20 and a section 20A and a section 20B. The purpose of the changes is to speed up the formal procedure for the making of schemes and orders by the Charity Commission and to reduce the cost to charities, by making advertising of the changes a matter of Commission discretion.

Subsections (1) and (2) of new section 20 state that the Commission may not establish a scheme for a charity without giving public notice or, if it is a local charity, informing the parish council or chairman of the parish meeting.

Subsection (3) makes the timing of such notices a discretionary matter for the Commission. Under the current law, public notice must have been given for at least a month before the date of making the scheme.

Subsection (4) allows the Commission to disapply the publicity requirement if it is satisfied that this is unnecessary. Subsection (5) says that the Commission must take into account any representations made to it but may proceed with the proposals without further notice at its own discretion without necessarily modifying them. After an order is made it must be displayed publicly for at least a month in the Commission's office and, if it is a local charity, at a convenient place in the charity's area. The latter requirement may be disregarded should the Commission deem it unnecessary. Subsection (7) gives the Commission discretion as to what information is included in the public notices and how it is presented.

Section 20A contains similar provision to section 20 in relation to orders of the Commission to remove trustees, officers, agents or employees of charities from their position as such within a charity. The Commission can determine the length of public notice given (subsection 3), whether or not such a notice is necessary (subsection 4) and the form and content of the notice (subsection 7). Subsection (5) requires the Commission to notify the person being removed from his position not less than one month before the order is made, inviting representations from him within a stated time. This does not apply if the person cannot be found or has no known address in the United Kingdom.

Subsection (8) allows the notice to be given by post to the recipient's last known address in the UK.

Section 20B concerns orders made by the Commission that are subject to appeal. The Commission must give public notice of such an order or notice of it to all those entitled to appeal unless it – the Commission – is satisfied that it is unnecessary to do so. The Commission may decide the form and content of the notice and may notify recipients by post, using the last known address in the UK.

Clause 19 – Participation of Scottish and Northern Irish charities in common investment schemes etc.

Under sections 24 and 25 of the Charities Act 1993 the Charity Commissioners may make schemes for the establishment of, respectively, common investment funds (CIFs) and common deposit funds (CDFs), which are collective investment vehicles specially designed for charities. A CIF is akin to a unit trust while a CDF is akin to a deposit account for cash. Under the existing law the only investors from which CIFs and CDFs are allowed to accept investments are charities established in England and Wales.

Clause 19 amends sections 24 and 25 of the Charities Act 1993 to allow CIFs and CDFs the opportunity to admit, as investors, charities established in Scotland and Northern Ireland.

Clause 20 – Power to give advice and guidance

The Charity Commissioners have power under section 29 of the 1993 Act to give a charity trustee who applies in writing for it, their opinion or advice on any matter affecting the performance of his or her duties as such. If the trustee acts in accordance with the advice or opinion given by the Commissioners, he or she is deemed to have acted in accordance with the trusts of the charity. This protection is withdrawn, however, if the trustee knows or suspects that the Commissioners' opinion or advice was given without their knowing all the material facts of the matter. Protection is also withdrawn where the court has already given a decision on the same matter, and where proceedings are under way to obtain the court's decision.

Clause 20 substitutes a new section 29 for the existing section 29. The overall effect of new section 29 is to preserve, with two minor extensions, the existing power described above, and to add a more general power for the Commission to give advice.

Subsections (1) to (4) of the new section 29 reproduce in essence the existing power, but extend the range of persons entitled to seek the Commission's opinion or advice. As well as charity trustees, who are entitled under the existing power, subsection (2)(a) and (b) entitles any other trustee, or any officer, employee or agent, of a charity to seek the Commission's opinion or advice. Subsection (1)(b) makes the second extension, which is to allow the Commission's opinion or advice to be sought on any matter relating to the

administration of the charity not just, as at present, on any matter relating to the applicant's performance of his or her duties.

Subsections (5) and (6) give the Commission a more general power to give advice and guidance, as part of their new function (set out in new section 1C(2) of the 1993 Act, inserted by clause 5 of the Bill) of encouraging and facilitating the better administration of charities. The Commission may use this new power to give advice to individual charities, to classes of charity, or to all charities, and may do so in whatever form and manner – for example, through letters, through publications made generally available, through documents placed on their website – it considers appropriate.

Clause 21 – Power to enter premises

This clause inserts into the 1993 Act a new section, section 31A, which gives the Charity Commission power to enter premises for certain purposes and on certain conditions. The Charity Commissioners have had since 1960 an enforceable power to call for documents and search records, but have never had power to enter premises to take possession of documents or information.

The power of entry is exercisable subject to obtaining a warrant from a justice of the peace. Subsection (1) of new section 31A sets out the circumstances in which a justice of the peace may issue a warrant.

The conditions in subsection (2) include the condition (paragraph (a) of that subsection) that an inquiry has been instituted under section 8 of the 1993 Act. Section 8 gives the Commission power to institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

Subsection (3) sets out the actions which a warrant authorises the Commission employee named in the warrant to take. The documents which that person may take into his or her possession are limited, by paragraph (b) of that subsection, to documents falling within paragraph (b) of subsection (2) – that is, to documents which are relevant to the inquiry in question and which the Commission could require to be furnished or produced under its power in section 9(1) of the 1993 Act. Subsection (d) allows the Commission employee to take possession of computer discs and other electronic storage devices containing information of the same description.

Clause 22 – Annual audit or examination of accounts of unincorporated charities

Clause 22 makes a number of amendments to section 43 of the 1993 Act. At present under section 43 a charity which is not a company must have its accounts for a particular financial year professionally audited (that is, audited by a person eligible under the Companies Act 1989 to audit the accounts of a company) if either:

- its gross income or total expenditure exceeded £250,000 in that financial year; or

- its gross income or total expenditure exceeded £250,000 in either of the two years preceding that financial year.

The substitution made by subsection (2) of this clause removes from the requirement to have an audit any references to the expenditure of a charity, which means that the level of a charity's expenditure is no longer relevant in determining whether or not its accounts must be audited. Nor is there any longer a requirement to consider the income of the charity in the preceding two years before the year in question. New section 43(1) sets the audit requirement at an income level of £500,000 per annum and introduces an additional asset value threshold of £2.8million. The asset value threshold applies only to those charities that are required to prepare a full annual statement of accounts under section 42(1) (ie the threshold does not apply to charities which prepare the simpler form of accounts under section 42(3)). This means that the asset threshold applies only to charities with gross income of more than £100,000 per annum.

The amendment made by subsection (3) to section 43(2) preserves the requirement that a charity's auditor must be a person eligible to audit company accounts. The purpose of the amendment is to apply to auditors of charity accounts the rules on ineligibility on grounds of lack of independence that are contained in Part 2 of the Companies Act 1985.

Subsection (4) amends section 43(3) of the Charities Act 1993. This section relates to the requirements placed on charities, falling below the audit requirement threshold, to have their accounts independently examined. Section 28 of the Deregulation and Contracting Out Act 1994 amended section 43(3) so that the requirement to have an independent examination was placed on charities whose gross income or total expenditure in that year exceeded £10,000. This amendment removes the consideration of expenditure from the requirement to have an independent examination. However, the accounts of charities with incomes above £10,000 but below the new threshold of £500,000 would be subject to independent examination.

Subsection (5) provides for the new subsection (3A). This subsection relates to those charities which would have been required to have an audit under the previous regime, that is those with incomes above £250,000 but with incomes below the new audit threshold requirement of £500,000. Where those charities do not opt to have an audit the accounts are required to be independently examined by someone with a relevant qualification. For the purposes of the Act a relevant qualification would be a member of a body recognised under section 249D(3) of the Companies Act 1985, which would currently be one of the following bodies:

- Institute of Chartered Accountants in England and Wales (member CCAB)
- Institute of Chartered Accountants of Scotland (member CCAB)
- Institute of Chartered Accountants in Ireland (CCAB)

- Association of Chartered Certified Accountants (member CCAB)
- Association of International Accountants
- Association of Accounting Technicians
- Chartered Institute of Management Accountants (member of CCAB)
- Institute of Chartered Secretaries and Administrators,

or a member of the Chartered Institute of Public Finance and Accountancy. The Secretary of State would have the power by order (given by subsection (6)) to add a body to the list and to remove or alter the name of a body that is included in the list.

Subsection (6) substitutes section 43(8) of the 1993 Act for a new section 43(8). Under this subsection the Secretary of State retains the power to amend the audit threshold requirements and the requirements for independent examination. As explained above, the Secretary of State also has the power to amend the list of bodies to which section 43(3A) refers.

Clause 23 – Duty of auditor etc. of unincorporated charity to report matters to Commission.

Auditors of registered charities which are not companies have a specific statutory duty to report to the Charity Commission abuse or significant breaches of charity law or regulation by virtue of the Charities (Accounts and Reports) Regulations 1995 Regulation 6(5). Auditors who do so have statutory protection from the risk of action for breach of confidence or defamation. Auditors of charitable companies, however, would have to rely on the protection given by case law if they made a similar report in the ‘public interest’.

Subsection (1) of clause 23 provides for the new section 44A, duty of auditors etc to report matters to the Charity Commission. Currently Section 44 of the 1993 Act confers on the Secretary of State a power to make regulations about the duties of auditors under section 43 and that power has been exercised in the Charities (Accounts and Reports) Regulations 1995. Regulation 6(5) of those regulations imposes on the auditor of a charity a duty to communicate to the Commissioners in writing any matter relating to the activities or affairs of the charity which he has reasonable cause to believe is, or is likely to be, of material significance for the exercise in relation to the charity of the Commissioners’ functions under section 8 (inquiries) or 18 (protective powers) of the 1993 Act. The effect of that duty is to release an auditor acting in pursuance of regulation 6(5) from his duty of confidentiality to the trustees of the charity and to enable him to report relevant matters about the charity without risking action for breach of confidence. The new section 44A outlines the duties placed on auditors and extends that duty to independent examiners and enables them to report relevant matters to the Commission, it releases them from the duty of confidentiality to the trustees of the charity and (Section 44A(1)-(7)).

Section 44A(3) confers on an auditor or independent examiner a discretionary power to communicate to the Charity Commission in writing any matter of which he has become aware of in his capacity as such and which he has reasonable cause to believe is relevant to any of the functions of the Charity Commission.

Subsection (2) provides for the new section 69A. It extends to persons acting as auditors of charitable companies under Chapter 5 of Part 11 of the Companies Act 1985, and to reporting accountants of charitable companies under section 249C of that Act, the duty and protection provided for auditors and independent examiners under section 44A(2)-(7).

Subsection (3) clarifies that the amendments made by section 44A and section 69A specifically extend to matters which the auditor, independent examiner or reporting accountant became aware of prior to the commencement of this legislation. Where a duty has been placed on them by virtue of section 44A(2) or 69A(1) to report matters in writing to the Commission, that duty covers matters of which they became aware before commencement of this clause but within the charity's financial year current at the date of commencement.

Clause 24 – Relaxation of restriction on altering memorandum etc. of charitable company

Clause 17 amends section 64 of the 1993 Act and subsection (2) substitutes section 64(2) for a revised section 64(2).

Subsection (2) also provides for a new subsection (2A) to be inserted after section 64(2). Section 64(2A) limits the occasions on which the alteration of the charity's memorandum or articles of association would require the prior written consent of the Charity Commission. The occasions where the Charity Commission's prior written consent is required are provided for by section 64(2A)(a)-(c).

Clause 25 – Annual audit or examination of accounts of charitable companies

The provisions in this clause relate specifically to the audit thresholds for charitable companies. The revised thresholds will ensure greater consistency in the audit thresholds for charitable companies and unincorporated charities. The provisions in this clause amend section 249 of the Companies Act 1985 and have been developed in conjunction with the Department of Trade and Industry.

Subsection (1) amends section 249A(4) of the Companies Act 1985. Section 249A(4) provides for the circumstances in which a charitable company with income between £90,000 and £250,000 and assets of less than £1.4 million may have an accountant's report rather than an audit. Subsection (1)(a) and (b) increases the reporting accountant conditions so that charitable companies with gross incomes of more than £90,000 but not more than £500,000 and with assets of not more than £2.8million would be able to have an accountant's report as opposed to an audit.

Subsection (2) provides for the associated increase in the audit exemption threshold where a charitable company is a parent company or subsidiary undertaking. Section 249B(1C) of the Companies Act 1985 provides that where a charitable company is a parent company or subsidiary undertaking to obtain an audit exemption in that year the group turnover would be not more than £350,000 net (£420,000 gross). The charitable group threshold is 40% higher than that for the charitable company threshold. For that reason subsection (2) provides that the new threshold for audit exemption for charitable groups is 40% higher than the new threshold for charitable companies. The new threshold is therefore £700,000 net or £840,000 gross (that figure is 20% higher than the net figure).

Clause 26 and Schedule 6 – Charitable incorporated organisations

Clause 26 introduces Schedule 6, Part 1 of which inserts a new Part, 8A, and a new Schedule, 5A, into the 1993 Act. This new Part and Schedule make provision for a new type of legal entity, the charitable incorporated organisation (“CIO”). Part 2 of Schedule 6 makes other amendments to the 1993 Act to apply requirements of that Act to the CIO.

Clause 27 – Remuneration of trustees etc providing services to charity

A trustee (including the directors of charitable companies) may not directly or indirectly receive any remuneration, or other form of valuable benefit, from his charity without authority. Currently authority for a trustee’s remuneration can come from either:

- a provision in the charity’s governing instrument; or
- an order made by the Charity Commission (under section 26 of the Charities Act 1993) or by the Court; or
- statutory provision (e.g. Schedule. 1 to the Housing Act 1996, which allows for the remuneration of charity trustees of some charitable housing associations in some circumstances).

This clause inserts two new sections, 73A and 73B, into the 1993 Act. Section 73A provides a statutory power for trustee bodies to pay remuneration to an individual trustee where that trustee, or a person connected with that trustee (as defined in section 73B(6)), is providing goods or services to the charity. It also provides safeguards to prevent misuse of the power.

Subsections (2) to (6) set out the conditions that need to be met for remuneration to be payable under this section.

Subsection (7) provides that this section does not apply to remuneration for services provided by a person acting in the capacity of trustee, nor under a contract of employment. Neither does this section apply to any other remuneration to which a person is entitled specified in the provisions and orders that are set out in subsection (8).

Section 73(B)(2) and (3) contain two of the safeguards to prevent misuse of the power: duty to have regard to Charity Commission guidance, and a requirement to act in accordance with the duty of care set out in section 1(1) of the Trustee Act 2000.

Clause 28 – Disqualification of trustees receiving remuneration by virtue of section 27

This clause inserts a new section, 73C, into the 1993 Act. Where a trustee or connected person is (or would be) entitled to receive remuneration under an agreement or proposed agreement within section 73A (inserted by clause 26), section 73C provides (subsection (2)) that the trustee in question is disqualified from acting as a trustee in relation to decisions or other matters about that agreement. For this clause a “connected person” is as defined in section 73(B)(6) as inserted by clause 27.

Subsection (3) prevents a person’s disqualification from invalidating his acts done while disqualified.

Penalties on conviction of the offence of acting as a trustee while disqualified under this section are prescribed by subsection (4). There is, in subsection (5), a defence for a person charged with an offence under subsection (4).

Subsection (6) allows the Charity Commission to order a person to repay to the charity any remuneration – including, by virtue of subsection (7), the value of any benefit in kind – which he has received under an agreement in relation to which he acted while disqualified.

Subsections (8) to (10) provide for appeals, to the Tribunal created by clause 6, against orders made by the Commission under subsection (6).

Clause 29 – Power of Commission to relieve trustees, auditors etc from liability for breach of trust or duty

Currently a charity trustee seeking relief from personal liability for a breach of trust must apply to the court. The court can grant relief, where it believes that the trustee has acted honestly and reasonably and ought fairly to be excused, under section 61 of the Trustee Act 1925 or, for directors of charitable companies, section 727 of the Companies Act 1985. The Charity Commission does not currently have the power to grant relief in that way.

This clause provides the Commission with such a power. It inserts a new section, 73D, into the 1993 Act. Section 73D confers power on the Charity Commission to provide relief from liability (in whole or in part) to a trustee for breach of trust or duty, where the trustee has acted honestly and reasonably, and where the trustee ought fairly to be excused for the breach. It also extends that power to apply to persons appointed by a charity (under section 43 of the Charities Act 1993) as auditor or independent examiner.

Clauses 30 – Power to transfer all property; 31 – Power to replace purposes; and 32 – Power to modify powers or procedures

At present, section 74 of the 1993 Act gives the charity trustees of certain unincorporated charities with low annual income (currently £5,000 or less) the power, subject to specified controls and conditions, to make a resolution:

- to transfer all the property of the charity to one or more other charities; or
- to modify the trusts of the charity by replacing all or any of the purposes of the charity with other charitable purposes; or
- to modify particular powers and procedures in the trusts of the charity.

Section 74 removes the need for charity trustees who wish to make any such transfer or modification, but who do not otherwise have the power to do so, to apply to the Charity Commission to make a scheme effecting the transfer or modification. Under section 74 the Commission's concurrence in writing to the resolution is needed before the transfer or modification can take effect, but for small charities the process of obtaining that concurrence is normally much simpler and quicker than the process of applying for a scheme.

Clauses 30 – 32 of the Bill preserve the essence of the current section 74 arrangements for low-income charities while modifying and extending some elements of them.

Clause 30 substitutes for existing section 74 a new section 74 and section 74A, which deal with the power to transfer a charity's property to one or more other charities.

Clause 31 inserts a new section, 74B, into the 1993 Act to deal with the power to modify a charity's trusts by replacing all or any of the charity's purposes with other charitable purposes.

Clause 32 inserts a new section, 74C, into the 1993 Act to deal with the power to modify powers or procedures in the trusts of a charity.

Clause 33 – Power to spend capital

Section 75 of the 1993 Act gives to the trustees of very small unincorporated charities which have permanent endowment not consisting of any land the power to resolve, by a simple administrative procedure, to spend that endowment. Very small charities in this context are ones whose gross annual income is not more than £1,000. Permanent endowment is property which is subject to a restriction preventing its expenditure. Where permanent endowment is held as an investment the income from the investment must be spent but the capital may not be. The purpose of section 75 is to allow trustees of charities with slender resources to remove the restriction on expenditure of capital, so that the capital can be spent as well as the income. This is useful because the income is often so small that little if anything can be achieved by spending the income alone.

Clause 33 substitutes for the existing section 75 a new section 75, which modifies and extends the current regime for expenditure of capital by small charities.

The principal changes brought about by new section 75 are:

- the power to resolve to spend permanent endowment is made available (subsection(3)) to qualifying charities with annual income over £1,000 in respect of any endowment fund worth up to £10,000;
- one of the conditions of existing section 75 is that, before making a resolution, trustees must be satisfied that the charity's property is too small for "any useful purpose" to be achieved by spending the income alone. It is sometimes difficult for trustees to conclude that a sum of money is so small that there is not any useful purpose to be achieved by spending it. Subsection (5) of new section 75 substitutes a different test;
- the requirement for the Charity Commission to go through a procedure of concurrence with the trustees' resolution is not reenacted.

Subsection (8) allows the Secretary of State to change the amounts mentioned in subsection (3).

Clause 33 also inserts two new sections, 75A and 75B, into the 1993 Act. These provide powers for some larger charities (as specified in subsection (1)(b)) to resolve spend certain permanent endowment funds (as specified in subsection (1)(a)). The condition which trustees must satisfy before resolving to spend such funds is specified in subsection (3).

Subsections (5) to (10) prescribe some safeguards which apply where the permanent endowment in question came to the charity by a lifetime gift from, or under the will of, a person, or as a grant or other form of donation from an institution. The safeguards are meant to ensure, by requiring the Charity Commission's concurrence to be obtained and by requiring the Commission to take into account the wishes of the donor as well any changes in the charity's circumstances since the gift was made, that the donor's intentions in making the gift are treated with due consideration.

Section 75B applies in cases where the Charity Commission have made a direction to a specific effect under section 96(5) of the 1993 Act. That provision allows the Commission to direct that an institution (typically a trust) which is established for some special purposes of, or in connection with, a charity either forms part of that charity or represents a distinct charity by itself. Where the Commission has directed that a special trust is a distinct charity, section 75B allows that charity's trustees to resolve to spend certain permanent endowment subject to conditions and controls which mirror those described above for subsections (3) and (5) to (10) of section 75A.

Clause 34 – Merger of Charities

Clause 34 inserts two new sections, 75C and 75D, into the 1993 Act. Together they provide for a public register of mergers between charities.

Subsection (1) of section 75C require the Charity Commission to establish and maintain the register which. Subsection (3) describes what sort of mergers will be included in the register, stating that only those charities who inform the Commission that they merge will be registered. In other words, registration remains optional and at the discretion of the charities involved. Subsection (4) defines ‘relevant charity merger’. Subsection (6) states what information will be held on the register. The register will be open to the public (subsection (7)) and the information on it must be made available in legible form even if it is not held that way (subsection (8)). Subsection (9) provides for the register to include mergers that took place before the commencement of this clause.

Section 75D deals with the effect of entry in the register of mergers. It is concerned with what happens to the money and assets of the charity that ceases to exist after the merger (this might be both charities if a new charity is created as a result of the merger). Subsection (2) provides that any gift given in the name of the old charity but which takes effect after the date of the merger can be considered as the property of the charity created as a result of the merger.

Subsection (3) deals with the situation for those mergers that happened before the commencement of this clause. It states that subsection (2) does not affect gifts given before that date. However, it does affect gifts given after the date of enactment but before the charity enters the register.

Subsections (4) and (5) allow a declaration to be made by the trustees of the transferor charity in contemplation of the merger, which operates to transfer all the property of that charity to the transferee charity without the need for any further document of transfer.

Clause 35 – Statements indicating benefits for charitable institutions and fund-raisers

This clause amends section 60 of the 1992 Act.

Subsections (2) and (3) read with subsection (5) amend sections 60(1)(c) and 60(2)(c) of the 1992 Act to require a professional fundraiser to state the amount of his remuneration in connection with an appeal; or, if that amount is not known at the time of the appeal, to give as accurate an estimate of the amount as is reasonably possible in the circumstances. Currently a professional fundraiser is required state only in general terms the method by which his remuneration is determined, which has in practice been imprecise and has offered little assistance to those it was designed to help.

Subsection (4) amends section 60(3)(c) of the Charities Act 1992, which require a commercial participator to make a general statement outlining the

method of determining the benefit to the charitable institution or institutions concerned. Subsection (4) substitutes for section 60(3)(c) a revised section 60(3)(c), which when read with subsection (5) requires the statement to indicate:

- the amount or an estimate of the amount if the amount is not known at the time, of the consideration given for goods or services sold or supplied by the commercial participator which is to be given to or applied for the benefit of the charitable institutions or institutions concerned;
- the amount or an estimate of the amount if the actual amount is not known at the time, of the proceeds of the promotional venture undertaken by a commercial participator which are to be given to or applied for the benefit of the charitable institution or institutions concerned;
- where an agreement with a commercial participator has been made authorising him to represent that charitable contributions are to be given to or applied for the benefit of the institution concerned the statement would indicate the amount, or an estimate of the amount if the amount is not known at the time, of the sums given by way of donation in connection with the sale or supply of goods or services which are to be given to or applied for the benefit of the charitable institution or institutions concerned.

Subsection (5) provides for a new subsection (3A) to be inserted after subsection (3) of section 60 of the 1992 Act. It provides that the notifiable amount of remuneration is the actual amount if that is known at the time of the statement, otherwise an estimated amount of the remuneration or sum, calculated as accurately as possible in all the circumstances.

Clause 36 – Reserve power to control fund-raising by charitable institutions

Subsection (1) of this clause confers a new power on the Secretary of State by inserting a new section 64A into the 1992 Act. The power is to make regulations to control charity fundraising (defined in section 64A(2)) if the Secretary of State deems it necessary or desirable. In particular, the regulations may impose a good practice requirement on persons managing charitable institutions (in charities those persons are the charity trustees).

Subsections (4) and (5) of section 64A, read together, define the good practice requirement. The power enables the regulations to provide that persistent failure to comply with the regulations constitutes an offence the penalty for which, on summary conviction, is a fine not exceeding level 2 on the standard scale.

Subsection (2) of the clause amends section 77(4) of the 1992 Act. The effect is to require the Secretary of State to consult such persons or bodies as he considers appropriate before making any regulations under section 64A.

Clause 37 – Regulation of public charitable collections

This clause, and the six following clauses, provide for the regulation of public charitable collections by amending Part III of the 1992 Act. But because Part III of the 1992 Act was never brought into effect, the arrangements currently in force for regulating public charitable collections derive (in the case of street collections) from a law of 1916 and (in the case of house to house collections) from a law of 1939.

Clause 37 substitutes new sections 65, 65A and 65B for existing section of the 1992 Act. The three new sections break down existing section 65 into three separate elements without making many changes of substance.

65 Regulation of public charitable collections

Section 65(1) defines the two types of public charitable collection.

Section 65(2) provides for the definitions relevant to Part 3 of the Charities Act 2005.

65A Charitable appeals that are not public charitable collections

Section 65A (1) defines which appeals do not count as public charitable collections. Section 65A(1)(c) specifically excludes any appeal on land to which the public has unrestricted access, but only because of the express or implied permission of the occupier of the land, and the occupier is the promoter of the collection. This provision is intended to exclude collections undertaken by organisations such as the National Trust on their own land from the scope of the scheme.

Clause 38 – Restrictions on conducting collections

This clause replaces section 66 of the 1992 Act and outlines the restrictions on conducting public charitable collections. It also provides for the new section 66A.

Section 66(1) provides that a collection in a public place cannot be undertaken unless the organisation holds (a) a certificate of fitness (granted by virtue of section 66E) and has (b) obtained a permit from the relevant local authority (granted under section 68).

Section 66(2) clarifies that the provisions of section 66(1) do not apply where the collection is an exempt local, short-term collection. Those collections do not require a certificate of fitness or a permit by virtue of section 66B of the Act.

Section 66(3) provides that where a promoter undertakes a collection in a public place without a certificate of fitness and a permit the promoter is guilty of an offence and provides for the maximum level of fine appropriate in such a case.

66A Restrictions on conducting door to door collections

Section 66A(1) provides that a collection by means of visits door to door cannot be undertaken unless the organisation holds (a) a certificate of fitness (granted by virtue of section 66E) and (b) has notified the local authority of the matters mentioned in section 66A(2).

Section 66A(4) clarifies that where a collection is undertaken by means of visits door to door without a certificate of fitness and without notifying the local authority of the matters referred to in section 66A(2) the promoter is guilty of an offence and provides for the maximum level of fine appropriate in such a case.

Clause 39 – Exemptions from the requirement to obtain certificates of fitness or permits in respect of collections

This clause provides for new sections 66B and 66C, which set out the conditions under which a collection would be exempt from the requirement to obtain a certificate of fitness and a permit to collect.

66B Exemption for local, short-term collections

Section 66B(1) provides for the exemption from the requirement to obtain a permit where a collection is undertaken either in a public place or by means of visits door to door; for a collection that is local in character and is conducted within a prescribed period of time (66B(1)(a)&(b)). The collection would be exempt from the requirement to obtain a certificate of fitness and a permit if the promoter had notified the local authority of the matters referred to at section 66B(2)(a)-(d) no later than one month before the date the collection commences and no earlier than 6 months before. Promoters would notify the local authorities in whose areas the collection was to take place.

In accordance with section 66B(1)(d) a collection is only an exempt collection for the purposes of section 66B if the local authority have not notified the promoter under section 66B(3) at least 14 days before the date of the collection that the collection does not qualify as a local, short-term collection.

66C Exemption for door to door collections of goods

Section 66C(1) provides for the exemption from the requirement to obtain a certificate of fitness and a permit to a collection that is for goods only and is conducted by means of visits door to door (not in a public place) and the promoter has notified the local authority about the matters set out in section 66B(2)(a)-(d).

Clause 40 Certificates of fitness

This clause provides for the new sections 66D, 66E, 66F, 66G and 66H to be inserted after section 66C of the 1992 Act.

66D Applications for certificates

Section 66D(1) enables a person proposing to collect in one or more local authority area to apply for a certificate of fitness, that would be the first stage in the process. The second being either the submission of an application for a permit (section 67) or notification to the local authority about the collection (section 66A).

Section 66D(3)(a) specifies the deadline by which an application for a certificate should be made and section 66D(3)(b) to (d) provides for the information which should be submitted as part of the application process.

66E Determination of applications and issue of certificates

Section 66E(1) specifies that on receiving an application for a certificate of fitness the local authority must take action to consult the chief officer of police for the police area which comprises or includes the area of the local authority and may make such other inquiries as they think fit. That reflects the provisions currently provided by section 67(4) of the 1992 Act in relation to permits.

Section 66E(4) provides that where a local authority refuses to issue a certificate of fitness they must write to the applicant providing their reasons for doing so.

66F Grounds for refusing to issue a certificate

Section 66F(1) provides the grounds on which a local authority can refuse to issue a certificate of fitness. The grounds available are equivalent to the grounds that had been provided by paragraphs (e) to (g) of section 69(1) of the 1992 Act. When considering an application for a certificate of fitness local authorities are not able to consider the matters that had previously been provided for by paragraphs (c) and (d) of section 69(1) of the 1992 Act.

66F(3) to (8) - see comments on subsection (8) of clause 40.

66G Withdrawal etc of certificates

66G(1)(a) provides that a certificate of fitness issued under section 66E may be withdrawn where the local authority has reason to believe that subsection (2) or (3) of section 66G applies.

66H Appeals

Section 66H(1) provides a right of appeal to the Magistrates' court against a decision by the local authority to issue a certificate of fitness under section 66D.

Section 66H(2) provides that the right of appeal can be used where the local authority withdraws a certificate under section 66G. These rights of appeal are

to be exercised within 14 days of the date of service of the relevant notification on the person in question.

Section 66H(5) provides for an onwards right of appeal against the decision of the Magistrates' court to the Crown Court.

Clause 41 – Permits to conduct public charitable collections in a public place

This clause amends sections 67 to 69 and 71 of the 1992 Act, which relate to applications for a permit, refusal of applications and appeals.

Subsection (2) amends section 67(1) so that “public charitable collection” is substituted for “collection in a public place (other than a collection that is an exempt collection under section 66B)”. That amends the scope of the section 67 so that it deals with applications for a permit to conduct a collection in a public place only. Collections in a public place which are exempt by virtue of section 66B do not require a permit. Collections undertaken by means of visits door to door do not require permits by virtue of sections 66A or 66C. That is because collections on a door to door basis do not raise issues of capacity.

Subsection (4) provides for the omission of section 67(4) of the 1992 Act, which required a local authority to consult the chief police officer before determining an application for a permit to conduct public charitable collections.

Subsection (5) amends section 68(1) to clarify that section 68 deals with applications for a permit to undertake a collection in a public place as opposed to by means of visits from door to door. Collections on a door to door basis do not require a permit.

Subsection (6)(a) amends section 69(1) to clarify that section 69 deals with the grounds of refusal to applications for a permit to undertake a collection in a public place only, as opposed to by means of visits door to door.

Subsection (6)(c) omits from section 69 subsections (c) to (g). That is because applications for a permit would be considered on the grounds of capacity only and not on the fitness or otherwise of an organisation to undertake a collection in a public place.

Subsection (8) provides for the omission of subsections (3) to (5) of section 69. Those subsections are now relevant to the refusal of applications for a certificate of fitness (66F) and the contents of them are reflected in subsections (3) to (8) of section 66F.

Subsection (9) amends section 71, which provides for a right of appeal against a decision to refuse to issue a permit, to attach a condition to a permit or to withdraw a permit. Subsection (9) amends section 71(1) to clarify that section 71 deals with appeals in relation to permits to undertake collections in a public place. Collections door to door do not require a permit.

Clause 42 - Regulations

This clause empowers the Secretary of State to make regulations under Part 3 of the 1992 Act. Subsection 2 provides for a substitute section 73(1) and enables the Secretary of State to make regulations in connection with the matters provided for by the new sections 73(1)(a)-(f).

Clause 43 – Offences

This clause amends Section 74 of the 1992 Act which deals with offences.

In section 74(2) of the 1992 Act, the maximum fine has been changed from “the fourth level” to “level 5.”

Subsection (3) provides for the substitution of section 74(3) for the new section 74(3). It makes it an offence for any person to knowingly or recklessly furnish any information which is false in material particularly in relation to an application for a certificate of fitness under section 66D or a permit under section 67 (section 74(3)(a)) or in relation to information provided for the purposes of sections 66A, 66B or 66C. This section provides that the provision of such false information constitutes an offence the penalty for which is a fine not exceeding level 5 on the standard scale.

Clause 44 – Power of the Secretary of State to give financial assistance to charitable, benevolent or philanthropic institutions

This clause gives the Secretary of State an express statutory power to give financial assistance to organisations that are established for charitable, benevolent or philanthropic purposes rather than relying on the annual Appropriation Act. This power extends only to such organisations which operate wholly or mainly in England. Government funding of similar organisations operating in Wales is devolved to the National Assembly for Wales.

Under clause 44 the Secretary of State may give financial assistance by way of grants or loans (subsection (1)). Such assistance may be given subject to terms and conditions (subsections (2) and (3)). The Secretary of State may delegate his functions under this clause (subsections (5) and (6)). He must report annually on his exercise of the power conferred by this clause (subsections (7) and (8)).

Clause 45 – Consequential amendments, repeals and transitional provisions

The order-making power given to the Secretary of State by subsection (3) allows him, by virtue of subsection (4), to amend or repeal any enactment. An enactment here includes both primary legislation and subordinate legislation. Subsection (5) applies the affirmative resolution procedure to the making of orders under subsection (3).

Clause 46 – Expenses

This clause provides for the Secretary of State's expenses to be met out of public funds provided by Parliament.

Clause 47 – Interpretation

This clause prescribes the meaning of the listed terms wherever they appear in the Bill.

Clause 48 – Short title, commencement and extent

Subsection (2) brings this clause, and subsections (3) to (5) of clause 45, into effect on the date the Bill receives the Royal Assent, and provides for the remaining provisions to be brought into force by order – usually known as a commencement order – made by the Secretary of State. Subsection (3) allows him to make commencement orders bringing different provisions of the Bill into force on different dates.

Draft Regulatory Impact Assessment

CHAPTER 1: Summary

INTRODUCTION

1) Proposal

- 1.1 To create a modern legal framework to support and encourage a vibrant and diverse voluntary sector
- 1.2 This Regulatory Impact Assessment (RIA) assesses the impact of all the measures to be included in the Charities Bill. It updates the RIA set out in 'Private Action, Public Benefit', published by the Prime Minister's Strategy Unit (September 2002). This chapter presents the overarching position. Later chapters deal with each measure in greater detail. Chapter 2 deals with the bulk of the measures which have been grouped together. Chapter 3 deals with Public Collections and Chapters 4 and 5 deal with the exempt and excepted charities respectively.

THE IMPORTANCE OF THE SECTOR

- 1.3 The voluntary sector has an enormous impact on everyday life and on the national economy, making the preservation and expansion of its sphere of influence an important aim of government. The sector provides vital services, strengthens communities, identifies and addresses new needs, and is often a powerful advocate for the marginalised in society.
- 1.4 According to recent figures published by NCVO, the UK voluntary sector in 2001/02 had a total income of £20.8 billion, operating expenditure of £20.4 billion and assets totalling £70.1 billion. The sector has 569,000 paid employees, some 2% of the national figure, and makes a contribution of £7.2 billion to UK Gross Domestic Product (GDP).
- 1.5 The number of charities has increased and continues to do so, rising from 98,000 active general charities in 1991 to approximately 153,000 at present. However, in 2001/02 the sector's total income fell by £429 million compared to 2000/01 following the millennium. The largest charities - those with annual incomes of £1 million or more - actually experienced increases in income. The majority of the fall was in small and medium sized organisations.
- 1.6 Surveys of individual donors suggest that giving to charity is an activity still engaged in by over two-thirds of the adult population. Giving to charity was worth an estimated £7.3 billion in 2002, a figure that is boosted by the increasing use of tax-efficient methods. The Home Office Citizenship Survey estimates that in 2001 27% of the population had volunteered through a group, club or organisation at least once a month. 39% of the population had volunteered formally at least once in the last year.

2) Purpose and intended effect

The Objectives

- 2.1 It has been over a decade since charity law was last reformed and many aspects of current legislation are considerably older in origin. As a result, charity law has not kept pace with changes in society and within the diverse voluntary sector. The government has reviewed these laws and has drafted new legislation designed to promote a dynamic and vibrant voluntary sector which continues to enjoy the high levels of public confidence upon which the sector depends.
- 2.2 The reforms will:
- update and expand the list of charitable purposes and place a clearer emphasis on the requirement to deliver on public benefit;
 - contain a range of measures designed to enable charities to administer themselves more efficiently and to be more effective in their work;
 - introduce a new legal form specifically for charities;
 - provide for a greater degree of accountability for charities which are currently excepted or exempt from the requirement to register with the Charity Commission;
 - improve the regulation of charity fundraising; and
 - modernise the Charity Commission's functions and powers as regulator and increase its accountability.

The Background

- 2.3 The Cabinet Office Strategy Unit report 'Private Action, Public Benefit', made a number of recommendations for changes to the legal and regulatory framework for the charitable and wider not-for-profit sector. The responses to the public consultation on this report, which ran from September 2002 to December 2002, demonstrated considerable support for many of the proposals. The Government response to the Strategy Unit report, which took account of the responses to the consultation, was published as 'Charities and Not-For-Profits: A Modern Legal Framework'. The proposals, with very few exceptions, were accepted by the Government and those requiring legislation form the basis of this Bill.
- 2.4 As the regulation of public collections is one where there is not a natural consensus, it was decided to seek views on the detailed provisions of the licensing scheme. A separate consultation entitled 'Public Collections: For Charitable, Philanthropic and Benevolent Purposes' was held from 9 September to 2 December 2003.

3) Risk Assessment

3.1 The current legal framework is out-dated. It places unnecessary restriction on charities and does not deliver the degree of accountability and transparency by charities which is necessary to maintain public trust and confidence in the charitable sector. The proposed legislative changes are not in response to any current crisis within the voluntary sector. The aim of the changes is to empower the sector to expand and flourish to promote public trust and confidence in it.

3.2 Retaining the status quo would:

- hamper the growth of a diverse and vibrant voluntary sector;
- maintain unnecessary burdens on the sector through outdated regulation;
- risk the lowering of public confidence in charities; and
- leave in place a system under which many large charities operate without there being effective oversight of their compliance with charity law.

4) Options

4.1 The options relating to each of the proposals are set out in Chapters 2-5. The ones chosen have been selected to achieve the best balance between costs and benefits.

5) Expected Costs and Benefits

5.1 The table below summarises the costs and benefits for the main measures that are included in the Charities Bill. The costings which follow in the table show the range within which the precise costings will fall.

| Description | Costs | Benefits |
|---|---|---|
| 1) New legal form for Charities: The introduction of the Charitable Incorporated Organisation, which will be available only to charities. | This change is permissive so there will be no unavoidable costs to charities. | Will provide a new corporate vehicle specifically for charities, thus reducing the burden of registration with both Companies House and the Charity Commission and the attendant double reporting requirements. |

| Description | Costs | Benefits |
|--|---|--|
| <p>2) Public Collections:</p> <p>A new, updated and unified local authority licensing scheme for public collections.</p> <p>This would involve an assessment of the fitness of the organisation to collect, then processing of applications for permits on the basis of capacity only. Where collections are to take place in more than one area a lead authority will determine fitness. Local, short-term collections and the collections of goods house to house will be subject only to the requirement to notify the local authorities within those areas collections are to take place. Collections of cash or direct debits house to house, whether in one or more area will be subject to a fitness check only.</p> | <p>The impact on costs for the majority of local authorities should be negligible. The scope of the current licensing regime would be extended under the new scheme but the number of checks undertaken by each individual local authority would be reduced. However, there would be increased costs for the London Boroughs as a result of the transfer of the licensing regime from the Metropolitan Police to them.</p> <p>The costs to Government would also include the introduction and processing of appeals to the Magistrates' courts against the refusal or withdrawal of applications for a certificate of fitness and a permit.</p> <p>Costs to London boroughs: £32,500 - £103,584</p> <p>Magistrates Courts: £14,104 - £26,404</p> <p>The costs to charities and local authorities will be increased because of the inclusion of direct debits in the scheme and the extension of the scheme to places not currently covered. However, costs will be reduced because of the lesser requirements in the case of goods collections and all collections undertaken house to house.</p> | <p>To public confidence in charitable collections and, therefore, to charity income.</p> |

| Description | Costs | Benefits |
|--|---|--|
| <p>4) Changes to the Charity Commission:</p> <p>These involve improving the accountability and transparency of the Charity Commission through a number of different measures.</p> | <p>Costs to the Charity Commission:</p> <p>£431,000</p> | <p>To enhance confidence in the effectiveness and accountability of the regulator.</p> |
| <p>5) Appeals against Commission decisions:</p> <p>An independent tribunal will be introduced to hear appeals</p> | <p>Costs to the Government have been estimated at one-off costs of £49,000 with continuing costs of £379,600-£479,600.</p> <p>Charities will not have to pay to use the tribunal.</p> <p>The Charity Commission estimate that their total costs for processing appeals would be between £150,000 and £250,000 per annum.</p> | <p>Will promote confidence in the regulator's decision-making by providing an accessible, and independent forum in which charities can contest the Charity Commission's decisions.</p> |
| <p>6) Excepted Charities:</p> <p>Excepted charities with incomes above £100,000 would be required to register with the Charity Commission.</p> | <p>Costs to the Charity Commission should be one-off registration costs of £350,000-£650,000 with continuing costs of £137,962-£256,214 per annum.</p> <p>Costs to these charities should be modest. Every effort will be made to ensure that existing systems are adapted rather than new systems being created so as to minimise the bureaucratic burden.</p> | <p>Will ensure that charities with excepted status - an historic status that is nowadays hard to justify - are put on a par with other charities, improving their accountability and increasing public confidence in the sector more widely.</p> |

| Description | Costs | Benefits |
|--|--|---|
| <p>7) Exempt Charities:</p> <p>Where a main regulator has been identified and accepted, the monitoring regimes already in place for these charities should be extended to include basic charity law requirements.</p> <p>Where no main regulator is identified these should register with the Charity Commission. The changes would only affect exempt charities with an annual income of above £100,000.</p> | <p>Continuing costs should be £19,820-£68,360 per annum for the main regulators.</p> <p>Costs to the Charity Commission should be one-off registration costs of £630,000-£1,170,000 with continuing costs of £250,000-£450,000 per annum.</p> <p>Costs to the charities themselves should be the same as for the excepted charities</p> | <p>Will ensure that exempt organisations enjoying the benefits of charitable status are, like other charities, overseen in respect of their adherence to charity law.</p> |

6) Impact on Small Business

6.1 Overall, the impact on small business is expected to be minimal. The views of the Small Business Service have been sought as part of the consultation process. The principal concern was that the more onerous accounting requirement for charities compared with those applying to small businesses might prove a burden. However, the Small Business Service has accepted that stakeholders legitimately have a greater desire for more information about charities than they do about small businesses. Other lesser concerns were identified and are dealt with in subsequent chapters.

7) Results of Consultation

- 7.1 Approximately 1,100 written responses were received to the consultation on 'Private Action, Public Benefit' and over 250 to the public collections consultation.
- 7.2 The Government has taken these responses into account in developing its proposals. Overall, the responses justify proceeding with the measures.
- 7.3 This Regulatory Impact Assessment is being published as part of a draft Bill, and further comment is welcomed as part of the pre-legislative scrutiny process.

8) Devolution

8.1 Charity law is a devolved issue in Scotland and Northern Ireland. The Scottish Executive expect to publish a Charities Bill shortly. The measures will affect England and Wales and consultation with the Welsh Assembly has and will continue to take place.

9) Guidance, Enforcement and Evaluation

9.1 The Charity Commission will continue to act as the principal focal point for guidance, enforcement and evaluation of the diverse charitable sector.

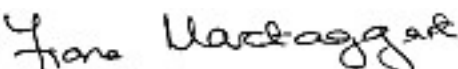
9.2 There will be a review of the legislation by the Home Office after a period of five years.

10) Summary

10.1 The measures included in the draft Charities Bill are designed to strengthen the vibrant and diverse voluntary sector, giving it a legal and regulatory framework that will be empowering and facilitate long-term growth.

11) Declaration

I have read this Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: 

Date: 27 May 2004

Fiona Mactaggart MP

**Parliamentary Under Secretary for Race Equality, Community Policy
and Civil Renewal**

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CHAPTER 2: Charitable Legal Framework – Administrative and Structural Reforms

- 1.1 This chapter assesses the impact of all the measures to be included in the Charities Bill, with the exception of the regulation of public collections and of excepted and exempt charities.
- 1.2 These measures affect all charities directly. Many of the measures are permissive rather than prescriptive. The Bill seeks to promote growth in the sector through a flexible rather than restrictive legislative framework.

PURPOSE AND INTENDED EFFECT

Objective

- 1.3 That charity be redefined in law, based on the principle of public benefit and falling under one of twelve new purposes of charity.
- 1.4 That a package of legal measures be introduced that will facilitate mergers and, more generally, the administrative running of charities. These measures include the following:–
 - Raising the threshold below which small charities can make certain changes (such as transferring assets and modifying objects) from £5,000 to £10,000 annual income. The criteria and procedure for transferring property or changing objects will be broadened and simplified.
 - Making it easier for trustees to make administrative amendments to their governing documents.
 - Speeding up the formal scheme making procedure and reduce the cost to charities by making advertising the changes a matter of Commission discretion.
 - Including specific provision in the Charitable Incorporated Organisation legislation to facilitate transfers and mergers.
 - Providing for the benefit of all future legacies and gifts to transfer automatically to the newly incorporated or merged charity.
 - Producing regulatory guidelines on due diligence in charity mergers, based on a light-touch approach.
- 1.5 The criteria for allowing trustees to spend capital to be revised.
- 1.6 A new legal form designed specifically for charities, the Charitable Incorporated Organisation (CIO), to be introduced, which will only be available to charitable organisations. Five years after the introduction of

the CIO the Government will consider further whether other forms of incorporation should continue to be available for charities.

- 1.7 Auditors of all charities to have the same statutory protection from the risk of action for breach of confidence or defamation, as do the auditors of charities which are not companies.
- 1.8 The Home Secretary to be given power to introduce statutory regulation of fundraising which he would exercise if he considers the self-regulation initiative to have been ineffective or inadequate. The Government accepts that self-regulation should be the first resort in improving fundraising standards and practices. The advantage of self-regulation in that area is that fundraising organisations would be centrally involved in devising and implementing regulation and would be more committed to it. However, the Government recognises that there is a risk that self-regulation might not be successful. The criteria which the Home Secretary will use to judge the success or failure of self-regulation will be published.
- 1.9 The legislation to be amended to require a specific statement of the return that will be made to charitable, philanthropic and benevolent purposes from promotional ventures.
- 1.10 A trustee body to have a statutory power to pay an individual trustee to provide a service to a charity (outside their duties as a trustee) if they reasonably believe it to be in the charity's interests to do so.
- 1.11 Charity trustees to be able to apply to the Charity Commission as well as the court for relief from personal liability for breach of trust where they have acted honestly and reasonably.
- 1.12 The income threshold for audit to be raised to £500k per annum. An asset threshold of £2.8 million to be introduced for charities required to prepare a statement of accounts (currently those with incomes over £100k per annum). A professional qualification to be required for independent examiners of larger non-audited charities, that is those with income above £250k but below £500k per annum.
- 1.13 The threshold for compulsory registration to be raised to £5,000 with voluntary registration to be allowed for charities below the new threshold. The two criteria relating to permanent endowment and use/occupation of land should no longer apply.
- 1.14 The Commission to have clear strategic objectives in statute setting out what it exists to achieve as regulator and to report its performance against its objectives in its annual report. The Charity Commission to hold an open Annual General Meeting at which to present its report and answer questions.

- 1.15 The Charity Commission to be a statutory corporation, operating at arms length from Ministers, with the relationship defined in statute.
- 1.16 The number of Commissioners to be increased from five to nine, with one Commissioner appointed by the Secretary of State for Wales. There to be separate Chair and Chief Executive posts.
- 1.17 An independent tribunal to be introduced to hear appeals against the legal decisions of the Commission as registrar and regulator.

Risk Assessment

- 1.18 Failure to update the legal framework by adopting these measures would have a negative long-term impact on the ability of charities to expand and modernise to create a more vibrant and diverse voluntary sector.
- 1.19 The definition of charitable purposes is nearly 400 years old. Should it remain unchanged, the legal definition of charity might fail to match the public perception of what is charitable. A clear focus on the requirement to deliver public benefit is essential to ensure continued confidence in the charity brand and to maintain public support for the granting of fiscal benefits to charities.
- 1.20 The proposals such as the CIO, payment of trustees for services, the measures set out in 1.4 and the spending of small levels of capital by trustees are designed to make it easier for charities to operate. Failure to implement them is likely to stifle initiative and innovation and prevent the expansion of the sector.
- 1.21 The risk of not introducing the specific statement of the return from promotional measures is that the general public will be either confused or deliberately misled by how much of their money is given to the charity benefiting from the promotion. Either would detract from public confidence in the charitable sector.
- 1.22 However, forcing companies to make a specific statement of the return made to charities from promotional ventures might deter companies from creating such ventures. Companies might view revelation of such details as a breach of confidentiality. Those risks are minor and out-weighted by increased transparency and accountability considerations.
- 1.23 Failure to increase the audit threshold would be an unnecessary burden to small and medium sized charities and would not be in line with a general increase in the threshold for companies in the private sector. However, increasing the threshold by too much would pose a risk to public confidence. The public generally requires more information from charities than small businesses with a similar turnover. This should be reflected in the legislation.

1.24 If the changes to the structure and governance of the Charity Commission are not implemented it will be impeded in developing into a modern effective regulator commanding the confidence of the charitable sector and of the general public.

Options

1.25 Three broad options have been identified in regard to the proposals mentioned in this RIA.

Option 1 - leave the relevant legislation unchanged.

1.26 The charitable sector would not have a modern fit for purpose legal and regulatory framework.

Option 2 - Implement all of the proposals set out by the Strategy Unit in 'Private Action, Public Benefit'.

1.27 Some of the Strategy Unit proposals met with strong opposition during the period of consultation. Some were adapted as a result of the consultation and one proposal was dropped due to Government concerns about unfair competition. Continuing with these proposals unchanged might lead to resentment that strongly expressed public views were being ignored.

1.28 There was considerable support in the consultation for the inclusion of 3 further heads of charity over and above the 10 set out by the Strategy Unit (SU). These 3 were:

- the promotion of animal welfare;
- the provision of social housing; and
- the advancement of science (to be added to the proposed purpose for the advancement of culture, arts and heritage).

These three purposes which are well-established as charitable would be covered by the category 'other purposes beneficial to the community'. However, they have strong public recognition. Their inclusion as specific purposes in their own right will help to align the legal definition of charity with the public understanding of what is charitable.

1.29 There are risks inherent in implementing the SU recommendation that charity law should be amended to allow charities to undertake all trading within the charity, without the need for a trading company, subject to a specific statutory duty of care. The Government does not favour this proposal as it risks offending the principle of there being a level playing field with private sector businesses. At present, companies owned by charities are in the same position as any other company. It is a matter of choice whether or not profits are passed on to shareholders within the

Gift Aid arrangements. In addition, there is a statutory exemption from tax for small trades carried on by charities and a concession providing exemption from tax for minor trading activities for charitable purposes, such as bazaars and jumble sales. These relieve smaller charities of any administrative burden in conducting modest trading activity. The implementation of the recommendation would present a significant risk of generating unfair competition for other businesses.

- 1.30 Roughly a third of the 128 respondents on the proposal relating to audit thresholds had concerns about it or unequivocally opposed it. Most of these felt that raising the threshold to £1 million would lead to a greater risk of abuse by medium-sized charities due to the lack of rigorous scrutiny. Increasing the threshold to £1m runs the risk of alienating those who opposed the measure, reducing the accountability of medium-sized charities and possibly result in there not being enough competent independent examiners to take on the extra work that would result from the changes.
- 1.31 Over 95% of the small charities who responded to the consultation opposed setting the registration level at £10,000 per annum on the grounds that small charities derive much of their credibility with funders, the public, local authorities, banks and other organisations from their registration with the Charity Commission. Loss of registration could damage small charities.

Option 3 - Implement those proposals accepted by the Government and set out in 'Charities and Not-for-Profits: A Modern Legal Framework'.

- 1.32 This would meet the objective of providing a modern fit-for-purpose framework but contains a few risks.
- 1.33 The measures on trading that were rejected by the Government were strongly supported by charities with 84% of the 297 respondents being in favour. Failure to adopt this measure may alienate those who supported it.
- 1.34 Increasing the audit threshold to £500,000 rather than £1m will have less of a de-regulatory effect for medium-sized charities. There will be a discrepancy between the audit threshold of small businesses, which will be £5.6m and that of charities but there is a greater public interest in the accounts of charities and a higher risk to the sector should any individual charity abuse the system.
- 1.35 Setting the registration threshold for charities at £5,000, means that there will be a group of charities that are registered but not monitored on a systematic basis but the Commission does not undertake systematic monitoring of charities with an income of under £10,000 per annum. The public might derive false comfort from believing mistakenly that all registered charities are systematically monitored. That possibility is outweighed by the need to ensure that the smallest charities do not have to enter the 'bureaucratic net' until they are better resourced to do so.

Those charities will still benefit from the information and advice of the Charity Commission via Commission mailings. The Charity Commission's regulatory powers apply in full to unregistered charities below the threshold.

- 1.36 Businesses involved in promotional ventures with charities may have concerns about revealing information which might be commercially sensitive and decline to participate, with consequent lost income to charities. That risk is considered to be low.

Professional fundraising firms might suffer as a result of this measure, if potential donors conclude that too much of their donation is going to the fundraisers rather than to the charity. The public might not appreciate the longer-term gains to charities. It will be for professional fundraisers to provide a balanced case on this issue.

- 1.37 The structural changes to the Commission might result in the regulatory or 'watch-dog' aspects of the work carried out by the Commission overshadowing its advisory and supportive role to the sector.

Benefits:

Option 1 - leaving the existing legislation unchanged.

- 1.38 There would be no additional benefits from this option.

Option 2 - Implement all of the proposals set out by the Strategy Unit in 'Private Action, Public Benefit'.

- 1.39 The benefits have been identified in the foregoing paragraphs but have been found to be outweighed by the risks.

Option 3 - Implement those proposals accepted by the Government and set out in 'Charities and Not-for-Profits: A Modern Legal Framework'.

- 1.40 The benefits have been identified in the foregoing paragraphs.

- 1.41 Broadening the definition of charity so that there are 12 new 'heads of charity' will better reflect the modern concept of what is charitable. Widening the definition may allow some organisations that were not previously so to become charitable, though it is not expected that the number of these would be very high. Reflecting a more modern definition of charity will also give the general public a greater confidence in what is charitable within law.

- 1.42 Requiring charities to demonstrate that they deliver public benefit will enable the general public to have confidence that organisations which have charitable status are genuinely for the public good.

1.43 Introducing a range of legal measures to facilitate mergers will ease the process when two charities combine. These measures are wholly permissive and there is no intention to force charities to merge, merely to facilitate the process where it seems in the best interests of the charities involved. According to research carried out by the Charity Commission, 22% of all charities currently work collaboratively and 5% of charities exist as a result of a merger in the past ten years. 13% of large charities have either merged or actively considered a merger in the last 10 years (March 2003). The majority of the charities for whom it was relevant felt that as a result of the collaborative working, service delivery had improved. 6% of those who were asked had considered merging in the past 10 years but had not done so, 10% of those who did not work collaboratively stated this was either because it had been considered but not materialised or previous collaborative efforts had not worked out and they were cautious of trying again. 15% of those who considered merging but did not do so stated the reason was that the merger was too bureaucratic or complex.

Many charities will feel no need to merge but those that do are likely to reap benefits. Equally, a substantial number are put off by the bureaucratic processes involved in merging. Simplification of the merger process will benefit both the charities involved and the general public.

1.44 The benefit arising from the provision to allow trustees to spend capital, provided it is below £10,000, will be limited but useful. Many major charities, and educational institutions in particular have large numbers of very small trusts, some of which are of considerable age. Maintaining the separation of these funds while still ensuring that the charity makes the most out of them can generate a lot of administrative work and ties down potentially useful money. By loosening the controls on these funds, with safeguards to ensure that the money is used for a similar purpose to that originally stated, this measure will improve the performance of many charities.

1.45 The creation of a new legal format, designed specifically for charities (the CIO), should benefit them significantly. There will be no need for dual registration with the Charity Commission and Companies House. The regime will be tailored to fit the trustee governance structure. The relationship between trustees and directors will be clarified and any overlap resolved. There will be model constitutions prepared by co-ordinating bodies, tailor-made for particular parts of the sector and an explicit statement of trustees' duty of care, consistent with the Trustee Act 2000.

1.46 Giving auditors of all charities the same statutory protection as the auditors of charities that are not companies will improve the accountability of charities. Auditors identifying potential malpractice will be able to draw attention to legitimate concerns, without fear of the consequences.

- 1.47 The power to pay trustees, for services to the charity, other than as trustees, will allow charities to benefit from the expertise of individuals committed to the charity. Within the safeguards set out within the draft Charities Bill, use of this measure will save charities money and enable them to make the most of the resources available to them.
- 1.48 The ability of trustees to apply to both the Commission and the Courts for relief of personal liability will have the benefit of providing greater reassurance to potential and existing trustees that if they act reasonably then their personal finances will not be affected by their role as trustee. This should make it easier for charities to recruit high calibre trustees.
- 1.49 Raising the audit threshold to £500,000 will reduce the burden of bureaucracy on medium-sized charities. It is estimated that increasing the threshold would free over 2,000 unincorporated charities and nearly 1,500 charity companies from the audit requirement.
- 1.50 Raising the threshold for mandatory registration with the Charity Commission to £5,000 will also help to cut down on costs on what can be a tight administrative budget for small charities. It also has the potential to cut registration costs for the Charity Commission itself, although few charities which are already registered are likely to remove themselves from the Commission's register.
- 1.51 The requirement for commercial operators to make a specific statement will have the benefit of clarifying the relationships between the private and charitable sectors. According to research undertaken by Business in the Community, consumers spent more than £50 million on products displaying a charity logo during 2003 – a 50% rise on the previous year. More than 83% of consumers have bought a cause-related product or service. Charities have the potential to benefit enormously from entering into a partnership – with a commercial organisation, for example Comic Relief raised £250,000 from such an arrangement with a cake manufacturer.
- 1.52 The structural changes to the Charity Commission will increase clarity and accountability, so that the sector and the general public can have confidence in the role the Commission plays. Its organisational status will reflect its independence while the expansion of the board will enable it to reflect the interests of a wider range of stakeholders.
- 1.53 The new Tribunal will provide charities and trustees with a better and less expensive opportunity to challenge the decisions of the Charity Commission through an authoritative and legally binding process.

Costs:

Option 1 - leaving the existing legislation unchanged.

1.54 There will be no additional costs for this option.

Option 2 - Implement all of the proposals set out by the Strategy Unit in 'Private Action, Public Benefit'.

1.55 The costs of these measures will be mostly the same as for those in option 3 – largely negligible. Removing the need for charities to have separate trading subsidiaries could have significant costs for small businesses. No accurate figures are available but both the Treasury and the Small Business Service have stated that this proposal would incur an unacceptable level of loss of revenue to small businesses.

Option 3 - Implement those proposals accepted by the Government and set out in 'Charities and Not-for-Profits: A Modern Legal Framework'.

1.56 The majority of these measures are permissive, so the costs incurred are virtually entirely at the discretion of the charities themselves. The costs to the charities of any of these measures is expected to be minimal. The following measures are expected to be cost neutral:–

- Facilitating mergers
- Allowing trustees to spend capital
- Auditor protection
- Payment of trustees to provide a service
- Raising the compulsory registration threshold to £5,000

The measure for trustees to apply to the Charity Commission for relief from personal liability might involve some cost to the Commission but it would be very small.

1.57 The costs involved in changing the definition of charitable purposes should not be high. It is not expected that large numbers of organisations will become charitable as a result of this, so the Charity Commission will not face an increased burden.

1.58 The Charitable Incorporated Organisation is a permissive measure. The cost of creating this legal form is expected to be equivalent to or less than forming a company limited by guarantee. There will be additional burdens to the Charity Commission but their figures indicate that it should be possible to absorb any costs involved in registering this new legal form.

1.59 The cost in producing a specific statement of return from promotional ventures should be negligible. It is not possible to calculate the financial impact of the specific statement of return requirement. No charity expressed concerns about this recommendation in response to the Strategy Unit consultation.

1.60 Raising the audit threshold is likely to reduce the number of charities requiring audit by approximately 3,500. It is expected that this reduction will probably occur over a number of years, as many charities who currently have their accounts audited are likely to continue to do so immediately following the Bill. The governing documents of some charities will require them to have their accounts audited.

1.61 Structural and procedural changes to the Charity Commission itself will incur costs. Regarding the measures on board meetings, the additional resource for governance for 2004/05 is **£114,000** to cover:

6 open board meetings,

4 regional meetings,

1 open AGM, and

1 Pay Band 4 member of staff as support.

1.62 In regard to increasing the number of Commissioners and splitting the role of Chief Executive and Chair, there is an additional recruitment cost that will be borne by the Commission. This comprises the recruitment of 4 Board Member posts every 3 years at c£50,000 per appointment (to fulfil standard senior public appointments arrangements). This gives an annual cost of **£67,000** (50 x 1.33 on average).

£114,000 plus £67,000 gives a total planned cost of **£181,000** for the governance changes.

There will also be the annual cost of the salaries of the new Board Members, the support staff for them and the addition of the new Chair role. This is estimated at **£250,000** per annum, working on the assumption that contracts are for the same hours as existing non-executive Commissioners. These costs do not take into account any redundancy costs that may occur.

1.63 The costs incurred by the new Tribunal are largely dependent on the proposed structure of the new tribunal system which is still being determined through legislation to be taken through by the Department of Constitutional Affairs. Much will depend on whether the Charity Appeal Tribunal stands alone or is grouped with other Tribunals, reducing the set-up costs.

1.64 In order to work out the costs involved in the normal annual costs of the Tribunal (excluding set-up costs), the average number of cases has had to be estimated. Estimates of the potential number of cases per year vary from 35 to 2,500. We have taken the figure of 50 cases per annum as the best estimate available. However, last year there were only 14 cases in which complaints against the Commission's decisions were not resolved by the Commission's own internal review process. This could well indicate that fewer than 50 cases would be brought to the Tribunal. However, there might be an initial flurry of interest in the Tribunal which could result in more appeals. This estimate may well be amended as further information on the number of appeals comes to light.

In terms of the length of each case, there is little evidence to work upon. To date there have been two cases involving appeals against the Charity Commission that have been taken to the High Court. One lasted three days while the other lasted three weeks, so there is no established time-scale for cases. Given the extraordinary nature of the latter case but remembering that it is expected that most appellants will chose to litigate in person, which is likely to take longer, we have estimated that cases will take between 3 and 7 working days each.

The resulting figure is 50 cases at 3-7 days each, meaning 150-350 court days per year. The table at Annex A provides an estimate as to the costs to the Government of the Tribunal. The figures will be subject to change once further information and discussions have taken place. It is estimated that the Tribunal will attract one-off costs of **£49,000** and continuing costs of between **£379,600** and **£479,600** per annum.

The Charity Commission estimate that their total costs for processing appeals would be between **£150,000** and **£250,000** per annum.

Impact on Small Business

1.65 Overall, the impact on small business is expected to be minimal. The views of the Small Business Service have been sought as part of the consultation process. The principal concern was that the more onerous accounting requirement for charities compared with those applying to small businesses might prove a burden. However, the Small Business Service has accepted that stakeholders legitimately have a greater desire for more information about charities than they do about small businesses.

Results of Consultation

- 1.66 The consultation produced responses on all the measures described above. Every measure that has been accepted unaltered attracted significant support.

The measure on trading also received a large majority of positive results - 84% of 297 respondents. On the small charities registration threshold 95% of the small charities who responded were opposed to the measure, though many respondents did not have a full understanding of the recommendations and how they would affect small charities. On the definition of charity, there was considerable support for 3 new categories: promotion of animal welfare, provision of social housing and advancement of science, each of which has been included in the Bill. There was no consensus for removing any of the categories proposed, though single-figure numbers of respondents suggested removing charitable status from: religious organisations, independent schools and 'poor relations' charities. Roughly a third of respondents to the payment of trustees measure opposed it. A full range of opinions were represented in both support and opposition, from those who advocated a wide general power for the payment of charity trustees to those who believed that no charity trustee should ever be paid.

Summary and recommendation

| Option | Benefits | Costs |
|---|---|--------------|
| 1. Leave the relevant legislation unchanged | <ul style="list-style-type: none">• There would be no additional benefits from this option apart from the fact that there would be no additional costs. | |

| Option | Benefits | Costs |
|--|---|--|
| 2. Implement all the recommendations set out in the Strategy Unit review “Private Action, Public Benefit.” | <ul style="list-style-type: none"> • Increasing the audit threshold to £1 million and allowing charities to trade within the charity without the need for a separate trading company would ease the burdens currently placed on charities but there are risks associated with that. • Raising the registration threshold to £10,000 would ease the burden on small charities. | <ul style="list-style-type: none"> • Negligible actual additional costs. • During the consultation period some of the proposals met with strong opposition or requests for modification. Continuing with those proposals unchanged might lead to resentment that strongly expressed public views were being ignored. • The proposal enabling charities to undertake trading within the charity without the need for a separate trading company risks offending the principle of there being a level playing field with private sector businesses. • Roughly one third of the 128 respondents who commented on raising the audit threshold felt that raising the threshold to £1million would lead to greater risk of abuse by medium-sized charities due to the lack of rigorous scrutiny. • Over 95% of small charities who commented on the proposal to raise the registration threshold to £10,000 were opposed to it. |

| Option | Benefits | Costs |
|--|---|--|
| <p>3. Implement the Strategy Unit proposals accepted by the Government and set out in “Charities and Not-for-Profits: A Modern Legal Framework.”</p> | <ul style="list-style-type: none"> • It would meet the objective of providing a modern fit-for-purpose framework with only a few identifiable risks. • Increasing the audit threshold to £500,000 rather than to £1million will have less of a de-regulatory effect on the medium-sized charities but it will reduce the risk of abuse, which might occur if the threshold rose to £1million. • The extension of the list of charitable purposes will provide for the specific inclusion in the list of charitable purposes that have strong public recognition. It will help to align the legal definition of charity with the public understanding of what is charitable. • Raising the registration threshold to £5,000 only, and allowing charities to register voluntarily below that threshold, would ease the burdens placed on the smallest charities while at the same time enabling them to register if they wish to do so. | <ul style="list-style-type: none"> • Businesses involved in promotional ventures with charities might have concerns about the specific statement of return. They might be concerned about revealing information which might be commercially sensitive. However, that risk is considered to be low. • Professional fundraising organisations might suffer as a result of the statement of return if potential donors conclude that too much of their donation is going to the fundraisers rather than the charity. • The cost of the governance changes to the Charity Commission have been estimated at £181,000 (see 1.62) and the annual staffing costs in terms of salaries for the new Board Members, their support staff and the Chief Executive post have been estimated at £250,000 per annum (these costs are also relevant for Option 2). • The estimated costs to the Government of the Tribunal (which can only be used as a cautious guide) are one-off costs of £49,000 with continuing costs of £379,600-£479,600. The Charity Commission estimate that their total costs for processing appeals would be between £150,000 and £250,000 per annum. |

1.67 Our clear preference is for Option 3. It will deliver our objectives and maintain an appropriate balance between empowering the sector while providing the right degree of transparency and accountability.

Annex A: Estimated costs of the Tribunal

The figures provided will be subject to change once further information and discussions have taken place.

| Expenses | Costs incurred |
|--|---|
| One off costs | |
| IT – <i>generic database</i> | £30,000 |
| Website | £14,000 |
| Books and Stationery | £5,000 |
| | £49,000 |
| Continuing costs | |
| Staffing | £90,000 |
| Sitting days – <i>President/Chair:</i> <i>(Members 1 and 2 at £235 per day</i> <i>therefore, £500 per day)</i> | £75,000-£175,000 (150-350 days x £500 per day) |
| Writing – <i>(100 days x £500)</i> | £25,000 |
| IT support costs - <i>(£800 per month)</i> | £9,600 |
| General Administration | £7,500 |
| Accommodation | £97,500 |
| Judiciary T&S | £75,000 |
| | £379,600-£479,600 |
| Total costs | One-off costs: £49,000 Continuing: £379,600-£479,600 |

CHAPTER 3: Public Collections

1. TITLE OF PROPOSAL

- 1.1 Public Charitable Collection Regulation - the reform of public charitable collection legislation. In certain respects the contents of this RIA go beyond the provisions included on the face of the draft Charities Bill. The decision to include the additional material has been taken in order to enable the reader to gain a more complete understanding of the proposals.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

2.1 *The objective*

- 2.1.1 To create a fair and cost effective system of local authority licensing of public charitable collections which strikes an appropriate balance between facilitating responsible fundraising and charitable work, removing the existing confusion for charities and fundraising organisations, and restricting inappropriate fundraising, for example, excessive or bogus appeals and limiting public nuisance.

2.2 *Devolution*

- 2.2.1 The scheme, if implemented, would apply in England and Wales only.

2.3 *The background*

Existing legislation

- 2.3.1 Under existing legislation the following arrangements apply to public collections:
- **Street collections** - these are licensed locally under section 5 of the Police, Factories Etc (Miscellaneous Provisions) Act 1916. A model for local regulations, which are confirmed by the Home Secretary, is contained in the Charitable Collections (Transitional Provisions) Order 1974. Although it is not obligatory for local authorities to introduce such a system of licensing in their area, the majority have them in place.
 - **House to house collections** - these are licensed locally in accordance with the House to House Collections Act 1939 and the House to House Collections Regulations 1947, as amended in 1963 and 1974. In accordance with the 1939 Act, it is possible for organisations conducting house to house collections over a substantial part of England and Wales to obtain an Exemption Order from the Home Secretary which exempts them from control locally and subjects them to central supervision by the Home Office. In addition, small-scale, local house to house collections (for example for carol singing) may be granted a local police exemption.

- The Local Government Act 1972 transferred responsibility for both forms of licensing to local authorities from the police, except in London where they continue to be the responsibility of the Metropolitan Police. The Corporation of London has responsibility for licensing in the City of London.

2.3.2 The legislation was intended to offer the public a degree of protection against dishonest appeals and to prevent public nuisance. The relevant provisions were introduced at a time when the bulk of fundraising for charity was carried out by way of public collections for cash and property.

Strategy Unit Review

2.3.3 In September 2002 the Strategy Unit (SU) issued for consultation a report, *“Private Action, Public Benefit - A Review of Charities and the Wider Not-For-Profit Sector”* in response to a request from the Prime Minister to look at the law and regulatory structures which govern the whole sector. One of the issues the report considered was the regulation of public charitable collections. It concluded that the existing legislation covering public collections in the street and house to house is inconsistent, outdated and unnecessarily complex. It therefore recommended that legislation be brought forward to establish a new integrated local authority licensing scheme.

2.3.4 Almost 1,100 responses were received to the SU consultation. A small number commented on the proposal for a new integrated licensing scheme. The majority of respondents agreed that there should be a unified statutory licensing scheme, administered by local authorities, for all public collections.

2.3.5 The Government is aware that the last attempt to introduce a similar scheme through Part III of the Charities Act 1992 was unsuccessful. Part III was enacted but never brought into force because it was believed that the licensing scheme had flaws in the detail of its procedures. In order to ensure that the new scheme is practicable, the Government carried out a further detailed consultation with the sector, local authorities and other interested parties. The consultation document *“Public Collections for charitable, philanthropic and benevolent organisations”* was published on 9 September 2003. The consultation period closed on 2 December and over 250 responses have been received.

The charitable and wider not-for-profit sector

2.3.6 As at 31 March 2003 there were 187,316 charities on the Charity Commission’s Register (of which 163,013 were “main” charities; the remainder were subsidiaries or branches of other charities). There is an estimated similar number of charities which are currently either exempt or excepted from registration with the Commission. In addition, there are voluntary organisations which would qualify as benevolent or philanthropic but because most of them are informally constituted and

not registered with any authority, their numbers are unknown but they could run into several tens of thousands.

2.4 **Risk assessment**

- 2.4.1 The main risk that the scheme is designed to guard against is the possibility of a depression of collection revenues through a decline in public trust and confidence in public collections.
- 2.4.2 Individual donations are an important source of income for charities and are an indication of the level of trust that the general public has in charities. Because no records are kept centrally of the total amount of revenue raised by house to house and street collections it is impossible to state exactly how much income is raised by those methods of fundraising and none of the research breaks it down in this way. Notwithstanding that, NCVO/NOP surveys indicate that in 1995 individual charitable giving in general was well over £11 per person per month from over 70% of the population, which equated to £5.7 billion worth of donations¹. However by 2002, while the average monthly donation had surpassed its 1995 level to £12.93 per person per month the proportion of the population giving to charity had fallen to 67.3%, although that equated to £7.3 billion worth of donations².
- 2.4.3 Of those sampled in 2002, 20.9% gave to collections in the street and 15.6% to house to house appeals. However, this accounted for only 2.9% and 3.5% respectively, of the total individual charitable donations received. The Voluntary Sector Almanac commented that while this accounted for a relatively small proportion of the total amount given to charity, the need for little or no commitment, planning and money on the part of the donor meant that those ways of giving are crucial if charities are to continue to engage with a large proportion of the public³.
- 2.4.4 Collections in the street and from house to house appeals, therefore, generate a comparatively small share of the money donated to charity overall. However, collections undertaken in those ways are important as some donors might not respond to other fundraising methods. These collecting techniques also help to raise the profile of charitable organisations. Collectors often represent the public face of charities to many people who might not encounter the organisation in any other situation.

Specific risks

- 2.4.5 That bogus street collection activity is not being tackled in some areas. Some local authorities have said that they are unable to undertake or undertake only limited levels of enforcement in connection with the current licensing regime. Of the 33 local

1 NCVO UK Voluntary Sector Almanac 2002.

2 NCVO UK Voluntary Sector Almanac 2004.

3 NCVO UK Voluntary Sector Almanac 2004.

authorities spoken to in relation to this matter 10 indicated that they undertook no enforcement action (although some would in response to complaints) and a further 7 said that they were able to undertake a limited or small amount of enforcement work. One local authority suggested that due to the high level of scrutiny given to the analysis of the application for a permit and returns of the collection further enforcement activity was not required.

- 2.4.6 There are no figures currently available on the level of bogus street collections but respondents to the consultation, generally, did not believe that bogus street collecting activity represented a major problem. However, it was recognised that the potential for abuse existed within the current system, especially with the definition of public place excluding areas such as shopping malls and supermarket forecourts.
- 2.4.7 A decline in public trust and confidence in the collection of direct debit solicitations (also called face to face fundraising) because of 'saturation' with some collection sites being over-used. There is a lack of clarity in the legislation in terms of the current need for licensing and the absence of relevant case law has meant that there has been inconsistency in practice. The results of the consultation exercise showed general acceptance that this area of fundraising activity required regulation. 92% of the 222 respondents who commented on the recommendation supported its inclusion within the new scheme. Of the 37 local authorities who expanded on their reasons for favouring its inclusion, 16% reported that they had received complaints about that collection method and 13.5% felt that it gave rise to a public nuisance. Some reported that members of the public avoided areas frequented by those collectors. Charities felt that its inclusion would promote public trust and confidence in this collecting method.
- 2.4.8 National exemption orders granted by the Home Office to organisations collecting in a significant number of local licensing authority areas throughout England and Wales provide an unfair advantage to national organisations engaged in large-scale house to house fundraising activity over smaller organisations which do not collect so extensively. Currently, the 43 exemption order holders are able to undertake collections house to house without applying to local authorities for a permit, although they should notify local authorities of the dates and locations of their collections. In order to qualify for an exemption order organisations are currently required to demonstrate that they have collected in at least 70 local authority areas for a period of 2 years. Large regional charities would not qualify for exemption even though they might collect in numerous local authority areas. Currently they would have to apply for a permit to each of the local authorities in whose areas they wished to collect. As a result of that, the costs incurred by a regional charity wishing to undertake a region wide house to house collection would be more than for a national

exemption order charity wishing to undertake the same collection in the same area.

- 2.4.9 That the implementation of the existing legislation is inconsistent and there is an absence of policies with transparent rationally grounded criteria. As a result, collecting revenues are depressed because some local authorities do not provide maximum opportunity for eligible, well conducted collections consistent with local capacity. For example, feedback received from the consultation events and at various meetings attended, showed that local authorities adopted different approaches when assessing the capacity of their areas. In some areas one street collection would be allowed per week while in other areas licensing officers had taken action to divide town centres into zones, thereby offering more opportunities for collecting activity.

3. OPTIONS

- 3.1 **Option 1:** Retain the status quo
- 3.2 **Option 2:** Rely on a voluntary code of practice/self-regulation by the sector.
- 3.3 **Option 3:** Require local authorities to license all public charitable collections under a new integrated licensing system.
- 3.4 **Option 4:** Require local authorities to operate a licensing scheme for public collections which is risk focussed and proportionate to the collection method employed.

4. BENEFITS

- 4.1 **Option 1:** Limited. The current legislation is hopelessly out of date and the extent of its application is not clear. For example, it is not clear whether the regulations currently extend to direct debit solicitations and local authorities are not obliged to have street regulations, although the majority (80%) of them do. However, even though the legislation governing public collections is both outdated and complex local authorities and charities would be familiar with the operation of the current scheme and have developed ways of working with it.
- 4.2 **Option 2:** Limited. The Government accepts that self-regulation should be the first resort in improving fundraising standards and practices. The advantage of self-regulation in that area is that fundraising organisations would be centrally involved in devising and implementing regulation and would be more committed to it. That would also apply in part to the licensing of public collections. However, the Government recognises that existing charitable collection law provides a level of protection against bogus collections, fraud and public nuisance. A total absence of regulation in this area might harm public confidence in charitable giving through the risk of

non-compliance. Self-regulation would be concerned with maximising collecting revenues where statutory regulation would be concerned with maximising collecting revenues and improving public attitudes to fundraising.

- 4.3 **Option 3:** For the most part, this option would build on existing provision, simplifying and rationalising it to provide a single regime which should be easier to understand than the current legislation. This would significantly reduce the confusion which exists currently among charities, local authorities, professional fundraising organisations and the public. It would also promote greater uniformity in the application of the law. In the light of the fact that under this option all fundraising activity would be subject to the local authority licensing regime it would result in an increase in public confidence in public collections. However, it would impose a licensing requirement on the organisers of the smallest collections (usually undertaken by and collected from people that know each other); it would apply to collections undertaken at charity events; and would not be proportionate to the risks associated with various fundraising activities. It would be a burden for charities and would increase the costs of their fundraising activities.
- 4.4 **Option 4:** This has the benefits identified for option 3. It has the additional advantages of being a risk focussed and proportionate approach to licensing. It would promote an increase in public confidence in public collections without imposing a licensing requirement on the smallest collections or stifling fundraising activity. It would not require the collection of goods house to house to be licensed and collections of other types of property on a house to house basis would be subject only to a check on fitness of the charity, philanthropic or benevolent organisation to undertake a collection. Local authorities would not be required to monitor collection returns as the costs of the collection and the amounts used for charitable purposes are matters for the trustees of the charity or similar body of a philanthropic or benevolent organisation. That would reduce charities' costs and might well free up time for local authorities to take enforcement action. It would extend to many organisations the benefits reserved at present to Exemption Order holders only.
- 4.5 The new licensing regime would preserve local authority control over the public nuisance aspects of fundraising (such as too many fundraisers working in a high street) and set basic requirements for the conduct of collections. Option 4 would sit alongside the self-regulatory initiative which is currently being taken forward by the sector and aims to encourage and promote good practice in respect of all methods of fundraising. The Government accepts that self-regulation should be the first resort in improving fundraising standards and practice. Organisations are more likely to be fully committed to it and it is likely that self-regulation would be able to adapt quicker than statutory regulation to changes in fundraising practices. However, the Government believes that the removal of all existing statutory

regulation and reliance in future solely on self-regulatory mechanisms would be likely to have a negative effect on public confidence with a possible resultant drop in charitable giving.

- 4.6 The Institute of Fundraising has set up an independent commission, the Buse Commission, to explore different models for a system of self-regulation and to recommend a preferred model. The Buse Commission reported in January 2004 making a number of recommendations for the future framework and governance structure for the self-regulation of fundraising. It was intended that it would be subject to consultation from February to April 2004 and potential arrangements would be put in place in May / June 2004⁴. However, the Home Secretary would have the power to introduce statutory regulation should self-regulation fail.

5. PRINCIPAL ELEMENTS OF THE PROPOSED SCHEME

- 5.1 The table at Annex A provides a breakdown of the different types of collections and the processes an organiser would have to go through in order to undertake those collections.

5.2 *Permits*

Under the new scheme local authorities would be required to license all public charitable collections apart from the very small and local and those involving the collection of goods house to house, other collections undertaken house to house would be subject to a fitness test only. The licensing requirement would extend to direct debit solicitation, sometimes called face to face fundraising, and to areas where the public has unrestricted access such as supermarket forecourts and railway station concourses. The granting of a permit would be subject to a two stage test. Firstly, organisations would have to satisfy the appropriate local authority that they were fit to collect and, if satisfied, the local authority would issue a certificate of fitness which would be valid for up to five years. Secondly, local authorities would issue a permit to collect once they had satisfied themselves that there was capacity in their area for the collection. Existing permits would be allowed to expire but new permits would be granted under the new scheme. The proposal is that there should be no charge for permits.

An application for a certificate of fitness would be made not less than one month before the day on which the first collection was due to take place and should specify the period for which it is to remain in force (up to a maximum of 5 years). Local authorities would have the power to award certificates for a period of time less than the period which had been requested. The Government recognises that that might lead to an element of inconsistency within the new scheme but believes that local authorities should have the ability to attach conditions to a

⁴ Taken from the Buse Commission website at www.busecommission.org.uk.

certificate of fitness where that is appropriate. The central guidance would specify the circumstances where local authorities would exercise that power.

5.3 ***The definition of public place***

Generally, local authorities do not license charitable collections on private property such as supermarket forecourts and railway station concourses. This provides a potential loophole for those who wish to avoid the checks and controls of the licensing system. Under the new scheme the definition of public place would be extended so that collections would be licensed if they took place in areas where the public have unrestricted access, that includes land commonly used by the public as a highway or to which they have regular access. However, that would be an additional burden for charities who would be required to obtain the permission of site owners as well as a permit from the local authorities. The Government does not believe that fundraisers should be given a permit to collect on private property in contravention of the wishes of the site owner.

The National Trust and similar organisations occupy land which the public may walk on without payment or barrier and it would be disproportionate to expect those organisations to apply for a permit to collect on their own land. Under the new scheme those organisations would not be required to apply for a permit in order to carry out a collection on their own land and those collections would be specifically excluded from the scope of the scheme. However, other organisations that might wish to undertake a collection on land owned by organisations, such as the National Trust, to which the public has unrestricted access would be required to apply for a permit in the usual way. That would involve obtaining the organisation's permission to undertake the collection.

5.4 ***Replacing National Exemption Orders with a 'lead authority' system***

National Exemption Orders issued by the Home Office to large organisations conducting house to house collections in a significant area of England and Wales would be replaced by a new 'lead authority' system. The 'lead authority' system would be extended to apply to street collections. In that way it should reduce the overall burden for those wishing to collect both house to house and in the street in more than one local authority area. Collections undertaken on a house to house basis would be subject to the test of fitness and, if successful, organisers would be required only to notify local authorities of the dates and locations of the collections. Whereas collections undertaken in the street would be subject to a fitness test and, if successful, a permit would be granted if the local authority assessed that they had capacity for the collection. That was because collections undertaken on a house to house basis would not impact on the capacity of an area, in the same way as a street collection. In order to prevent organisations from submitting applications for a certificate of

fitness to more than one local authority area, registered charities would be required to apply for a certificate of fitness to the local authority in whose area the address entered onto the Charity Commission's register is situated. (Hereafter referred to as the registered address). In all other cases the application should be made to the local authority of the area in which the promoter's principal address is situated.

Feedback received during the consultation events suggested that some people would consider that the collection of cash or direct debits on a door to door basis constitutes a public nuisance. Those people appeared more concerned about collectors calling at their homes than collecting in the street. The proposal to remove the test of capacity from collections undertaken on a house to house basis would probably increase their concerns. The Government recognises that but figures received show that the number of collectors calling at households is not as significant as people believe. For example, based on the number of collections for direct debit solicitations currently undertaken on a house to house basis in the central London area it has been estimated that households would be visited no more than 4-6 times per year by a collector seeking a direct debit solicitation⁵.

5.5 ***Collection of goods house to house***

The collection of goods house to house would not fall within the scope of the new scheme, although collection organisers would be required to notify local authorities, in advance, of the dates and locations of their collections. That notification would be provided at least two weeks but not more than six months in advance of each collection. The notification would contain such information as required and as would be prescribed by subsequent regulations. It is likely to include information in relation to the details about which the proceeds are to be applied, the date or dates on which the collection is to be conducted, and the place at which, or the locality within which, the collection is to be conducted.

Some respondents to the consultation expressed their concern about the collection of goods by organisations which purported to be charitable, without declaring themselves as such. However, that was a matter for Trading Standards to consider and address and could not be dealt with by a licensing regime. Notwithstanding that, organisations which undertook a collection, without prior notification to the local authorities, would be operating contrary to the requirements of the scheme and it would be open for the matter to be referred to Trading Standards, if appropriate.

5.6 ***Local, short term collections***

Local, short term collections such as carol singing or one-off spontaneous appeals would be removed from the scope of the new scheme. The organisers of those collections would be required to

⁵ Taken from the response to the consultation provided by the PFRA.

inform the local authority about the collection, not less than one month in advance of the collection taking place. That notification would contain such information as required and as would be prescribed by subsequent regulations. It is likely to include details about which the proceeds are to be applied; the date or dates on which the collection is to be conducted; and the place at which, or the locality within which, the collection is to be conducted. On submission of that notification it would be open to local authorities to take action to require a full application where it appeared to them that the collection was not of a local or short term nature. Guidance would specify the circumstances where it would be appropriate for local authorities to take that course of action.

5.7 ***Appeals against the refusal of permits***

At present there is a right of appeal to the Home Secretary against the refusal of a house to house collection permit but not against the refusal of a street collection permit. Under the new scheme there would be a right of appeal against refusal of both. Appeals would be to the Magistrates' court, aligning it with the procedures for other licensing schemes.

5.8 ***Responsibility for licensing in London***

Currently in London the Metropolitan Police are responsible for the licensing of both street and house to house collections. The Corporation of London administer the licensing regime within the City of London. Under the new scheme the licensing function would transfer from the Metropolitan Police to the London boroughs. That would result in a unified consistent approach to the licensing of public collections, throughout the country.

5.9 ***Local Authority operation of the scheme***

The scope for inconsistency in the operation of the new scheme would be limited by the provision of clear central published guidance. We are considering whether to publish statutory guidance in order to further ensure consistency. The guidance would also consider how local authorities might ensure that collections do not constitute a public nuisance, what checks local authorities should make on the fitness of applicants and what arrangements should be put in place to provide effective liaison between local authorities and other bodies, including the police and the Charity Commission, to ensure the appropriate checks are made and to secure effective enforcement. The contents of the guidance would be subject to further consultation.

5.10 ***The scope of charitable, philanthropic and benevolent purposes/causes***

The new scheme would, as at present, cover collections for charitable, philanthropic and benevolent purposes. Local authorities often have difficulty determining whether particular non charitable causes qualify as philanthropic and benevolent. The central guidance would address this question.

5.11 **Capacity**

Local areas, because of their differing circumstances, can sustain different levels of collecting activity. The level at which collections would generate a viable return, referred to as the capacity of an area, would not be decided on the basis of arbitrary criteria. The guidance would set out those matters which should or should not be taken into account when decisions about capacity are being considered.

5.12 **Providing fair access**

Under the new scheme, for the first time, a duty would be placed on local authorities to provide fair access to collecting opportunities to all fit organisations. The guidance would set out the factors to be addressed when allocation decisions are made.

5.13 **Accounting for collections and returns**

The Government believes that the costs associated with undertaking a collection and the funds raised are a matter for the trustees of the charity or similar body for a philanthropic or benevolent organisation. It is the trustee body which retains legal responsibility for the collection and the proceeds of it. For that reason, the Government does not believe that it is rightly for local authorities to scrutinise collection returns. The Government does not take action to monitor or scrutinise, in other areas, the contractual relationship between voluntary and community organisations and the bodies contracted to work for them. The Government recognises, however, that some local authorities are concerned about the levels of remuneration received by some professional fundraisers. It also recognises that where house to house collection permits have been refused on grounds relating to those matters, and an appeal has been lodged, the Home Secretary has generally upheld the decision of the local authorities. Under the new scheme the oversight of the local authorities would be lost.

However, many public collections are organised by registered charities. Those organisations already report and account to the Charity Commission and the requirement to submit returns to local authorities on their public collecting activity could be seen as over regulation. Under the new scheme registered charities would not be required to submit returns to local authorities, although local authorities would have the power to ask for the relevant information, where appropriate, such as where concerns have been raised about a collection.

For philanthropic and benevolent organisations, some would be incorporated organisations, already required to submit their accounts to either Companies House or the Financial Services Authority. Although, due to the nature of those organisations the majority are likely to be small local unincorporated organisations.

5.14 ***Fitness***

The table attached at Annex B, sets out those areas on which local authorities could currently refuse an application for a house to house permit on the grounds of fitness; the matters it was proposed that they would consider under Part III of the Charities Act 1992 and the matters to be considered under the new scheme.

Under the new scheme local authorities would not be required to take action to consider whether the amount to be applied for charitable, benevolent or philanthropic purposes in consequence of the collection was adequate or whether the level of remuneration to be received was excessive. Those matters are rightly the responsibility of the trustees of a charity or equivalent body of a philanthropic or benevolent organisation. In the same way organisations would no longer be required to provide information in relation to the costs associated with the collection or the level of remuneration received.

Fitness to collect under the new scheme would focus on whether the applicant had been convicted of a relevant offence; whether the person promoting the collection (if different from the applicant) had been duly authorised by the applicant to do so; whether the applicant had exercised due diligence to ensure that the collectors were fit and proper persons, who complied with the provisions of the regulations made in relation to this matter; and whether the applicant had taken action to prevent badges or certificates of authority being obtained by persons other than those he had authorised. Local authorities would consult the chief officer of police for the area and make other inquiries that they thought fit in order to determine the matters referred to above. Applications for a certificate of fitness would be made no less than 1 month in advance of the date of the first collection and the information provided at application would enable local authorities to undertake the checks outlined above.

6. WHAT THE NEW SCHEME IS DESIGNED TO ACHIEVE

- 6.1 Increase public trust and confidence in public charitable collections. That increase would be achieved by extending the definition of public place to cover areas to which the public has unrestricted access and which are not currently regulated and enlarging the scope of the regime to cover face to face fundraising. It would also be achieved by requiring all collections to notify the local authorities about the collection.
- 6.2 Reduce the administrative burden placed on all organisations wishing to undertake a street collection in more than one local authority area. Currently organisations would be required to submit separate full applications to each of the local authorities in whose areas they wished to collect. Under the new scheme those charities would make one application for a certificate of fitness to the lead authority and then apply to the relevant local authorities for a permit, which would

be assessed on the grounds of capacity only. Currently, all the local authorities in whose areas the collection was to take place would have considered the application in full and would have undertaken checks to assess the fitness of a collection, and organisations would be required to provide the relevant information.

- 6.3 In terms of organisations wishing to undertake house to house collections in more than one local authority area there would be a reduction in the administrative burden placed on regional and smaller organisations. Under the new scheme those organisations would be required to obtain a certificate of fitness only and then notify the relevant local authorities of the dates and locations of their collections. As with street collections, currently, they are required to submit an application to all the local authorities in whose areas the collection was to take place. Each local authority would consider whether it was a fit collection and whether the area had capacity for it.
- 6.4 The removal of National Exemption Orders would increase the administrative burden for the current exemption holders, but that should be kept to a minimum. The collection of goods house to house would be removed from the scope of the new scheme and the collection of other types of property house to house would be subject to a fitness assessment only. For the collection of both types of property organisations would be required to notify the local authorities of the dates and locations of the collection in the same way as they should do now. In that way, the additional burden for them would be providing the information for the fitness test. Again the impact here would be minimal, organisations are already required to provide information to the Home Office in order to obtain an exemption order and to alter the details on the order. They are also required to prepare and submit accounts to the Home Office.
- 6.5 Help local authorities, the police and the Charity Commission to work effectively together to tackle bogus fundraising through consistent licensing.
- 6.6 Reduce the administrative burden for those organising local, short term collections such as carol singing or one-off spontaneous appeals in the street. At present, such activity has to be licensed as no local exemption is currently available for such collections in the street in the way that there is for house to house collections.
- 6.7 Have a negligible impact on the time that individual local authorities spend on the administration of the scheme. There would be a reduction in administration as a result of: introducing the lead authority approach; providing greater clarity on some of the issues/questions that local authorities find difficult; removing the collection of goods house to house and local, short term collections from the scope of the scheme; removing the assessment of capacity from collections undertaken house to house; limiting the matters to be considered by

local authorities when assessing the fitness of a collection; and removing the requirement for local authorities to examine collection returns. However, there would be an increase in administration in terms of the extension of the definition of public place and clarification that face to face fundraising would fall within the scope of the new scheme.

- 6.8 We have relatively limited information about the time currently spent by licensing departments on the operation of the present scheme. One local authority estimated that processing an application could take anything from 15 minutes to 1 hour depending on the level and complexity of the information provided. The analysis of the returns of the collection could take between 15 minutes to 3 hours to complete. Other local authorities provided a breakdown of officer's time engaged in operating the current scheme. Estimates varied from 12% of one officer's time to 1 full time administration officer post plus additional senior officer involvement, legal advice and enforcement.
- 6.9 Reduce the administrative burden on professional fundraising organisations who organise collections on behalf of charities and other voluntary organisations as they would no longer be required to make a return to the local authority for each collection. Due to the complex nature of direct debit solicitations (including lead in times) some respondents to the consultation commented that estimates / returns submitted covering this type of collection are of limited value.
- 6.10 Slightly reduce the administrative burden on charities that run public charitable collections as they would no longer be required to submit returns on collecting activity to local authorities. However, as a matter of good practice they should keep detailed accounts of collecting activity which the local authority could request for inspection in the event of concerns. It is unlikely that this would result in a significant reduction in the administrative burdens placed on charities, as they would still be required to retain figures on their collecting activity. However, there would be a reduction in costs in terms of preparing returns in the manner requested by different local authorities and postage.
- 6.11 Significantly reduce the burden on local authorities in terms of assessing returns. Under the new scheme organisations would not be required to submit returns for their collections to local authorities. Figures on the time and costs incurred in monitoring returns are limited. One local authority estimated that the process of collecting and monitoring returns could take between 15 minutes and 3 hours depending on the level of co-operation received and the clarity of the returns made.
- 6.12 However, local authority monitoring of collection returns would be a useful tool in ensuring that organisations are mindful of the costs incurred when undertaking a collection. It would enable local

authorities to take action where costs appeared excessive or the amount donated to charity appeared inadequate. It would also provide a useful tool for local authorities in helping them to determine the capacity of their area. For example, a reduction in the amounts collected might indicate that collections were being held at a level above the capacity for that area.

- 6.13 The Government recognises that there are advantages in local authorities continuing to monitor collection returns but on balance believes that they would not justify the time and expense incurred by the local authorities in chasing and examining those returns. The costs associated with the collection and the amount donated to the charity are matters for the trustees of the charity or similar body for philanthropic or benevolent organisations. Under the new scheme organisations would be required to retain accounts for their collections, which could be examined by local authorities where concerns have been raised. The regulations would specify which accounts should be retained.
- 6.14 Ensures consistency in the operation of the scheme by the provision of Home Office guidance to the local authorities. The Home Office guidance would include details of the checks that local authorities should undertake in order to consider applications for certificates of fitness and provide a guide on the assessment of the capacity of an area. The guidance would be issued in advance of the implementation of the new licensing regime.

7. BUSINESS SECTORS AFFECTED

- 7.1 The standardisation of the licensing system for charitable fundraising would impact primarily on the charitable sector. Secondary sectors affected would be professional fundraisers.
- 7.2 More effective regulatory controls particularly over face to face fundraising would be welcomed by businesses some of whom complain that saturation cover by face to face collectors adversely impacts on their businesses.

8. ISSUES OF EQUITY AND FAIRNESS

- 8.1 The objective of the new local authority licensing scheme for public charitable collections is to correct the current inconsistent, outdated and unnecessarily complicated legislation governing such collections. The aim is to create a fair and cost effective system to replace the existing system. It would achieve that by introducing a system that is proportionate and risk focussed, which seeks to facilitate responsible fundraising activity while providing protection to the public from bogus collectors. Under the new scheme, local authorities would be aware of all collections being undertaken in their area at any given point of time (even though they would not all have been subject to the licensing

regime). In that way any collections undertaken without a permit or without prior notification might not be legitimate and might warrant further investigation by the local authority.

- 8.2 As outlined above, the current system of exemption orders provides an advantage to the large national organisations over regional and smaller ones. Under the new scheme all organisations would apply to a lead authority for a certificate of fitness, which for house to house collections would operate in much the same way as the current exemption order scheme. In that way, all organisations would be placed on a level playing field.

9. COSTS FOR BUSINESSES, CHARITIES AND VOLUNTARY ORGANISATIONS

- 9.1 **Option1:** Retain the status quo - no additional costs

- 9.1.1 We have limited information on the costs to the local authorities of administering the current system of licensing. Following the consultation exercise Home Office officials spoke with a number of local authorities who provided some information in relation to the actual costs of administering the current scheme of licensing. Where local authorities had provided sufficient information in response to the consultation exercise or where they had provided no information in relation to the actual costs of operating the current scheme, no further contact was made. The table attached at Annex C outlines the costs to the local authorities of administering the current system of licensing, this reflects the information provided by 37 local authorities.
- 9.1.2 Using the figures provided at Annex C as a guide (which should be treated with caution) it is estimated that the average cost to a local authority of administering the current scheme of licensing would be somewhere in the region of £7,067.50 per annum. The average cost of processing an application was £47.92.
- 9.1.3 The estimated costs of operating the current system of licensing vary considerably from one local authority to the next, it ranged from £4.36 per permit application to £316.94. The majority of local authorities spoken to had been unable to undertake active enforcement work, although some of those did in response to complaints. That pattern would probably be repeated throughout the country and, therefore, the differing cost levels are likely to be due to the differing levels of checks undertaken at application stage and on the returns submitted.
- 9.1.4 The Metropolitan Police are responsible for operating the current licensing regime in the London Boroughs. However, in terms of face to face fundraising the Public Fundraising Regulatory Association (PFRA) manages over 100 locations in London. The table below outlines the

costs incurred by the Metropolitan Police in administering the licensing regime across the London Boroughs. It does not include the costs of bringing any prosecutions.

| No of permit applications per annum | Cost per permit | Total costs per annum |
|--|------------------------|------------------------------|
| Street – 164 | £143.80 | £32,500 |
| House to house – 62 | | (£30,000- |
| Total – 226 | | £35,000) |

9.1.5 Currently, there is also a cost to the Home Office in terms of the operation of the exemption order regime and confirming street collection regulations. The costs are outlined in the tables below.

Cost of dealing with exemption order applications / examining accounts

| Grade | Time spent per annum | Total costs per annum |
|--|--|------------------------------|
| 1 x AO (£13,556 – £16,776) ⁶ | 128 days ⁷ | £7,436.80 |
| 1 x EO (£17,294 – £22,064) ⁸ | 10 days | £753.90 |
| 1 x Grade 7 (£38,166 – £51,749) ⁹ | 6 applications per annum x 1/2 an hour per application | £64.59 |
| Total cost | | £8,255.29 |

6 Midpoint used £15,166 and therefore daily rate is approximately £58.10.

7 On average 17.5 hours per week utilised on this function

8 Midpoint used £19,679 and therefore daily rate is approximately £75.40

9 Midpoint used £44,958, daily rate is approximately £172.25 and hourly rate is approximately £21.53

Cost of dealing with appeals against a refusal to issue a House to House collection permit

| Grade | Time spent per annum | Total costs per annum |
|---|-----------------------------|------------------------------|
| 1 x EO (£19,679) | 30 days | £2,262 |
| 1 x Grade 7 (£44,958) | 2 days | £344.50 |
| 1 x Legal Adviser (£51,749) ¹⁰ | 18 hours ¹¹ | £446.04 |
| Total cost | | £3,052.54 |

Cost of processing street regulations

| Grade | Time spent per annum | Total costs per annum |
|--------------------------------|-----------------------------|------------------------------|
| 1 x EO (£19,679) | 3/5 days (4) | £301.60 |
| 1 x Grade 7 (£44,958) | 4 hours | £86.12 |
| 1 x Legal Adviser (£55,074.05) | 16 hours | £396.48 |
| Total cost | | £784.20 |

9.1.6 We do not have any significant information in relation to the actual cost to charities in operating the current licensing scheme. Some respondents to the consultation exercise provided a breakdown of the types of expenditure associated with the current system but did not provide an actual costs figure. Only one large charity provided an estimate as to costs but it would not reflect the costs incurred by the sector as a whole.

9.1.7 However, there is a cost to charities and fundraising organisations as a result of the inconsistent application of the current legislation. Evidence shows that some local authorities have adopted somewhat arbitrary criteria for denying access to collecting slots. For example, some local authorities would only grant permits to charities based within a specified area, at the exclusion of all other charities. Others would require in-depth information about the costs associated with the collection method adopted.

¹⁰ Used midpoint of payscale, which is £46,755 - £63,394, daily rate approximately £198.27, and hourly rate is approximately £24.78.

¹¹ On average 2 hours spent per appeal. 18 appeals received in two years. Therefore average number of appeals dealt with per annum is 9 - which equates to 18 hours per annum.

- 9.1.8 There is also a negative financial impact for the sector in terms of lost revenue due to the different treatment afforded to direct debit solicitations. For example, face to face fundraising has been prohibited in certain areas, where the local authorities are opposed to that collecting method. It has been estimated that that costs the sector millions of pounds in lost revenue each year¹². However, local authorities operate their licensing regimes in order to reflect the views of local people and there would be a risk for them if their ability to operate such a scheme was removed.
- 9.2 **Option 2:** Rely on a voluntary code of practice/self-regulation by the sector.
- 9.2.1 The main cost would be a loss of public confidence in fundraising. The public's main interface with charities, except for those who receive services from the sector, is via public collections. That being so, how that activity is conducted plays an important part in determining the public perception of the integrity of the sector.
- 9.2.2 Removal of all existing statutory regulation and reliance in future solely on self-regulatory mechanisms would be likely to have a negative effect on public confidence with a possible resultant drop in charitable giving. There might also be an impact on public trust and confidence in collections if licensing was carried out solely by a self-regulatory body.
- 9.2.3 There is also a general risk with self-regulatory initiatives in that they could represent the interests of a small group of more powerful stakeholders rather than the interest of the entire sector.
- 9.2.4 It is unlikely to have a significant financial cost impact for the sector, although any self-regulation scheme would have to be financed through what, in effect, would amount to a levy on donations in addition to the self-regulatory initiative which is currently being taken forward in relation to promoting good practice in fundraising. Self-regulation would sit alongside the statutory regulatory framework for public collections. Its focus would be to drive up standards in respect of all methods of fundraising. It will deal with issues of broad principle rather than detail.

¹² The Public Fundraising Regulatory Association's response to "Public collections for charitable, philanthropic and benevolent purposes".

- 9.3 **Option 3:** Require local authorities to license all public charitable collections under a new integrated licensing system.
- 9.3.1 Additional costs for local authorities and the sector. There would be greater costs for all parties because Option 3 would extend licensing to types of fundraising and locations currently not covered, without reducing the licensing requirement for other areas, such as small local collections. This option could make small local collections non-viable and the efficient operation of charity shops very difficult.
- 9.3.2 However, this option would appeal to those who are in favour of regulating all collections. The response to the consultation exercise showed that of the 216 respondents who commented on the exemption for local, short term collections 36.5% felt that they should not be exempt. That being so, theoretically not adopting Option 3 could lead to a drop in the level of donations.
- 9.4 **Option 4:** Require local authorities to operate a licensing scheme for public collections which is risk focussed and proportionate to the collection method employed - negligible cost implications.

Local authorities

- 9.4.1 There would be an initial cost to local authorities in terms of familiarising themselves with the requirements of the new scheme, which is considered in the following section.
- 9.4.2 We have estimated (rough guide) that the current licensing scheme costs local authorities, on average £7,067.50 per annum to administer. The table below outlines the requirements placed on local authorities in the operation of the current scheme and the requirements of the new scheme.

Requirements of the Licensing Regime

| Current Scheme | New Scheme |
|--|--|
| Each local authority would consider full applications for permits to undertake street collections. While not identified as such, in practice that would usually involve consideration of the fitness of an application as well as a local authority's assessment as to whether they had capacity for the collection. | Consideration by the lead authority only of the fitness of a collection and consideration by subsequent local authorities only on the basis of capacity. |

Requirements of the Licensing Regime

| Current Scheme | New Scheme |
|--|---|
| <p>Each local authority would consider full applications for permits to undertake house to house collections of property other than goods (with the exception of the exemption order holders). While not identified as such, in practice that would usually involve consideration of the fitness of an application as well as a local authority's assessment as to whether they had capacity for the collection.</p> | <p>Consideration by the lead authority only of the fitness of a collection, organisations would then notify local authorities of the dates and locations of the collections but local authorities would not undertake an assessment as to capacity.</p> |
| <p>Each local authority would consider full applications for permits to undertake house to house collections of goods (with the exception of the exemption order holders). While not identified as such, in practice that would usually involve consideration of the fitness of an application as well as a local authority's assessment as to whether they had capacity for the collection.</p> | <p>Collections of goods would be removed from the scope of the scheme but organisations would be required to notify local authorities of the dates and locations of the collections.</p> |
| <p>43 organisations hold Home Office Exemption Orders and are exempt from local authority licensing when they undertake collections house to house. Those organisations should notify local authorities of the dates and locations of their collections.</p> | <p>The lead authority system would replace the exemption order approach and local authorities would issue certificates of fitness to organisations for a period up to 5 years and it would extend to street collections.</p> |
| <p>Local authorities have the option of preparing street regulations for their areas, which are confirmed with the Home Office.</p> | <p>Under the unified scheme there would no longer be the need for street collection regulations.</p> |
| <p>Fitness tests consider whether the amount to be applied for charitable, benevolent or philanthropic purposes in consequence of the collection was adequate and whether the level of remuneration to be received was excessive.</p> | <p>Local authorities would not be required to consider those matters.</p> |

Requirements of the Licensing Regime

| Current Scheme | New Scheme |
|---|--|
| Each local authority scrutinises the returns received from the collections undertaken in their areas. | Local authorities would not monitor or scrutinise returns, except where it was considered appropriate, for example, where concerns had been raised. |
| There is uncertainty as to whether the current licensing regime extends to direct debit solicitation. Of the 97 local authorities who commented on the recommendation to include direct debit solicitation within the scope of the new scheme, 5 specifically commented that they already licensed it. Using that as a guide (albeit a cautious guide) it is estimated that approximately 5% of local authorities currently license the collection of direct debit solicitations. | Local authorities would be required to license the collection of direct debit solicitations subject to the conditions outlined above in terms of the different approaches for street and house to house collections. |
| Local authorities are not required to license collections on private property to which the public has unrestricted access. | Local authorities would be required to license collections in those areas, including supermarket forecourts, railway station concourses and the common parts of shopping centres. |
| There is a right of appeal to the Home Secretary against a local authority's decision to refuse a house to house collection permit. | There would be a right of appeal to the Magistrates' court against a decision to refuse or withdraw a certificate of fitness for street and house to house collections and a decision to refuse or withdraw a street collection permit. As discussed below it is unlikely that the number of appeals would be significant. |

- 9.4.3 There would be a slight increase in the number of permit applications received due to the removal of the Home Office Exemption Orders, the extension of the definition of public place and clarification that direct debit solicitation would fall within the scope of the new scheme. However, under the new scheme the application process would be somewhat streamlined in that fitness would be considered only by the lead authority; fitness checks would not look into the costs of the collection or the remuneration received and local authorities would no

longer monitor collection returns. Therefore, on balance, even with the inclusion of direct debit solicitations and the extension of public place the additional costs to the local authorities in the operation of the new scheme would be reduced.

- 9.4.4 With the reduction in costs it would be open for the local authorities to undertake further enforcement action than is currently the case. The implementation of the notification scheme along with issuing permits would mean that all local authorities would be aware of the legitimate collections being undertaken in their areas at a given point in time. That would provide a basis on which enforcement action could be taken forward.
- 9.4.5 The Government does not intend to introduce a fee for the licensing of public charitable collections, although it recognises that charitable organisations pay licence fees in other areas of licensing. The Government believes that for the introduction of a licence fee to be worthwhile, it would have to be set at a level which would cover administration (including staff costs, accommodation, IT and training), and enforcement as well as the costs of administering the collection of the licence fee. The Government believes that that would be at a level which would be unacceptable to charities and might deter responsible fundraising.

London Boroughs

- 9.4.6 Under the current scheme the Metropolitan Police have responsibility for licensing in London. The transfer of that function to the London boroughs would have a cost implication for the 32 boroughs.
- 9.4.7 The Charity Commission have undertaken a search of the register of charities to identify the number of charities where the addresses entered onto the register falls within London. The Commission have identified 19,819 charities with a registered correspondence in areas which have London based postcodes. That does not mean that all of those charities are actually a) based in London or b) operating solely in London. Charities are also able to classify their areas of operation as part of the returns they send to the Commission and from interrogating that data the Commission has identified 13,557 “local” charities classified as operating in Greater London. However, we do not have information about how many of those charities will fundraise. There is no central record of the number of philanthropic or benevolent organisations in England and Wales.
- 9.4.8 The Metropolitan Police have estimated that the costs of operating the licensing regime in London is approximately £32,500 per annum, however, due to the operation of the lead authority proposal it would not be appropriate to estimate costs by dividing that sum by the 32 London boroughs. As explained above, the lead authority principle would operate on the basis that organisations apply for a certificate of fitness to the local authority in which the registered address of the

charity falls. It is likely, therefore, that a number of London Boroughs would receive a large number of applications.

- 9.4.9 The Metropolitan Police issued 164 street collection and 62 house to house collection permits in the last financial year. They estimate that the permits were issued to approximately 44 major charities and 95 individual charities. However, during the Christmas period from 1 to 24 December carol singing is licensed by the London Boroughs on behalf of the OCU Commander of the area in which the collection is to take place. We have been unable to attain information in relation to the sites most commonly used in the London area as street collection permits are not designated to certain areas. Although all the London Boroughs currently have street collections in their areas¹³. The PFRA currently manages, separately from the Metropolitan Police, 148 sites specifically for face to face fundraising in the London area and they estimate that those sites were used by 45 voluntary and community organisations in the last year. The table at Annex D outlines the number of sites managed by the PFRA in each of the London Boroughs. Westminster currently has the largest number of sites (31) followed by Camden (13) and Kensington and Chelsea (11). The PFRA also manages house to house direct debit solicitation and they estimated that 35-40 postcodes are visited each week. They believed that the majority of those were carried out on behalf of exemption order holders¹⁴.
- 9.4.10 The Metropolitan Police currently restricts street collections to two days per week (usually Tuesday and Saturday) and so the implementation of the new regime might result in a rise in the number of collections per week. However, the rise would only be in line with the capacity of each London borough.
- 9.4.11 It is likely that the costs of operating the scheme would increase with the transfer of functions from the Metropolitan Police to the London boroughs. Costs would increase due to the operation of the lead authority proposal, the inclusion of face to face fundraising within the scope of the scheme which is not currently licensed by the Metropolitan Police and the extension of the definition of public place to include railway station concourses.
- 9.4.12 With the focus of collecting activities falling within the central London region, especially in Westminster, it is likely that the cost implications for those boroughs would be greater for than for those in outer London.
- 9.4.13 The Government does not believe that the licensing of public collections is an appropriate function for the police service to undertake. However, it will discuss further with key stakeholders in

¹³ Information received direct from the Metropolitan Police.

¹⁴ Information received direct from the PFRA.

London whether any arrangements are needed over and above the lead authority proposals for collections which take place in more than one London borough (including the City). Under the new scheme there might be a risk in terms of the ability of organisations to undertake London wide street collections.

- 9.4.14 The figures we have received from the Metropolitan Police and the PFRA indicate that 184 organisations currently apply for licences to fundraise in the London area. There would be some duplication here in that a number of those organisations would have applied to the Metropolitan Police and used the PFRA. We estimate that the cost to the London Boroughs of administering the new scheme would be somewhere in the region of £32,500 to £104,000 per annum. We have calculated that using the current cost of administering the system to the Metropolitan Police as a baseline. We arrived at the upper figure by estimating that 184 applications for a certificate of fitness would be submitted subject to an 11% increase which would result in 204 applications. We have allowed for an 11% increase to reflect the fact that 11% of registered charities have their registered correspondence address in the London area. The average cost of processing an application is currently £47.92. That would mean that the cost of processing the applications for certificates of fitness would be in the region of £9,775.68. However, once granted a certificate of fitness an organisation might be required to approach each London borough for a permit on capacity grounds. We estimate that the consideration of an application for a permit would cost no more than 20% of the cost of a full application as it should involve no more than a diary check, that equates to £9.58 per application. The total cost would equate to £62,538.24 ($£9.58 \times 204$ (no of applicants) $\times 32$ (no of London boroughs)). We have allowed for a 50% increase in order to cover the increase in the number of days collections might be permitted under the new regime. That equates to £93,807.36 ($£62,538.24 + 50\%$). Together with the cost of processing the certificates of fitness we estimate the maximum costs of administering the new scheme by the London boroughs would be approximately £103,583.04 per annum ($£93,807.36 + £9,775.68$).

Charities, Philanthropic and Benevolent organisations

- 9.4.15 For the majority of fundraising organisations, charities and philanthropic and benevolent organisations, (other than current Exemption Order holders), wishing to undertake collections in more than one local authority area the new system would result in an overall reduction in costs. It would have negligible impact on those organisations wishing to collect in only one local authority area.
- 9.4.16 There might be some organisations that have, to date, undertaken collections only in public places, which are excluded under the current scheme but would fall under the scope of the new scheme by virtue of the extension of the definition of public place. For those organisations, there would be additional costs as a result of the

licensing requirement extending to areas such as supermarket forecourts and railway station concourses and having to obtain dual permission from the site owner and the local authority. However, the Government believes that the extension of the definition of public place in the new scheme is important in acting as a deterrent against bogus collectors, who might currently collect in areas such as supermarket forecourts and railway station concourses.

- 9.4.17 However, for organisations that undertake street collections in the London area there would be an impact in terms of the transfer of functions from the Metropolitan Police to the London boroughs. Under the new scheme, once they had been granted a certificate of fitness, they would be required to apply for a permit to each local authority in whose areas they wished to collect. Currently, a permit would be issued by the Metropolitan Police and no contact would be required with the individual local authorities.

Exemption order holders

- 9.4.18 The 43 organisations currently holding Home Office Exemption Orders for house to house collections throughout England and Wales would need to adapt their policies to ensure compliance with the new system as Home Office Exemption Orders would be abolished. The cost implications of that would be kept to a minimum as the collection of goods house to house has been removed from the scope of the new scheme, although organisations would be required to notify local authorities about the collection. Other types of collection on a house to house basis would be subject to a certificate of fitness only and would not be required to apply for a permit in each local authority area. As with the collection of goods organisations would be required to notify the relevant local authorities about the collection. That reflects broadly the operation of the exemption order system currently in place, albeit that a certificate of fitness would be issued for up to five years and the exemption orders are issued on an indefinite basis.
- 9.4.19 Like other organisations there would be a decrease in administration for the current Exemption Order holders in terms of the extension of the lead authority approach to street collections. Currently, Exemption Order holders are required to apply for street collection permits to each area local authority in whose area they wished to collect.

Local, short term collections

- 9.4.20 Organisers of such collections are currently required to obtain permission from the local police for those collections and so the removal of this from the scope of the scheme would result in decreased costs for organisers. Even though, organisers would be required to notify the local authorities about the collection.

Other costs

Familiarisation

- 9.4.21 There will be a cost to local authorities in terms of familiarising themselves with the requirements of the new licensing scheme as well as staff time in the development of new policies and procedures to secure compliance with the new system. Setting up costs would be greater for the London boroughs where currently no expertise exists in the administering of a licence scheme for public charitable collections.
- 9.4.22 We estimate that it would take 3 hours to train a licensing officer already familiar with the current licensing regime to understand the workings of the new scheme. However, for the London boroughs that would be increased to 1 full day.

Appeals

- 9.4.23 Currently there is a right of appeal to the Home Secretary against a decision to refuse a house to house collection licence but there is no right of appeal against a decision to refuse a street collection licence. However, in some areas, where decisions are delegated to licensing officers, organisations might have been able to appeal in the first instance to the licensing committee of that area. The table attached at Annex E outlines the number of appeals to the Home Secretary that have been received from 1 March 2001 to 29 February 2004, it also provides details of the grounds on which the applications were originally refused.
- 9.4.24 In all bar one of the cases outlined at Annex E the grounds on which the application had originally been refused would not be relevant under the new scheme. That being so, in translating that into an estimate of the number of appeals expected against a decision to refuse a certificate of fitness to undertake a house to house collection under the new scheme we would estimate that it would be between 3 and 5 per year. That would take into account the fact that under the new scheme the current Exemption Order holders would be required to apply for a certificate of fitness to undertake a house to house collection of property other than goods.
- 9.4.25 In terms of street collection permits we estimate that there are currently between 6 and 11 street collection permits granted for every house to house collection permit granted¹⁵. There were 18 appeals lodged in 3 years against decisions to refuse a house to house collections permit and only one of those was on grounds which would be applicable under the new scheme. Therefore, one could estimate that there would be between 6 and 11 street collection appeals on the

¹⁵ Figures based on information provided by 13 local authorities and the Metropolitan Police – in total there were 1,818.5 street permits compared with 310.5 house to house permits issued, when calculating the overall figure but using the individual ratio of each individual local authority that equates to 150.5 street permits compared with 14 house to house permits or 11 to 1.

basis of fitness in a 3 year period. That would equate to an additional 2 to 3.66 appeals per year. For the purposes of costings we have estimated that there would be an additional 6 to 18.3 appeals per annum. That increase would take into account the fact that the figures for the current level of house to house appeals would not reflect any appeals the current Exemption Order holders might instigate.

- 9.4.26 However, we would expect additional appeals under the new scheme due to the extension of the definition of public place and the specific inclusion of face to face fundraising. In that way, the number of organisations requiring a street collection permit would increase. That might result in an extra 15-25 appeals per annum.
- 9.4.27 Applications for a street collection permit, unlike applications for a certificate of fitness to undertake a house to house collection, could be refused on the basis that an area did not have capacity for the collection. It is difficult to provide an estimate as to the number of additional appeals there might be in relation to capacity. On the one hand the number of organisations applying for a street collection permit is likely to increase because of the inclusion of face to face fundraising within the scope of the new scheme and the extension of the definition of public place. However, on the other hand the extension of the definition of public place would also result in there being more areas than currently available for allocation, provided the owner had given their permission. The refusal of an application on the basis of capacity would sensibly be addressed by the applicant seeking an alternative date/dates for the collection rather than using the appeals process. It is unlikely, therefore, that there would be anymore than 15-25 additional appeals on the basis of capacity per annum.
- 9.4.28 Under the new scheme local authorities would retain the power to revoke certificates of fitness and the subsequent permits. That would be subject to appeal to the Magistrates' courts but it is unlikely that there would be anymore than a handful of such cases.
- 9.4.29 While we cannot say with any certainty the length of time it would take to deal with appeals of the nature envisaged here, for the purposes of this document we have worked with the average length of time currently taken for appeals, which is three hours, at an average cost to the Magistrates' court of £328. The table below incorporates the figures provided above and provides an estimate as to the cost to the Magistrates' court of dealing with appeals in this area of licensing.

| Decisions subject to appeal | No of appeals | Total cost (no of appeals x £328) |
|---|----------------------|--|
| Certificate of fitness to undertake a house to house collection | 3 – 5 | £984 – £1,640 |
| Certificate of fitness to undertake a street collection permit | 6 – 18.5 | £1,968 – £6,068 |
| Permit to undertake a street collection | 15 – 25 | £4,920 – £8,200 |
| Additional appeals due to the extension of the scheme | 15 – 25 | £4,920 – £8,200 |
| Decisions to withdraw a certificate of fitness | 4 – 7 | £1,312 – £2,296 |
| Total | 43 – 80.5 | £14,104 – £26,404 |

- 9.4.30 There would be an additional cost to the Magistrates' court in terms of familiarisation with the new scheme governing the licensing of public collections. However, that should be kept to a minimum provided that comprehensive guidance is provided that would be available to Magistrates' legal advisers.
- 9.4.31 Currently there is no fee attached to an appeal to the Home Secretary against a decision to refuse a house to house collection permit. Under the new scheme an appeal to the Magistrates' court would attract a fee and while we cannot give a clear indication as to what the actual fee would be, for the purposes of this document we have worked with a fee of £50. The cost of the application to the Magistrates' court would be dealt with by the award of costs at the court.
- 9.4.32 Voluntary and community organisations and local authorities would incur costs as a result of progressing a case to appeal stage. While we are not able to quantify those costs the Government recognises that there would be a risk that any costs would deter both parties from progressing matters to appeal. However, that risk is no greater than currently exists in the operation of the right of appeal to the Home Secretary against a decision to refuse a House to House collection licence.

Costs for a typical business

- 9.4.33 The standardisation of the licensing system for charitable fundraising will impact primarily on the charitable sector and the professional fundraisers and commercial participators they have agreements with. It aims to create a fair and cost effective system for the licensing of all public charitable collections.

10. CONSULTATION WITH SMALL BUSINESSES: THE “LITMUS TEST”

10.1 We have spoken to three businesses, which the Small Business Service is satisfied represents a cross-section of small businesses for the purposes of this Regulatory Impact Assessment, to confirm that nothing in these proposals would represent a burden to them. They said that they would welcome clearer regulation of charitable fundraising because of their concerns about collectors who position themselves outside their retail outlets and have a negative impact on their trade. That view was endorsed by written representations received from other small businesses.

11. COMPETITION ASSESSMENT

11.1 We have applied the competition filter test in accordance with the Office of Fair Trading’s guidelines for competition assessment. In doing so we have considered the effect of the proposed regulatory framework across business sectors in England and Wales.

11.2 The new scheme would impact primarily on the charities sector. We have no evidence to suggest that the new scheme would have any significant effect on competition in any related commercial sector.

11.3 Whilst charities do compete with each other for revenue from the general public in the ‘traditional’ sense of the meaning of the word competition, such competition arguably differs from that between commercial businesses which compete on products and services. It is the latter form of competition which the competition filter seeks to determine in considering market shares, entry barriers and whether the effect of a proposal is proportionate on the size of a business.

12. ENFORCEMENT AND SANCTIONS

12.1 Local authorities would be responsible for administering the new unified licensing scheme, but the Home Office will provide clear guidance on how it should be operated. The guidance will be published and will therefore be available to charities. A representative from the Local Government Licensing Forum was on the Fundraising Advisory Group, a working group set up by the Home Office to look at the regulation of public collections prior to the publication of the consultation document.

12.2 As all local authorities are currently required to licence house to house collections and have the power (but not the duty) to create licensing schemes for street collections the extra costs of administering the unified scheme should be minimal on most local authorities. At present it is estimated that 80% of the 410 local licensing authorities have street collection regulations in place. Indeed, in some local authorities, where there is confusion about the operation of the current scheme,

the introduction of a unified scheme might be more cost effective. In response to the consultation exercise local authorities overwhelmingly supported the introduction of a unified licensing regime.

- 12.3 The new scheme would impose sanctions for non compliance - the sanctions build on those already provided by the House to House Collections Act 1939 and Part III of the Charities Act 1992¹⁶, with the exception of (ii) and (vi) below, which would be new offences.
- 12.4 The offences and related penalties are:
- (i) Organising a collection without obtaining a permit from the local authority (Section 1(2) of the 1939 Act and Section 66 of the 1992 Act).
A fine not exceeding level 5 on the standard scale (max £5,000).
 - (ii) Organising a collection, exempt from the requirement to obtain a permit, without notifying the local authority (this is a new offence).
A fine not exceeding level 3 on the standard scale (max £1,000).
 - (iii) Unauthorised use of documents / badges (Section 5 of the 1939 Act and Section 74(1) of the 1992 Act).
A fine not exceeding level 5 (max £5,000).
 - (iv) Giving false information for the purposes of the Act (Section 8(6) of the 1939 Act and Section 74(3) of the 1992 Act).
A fine not exceeding level 5 (max £5,000).
 - (v) Breaching the requirements on: use of badges in the prescribed form; presentation of badges, certificates on request; not allowing people under a certain age to collect (Section 73(2)&(3) of the 1992 Act).
A fine not exceeding level 2 on the standard scale (max £500).
 - (vi) Breaching the requirements on the keeping of specified records (this is a new offence).
A fine not exceeding level 3 on the standard scale (max £1,000).
- 12.5 The successful operation of the new scheme would depend, in part, on organisations notifying local authorities of the collections they intend to undertake that would not be subject to the full licensing regime, that is, collections undertaken on a house to house basis or local, short term collections. To ensure that local authorities are aware of all the collections taking place in their area the Government has introduced an offence for organising a collection without notifying the local authority about it.

¹⁶ Part III of the Charities Act 1992 has not been brought into force.

- 12.6 Under the new scheme organisations would not be required to submit returns to local authorities, although local authorities would have the power to look at the relevant paperwork where concerns have been raised about a collection. Regulations would specify the records which organisations would be required to prepare and retain. To ensure that the relevant records are kept the Government has introduced an offence for breaching those requirements.

Other measures

- 12.7 The introduction of a unified licensing scheme would go some way to establishing better fundraising practice. However, the Strategy Unit review found that where fundraising organisations did not comply with the current system that was largely because of a lack of awareness of their duties. The review concluded that it would be of benefit to have a single point of contact for information about the regulatory requirements for fundraising. It recommended, therefore, that a self-regulatory initiative should be established based on a new voluntary Code of Practice which would promote and raise awareness of good practice in fundraising. The Institute of Fundraising has sponsored an independent project to explore different models for a system of self-regulation and to recommend a preferred model. A report of the results of that project were subject to public consultation (until April 2004).

13. MONITORING AND REVIEW

- 13.1 It is the Government's intention that the Charity Commission, with advice from the Cabinet Office's Regulatory Impact Unit, will quantify the impact of regulation on charities and other not-for-profit organisations, monitor it over time, publish the results and highlight areas where regulation appears excessive. That would include the impact of the regulation of fundraising.

14. CONSULTATION

Departmental consultation

- 14.1 The proposals for reform, as outlined in the consultation on public collections, were developed in conjunction with the Fundraising Advisory Group set up by the Home Office. The group included representatives from the Charity Commission, Home Office, Institute of Fundraising, National Council for Voluntary Organisations, Public Fundraising Regulatory Association, Charity Law Association, National Consumer Council, Welsh Assembly and Local Government Licensing Forum. We have also been in contact with the Office of the Deputy Prime Minister and the Department for Constitutional Affairs.

Public Consultation

- 14.2 The Government consulted on the proposals outlined in the consultation document "Public Collections for charitable, philanthropic and benevolent purposes" with charities and other not-for-profit organisations, local authorities and others affected by the regulation of

public charitable collections. The consultation document was published on the Home Office website and copies of it were sent to representatives from the charitable sector as well as all local authorities. The document was translated into Welsh and copies were sent to the Welsh Assembly for onward distribution.

- 14.3 In order to further publicise the proposals 12 consultation events were held across England and Wales. Over 250 responses to the consultation exercise have been received. The proposals outlined above have been formulated in the light of the responses received to the consultation.

15. SUMMARY AND RECOMMENDATION

| Option | Benefits | Costs |
|----------------------------|--|--|
| 1. Do nothing | Limited. <ul style="list-style-type: none"> Local authorities and the sector are familiar with the operation of the scheme. | <ul style="list-style-type: none"> Legislation outdated and complex. Application and the extent of the legislation not clear. |
| 2. Self-regulation | Limited <ul style="list-style-type: none"> Voluntary organisations likely to be more committed to a scheme they had been involved in devising. | <ul style="list-style-type: none"> Might harm public trust and confidence in fundraising. Does not offer a level of protection against bogus collections, fraud or public nuisance. |
| 3. License all collections | Some <ul style="list-style-type: none"> Builds on existing provision and reduces confusion. Increases public trust and confidence in collections. | <ul style="list-style-type: none"> Imposes a licensing requirement on all collections, disproportionate to the risks attached to them. Increase burdens for charities. Increase costs of fundraising. Increase costs to local authorities. |

| Option | Benefits | Costs |
|----------------------------------|--|---|
| 4. Risk focused licensing regime | <ul style="list-style-type: none"> • Builds on existing provision and reduces confusion. • Increases public trust and confidence in collections. • Proportionate to the risks involved with different collecting methods. • Preserves local authority control over capacity and public nuisance. • Introduces the lead authority concept which would be fairer than the current exemption order system. • Sits alongside the self-regulatory initiative being taken forward by the sector to improve standards in practice. • Introduces an effective appeals mechanism in relation to all collections. • Addresses the concerns of small businesses in relation to excessive fundraising. | <ul style="list-style-type: none"> • Increased costs to the Magistrates' courts as a result of the introduction of an appeals mechanism. • Increased costs to the London boroughs as a result of the transfer of functions from the Metropolitan Police. • Might give rise to concerns about public nuisance in terms of collections undertaken on a house to house basis. |

15.1 Option 4 maximises the benefit to charities and local authorities. It builds on existing provision, but simplifies and rationalises it to provide a unified scheme, which should be easier to understand than the current system. The new scheme would be proportionate to the risks associated with different collecting methods and the provision of clear central guidance on the operation of the scheme would ensure that the new scheme is more consistent and so fairer than the current regime.

- 15.2 It also maximises the benefits to small businesses in terms of their concerns about excessive fundraising. The new licensing scheme for public collections, including face to face fundraising, would deter excessive appeals and prevent nuisance to the public, while encouraging legitimate collecting activity.
- 15.3 Option 4 represents the recommendation of the Home Office.

ANNEX A:

| Types of collection | Application for a certificate of fitness | Application for a permit | Notification to local authority of the collections in their areas. |
|--|---|--------------------------|--|
| Temporary local collection in one local authority area | No | No | Yes (notification to be not less than 1 mth and not more than 6 mths before the date of the collection). |
| Collection of goods house to house in one local authority area | No | No | Yes (notification to be not less than 2 weeks and not more than 6 mths before the date of the collection). |
| Collection of goods on a house to house basis in more than one local authority area. | No | No | Yes – (notification to be not less than 1 mth and not more than 6 mths before the date of the collection). |
| Collection of property other than goods on a house to house basis in one local authority area. | Yes – application to be made to the local authority in whose area the collection was to take place. Application considered on basis of section 69(1)(e)-(g) of 1992 Act. Applications to be made not less than one month before the date of the first collection. | No | Yes (notification to be not less than 1 mth and not more than 6 mths before the date of the collection). |
| Collection of property other than goods on a house to house basis in more than one local authority area. | Yes – application to the lead local authority defined as the area covering the charity’s registered address or for philanthropic/benevolent organisations the area in which the promoter’s address falls. Application considered on basis of section 69(1)(e)-(g) of 1992 Act. Applications to be made not less than one month before the date of the first collection. | No | Yes – (notification to be not less than 1 mth and not more than 6 mths before the date of the first collection). |

ANNEX A: (continued)

| Types of collection | Application for a certificate of fitness | Application for a permit | Notification to local authority of the collections in their areas. |
|---|--|---|---|
| Collections undertaken in the street (including areas to which the public has unrestricted access) in one local authority area. | Yes – application to be made to the local authority in whose area the collection was to take place. Application considered on basis of section 69(1)(e)-(g) of 1992 Act. Applications to be made not less than one month before the date of the first collection. | Yes – application considered on basis of section 69(1)(a)&(b) of 1992 Act. – Applications to be submitted 14 days before date of the first collection (where possible) but not more than 12 months before. | No – date allocated when application for a permit is considered. |
| Collections undertaken in the street (including areas to which the public has unrestricted access) in more than one local authority area. | Yes – the application would be made to the lead local authority defined as the area covering the charity’s registered address or for philanthropic / benevolent organisations the area in which the promoter’s address falls. Application considered on basis of section 69(1)(e)-(g) of 1992 Act. The application should be made not less than one month before the date of the first collection. | Yes – applications for a permit to be made to all of the areas in which the collections are to take place. Applications considered on basis of section 69(1)(a)&(b) of 1992 Act. – Applications to be submitted 14 days before date of the first collection (where possible) but not more than 12 months before. | No – date allocated when application for a permit is considered. |

ANNEX B:

| House to House Collections Act 1939 | Charities Act 1992 | Draft Charities Bill |
|---|--|--|
| 3(a) – the total amount likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received). | 67(4) – before determining an application a local authority shall consult the chief officer of police for the police area which comprises or includes their area and may make other inquiries as they think fit. | Under the new scheme local authorities would only consider those matters outlined in 69(1)(e), (f) or (g) of the 1992 Act. |
| 3(b) – that remuneration is excessive in relation to the total amount likely to be applied for charitable purposes. | 69 (1)(c) – if it appears to the local authority that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the collection would be inadequate, having regard to the likely amount of the proceeds of the collection. | |
| 3(c) – that the grant of a permit would be likely to facilitate the commission of an offence under section 3 of the Vagrancy Act 1824 or that an offence under that section has been committed in connection with the collection. | 69 (1)(d) – that it appears that the applicant or any other person would be . likely to receive an excessive amount by way of remuneration in connection with the collection. | |
| 3(d) – that the applicant or the holder of the permit is not a fit and proper person to hold a permit because he has been convicted in the UK of any of the offences in the Schedule to the Act, or any offence involving a finding that he had acted fraudulently or dishonestly, or of an offence of a kind which would be likely to be facilitated by the grant of a permit. | 69 (1)(e) – that the applicant has been convicted of a relevant offence (as specified in the Act). | |

ANNEX B: (continued)

| House to House Collections Act 1939 | Charities Act 1992 | Draft Charities Bill |
|---|---|-----------------------------|
| <p>3(e) – that the applicant or holder of a permit has failed to exercise due diligence to ensure that the that collectors for the purposes of the collection were fit and proper persons, to ensure compliance on the part of the collectors with the provisions of regulations made under this Act, or to prevent prescribed badges or prescribed certificates of authority being obtained by persons other than the authorised collectors.</p> | <p>69 (1)(f) – where the applicant is a person other than a charitable, benevolent or philanthropic institution for whose benefit the collection is proposed to be conducted, that they are not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collection.</p> | |
| <p>3(f) – that the applicant or holder of a permit had refused or neglected to furnish information as they may have reasonably required for the purposes of informing themselves as to any of the matters specified in paragraphs 3(a) to 3(e).</p> | <p>69 (1)(g) – that the applicant failed to exercise due diligence to secure collectors were fit and proper persons; to secure that such persons complied with the provisions of regulations under section 73 or section 119 of the 1982 Act; or to prevent badges or certificates of authority being obtained by persons other than those he had so authorised.</p> | |

ANNEX C:

Costs to local authorities of administering the current system of licensing

| Number of applications /permits granted | Costs per application (£s) | Total annual cost (£s) |
|--|-------------------------------|---------------------------|
| 240 | 50.00 | 12,000 |
| 56 | 316.94 | 17,750 |
| 141 | 24.82 | 3,500 |
| 312 | 14.00 | 4,368 |
| 100 | 40.00 | 4,000 |
| 400 | 37.50 | 15,000 |
| 71 | 70.42 | 5,000 |
| 450 | 17.77 | 8,000 |
| 211 | 28.43 | 6,000 |
| 109.5 | 22.83 | 2,500 |
| 100 | 100.00 | 10,000 |
| 60 | 25.00 | 1,500 |
| 74 | 33.78 | 2,500 |
| 160 | 24.25 | 3,880 |
| 140 | 37.50 | 5,250 |
| 104.5 | 23.92 | 2,500 |
| 312 | 14.00 | 4,368 |
| 174 | 46.15 | 8,030 |
| 120 | 121.00 | 14,520 |
| 135 | 35.55 | 4,800 |
| 55 | 13.64 | 750 |
| 203 | 7.98 | 1,620 |
| 229 | 4.36 | 1,000 |
| 150 | 16.66 | 2,500 |
| 70 | 142.85 | 10,000 |
| 62 | 100.65 | 6,240 |
| 212 | 141.50 | 30,000 |
| 90 | 15.00 | 1,350 |
| 246 | 19.25 | 4,735.75 |
| 429 | 18.18 | 7,800 |
| 124 | 21.97 | 2,724 |
| 375 | 50.00 | 18,750 |
| 260 | 81.11 | 21,090 |
| 312 | 14.00 | 4,368 |
| 312 | 14.00 | 4,368 |
| 312 | 14.00 | 4,368 |
| 312 | 14.00 | 4,368 |
| Total | 7,223 | 261,497.75 |

ANNEX D:

Number of sites managed by the PFRA by London Boroughs

| LONDON BOROUGH | NUMBER OF COLLECTION SITES |
|------------------------|-----------------------------------|
| Barking and Dagenham | 3 |
| Barnet | 9 |
| Bexley | 3 |
| Brent | 7 |
| Bromley | 3 |
| Camden | 13 |
| Croydon | 3 |
| Ealing | 5 |
| Enfield | 5 |
| Greenwich | 5 |
| Hackney | 4 |
| Hammersmith and Fulham | 2 |
| Haringey | 3 |
| Harrow | 4 |
| Havering | 2 |
| Hillingdon | 2 |
| Hounslow | 3 |
| Islington | 8 |
| Kensington and Chelsea | 11 |
| Kingston upon Thames | 3 |
| Lambeth | 8 |
| Lewisham | 5 |
| Merton | 4 |
| Newham | 5 |
| Redbridge | 3 |
| Richmond upon Thames | 9 |
| Southwark | 8 |
| Sutton | 3 |
| Tower Hamlets | 6 |
| Waltham Forest | 3 |
| Wandsworth | 4 |
| Westminster | 31 |
| City Corporation | 1 (Liverpool Street Station) |

ANNEX E:

Grounds for appeals from 1 March 2001 to 29 February 2004

| Appeal Number | Grounds for refusal subject to appeal |
|----------------------|---|
| 01 | Amount to charity is inadequate in proportion to the value of the proceeds of the collection. |
| 02 | Unable to supply sufficient information on the returns. Appeal upheld by Home Sec but on different grounds, that is, remuneration excessive in relation to the total amount likely to be applied for charitable purposes. |
| 03 | Remuneration is excessive in relation to the total amount (likely to be applied for charitable purposes) as the result of the collection. |
| 04 | Did not provide sufficient information to satisfy the council as to the ratio of the costs to the proceeds. |
| 05 | That the amount donated to the charity is inadequate in proportion to the money collected. |
| 06 | That the returns for the collection cannot be made and they were concerned about the percentage of money to be given to the nominated charities. |
| 07 | Remuneration was excessive. |
| 08 | Not supplied enough detailed information regarding remuneration. |
| 09 | That the amount donated to the charity is inadequate in proportion to the money collected & remuneration is excessive. |
| 10 | Only collections for goods and not money can be licensed for a whole year, direct debits cannot be collected house to house, direct debit collections must be for one named charity only, excessive remuneration. |
| 11 | Failure to exercise due diligence to secure that persons authorised to act as collectors were fit and proper & had failed to furnish such information as the local authority had required. |
| 12 | Remuneration is excessive in relation to the total amount likely to be applied for charitable purposes. |
| 13 | Remuneration is excessive in relation to the total amount (likely to be applied for charitable purposes). |
| 14 | Insufficient information as to satisfy the Council with regard to the ratio of costs to proceeds. |
| 15 | That amount likely to be applied for charitable purposes is inadequate in proportion to the money collected. |

ANNEX E: (continued)

Grounds for appeals from 1 March 2001 to 29 February 2004

| Appeal Number | Grounds for refusal subject to appeal |
|----------------------|--|
| 16 | Financial requirements could not be met in terms of furnishing information on the costs ratio. |
| 17 | Collecting method would have a negative impact on vulnerable people (grounds not specified in the Act). |
| 18 | Total amount likely to be donated to charitable purposes was inadequate; that remuneration was excessive and the organisation had neglected or refused to furnish information. |

CHAPTER 4: Exempt Charities

1.1 This Regulatory Impact Assessment (RIA) examines the impact of the measures to be included in the Charities Bill on charities that are exempt from registration with the Charity Commission. These are listed in the Charities Act 1993 in Section 3(5A)(a), 3(5A)(b), 3(5B)(a)(i), 3(5B)(a)(ii), 24(8),25(2) and in Schedule 2. In certain respects, the contents of this RIA go beyond the provisions included on the face of the Bill. The decision to include the additional material has been taken in order to enable the reader to gain a more complete understanding of the proposals. Consideration is still being given to the arrangements for exempt charities in Wales.

Purpose and intended effect

Objective

- 1.2 Proposals for changes to the arrangements governing exempt charities are set out in “Private Action, Public Benefit” a report by the Prime Minister’s Strategy Unit. One of the main themes of the report was that charities need to demonstrate greater accountability and transparency if public trust in charities is to be maintained. The objective of the proposed changes to exempt charities is to promote confidence in the integrity of charitable status by providing for all exempt charities to be subject to the same accountability transparency and requirements as charities which are registered with the Charity Commission. Those organisations which will be affected are exempt charities, the existing regulators of those charities and the Charity Commission.
- 1.3 The Strategy Unit made the following recommendations which the Government accepted.
- The monitoring regimes to which housing associations, universities and colleges as exempt organisations are subject should be adapted to cover basic charity law requirements.
 - The reports and accounts of exempt charities should clearly set out the voluntary funds they hold and how they use them. The same level of information about exempt charities as is required of charities should be made accessible on or via the Charity Commission web-site.
 - The Charity Commission should be given the power to investigate exempt organisations on the request of their ‘main regulator.’
 - Larger exempt charities without a ‘main regulator’ should be registered with the Charity Commission.

- 1.4 The table below lists currently exempt charities and their proposed main regulator:

| Provision | Description | Proposed regulator |
|----------------------------------|--|---|
| Section 3 of the 1993 Act | | |
| Section 3(5A)(a) | Higher education corporations | Higher Education Funding Council for England |
| Section 3(5A)(b) | Further education corporations | Learning and Skills Council |
| Section 3(5B)(a)(i) | Foundation and voluntary schools | Charity Commission at present - currently under negotiation |
| Section 3(5B)(a)(ii) | Education Action Forums | Charity Commission |
| Section 24(8) | Common investment funds | Charity Commission |
| Section 25(2) | Common deposit schemes | Charity Commission |
| | Common deposit funds | Charity Commission |
| Paragraph of Schedule 2 | | |
| (a) | Several universities | Higher Education Funding Council for England |
| | Property falling within the Methodist Church Funds Act 1960 | Charity Commission |
| | The representative body of the Welsh Church and property vested in or administered by it | to be decided |
| | Property within the Church Funds Investment Measure 1958 | Charity Commission |

| Provision | Description | Proposed regulator |
|------------------|---|--|
| (b) | Universities of Oxford, Cambridge, London, Durham and Newcastle | Higher Education Funding Council for England |
| | Colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle | Charity Commission/ HEFCE subject to consultation |
| | Queen Mary and Westfield College in the University of London | HEFCE |
| | The colleges of Winchester and Eton | Charity Commission |
| (c) | Any university, university college or institution connected with a university or university college which Her Majesty declares by Order in Council to be an exempt charity for the purposes of the Charities Act 1993 | Higher Education Funding Council for England (universities), Charity Commission (university colleges and institutions connected with a university) |
| (d) | [Repealed] | |
| (da) | The Qualifications and Curriculum Authority | Department for Education and Skills |
| (e) | [Repealed] | |
| (f) | The Qualifications, Curriculum and Assessment Authority for Wales | To be decided |
| (g) | [Repealed] | |
| (h) | [Repealed] | |

| Provision | Description | Proposed regulator |
|------------------|--|--|
| (i) | A successor company to a higher education corporation (within the meaning of section 129(5) of the Education Reform Act 1988) at a time when an institution conducted by the company is for the time being designated under that section | Higher Education Funding Council for England |
| (j) | [Repealed] | |
| (k) | Victoria and Albert Museum | Department for Culture, Media and Sport |
| (l) | Science Museum | Department for Culture, Media and Sport |
| (m) | Armouries | Department for Culture, Media and Sport |
| (n) | Royal Botanic Gardens, Kew | Department for Rural Affairs |
| (o) | National Museums and Galleries on Merseyside | Department for Culture, Media and Sport |
| (p) | British Museum | Department for Culture, Media and Sport |
| | Natural History Museum | Department for Culture, Media and Sport |
| (q) | National Gallery | Department for Culture, Media and Sport |
| (r) | Tate Gallery | Department for Culture, Media and Sport |
| (s) | National Portrait Gallery | Department for Culture, Media and Sport |
| (t) | Wallace Collection | Department for Culture, Media and Sport |
| (u) | Imperial War Museum | Department for Culture, Media and Sport |
| (v) | National Maritime Museum | Department for Culture, Media and Sport |

| Provision | Description | Proposed regulator |
|------------------|---|---|
| (w) | Any institution which is administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of or in connection with, the last named institutions | As for the parent institution except students' unions which subject to discussion with the NUS should be required to register with the Charity Commission |
| (x) | The Church Commissioners and any institution which is administered by them | Charity Commission |
| (y) | Any registered society within the meaning of the Industrial and Provident Societies Act 1965 Any registered society or branch within the meaning of the Friendly Societies Act 1974 | Housing Corporation for RSLs, Charity Commission for others |
| (z) | Museum of London | Department for Culture, Media and Sport |
| (za) | British Library | Department for Culture, Media and Sport |
| (zb) | Community Fund | Department for Culture, Media and Sport |

1.5 We are still gathering information about the number of exempt charities and their income levels. So far we have established that there are 47 Higher Education corporations, approximately 400 Further Education Corporations, and approximately 8,000 foundation and Voluntary schools. We believe that the vast majority of these schools will exceed the £100,000 threshold. We are still trying to establish how many charitable Industrial and Provident Societies and Registered Friendly Societies there are, as there is no central register listing them. Nearly all the Industrial and Provident Societies which are registered social landlords will have an income in excess of £100,000.

- 1.6 The following is the list of key principles of charity regulation as drawn up by the Charity Commission and agreed by the Home Office. Monitoring by proposed main regulators would have to achieve the following:
- A.** cover all assets of a charity regardless of their source;
 - B.** have the objective of ensuring that the assets of a charity are applied solely for the purpose of furthering its objects, which must be for the public benefit;
 - C.** have the objective of ensuring that the governance arrangements of a charity are adequate for the effective and efficient furtherance of its objects, and are followed in the administration of the charity;
 - D.** have the objective of ensuring that changes are made to a charity's objects or governance arrangements when they are necessary for it to continue to operate effectively;
 - E.** have the objective of ensuring that the charity complies with all relevant legal requirements, for example in relation to the raising of funds from the public;
 - F.** require the charity to provide to all stakeholders adequate financial information about the use and application of the resources entrusted to it;
 - G.** provide appropriate machinery for effective debt management, and for the reconstruction or dissolution of the charity including the application of any assets, after the settlement of all liabilities, for suitable alternative charitable purposes; and
 - H.** be based on the principles of good regulation.

Background

- 1.7 Exempt charities enjoy the status and the fiscal benefits accorded to other charities. Like all charities, they are required to comply with the key principles of charity law but since 1992 they have not been allowed to register with the Charity Commission and they fall outside the monitoring and investigative powers of the Commission, though not of their advice giving powers. The grounds for their exemption from the requirement to register with the Commission have been that they are adequately supervised by another Government department or public authority. However, while it is true that they are regulated in respect of other activities and functions which they undertake, there is no mechanism for monitoring their compliance with charity law. They do not have to demonstrate that they continue to merit the considerable benefits, both fiscal and in terms of public esteem, which flow from having charitable status.

- 1.8 It is vital that public trust and confidence in the charitable sector should be maintained and if possible increased. Many charities rely heavily for their survival and growth on income from fundraising and on the work of volunteers. Without continued public goodwill and support, the activities of charities are likely to be significantly curtailed. Research indicates that, while overall levels of public trust in charities are high, the public has concerns about the quality of information available about charities and about their degree of accountability. Failure to ensure that information about exempt charities is readily available to the public and that those charities are held to account could result in the public having doubts about the probity and effectiveness of charities.
- 1.9 Many exempt charities, such as universities and housing associations, are subject to regulation because they receive significant public funds, but they also have voluntary monies and there is no mechanism for independent monitoring of their management of that funding or of whether they are complying with the principles of charity law. The Prime Minister's Strategy Unit found that some of those organisations were unaware of the requirements of charity law regarding, for example, governance arrangements and stewardship of funds. A lack of awareness of charity law and/or a lack of charity focussed regulation creates a risk that charitable assets will be lost or misapplied. While the public can obtain certain information about the affairs of exempt charities, it is more limited and less readily available than that for registered charities.
- 1.10 The 69 responses to the Strategy Unit proposals on this issue showed a clear acceptance, from both exempt charities and others, of the principle that all organisations enjoying the advantages of charitable status should, in return for those advantages, comply with the basic principles of charity law.
- 1.11 The Government's aim with these proposals is to establish arrangements that secure greater accountability and compliance with charity law by exempt charities, while imposing the minimum of extra bureaucracy.

Risk assessment

- 1.12 The public sees charities as being value-driven and tends to have much higher expectations of charities than of non-charitable organisations. Charities rely on having a good reputation in order to stay in business. The absence of an effective mechanism for monitoring the compliance of exempt charities with the principles of charity law poses threats to the public perception of the integrity of charitable status, a threat which might not be confined to exempt charities but could extend to the whole of the charitable sector. A loss of public confidence in charities would be likely to result in a drop in charitable giving and a reduction in the number of volunteers which they would attract to work for them. As a consequence charities would become very much less effective. Since a dynamic and vibrant charitable sector makes a vital contribution to the economy of the UK and to wider society, it is important that measures should be put in place to maintain public trust in the integrity of charities.

- 1.13 Research published by the National Council for Voluntary Organisations in 1998 “Blurred Vision, Research Quarterly” 1st January, indicated that overall the level of trust in charities is high but it identified concerns about the accountability of charities and about the quality of information available about them. Exempt charities are not held to account for their compliance with charity law and, although an exempt charity is obliged to provide information to a member of the public on demand, that information consists solely of basic accounts. A decision to retain the status quo for exempt charities would not address the public concerns identified in the research.
- 1.14 Exempt charities which do not have a clear understanding of charity law and which are not complying with it could find their failures exposed publicly with dire consequences for the future of the charity through the loss of public confidence in it. Adverse publicity could have a negative impact on the charitable sector as a whole.
- 1.15 There is a potential risk that the charitable funds and assets of an exempt charity might be being erroneously applied or even lost but, in the absence of a monitoring mechanism, that might never be identified or identified too late for the funds to be safeguarded.
- 1.16 A failure on the part of Government to address the lack of regulation for exempt charities would give rise to serious complaint from the very large number of charities who are required to register with the Charity Commission. Registered charities see no rationale for exempt charities being allowed to continue in their present state of unaccountability. They see it as an unjustified privilege which puts the integrity of the whole sector potentially in jeopardy. In 2001 the National Council for Voluntary organisations in their consultation document on charity law reform, “For the public benefit” identified the anomalous position of exempt charities and referred to evidence which they had received which indicated that some exempt charities did not comply with charity law principles in all respects.

Options

- 1.17 We have identified 2 options for reforming the law on exempt charities so as to provide greater accountability. Those options are considered below together with the option to maintain the status quo.

Option 1 - leave the relevant legislation unchanged.

- 1.18 That would not meet the objectives set out in paragraph 1.3 and would leave unaddressed the concerns identified at 1.11-1.16.

Option 2 - make all exempt charities register with the Charity Commission.

- 1.19 That would meet the objectives of delivering increased accountability and transparency but there is also a risk involved of excessive regulation.

- 1.20 The Government is aware that in some sectors exempt charities are already highly regulated, for example, Higher Education Institutions. The Better Regulation Task Force concluded in 2002 that HEIs were in some respects overburdened with bureaucracy.
- 1.21 For those exempt charities where there is a main regulator requiring them to register also with the Charity Commission could give rise to a significant duplication of regulation. Many exempt charities are, for example, already required to produce detailed financial accounts for their existing regulators. Creating an entirely new additional regulatory regime could in those circumstances place an unnecessary regulatory burden on those exempt charities. Charities could end up collecting and providing 2 lots of very similar information and simply presenting it in different formats for two regulators.

Option 3 - implement the Strategy Unit proposals contained in 'Private Action Public Benefit' and which are set out in paragraph 3 of this document.

- 1.22 The adoption of this option would meet the objective of providing greater accountability and transparency with the minimum possible regulatory burden placed upon exempt charities.
- 1.23 There are some risks involved in this option. It is possible that members of the public and other charities might contend that charities are not being regulated properly unless they are registered with the Charity Commission, the regulator of charities, and that there is not a 'level playing field' throughout the sector. However, as the bodies which would be performing the main regulator role would all be ones of standing and as the same level of information would be available to the general public in respect of exempt charities as would be available for registered charities, that contention would have less weight.
- 1.24 A main regulator is unlikely to have expertise in charity law and costs would arise for the regulator in obtaining training in charity law and in devising the form of regulation they will apply. However, many of the principles of good governance are common to both charitable and non charitable organisations and main regulators would be able to call upon the Charity Commission for advice and guidance on how best to carry out the monitoring role. The Charity Commission have begun a round of discussions with the main regulators about the regulatory mechanisms to be employed. The mechanism would be different in the case of each regulator. Main regulators and the Charity Commission Working together would be able to identify the gaps in expertise and deficiencies in existing mechanisms and decide how to remedy them.
- 1.25 It is probable that changes would be required to legislation applying to some main regulators to give them the necessary powers to carry out their monitoring role. The regulators are in discussion with their legal advisers and expect to be in a position to let us have information shortly about the legislative changes which would be needed.

Benefits

Option 1 - retaining the status quo.

1.26 No new regulatory burden would be imposed.

Option 2 - make all exempt charities register with the Charity Commission.

1.27 There would be several benefits. This option would deliver the Government's aim of accountability and transparency through monitoring and provision of information. There would be consistency and a 'level playing field' which is desired by many in the charitable sector.

1.28 Every charity would be directly regulated by the Charity Commission, the organisation which has the best understanding of and greatest expertise in charity law and which has significant powers of investigation and intervention. There would be no need to train main regulators in charity law.

1.29 It would not be necessary to amend the legislation governing main regulators to give them the necessary powers to carry out the monitoring role.

Option 3 - implement the Strategy Unit proposals set out in 'Private Action, Public Benefit'.

1.30 Exempt charities would be regulated in regard to charity law and the same levels of information about them would be available to the general public as is currently available about registered charities.

1.31 The main regulator, if it had concerns about a charity, would be able to invite the Charity Commission to exercise its powers of investigation and intervention.

1.32 It is probable that exempt charities which have a main regulator would not face a dramatic change in what is expected of them. They should already be complying with charity law. Information required for compliance in many cases would not be significantly more than is already expected by their existing regulator in terms of annual returns, though there would undoubtedly be some increase in regulatory burden due to the requirement to provide charity specific information.

1.33 Proposed main regulators would already have a working knowledge of the exempt charities they would be regulating and should be able to devise a mechanism which would be customised to the circumstances of the charity and would be proportionate, targeted and focussed on risk.

1.34 Main regulators would be able to assess compliance with charity law as part of their usual monitoring processes, using existing forms and reporting mechanisms adjusted to include charity law requirements. That should reduce the bureaucratic burden compared with that in Option 2.

Equity and fairness

1.35 Option 1 would continue to treat exempt charities differently from other charities which would be unfair. Option 2 could disproportionately affect those exempt charities which already undergo heavy regulation, for example the higher education sector. Conversely, registered charities could argue that exempt charities are unjustifiably being accorded special treatment if option 3 were to be adopted. Many registered charities, e.g. Barnardos, are multiply regulated because of the range of services they provide.

Business sectors affected

1.36 Higher Education Institutions, Museums and Galleries, Further Education Corporations, Foundation and Voluntary Schools, Church Commissioners, Registered Social Landlords, Industrial and Provident Societies, Registered Friendly Societies, Common Investment/ Deposit Funds/Schemes.

Costs

1.37 We have tried to estimate the costs to charities main regulators and the Charity Commission of each of the 3 options put forward. We are restricted, however, by a lack of information and the costing remains more than somewhat speculative at this stage. The major gaps in our knowledge are set out below.

- Although the number of foundation and voluntary schools fluctuates somewhat, the current figures indicate that there are 4,720 Church of England schools, 2,074 Roman Catholic, 33 Jewish and 4 Muslim as well as a small number of schools from other faiths. As it currently stands, it is anticipated that the vast majority of these schools will exceed the £100,000 threshold over a period of 5 years.
- We do not have information about the number of charitable Industrial and Provident Societies and Registered Friendly Societies, nor about their annual income. This information is not held centrally. We are trying to make some estimates. We do not believe it will be possible to obtain firm numbers.
- We do not know anything about the extent to which exempt charities currently comply with charity law and there is no easy or obvious way to obtain the information. As such we have assumed that they do currently comply, as they should under current legislation.
- Full details of the changes required to the main regulators' monitoring arrangements, so that they cover basic charity law requirements, are yet to be finalised. Work is continuing to establish the extent of the changes required.

- We do not know how much training in charity law main regulators will need to make them effective. That too should be established at meetings between the Charity Commission and main regulators.
- We do not know how often the Charity Commission may be called upon to intervene in the affairs of a charity where there is cause for concern and how protracted and complex such intervention might be. However, the Charity Commission investigates around 1 in every 500 out of the 165,000 main charities on the register in a year. The costs to the charity involved are extremely varied, depending on the nature of the investigation and the measures taken by the Charity Commission. Investigations are expected to benefit the charity involved by providing better governance and preventing the improper use of charitable assets. Given the fact that the vast majority of exempt charities have been subject to regulatory regimes of some sort before and that 80% of them are involved in the same sector, the Commission anticipates that the incidence of investigation would, if anything, be lower.

Option 1 - retaining the status quo.

1.38 That would generate no obvious costs to charities, main regulators or the Charity Commission. The main cost is the continued risk to public confidence in charities.

Option 2 - make all Exempt charities register with the Charity Commission.

1.39 If Option 2 was adopted, charities might be involved in duplicate work with attendant costs. It is probable that they already collect for the main regulator some of the same information that the Charity Commission would require. Charities might be involved in submitting similar information but in a slightly different format to 2 regulators. There might similarly be an overlap between the main regulator in monitoring the information supplied.

1.40 We have been unable to come up with substantiated figures which would set out the costs, either financial or in terms of time, to individual exempt charities. To date, there has been no research done on how long it takes charities to gather the information required by the Charity Commission. The amount of extra work required would vary depending on the amount of information exempt charities already gathered. Under charity law exempt charities, like any other charity, have a responsibility to produce some form of accounts.

The Charity Commission has produced figures on the costs to charities of filling out their Annual Return form and these are summarised in the following table. The Standard Information Return, a measure affecting charities of over £1 million annual income, has not been taken into account. This has yet to be fully developed by the Charity Commission but it is expected that it will not increase the costs for large charities by more than 25%.

| Type of Charity | First Year Costs | Subsequent Year Costs |
|---|------------------|-----------------------|
| Light touch Charities (under £10,000 annual income) | £4.16 | £1.80 |
| Smaller Charities (Simple accounts): income between £10,000-£100,000 | £8.33 | £6.00 |
| Smaller Charities (Accrual accounts): £10,000-£100,000 | £14.60 | £12.20 |
| Larger Charities | £31.75 | £23.80 |

In terms of time spent, the Charity Commission estimate that it would take about 10 minutes for charities only updating the public record, half-an-hour for other charities up to the £250k threshold and just over three-quarters of an hour for charities exceeding that threshold.

- 1.41 The following table sets out theoretical costs should the Charity Commission act as the regulator for all exempt charities. They would have to register and regulate a substantial number of charities. They would not have to register or incorporate in their routine pro-active monitoring system those with an income under £100,000. However, they would have investigative and intervention powers which they would be called upon to exercise should a charity give cause for concern. The costs for these are included in the continuing annual Charity Commission costs.

| Area of work undertaken | Costs incurred |
|---|---|
| Registration (one off cost) | £900,000 |
| Exercise of Legal Authority and giving of guidance | £234,000 |
| Evaluations and Investigations | £49,500 |
| Monitoring | £19,500 |
| Referrals to legal | £29,000 |
| Referrals to Financial Regulation | £22,700 |
| Total Costs (+/- 30% cost incurred to allow for inaccuracies): | One-off costs: £630,000-£1,170,000 Continuing: £250,000-£450,000 Combined: £880,000-£1,620,000 |

These costings are based on figures supplied by the Charity Commission. A break-down of the figures can be found in **Annex A**.

Option 3 - implement the Strategy Unit proposals set out in ‘Private Action, Public Benefit’.

1.42 The costs of those proposals remain difficult to quantify. Costs would vary from one main regulator to another. The regulatory regime which is devised must monitor compliance with charity law effectively but it does not have to mimic the Charity Commission model. Existing systems should be adapted and built on and a risk focussed approach adopted to reduce the administrative burden. The main regulators would devise the mechanism in discussion with the Charity Commission.

1.43 In the table below the costs to regulators have been calculated on the basis of adding 30% to the highest figures and subtracting 30% from the lowest figures of the anticipated costs based on the figures provided by the Charity Commission. That has been done to reflect the greater degree of uncertainty around the information available on which to base our calculations. The figures are based on the assumption that approximately 1,200 charities will be monitored by an existing main regulator. For this purpose the difference between the Charity Commission costs for options 2 and 3 was taken and used to provide a rough estimate of possible costs.

| Area of work undertaken | Costs incurred |
|---|---|
| Exercise of Legal Authority and giving of guidance | £19,250-£35,750 |
| Evaluations and Investigations | £3,850-£7,150 |
| Monitoring | £1,680-£3,120 |
| Referrals to legal | £1,925-£3,575 |
| Referrals to Financial Regulation | £1,610-£2,990 |
| | Total: £28,315-£52,585 |
| Total Costs (+/- 30% cost incurred to allow for inaccuracies): | Total Continuing Costs: £19,820-£68,360 |

Again, the figures are based on those figures provided by the Charity Commission, a break-down of which can found in **Annex A**.

1.44 The Charity Commission would have the costs of providing advice and guidance to main regulators and of investigating any serious concerns/malpractice in charities if invited to do so. They would have to register and regulate exempt charities with an income over £100,000 which do not have a main regulator. In the case of charities with an income of less than £100,000 which do not have a main regulator the Commission would not have to register them but they would have investigative and intervention powers which they would have to exercise if serious concerns were identified in the management of a charity. The Charity Commission would also have the cost of the advisory and guidance roles as well as the formal powers they are able to use in order to assist charities.

1.45 The costs to the Charity Commission are set out in the table below. The basis of the calculation are the figures supplied by the Charity Commission and can be seen in **Annex A**.

| Area of work undertaken | Costs incurred |
|---|---|
| Registration (1st year only) | £780,000 |
| Exercise of Legal Authority and giving of guidance | £206,500 |
| Evaluations and Investigations | £44,000 |
| Monitoring | £17,100 |
| Referrals to legal | £26,250 |
| Referrals to Financial Regulation | £20,400 |
| Total Costs (+/- 30% cost incurred to allow for inaccuracies): | First Year: £546,000-£1,014,000 Continuing: £220,000-£408,500 Total: £786,000-£1,422,500 |

The above figures are based on those figures provided by the Charity Commission, a break-down of which can found in **Annex A**.

1.46 There will be additional costs to exempt charities in being monitored for charity law compliance but it is impossible at this stage to accurately quantify them. As yet the fine details of the potential regulatory regimes have not been worked out. Until we do, it is difficult to quantify the cost to charities of the proposals.

We remain committed to working out the fine details with each of the proposed main regulators and the Charity Commission. However, the circumstances for each individual will still be varied, as each regulator may wish to gain different types of legislation. Any figures that were produced would be highly unsubstantiated, not least because the figures are not available on how much it would cost charities to be regulated by the Charity Commission (see paragraph 1.40).

Competition Assessment:

1.47 The proposals would impact on a wide variety of charitable institutions including higher education establishments, museums and galleries, further education corporations, foundation and voluntary schools, Church Commissioners, Registered Social Landlords, Industrial and Provident Societies.

1.48 Whilst the activities of some charities may mirror those of non-charitable organisations in the business world, there are significant differences in the use charities may make of their resources. Charity law prescribes that their resources may be used only in furtherance of their charitable objects. They may undertake trading which is directly connected to, or is ancillary to, furthering their charitable purposes. However, if charities wish to undertake substantial trading which is not in direct pursuit of its purposes, it must set up a separate trading company to do so. Neither the proposed changes to exempt charities nor any other proposals in the Charities Bill will in anyway affect that position.

- 1.49 To the extent that any charity might be said to compete with another e.g. for public funds, the impact of these proposals may in fact aid competition. It could be argued that exempt charities at present have an advantage over registered charities in that they are not at present subject to monitoring to check whether they are complying with charity law.
- 1.50 These proposals should not require a detailed assessment of the competitive impact, particularly in that they do not change the existing requirement that exempt charities must comply with charity law. Nor do they affect the legislation concerning trading.

Small Firms' Impact Test

- 1.51 The views of the Small Business Service have been sought as part of the consultation process. They had 2 specific concerns. Those were that Registered Social Landlords should not face heavy additional regulatory burdens and that the more onerous accounting requirement for charities compared with those applying to small businesses might prove a burden. These concerns are satisfactorily addressed, however, by the fact that Registered Social Landlords would be monitored by the Housing Corporation using appropriately adapted existing mechanisms, thus reducing the administrative burden. The Small Business Service has accepted that stakeholders/legitimately have a greater desire for more information about charities than they do about small businesses.

Enforcements and Sanctions

- 1.52 As the proposed main regulators already carry out various regulatory functions most will already have certain powers to ensure compliance. It is the intention that they would be given additional powers where there are gaps. The Commission already possesses powers of enforcement and their locus in respect of exempt charities would be extended by the proposals.
- 1.53 Should they agree to take on the regulatory role, the proposals would impose a new burden on main regulators. The Home Office would need to transfer funds to the relevant OGDs to cover the additional costs initially. Thereafter the expectation is that those costs would be part of the baseline funding received by the OGDs. The Charity Commission would continue to bid for funding direct from the Treasury to cover the additional duties arising from the proposals.
- 1.54 Criminal sanctions could be applied in respect of breaches of charity law by exempt charities but no new offences are created by these proposals and Department for Constitutional Affairs has expressed no concern about them.

Monitoring and Review

1.55 The Government might wish to review those measures after a period of approximately five years. The £100,000 registration threshold is intended to ease the transition for the Charity Commission and possibly exempt charities themselves. After 5 years this transitional period would effectively be complete and a review of the threshold level would be appropriate and could lead to a lower figure being introduced. Exempt charities below the £100,000 will effectively become excepted charities immediately and so the 5 year review would cover charities that are currently exempt and excepted under the £100,000 threshold.

Consultation

1.56 The consultation on the recommendations contained in “Private Action, Public Benefit” was carried out between 25 September to 31 December 2002. 1087 written responses were received. An analysis of the respondents is contained in ANNEX A of “Charities and Not-for-Profits: A Modern legal Framework”, the Government’s response to the consultation.

Summary and Recommendation

1.57 Our clear preference is for Option 3. It best meets the objective of providing an effective mechanism for monitoring the compliance of exempt charities with charity law while ensuring that the regulatory regime is not unduly burdensome to charities or the proposed regulators.

| | Option 1 | Option 2 | Option 3 |
|--|--------------------------|--|---|
| | Retaining the status quo | Make all Exempt charities register with the Charity Commission | Implement the strategy unit proposals set out in ‘Private Action, Public Benefit’ |
| Net increase over current regulatory costs | No additional costs | £880,000 – £1,620,000 | Costs to proposed main regulators: £19,820- £68,360 Cost to Charity Commission: £786,000- £1,422,500 |
| Total benefit per annum | No additional benefits | <ul style="list-style-type: none"> Exempt charities will regulated according to charity law A more ‘level playing field’ across the sector Increased public confidence in all charities | Same as option 2 with the additional benefit: <ul style="list-style-type: none"> Lower regulatory impact on exempt charities |

ANNEX A: Commission Costs in RIA re Proposals For Exempt Charities

To begin with some notes on context and underlying assumptions.

Numbers. a round figure of 10,000 exempt charities was used. This seemed a reasonable figure leaving aside the uncertainties of paragraph (w).

While the RIA mentions para (w), students' unions apart, all we can do is to explain the genuine impossibility of counting them.

Voluntary and Foundation Schools. This is by far the biggest category of the 10,000 being c8,300 of them (c900 Foundation and c7,400 Voluntary). The figures accept the view from the meeting with the Church of England and the Roman Catholics that virtually all voluntary schools would cross the £100,000 threshold in the first few years.

Ranges. Having calculated a figure it is used as the mid point of a range, plus/minus 30% to allow for the many variables and uncertainties.

Costs. The basic unit costs and number of actions upon which the figures are based are taken from the Commission targets for 2003/4.

There are two types of costs. The estimated costs of registration would be a one-off cost (possibly spread over several years). The other costs would occur annually.

Options

Option 1: - being no change - hasn't been costed.

Option 2: - All charities register with the Charity Commission and so within their normal jurisdiction.

Option 3: - Those with an acceptable main regulator do not have to register and the Charity Commission will only use our investigative/protective powers on request. As it is currently understand the basis of this approach such requests would be infrequent. Information on charities with a main regulator is made available on or via the Charity Commission website.

Each aspect has been looked at from two angles:

Simple Costs. It has been assumed that, proportionately, currently exempt charities that have to register will produce the same amount of work as other charities and worked out how much this would cost the Charity Commission.

Adjusting the Commission's Proportion and Risk Thresholds ("Adjusted Costs")

In some areas there is also the option of reducing additional costs by adjusting the Charity Commission's approach to regulatory and support work (very broadly speaking, spread the Commission's resources more thinly).

The registration costs have not been adjusted here - if 9,000 charities become registrable for the first time the Charity Commission is obliged to register them.

In other areas there is more flexibility. The Charity Commission take a proportionate, risk based approach to their regulatory and advisory work, concentrating resources on areas of greater risk.

Risk assessments could be adjusted to contain elements of the additional work within current resources. For example, the Charity Commission raises the criteria for opening a full investigation and/or for keeping investigations open.

The Commission could do this to varying degrees. For illustrative purposes the effect of reducing the impact on areas of flexibility by 50% has been shown.

Having noted that this approach could reduce additional costs to the Commission, it would also increase the risks of charitable assets being lost/misapplied, charities getting into difficulties and so on. More generally these increased risks for individual charities would also increase the risk of public confidence being undermined.

It should also be noted that, while the Commission is generally able to take operational decisions along these lines, it would be dependent on acceptance by bodies responsible for the external scrutiny of the Commission. For example, if the NAO criticised the Commission for the increased risks inherent in this approach, it could not be sustained.

Benefits/Balance

Two further points:

The costs of registering currently exempt charities will be far less than the savings that result from raising the general registration threshold.

The changes are not about regulation for its own sake. Charities benefit in a number of ways from being fully within the Charity Commission's jurisdiction (registered or not). The Charity Commission's investigative and protective powers can put charities back on a proper footing and ensure that charitable assets are protected and properly applied. Access to their advisory powers and guidance will benefit charities in a variety of ways.

Calculations

Registration

A round figure of £100 pounds per registration has been used. This is based on the Charity Commission target figure for staff cost per registration, adjusted to reflect the assumption that there will be little doubt about the charitable status of most of the currently exempt charities, so reducing the number of rejected/not proceeded with applications arising from the proposals.

Cost to Commission

Option 2: Estimate that 90% of charities will have to register: 9,000 @ £100 = £900,000

Option 3: Estimate 1,200 of above figure will have main regulator (Universities, Further Education Institutions, Museums, currently exempt Registered Social Landlords etc): 7,800 @ £100 = £780,000

This is the same for both Simple Costs and Adjusted Costs.

Annual Costs:

Assumptions:

That all 10,000 exempt charities will have an income over £10,000.

Work with main regulators is covered partly within current work with outside bodies and partly within the range of costs that relate to guidance, evaluation and investigation.

Costs of annual return process and mailing costs of adding to the register are taken to be covered by the +30% element of activities that arise from scrutiny (evaluations and so on).

Costs of information provision re charities with main regulator are difficult to estimate but likely to be relatively small and able to be contained within the scope for variation in the ranges.

Under option 3 it has been estimated that 12% of charities will be under a main regulator. Some costs are therefore reduced by 12% but investigation and evaluation costs reduced by 10% to allow for some action at request of the regulator.

For adjusted costs it has been assumed that the exercise of legal authority will remain the same but reduced other figures by 50%.

Simple Costs

Costs in the following areas:

Exercise of Legal Authority and giving of guidance

Option 2: £334,000

Option 3: £294,000

Evaluations and Investigations

Option 2: £99,100

Option 3: £88,000

Monitoring

Option 2: £38,900

Option 3: £34,200

Referrals to Legal

Option 2: £58,000

Option 3: £52,500

Referrals to Financial Regulation

Option 2: £45,400

Option 3: £41,000

Adjusted Costs

Exercise of Legal Authority and giving of guidance

Option 2: £234,000

Option 3: £206,500

Evaluations and Investigations

Option 2: £49,500

Option 3: £44,000

Monitoring

Option 2: £19,500

Option 3: £17,100

Referrals to Legal

Option 2: £29,000

Option: 3: £26,250

Referrals to Financial Regulation

Option 2: £22,700

Option 3: £20,400

Benefits

As mentioned above, there are benefits for charities and their beneficiaries. Investigations can identify and deal with problems in charities so protecting and/or releasing charitable assets for proper application.

Similarly, the Charity Commission advice and guidance helps charities to operate in accordance with charity law and standards of best practice. This applies not only in a general sense but also in particular cases where Charity Commission assistance - often involving the use of their formal powers - can help charities in many ways.

Overall

The above would give us the following:

A. Simple Costs

Option 2:

One-Off Registration Costs: A figure of £900,000 leading to a range of £630,000 - £1,170,000 (+/- 30% with a bit of rounding where appropriate)

Continuing Annual Costs: £575,000 leading to £400,000 - £745,000

Option 3:

Registration: £780,000 leading to a range of £546,000 - £1,014,000

Annual Costs: £510,000 leading to £357,000 - £663,000

B. Adjusted Costs

Option 2:

Registration: As Above: £630,000 - £1,170,000

Annual Costs: £250,000 - 450,000

Option 3:

Registration: As above: £546,000 - £1,014,000

Annual Costs: £200,000 - £380,000

CHAPTER 5: Regulatory Impact Assessment - Excepted Charities

1. PROPOSAL

- 1.1 This Regulatory Impact Assessment (RIA) examines the impact of the measures to be included in the Charities Bill on charities that are currently excepted from the requirement to register with the Charity Commission (the Commission). The draft Charities Bill will provide for the registration of the currently excepted charities. There will be an initial registration threshold of £100,000 which will over time reduce to bring it into line with the threshold for other charities.

2. PURPOSE AND INTENDED EFFECT

The objective

- 2.1.1 Excepted charities, although required to comply with charity law, are not required to register with the Commission. They can register voluntarily if they wish to do so. The proposals contained in this document will not impact on the excepted charities that have opted to register voluntarily. Those charities are already subject to the Commission's regular monitoring regime and oversight.
- 2.1.2 Proposals for changes to the arrangements governing excepted charities were set out in the Strategy Unit Review "Private Action, Public Benefit" which was published in September 2002. One of the main themes of the report was that charities needed to demonstrate greater accountability and transparency if public trust in the charitable sector was to be maintained. The objective of the proposed changes to excepted charities is to promote confidence in the integrity of charitable status by providing for excepted charities, subject to the income threshold, to be subject to the same accountability and transparency requirements as charities which are registered with the Commission. The organisations which will be affected by the changes are excepted charities and the Commission.
- 2.1.3 The Strategy Unit concluded that there was no principled justification for keeping the classes of charity that are currently excepted remaining outside registration with the Commission. It recommended that excepted charities with incomes above the new proposed registration threshold of £50,000 should be required to register. They proposed a temporary higher registration threshold above the general registration threshold in order to ensure a manageable process of registration. It was intended that at the higher registration threshold approximately 5,000 of the larger excepted charities would be required to register.
- 2.1.4 Of the 88 respondents who commented on the Strategy Unit proposals in relation to the excepted charities a clear majority (69%) supported them. However, there were divisions. Support for ending

excepted status was very strong among respondents who were not themselves excepted charities. Most of the respondents opposing the recommendation were excepted charities, predominantly religious bodies. They were typically concerned about placing additional burdens on the trustees of small local churches. However, officials have taken action in order to contact and meet with the excepted charities in order to discuss their concerns. The Commission has also taken action to set up a team to deal specifically with the registration of the excepted charities. The excepted charities have been advised to meet with the Commission to discuss any practical concerns they might have about the process of registration.

- 2.1.5 The Government accepted the Strategy Unit's recommendation but set the initial registration threshold for formerly-excepted charities at £100,000 annual income, rather than the £50,000 recommended by the Strategy Unit. That is because it appeared that a registration threshold of £50,000 would result in well in excess of 5,000 charities being required to register. We have estimated (Annex A) that approximately 5,000 excepted charities would be required to register at the initial threshold of £100,000.

2.2 ***Devolution***

- 2.2.1 The policy would apply to currently excepted charities in England and Wales only and would not impact on charities based in Scotland and Northern Ireland.

2.3 ***Background***

- 2.3.1 The exact number of excepted charities is not known precisely but in 2000 it was estimated at over 100,000¹. The main classes of charities which have been excepted by order of the Secretary of State are:

- boy scout and girl guide charities (the Charities (Excepting certain charities for Boy Scouts and Girl Guides from Registration) Regulations 1960);
- various religious charities (the Charities (Exception from Registration) Regulations 1996 and by Order of the Charity Commissioners);
- armed forces charities (the Charities (Exception from Registration and Accounts) Regulations 1965); and
- certain trusts for the advancement of religion conditional on the upkeep of graves (the Charities (Exception from Registration) Regulations 1996 and by Order of the Charity Commissioners).

1 Estimate contained in a joint Home Office/Charity Commission consultation document on exceptions from registration – see www.charitycommission.gov.uk/enhancingcharities/charregvol.asp.

Particular charities have been excepted by Order of the Commission, most of which are connected to the Roman Catholic Church.

Some charities owning foundation schools are excepted from the duty to register by virtue of section 23 of the School Standards and Framework Act 1998. The University of Buckingham is also an excepted charity by virtue of the Charities (Exception of Universities from Registration) Regulations 1966.

- 2.3.2 Excepted charities are fully subject to the Commission's jurisdiction and are required to comply with the key principles of charity law. However, there are a number of requirements that flow from registration that do not apply to excepted charities (unless they had registered voluntarily with the Commission). The table attached at Annex B provides a broad outline of the requirements placed on excepted and registered charities and the provisions of the Charities Act 1993 that apply in terms of registered and excepted charities.
- 2.3.3 Excepted charities enjoy the status and the fiscal benefits accorded to other charities but they fall outside the regular monitoring arrangements provided by the Commission. The Commission register was created in the 1960s to provide publicly accessible information confirming the existence and status of individual charities. The purpose of the register at that time was largely to provide a public record of the existence of individual charities. The Charities Act 1960 empowered the Secretary of State and the Charity Commissioners to exempt some charities – either individually or in classes - from registration. The justification for exception was that the existence of those charities was publicly documented elsewhere or that there was not thought to be great public interest in those charities. The Commission's register, unlike now, was not at that time designed to provide the basis for the systematic monitoring of the sector. The Commission's register is now the primary national database of the existence, purposes and activities of charities and it is an important element of the public accountability of charities.
- 2.3.4 When the exceptions regime was introduced in the 1960s there were certain conditions attached to some of the exceptions. For example, the 1960s exception of religious charities was, for many of them, conditional upon the Commission being supplied with details of individual charities. Where there were conditions attached they were introduced in order to fill information gaps. Compliance with those conditions has long been ignored by both sides and that was one of the reasons why it was considered that a review of the exceptions regime was required. The Charities (Exception from Registration) Regulations 1996 were made as a stop gap measure to be replaced when the then review was completed and it was at that time that no conditions were attached to the exceptions.

2.3.5 It is vital that public trust and confidence in the charitable sector should be maintained and if possible increased. Many charities rely heavily for their survival and growth on generating income from fundraising and being able to rely on the services of volunteers. Without continued public goodwill and support the activities of charities are likely to be significantly curtailed. Research indicates that, while overall levels of public trust in charities are high, the public has concerns about the quality of information available about charities and about their degree of accountability. Failure to ensure that information about excepted charities is readily available to the public and that those charities are held to account could result in the public having doubts about the probity and effectiveness of charities in general.

2.4 ***Risk assessment***

2.4.1 The public sees charities as being value-driven and tends to have much higher expectations of charities than of non-charitable organisations. Charities rely on having a good reputation in order to continue. The absence of an effective mechanism for monitoring the compliance of excepted charities with the principles of charity law poses threats to the public perception of the integrity of charitable status, a threat which might not be confined to excepted charities but could extend to the whole of the charitable sector. A loss of public confidence in charities would be likely to result in a drop in charitable giving and a reduction in the number of volunteers which they would attract to work for them. As a consequence charities would become very much less effective. Since a dynamic and vibrant charitable sector makes a vital contribution to the economy of the UK and to wider society, it is important that measures should be put in place to maintain public trust in the integrity of charities.

2.4.2 Research published by the National Council for Voluntary Organisations in 1998 “Blurred Vision, Research Quarterly” 1st January, indicated that overall the level of trust in charities is high but it identified concerns about the accountability of charities and about the quality of information available about them.

2.4.3 While excepted charities may very well be complying with charity law, there is no formal mechanism for holding them to account for their compliance and, although it is possible for the public to obtain information about them it is not, unlike in the case of registered charities, held centrally. The Government recognises that a number of the currently excepted charities have taken measures to ensure that information about them is more widely available. For example, a number of local churches publish their accounts at church meetings and on church notice boards but those measures do not provide the degree of accessibility that the public might reasonably expect.

2.4.4 An excepted charity is obliged to provide information to a member of the public on demand but that information is confined to the accounts.

A decision to leave the status quo for excepted charities would be unlikely to address the public concerns identified in the research.

- 2.4.5 There is a risk that the charitable funds and assets of an excepted charity might be being erroneously applied or even lost but, in the absence of a monitoring mechanism, that might never be identified or identified too late for the funds to be safeguarded.
- 2.4.6 Excepted charities which do not have a clear understanding of charity law and which are not complying with it could find their failures exposed publicly. Adverse publicity could have a negative impact on the charitable sector as a whole.
- 2.4.7 A failure on the part of Government to address the lack of regulation for excepted charities would give rise to serious complaint from the very large number of charities who are required to register with the Commission. The responses to the Strategy Unit review showed that registered charities see no rationale for excepted charities being allowed to continue in their present state of unaccountability. They see it as an unjustified privilege which puts the integrity of the whole sector potentially in jeopardy.
- 2.4.8 Further the majority of the religious denominations that currently enjoy excepted status are Christian and that could give rise to complaints of bias on the part of other denominations. The Strategy Unit had concerns that the current situation might not be compliant with Human Rights legislation. Of course one way of dealing with that would be to extend the current exceptions regime to other denominations, but that would have a negative impact on the accountability and transparency of the sector and would impact on public confidence in the sector.

3. OPTIONS

- 3.1 We have identified 2 options for reforming the law on excepted charities so as to provide greater accountability. These options are considered below together with the option to maintain the status quo.
- 3.2 **Option 1:** Leave the relevant legislation unchanged.
- 3.3 **Option 2:** Increase transparency and accountability among the currently excepted charities by introducing the Responsible Body approach. The joint Home Office/Charity Commission review published in 2000 “Charity Registration: When should it be voluntary?” (the Review) recognised that a number of umbrella bodies already performed a range of functions in respect of groups of charities that might include an element of support and regulation.
- 3.4 The Review considered whether the purposes of registration could be met by such an umbrella body and, if they were, whether this might justify exception (an umbrella body meeting this criterion was

described as a Responsible Body). One option would be, therefore, to consider whether the Responsible Body model could apply in the case of the currently excepted charities or whether it would be beneficial for the currently excepted charities to consider changing their structures so that the Responsible Body model could apply to them. However the intention of the Review was to identify Responsible Bodies from existing structures it did not propose that organisations changed their structures to fit in with the Responsible Body model. The Review described the purposes of registration as to:

- provide evidence of charitable status where this is of interest to the charity or the public;
- provide a way for charities to be accountable, for example by making basic information publicly available and by enabling the general public and the Commission to get in touch with charities; and
- enable large charities to be actively monitored (the Commission currently monitors registered charities with income or expenditure over £10,000 per annum).

The responses to the consultation exercise showed widespread support for the purposes of registration. Annex C provides a breakdown of the criteria which the Review proposed a Responsible Body would have to meet in order to achieve the aims of registration.

- 3.5 **Option 3:** Require the currently excepted charities to register with the Charity Commission subject to a higher initial registration threshold of £100,000 per annum. The draft Bill will include a provision to set the general registration threshold at £5,000 per annum.

4. BENEFITS

- 4.1 **Option 1:** Some, in that the continuation of the current exceptions regime would not have a costs implication for the charities concerned or the Commission. As explained above (2.3.3) the current exceptions regime has its roots in the 1960s. Exceptions were introduced for charities whose names appeared on some other list or because it was judged that the public was not interested in them. At that time the register of charities provided a list of charitable endeavour and was not the basis for the systematic monitoring of the charitable sector that it is today. Since the Commission's routine monitoring processes are based on the requirements placed on registered charities they do not cover unregistered charities, such as (almost all) excepted charities.
- 4.2 **Option 2:** Limited. The aim of the 2000 Review was to produce a sustainable criteria for exception. The proposed approach was to consider whether there were any bodies carrying out the kind of

functions that would meet the purposes of registration without the relevant charities having to register. If there were any Responsible Bodies, “their” charities would not have to register. Where there was not a Responsible Body the charities would have to register. For the purposes of this assessment we have also considered that the currently excepted charities might seek to change their structures so that they would fit within the Responsible Body model. At the time of the Review there was no possibility of Parliamentary time being made available to amend the primary legislation. The authors of the Review were restricted to working within the existing legislative framework. The benefits of this approach would be that it recognised existing systems, would enable information about charities to be more readily accessible and would provide for the monitoring of those charities without a duplication of effort. However, as indicated above the Responsible Body approach would not apply in the case of all the excepted charities.

- 4.3 A Responsible Body would not need to have systems that were identical to the Commission’s. The Commission’s monitoring system has to be designed to cover a wide range of charities. A Responsible Body would monitor only charities that were similar to each other. It could, therefore, restrict its focus to those issues that were of particular relevance to that group². The monitoring would not, however, be to the degree of independence as that undertaken by the Commission and would therefore command less credibility. The information while more accessible than at present would still be less so than if contained in the Commission’s register.
- 4.4 The principle disadvantage with this option, however, is that responses to the Review showed that the Responsible Body approach would not be appropriate for many of the currently excepted charities because their structures were not designed in that way. Of the 49 respondents to the Review who commented on the question about whether the Responsible Body approach was a sensible idea only 9 respondents agreed. For some of the charities concerned the Responsible Body approach is not compatible with their values and beliefs and their organisational structure does not lend itself to the Responsible Body concept. For example, one denomination is a voluntary association of autonomous churches. Each church is able to obtain advice and guidance from the Centre but the Centre does not have a controlling relationship in respect of the churches and could not adopt the Responsible Body approach.
- 4.5 **Option 3:** That would deliver the Government’s objectives of increased accountability and transparency which was one of the main objectives of the Strategy Unit review. The Strategy Unit concluded that “to promote trust and confidence in the regulatory system as a

² “Charity Registration: When should it be Voluntary?” Charity Commission/Home Office consultation.

whole it is important that all organisations with charitable status should be subject to the same accountability requirements³. Requiring all excepted charities to register would create a 'level playing field' with registered charities and would result in consistent arrangements for the monitoring of charities, which is desired by many in the charitable sector⁴. The higher registration threshold would be set as an interim threshold which would overtime move towards the general registration threshold. However, any decision to reduce the threshold would be subject to further consultation and that would include an assessment as to the impact of any reduction.

- 4.6 Every charity would be directly monitored by the Commission, the organisation which has the best understanding of and greatest expertise in charity law and which has significant powers of investigation, intervention and advice giving. There would be no need to train Responsible Bodies in order to monitor charities' compliance with charity law or to monitor the Bodies in order to ensure that they had undertaken their role effectively. Regulation by the Commission would provide independent, proportionate regulation, whereas Responsible Bodies would have a relationship with the charities concerned and would not be independent from them.
- 4.7 Registration with the Commission would provide the excepted charities with a registered charity number which would assist them in obtaining funding and tax relief. A number of the excepted charities reported that they currently encounter difficulties with organisations that are not familiar with the concept of excepted charities.
- 4.8 Excepted charities are currently able to seek advice and guidance from the Commission but once they were registered the role would be more formalised. The Commission's advice and guidance helps charities to operate in accordance with charity law and standards of best practice. That applies not only in a general sense but also in particular cases where Commission assistance - often involving the use of their formal powers - can help charities in many ways. Charities would receive regular newsletters from the Commission which would increase awareness of developments in the wider charity sector.
- 4.9 The Responsible Body (Option 2) approach would not remove from the Commission their legal responsibility for unregistered charities. They would remain within the Commission's jurisdiction and subject to the full range of its powers. The Review suggested that a Responsible Body would have to refer to the Commission any cases which were particularly difficult or complex.

3 Paragraph 7.89 of Strategy Unit Review "Private Action, Public Benefit".

4 Shown by the responses to the Strategy Unit Review.

5. EQUITY AND FAIRNESS

- 5.1 The objective of Option 3 is to create a fair and consistent system of registration and independent regulation for all charities. Under Option 3 all charities would be placed on a 'level playing field' in terms of the independent monitoring arrangements to which they are subject and the levels of accountability and transparency expected of them (subject to the interim higher registration threshold).
- 5.2 For the purposes of equity and fairness if Option 2 was adopted it should be considered in relation to other areas of the charitable sector. That would impact on the accountability and transparency of the sector as a whole as it might result in numerous lists of charities being monitored by numerous Responsible Bodies.

6. BUSINESS SECTORS AFFECTED

- 6.1 The registration of the excepted charities would impact primarily on the charitable sector.

7. COSTS

- 7.1 We have tried to estimate the costs to charities and the Commission of each of the 3 options put forward. We are handicapped, however, by a lack of information and the costing remains more than somewhat speculative. The major gaps in our knowledge are set out below.
- We do not know the extent to which excepted charities currently comply with charity law and there is no easy or obvious way to obtain the information. We are aware, however, that some groups of excepted charities might not be following the charity SORP.
 - We do not know the exact number of excepted charities which would have to be registered but it will be significant. There is a possibility that some of them would group a number of charities together and so limit the number of actual registrations.
 - We do not know how often the Commission may be called upon to intervene in the affairs of a charity where there is cause for concern and how protracted and complex such intervention might be. There is no reason to think that the Commission will have to intervene in the affairs of an excepted charity any more than in those they currently register. The Government recognises that the Commission currently has the power to investigate excepted charities. However, the Commission estimate that they have dealt with only a handful of such cases. That is to be expected. The absence of a mechanism to monitor the excepted charities means that the Commission would not necessarily be aware when problems have arisen.

- 7.2 **Option 1** – retaining the status quo.
- 7.2.1 That would generate no obvious costs to charities or the Commission. The likely cost would be to public confidence in charities and in terms of the level of dissatisfaction of registered charities who are aggrieved that excepted charities are not subject to the same monitoring mechanisms as other charities but enjoy the same fiscal benefits.
- 7.3 **Option 2** – adopt the Responsible Body approach.
- 7.3.1 The Responsible Body approach would not be appropriate for those of the currently excepted charities which do not have a hierarchical structure. The idea of the Responsible Body would not be compatible with the ethos of those organisations. If other organisations wanted to work towards a Responsible Body approach it would involve alterations to their working practices in order to establish an effective Responsible Body structure. We would be unable to quantify the costs of that for the charities as it would vary from one group of charities to another. That also goes beyond the intention of the original review.
- 7.3.2 There is a risk in the operation of the Responsible Body approach that the existing relationship between a potential Responsible Body and the charities for which it was responsible might prevent it from taking a firm line where problems arose.
- 7.3.3 In order for the operation of the Responsible Body approach to be effective it would be important for the Commission to have an active relationship with each Responsible Body. The legislation at present does not allow the Secretary of State or the Commission to control Responsible Bodies. The only sanction available, if a Responsible Body was not carrying out its functions, would be to require all the charities concerned to register with the Commission. The Review concluded that while the details of the arrangements between the Commission and the Responsible Body might vary from one Responsible Body to another according to the nature of the charities involved. The relationship might include the following provisions:
- asking Responsible Bodies to prepare an annual report to the Commission;
 - Responsible Bodies being subject to a specially designed monitoring process by the Commission; and/or
 - sampling by the Commission – requesting a selection of charities to submit their accounts or complete some other form of return to help assess the performance of their Responsible Body.
- 7.3.4 We have no way of calculating the costs to the Commission or the charities concerned in adopting the Responsible Body approach. For that approach to be effective it should be customised to meet the

needs of individual groups of charities and the amount of work required by each group of charities would depend on the relationships already in existence. The costs to Commission would depend on the number of Responsible Bodies created.

7.3.5 As explained above (4.4) the vast majority of respondents to the Review did not support the Responsible Body approach. The Review recognised that there are also wider issues to be considered. If the Responsible Body approach was introduced there would be no principled justification for restricting its use to the currently excepted charities. Indeed for the purposes of equity it should be extended to other charities. If that were the case there would be a danger of a number of charities adopting the Responsible Body approach and a large number of charities being removed from the register of charities. One of the purposes of the Commission's register is to offer the public a reliable central record of charities in England and Wales. It should be the obvious place to look for anyone trying to obtain information about charities or a particular charity. If there were a large number of Responsible Bodies, each effectively running its own register, there is a risk that the public might end up with no clear idea of where to look for details of a charity.

7.3.6 The Government recognises that there might be ways of overcoming the difficulties outlined above (7.3.5) but does not believe that they would be effective. For example, one possible solution would be for each Responsible Body to clearly define the types of charities it retained information about and for there to be access to the Responsible Bodies' lists via links on the Commission's website. However, that would not be as effective as registration with the Commission where members of the public are able to access and search the central record of charities in England and Wales. Its effectiveness would also be dependent on members of the public linking the charity they wish to find out about with the relevant Responsible Body. The number of Responsible Bodies could also be restricted but on what basis. Any restrictions might be regarded as arbitrary and potentially unfair.

7.4 **Option 3** – all excepted charities register with the Commission subject to an initial registration threshold of £100,000 per annum.

Costs to the currently excepted charities

7.4.1 We have been unable to come up with substantiated figures which would set out the costs, either financial or in terms of time, to individual excepted charities. To date there has been no research done on how long it takes charities to gather the information required by the Commission. Under charity law excepted charities are required to produce accounts in accordance with the provisions of the SORP in the same way as registered charities and they are required to follow the same requirements in terms of independent examination and audit.

7.4.2 The Commission has produced figures on the costs to charities of filling out their Annual Return form and these are summarised in the following table. The figures contained in the table are taken from the Compliance Cost Assessment which accompanied the Charities (Annual Return) Regulations 1997. The figures have been adjusted for inflation. The Standard Information Return, a measure which will affect charities of over £1 million annual income, has not been taken into account. That has yet to be fully developed by the Commission but it is expected that it will not increase the costs for the large charities in compiling information required by the Commission by more than 25%. There would be no more than a handful of currently excepted charities with income at that level.

7.4.3 Excepted charities with incomes above the £100,000 threshold only would be required to register with the Commission. Therefore, the costs to the estimated 5,000 excepted charities required to register in completing the Commission's annual return would be £31.75 in the first year and £23.80 in the subsequent years.

| Size of Charity | First Year Costs | Subsequent Year Costs |
|--|-------------------------|------------------------------|
| Light touch charities (under £10,000 annual income) | £4.16 | £1.80 |
| Smaller Charities (Simple accounts): income between £10,000 – £100,000 | £8.33 | £6.00 |
| Smaller Charities (Accrual accounts): £10,00 - £100,000 | £14.60 | £12.20 |
| Larger Charities: income above £100,000. | £31.75 | £23.80 |

7.4.4 The Commission estimate that it would take about 10 minutes for charities only updating the public record, half-an-hour for other charities up to the £250k threshold and just over three-quarters of an hour for charities exceeding that threshold.

7.4.5 There would also be the additional costs for the charities in terms of submitting the relevant documentation to the Commission. However, once registered that should be no more than the cost of posting the documentation annually to the Commission.

7.4.6 The Government recognises, however, that there is a risk for the currently excepted charities in terms of the perceptions of volunteers at the local level. The Government is aware, for example, of difficulties faced by religious denominations in recruiting volunteers to become trustees and, in particular, to take on the role of Church Treasurer. The denominations are concerned that the added burden of regulation by the Commission would act as a further deterrent to volunteers. While

the Government recognises those concerns it believes that fears around the burden of regulation by the Commission are based on mistaken perceptions rather than the reality of the situation. Once registered as a charity the trustees would be required to prepare and submit an annual return to the Commission as well as a trustee update form. They would also be required to submit annual accounts and reports, which they are currently required to prepare to comply with the accounting regulations.

- 7.4.7 We understand from our discussions with some of the currently excepted religious denominations that some of the churches have trust deeds which would not comply with modern standards of governance, which the Commission would expect a charity to have in place. One of the denominations had undertaken a pilot study of 50 churches. They submitted the trust deeds for those churches for legal advice and asked for a quotation in terms of the work that would have to be undertaken to make those deeds compliant with the Commission's model trusts. The quotation they received was for £250,000 for those 50 churches. However, another denomination had taken action to discuss matters with the Commission direct and reported that they would be working with them to develop model trust documentation which could be adopted by member churches. While the process of registration with the Commission would no doubt highlight any deficiencies in a charity's governing document, that document would be deficient whether the charities concerned were required to register or not.

Costs to the Commission

- 7.4.8 The following table sets out theoretical adjusted costs should the Commission register and monitor all the currently excepted charities with incomes over £100,000 per annum. However, the Government recognises that even with the initial threshold of £100,000 income per annum the Commission would have to register and regulate a substantial number of charities. A breakdown of the estimated charities involved is at Annex A. An explanation of the figures below is at Annex D.

| Area of work undertaken | Costs incurred |
|--|---|
| Registration (one-off cost) | £500,000 |
| Exercise of Legal Authority and giving of guidance | £130,000 |
| Evaluations and Investigations | £27,533 |
| Monitoring | £10,833 |
| Referrals to legal | £16,111 |
| Referrals to financial regulation | £12,611 |
| Total costs (+/- 30% cost incurred to allow for inaccuracies) | One-off costs: £350,000–£650,000 Continuing costs: £137,962–£256,214 |

8. COMPETITION ASSESSMENT:

- 8.1 The proposals would impact on a wide variety of charitable organisations including religious denominations and armed forces charities.
- 8.2 Whilst the activities of some charities may mirror those of non-charitable organisations in the business world, there are significant differences in the use charities may make of their resources. Charity law prescribes that their resources may be used only in furtherance of their charitable objects. They may undertake trading which is directly connected to, or is ancillary to, furthering their charitable purposes. However, if charities wish to undertake substantial trading which is not in direct pursuit of its purposes, it must set up a separate trading company to do so. Neither the proposed changes to excepted charities nor any other proposals in the draft Charities Bill will in anyway affect that position.
- 8.3 To the extent that any charity might be said to compete with another, for example, for public funds, the impact of these proposals may in fact aid competition. It could be argued that excepted charities at present have an advantage over registered charities in that they are not at present subject to monitoring to check whether they are complying with charity law.
- 8.4 These proposals should not require a detailed assessment of the competitive impact, particularly in that they do not change the existing requirement that excepted charities must comply with charity law. Nor do they affect the legislation concerning trading.

9. SMALL FIRMS' IMPACT TEST

- 9.1 The proposals to change the legislation governing excepted charities would not impact on small businesses. The views of the Small Business Service had been sought in relation to the changes to the exempt charities, which are relevant here. They were concerned that the more onerous accounting requirement for charities compared with those applying to small businesses might prove a burden. However, the Small Business Service has accepted that stakeholders legitimately have a greater desire for more information about charities than they do about small businesses.

10. ENFORCEMENTS AND SANCTIONS

- 10.1 The Commission already possesses powers of intervention and enforcement in respect of excepted charities and the adoption of Option 3 would enable them to monitor those charities on a regular basis. Where irregularities were identified the Commission would deal with them to ensure good governance and the correct application of charitable assets.
- 10.2 Criminal sanctions could be applied in respect of breaches of charity law by excepted charities but no new offences are created by these proposals. The Government recognises that there is a potential risk here in that without sanctions for failing to register there would be no deterrent to the currently excepted charities from remaining unregistered. However, the Government does not believe that specific sanctions should be imposed at this stage and indeed there is no specific sanction currently imposed on charities required to register at the general registration threshold and which fail to do so. That does not mean that there is no action which the Commission could take in the circumstances where a charity does not register with them even though they are required to do so. For example, it is a duty of the trustees to apply for registration and the Commission could make an order requiring them to register if they refuse to do so. Having done so, continued refusal to register could be treated in the same way as disobedience of an order of the High Court.
- 10.3 The Charity Commission would continue to bid for funding direct from the Treasury to cover the additional duties arising from the proposals.

11. MONITORING AND REVIEW

- 11.1 The Government might wish to review those measures after a period of possibly five years. In particular the £100,000 interim registration threshold should be reviewed with a view to lowering it towards the general registration threshold. Decisions about lowering the threshold would be based on the capacity of the Commission and the charities concerned to deal with it. Any decision to lower the threshold would be subject to further consultation at which stage the impact of lowering the threshold would be considered in detail.

12. CONSULTATION

- 12.1 The consultation on the recommendations contained in “Private Action, Public Benefit” was carried out from 25 September to 31 December 2002. 1,087 written responses were received. An analysis of the respondents is contained in ANNEX A of “Charities and Not-for-Profits: A Modern legal Framework”, the Government’s response to the consultation.
- 12.2 A summary of the responses to the consultation received on the matter of the excepted charities is at 2.1.3. In order to address the concerns of the excepted charities Home Office officials have taken action to contact and meet with the majority of the groups involved. As explained above, the Commission has also taken action to set up a team to deal specifically with the registration of the excepted charities. The excepted charities have been advised to meet with the Commission to discuss any practical concerns they might have about the process of registration.

13. SUMMARY AND RECOMMENDATION

13.1 Our clear preference is for Option 3. It best meets the objective of providing an effective mechanism for monitoring the compliance of excepted charities with charity law.

| Option | Benefits | Costs |
|--|---|--|
| 1. Do nothing | <p>Some:</p> <ul style="list-style-type: none"> • No additional costs for the Commission or the charities concerned. • No longer a principled justification for the current exceptions regime which has its roots ion the 1960s. | <ul style="list-style-type: none"> • A large number of charities would be outside the regulatory and monitoring regimes imposed on the majority of the charitable sector. • Excepted charities would continue to enjoy the fiscal benefits awarded to the charitable sector but without monitoring to check their compliance with charity law. |
| 2. Adopt the Responsible Body approach | <p>Limited.</p> <ul style="list-style-type: none"> • In theory it would meet the purposes of registration with the Commission but without the added burden of registration and regulation by them. • Responsible Bodies would provide a more flexible approach to the support and regulation of the specific charities they are concerned with, in that their approach could be tailored to meet issues specific to them. | <ul style="list-style-type: none"> • Responsible Body approach would not be acceptable for all of the currently excepted charities. • For the purposes of equity the Responsible Body approach should be extended to all charities. That might result in numerous charities being removed from the central register of charities and would cause confusion. • There is a risk that Responsible Bodies would be reluctant to take action where concerns had been identified with a charity. It would not be the same as independent monitoring. • The Commission would be required to monitor the Responsible Bodies to ensure consistency in approach. |

| Option | Benefits | Costs |
|---|--|---|
| <p>3. All excepted charities register with the Commission subject to a higher initial registration threshold of £100,000 per annum.</p> | <ul style="list-style-type: none"> • Ensures consistency of support and regulation across the excepted charities. • Ensures those in receipt of fiscal benefits are monitored in terms of their compliance with charity law. • Increased public confidence in all charities. • Provides a fair and equitable approach to registration. | <ul style="list-style-type: none"> • Initial cost to the charities and the Commission of registration (details at section 7). Costs to the Commission of registration £350,000 to £650,000. • Increased costs for the charities of preparing annual returns and submitting other documentation to the Commission (details section 7). Costs of completing the annual return £31.75 in the first year and £23.80 in subsequent years. • Increased costs to the Commission of annual monitoring and regulation (details section 7). Annual costs to the Commission £137,962 to £256,214. |

ANNEX A:

Number of Excepted Charities affected by the new measures

| Organisation | No required to register at £100k threshold |
|---|--|
| Armed Forces | 1,000 – 2,000 |
| Baptist Union of Great Britain | 200 - 300 (rough estimate by the Commission July 2003) |
| British and Foreign Unitarian Association | None |
| Church in Wales | 55 |
| Church of England | 1,800 - 2,000 |
| Fellowship of Independent Evangelical | Less than 75 (estimated) |
| Fellowships of Churches in Christ | None |
| Grace Baptist Churches | 5 |
| Guide Association | No information received |
| Methodist Church | 650 |
| Presbyterian Church of Wales | 4/5 |
| Religious Society of Friends | Limited number required to register |
| Roman Catholic | No information received |
| Scout Association | Unable to estimate (no central figures) |
| Union of Welsh Independents | Unable to estimate (no central figures). |
| United Reformed Church | No information received |
| University of Buckingham | 1 |
| Wesleyan Reform Union | None |

That equates to approximately 3,790 to 5,091 charities being required to register with the Commission.

The provisions in the draft Charities Bill in relation to excepted charities will not impact directly on charitable trusts for the advancement of religion conditional on the upkeep of graves. A charity, which has the use or occupation of land, currently has to register with the Commission regardless of its income level. That will cease to apply under the draft Bill. The requirement to register will be determined solely by the income level. The exception operated to except charitable trusts for the advancement of religion

conditional on the upkeep of graves with incomes below the general registration threshold from the requirement to register, which would currently be required to register because the charity used or occupied land.

The position in terms of voluntary and foundation schools is less clear. The School Standards and Framework Act 1998 excepts any foundation established otherwise than under that Act, which has no property other than the premises of any school or schools falling within subsection (1)(a) of the Act, (and is not an exempt charity), from the requirement to register with the Commission. Charities excepted from the requirement to register under this section will not be affected by the changes to the exceptions regime in the draft Charities Bill, as the general income registration threshold for charities would have applied to them in any event.

However, it is not clear whether there are any charities which are considered to be excepted from the requirement to register with the Commission by virtue of the Charities (Exception of Voluntary Schools from Registration) Regulations 1960. Those regulations excepted all voluntary schools, being charities and having no permanent endowment other than the premises of, or connected with, the school and it applied to schools within the meaning of Education Acts between 1944 to 1959.

For the purposes of the RIA we have used a round figure of 5,000 charities. It would seem reasonable to use a figure near the maximum given that we do not have figures for a number of the currently excepted charities.

ANNEX B:

Current Requirements of Registered and Excepted Charities

| Aspect of Regulation | Registered Charities | Excepted Charities |
|---|--|--|
| Required to register (through CC's gateway procedure). Enforced by CC. | Yes – unless income is below £1,000 | No (although they can register voluntarily if CC agrees). |
| Registered charity status must appear on charity documents (criminal offence for non-compliance). Enforced by CC/public vigilance and complaint to the Police. | Yes – but only if income above £10,000. | No – unless voluntarily registered and income above £10,000. |
| CC can order a change of charity's name if the name is too similar to that of another charity. | Yes | No – unless voluntarily registered |
| CC can investigate and apply statutory remedies if resources at risk or misconduct identified. | Yes | Yes |
| Trustees have a duty to apply to CC for a scheme if a charity's purposes become inoperable. | Yes | Yes |
| CC consent needed if charity wants to dispose of land for less than best price. | Yes, subject to section 36(9) | Yes, subject to section 36(9) |
| Trustees, staff etc entitled to seek advice or information from CC on any matter affecting their charity. | Yes | Yes |
| Trustees entitled to seek formal written advice from CC – trustees protected from liability if they follow that advice. | Yes | Yes |
| Required to prepare accounts: <ul style="list-style-type: none"> • receipts and payments accounts if income under £100,000 • accruals accounts in prescribed form following SORP if income over £100,000 Enforced by CC. | Yes, (charitable companies always have to prepare accruals accounts conforming with the requirements of company law) | Yes, (charitable companies always have to prepare accruals accounts conforming with the requirements of company law) |
| Required to prepare an annual report – Enforced by CC. | Yes | No (unless voluntarily registered, or required by CC to prepare a report). |

ANNEX B continued

| Aspect of Regulation | Registered Charities | Excepted Charities |
|--|--|--|
| <p>Required to make annual return in form prescribed by the CC, consisting of:</p> <ol style="list-style-type: none"> 1. information to update register entry 2. financial and other information to allow CC to monitor year's activities. <p>(Criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.</p> | <p>Yes – 1 required regardless of size and 2 required only if income or expenditure over £10,000.</p> | <p>No (unless voluntarily registered).</p> |
| <p>Required to have accounts:</p> <ul style="list-style-type: none"> • examined by an independent examiner (i.e. a competent lay person if income under £250,000 • professionally audited if income over £250,000. <p>Enforced by CC.</p> | <p>Yes (unless income or expenditure £10,000 or less – no examination required). The rules for charitable companies are different.</p> | <p>Yes (unless income or expenditure £10,000 or less – no examination required). The rules for charitable companies are different.</p> |
| <p>Required to submit accounts annually to CC within 10 mths of year end (criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.</p> | <p>Yes</p> | <p>No (unless 10 10 registered voluntarily or required to submit them by CC).</p> |
| <p>Required to provide latest accounts to member of public on request (criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.</p> | <p>Yes</p> | <p>Yes</p> |
| <p>Trustees subject to automatic disqualification from office on specified statutory grounds - e.g. bankruptcy, conviction for an offence of dishonesty etc. (Criminal offence to act as a trustee while being a disqualified bankrupt). Enforced by CC/complaint to the Police.</p> | <p>Yes</p> | <p>Yes</p> |
| <p>Simplified system allowing trustees to change purposes of charity, or wind up charity and transfer assets to another charity. Overseen by CC.</p> | <p>Yes – but only for charities which are not companies and which have an annual income of £5,000 or less</p> | <p>Yes - but only for charities which are not companies and which have an annual income of £5,000 or less</p> |
| <p>Trustees of an unincorporated charity can turn themselves into a corporate body of trustees with their own legal personality (but without altering the personality of the charity). Overseen by CC.</p> | <p>Yes</p> | <p>Yes</p> |
| <p>CC consent needed before trustees can start charity legal proceedings.</p> | <p>Yes</p> | <p>Yes</p> |

ANNEX B continued

| Aspect of Regulation | Registered Charities | Excepted Charities |
|--|---|---|
| Criminal offence knowingly to give the CC false information, to alter or destroy documents etc. Enforced by CC/complaint to the Police. | Yes – applies to anyone in or out of the charity. | Yes - applies to anyone in or out of the charity. |
| Contact in specified form required between charity and any professional fundraiser or commercial participator working for it. ⁵ Enforced by aggrieved charity through the civil courts. | Yes | Yes |
| Charity has power to take out injunction to stop objectionable fundraising in its name ¹ . | Yes | Yes |
| Professional fundraisers asking for money for a charity must state that they are being paid and explain how payment calculated (criminal offence for non-compliance) ¹ . Enforced by complaint to the Police. | Yes | Yes |
| Licences or exemption orders required before a charity can make a public collection ⁶ . Enforced by local authorities/Police. | Yes | Yes |
| CC has power to investigate any charity established in Scotland which is controlled wholly mainly from England and Wales - reciprocal arrangements exist in Scottish charity law. | Yes | Yes |

5 These requirements/powers apply to benevolent and philanthropic organisations as they apply to charities.

6 This is a requirement under Part III of the Charities Act 1992 which has never been brought into force. Existing similar legislation on street/house to house collections continues to apply.

ANNEX C: Criteria for an effective Responsible Body

- (A) Active monitoring, comparable with the Charity Commission's, to identify areas in which help and guidance might be needed.
- (B) Effective monitoring to prevent problems or to sort them out.
- (C) Clear minimum standards, which would support the Charity Commission's guidance on the hallmarks of a well-run charity.
- (D) Provision of an appropriate degree of public accountability. The detail would depend on the degree of public interest in the charities covered by the Responsible Body but possibilities include:
 - i) some form of contact list readily available to the public, such as a Yearbook or internet site, listing all the charities covered by the Responsible Body; or
 - ii) providing certain details that would be accessible via the Charity Commission. That might range from details of specific charities to simply a means of directing queries to the Responsible Body.
- (E) The Responsible Body should be willing to co-operate with the Commission. That would, for example, cover agreement to circulate Charity Commission guidance or advice to charities.

ANNEX D: Commission Costs in RIA on the proposal to register excepted charities subject to an initial registration threshold of £100,000 pa.

To begin with some notes on context and underlying assumptions.

Numbers – a round figure of 5,000 excepted charities was used. This seemed a reasonable figure leaving aside the uncertainties of numbers outlined at Annex A.

Ranges – having calculated a figure it was used as the mid point of a range, plus/minus 30% to allow for the many variables and uncertainties.

Costs – the basic unit costs and number of actions upon which the figures are based are taken from the Commission targets for 2003/4.

There are two types of costs. The estimated costs of registration would be a one-off cost (possibly spread over several years). The other costs would occur annually.

Option 1 – being no change - hasn't been costed.

Option 2 – due to the high level of uncertainty around the number of charities that might wish to adopt the Responsible Body structure and the level of work required in order to change structures it would be impossible to cost this option with any degree of accuracy. The authors of the 2000 Review believed that the Responsible Body approach would operate for those groups of charities that already had an umbrella body taking on a support and regulation role only. Other excepted charities would be required to register.

Option 3 – currently excepted charities register with the Charity Commission subject to an initial threshold of £100,000 income per annum.

Option 3 has been looked at from two angles:

Simple Costs. It has been assumed that, proportionately, currently excepted charities that have to register will produce the same amount of work as other charities and worked out how much this would cost the Commission.

Adjusting the Commission's Proportion and Risk Thresholds ("Adjusted Costs")

In some areas there is also the option of reducing additional costs by adjusting the Commission's approach to regulatory and support work (very broadly speaking, spread the Commission's resources more thinly).

The registration costs have not been adjusted here – if 5,000 charities become registrable for the first time the Charity Commission is obliged to register them.

In other areas there is more flexibility. The Commission take a proportionate, risk based approach to their regulatory and advisory work, concentrating resources on areas of greater risk.

Risk assessments could be adjusted to contain elements of the additional work within current resources. For example, the Commission raises the criteria for opening a full investigation and/or for keeping investigations open.

The Commission could do this to varying degrees. For illustrative purposes the effect of reducing the impact on areas of flexibility by 50% has been shown.

Having noted that this approach could reduce additional costs to the Commission, it would also *increase the risks* of charitable assets being lost/misapplied, charities getting into difficulties and so on. More generally these increased risks for individual charities would also increase the risk of public confidence being undermined.

It should also be noted that, while the Commission is generally able to take operational decisions along these lines, it would be dependent on acceptance by bodies responsible for the external scrutiny of the Commission. For example, if the NAO criticised the Commission for the increased risks inherent in this approach, it could not be sustained.

Benefits/Balance

Two further points:

The costs of registering currently excepted charities may well be less than the longer term savings that result from raising the general registration threshold from £1,000 to £5,000.

The changes are not about regulation for its own sake. Charities benefit in a number of ways from being fully within the Commission's jurisdiction (registered or not). The Commission's investigative and protective powers can put charities back on a proper footing and ensure that charitable assets are protected and properly applied. Access to the Commission's advisory powers and guidance will benefit charities in a variety of ways.

Calculations

Registration

A round figure of £100 pounds per registration has been used. This is based on the Commission's target figure for staff cost per registration, adjusted to reflect the assumption that there will be little doubt about the charitable status of most of the currently excepted charities, so reducing the number of rejected/not proceeded with applications arising from the proposals.

Cost to Commission

Option 3: 5,000 charities would be required to register. Therefore, 5,000 x £100 = £500,000.

This is the same for both Simple Costs and Adjusted Costs.

Annual Costs

Assumptions:

Costs of annual return process and mailing costs of adding to the register are taken to be covered by the +30% element of activities that arise from scrutiny (evaluations and so on).

For adjusted costs it has been assumed that the exercise of legal authority will remain the same but reduced other figures by 50%.

Simple Costs

Costs in the following areas of Option 3:

Exercise of Legal Authority and giving of guidance – £185,556

Evaluations and Investigations – £55,056

Monitoring – £21,611

Referrals to Legal – £32,222

Referrals to Financial Regulation – £25,222

Total – £319,667

Adjusted Costs

Costs in the following areas of Option 3:

Exercise of Legal Authority and giving of guidance – £130,000

Evaluations and Investigations – £27,533

Monitoring – £10,833

Referrals to Legal – £16,111

Referrals to Financial Regulation – £12,611

Total – £197,088

Conclusion

The above would give us the following costs for Option 3.

A. Simple Costs

One-Off Registration Costs: – A figure of £500,000 leading to a range of £350,000 - £650,000 (+/- 30%).

Continuing Annual Costs: – A figure of £319,667 leading to a range of £223,767 - £415,567 (+/- 30%).

B. Adjusted Costs

One-Off Registration Costs: – A figure of £500,000 leading to a range of £350,000 - £650,000 (+/- 30%).

Continuing Annual Costs: – £197,088 leading to a range of £137,962 - £256,214 (+/- 30%).



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