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STATUTORY INSTRUMENTS

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**2010 No. 503 (C. 36)**

**CHARITIES, ENGLAND AND WALES**

**The Charities Act 2006 (Commencement No.7, Transitional and Transitory Provisions and Savings) Order 2010**

Made - - - - 27th February 2010

The Minister for the Cabinet Office makes the following Order in exercise of the powers conferred by sections 78(6) and 79(2) and (3) of the Charities Act 2006<sup>(1)</sup>:

**Citation and interpretation**

1.—(1) This Order may be cited as the Charities Act 2006 (Commencement No. 7, Transitional and Transitory Provisions and Savings) Order 2010.

(2) In this Order—

“the 2006 Act” means the Charities Act 2006;

“excluded fund” means—

- (a) an Investment Fund or Deposit Fund within the meaning of the Church Funds Investment Measure 1958<sup>(2)</sup>; or
- (b) an investment or deposit fund within the meaning of the Methodist Church Funds Act 1960<sup>(3)</sup>.

“specified exempt charity” means an exempt charity—

- (a) included in paragraph (a) of Schedule 2 to the 1993 Act<sup>(4)</sup> other than an excluded fund;
- (b) included in paragraph (b), (c), (h), (i), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) or (za) of that Schedule to that Act; or

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(1) 2006 c.50.

(2) 1958 No.1. The 1958 Measure was amended by the Charities Act 1960 (c.58), Schedule 7; by S.I. 1964/490; by the Church of England (Miscellaneous Provisions) Measure 1995 (1995 No.2), the Schedule; by the Church of England (Miscellaneous Provisions) Measure 2000 (2000 No.1), section 14; by the Trustee Act 2000 (c.29), Schedule 2, paragraph 52, and by the Charities Act 2006, Schedule 8, paragraph 40 (paragraph 40 of Schedule 8 to the 2006 Act is not yet in force).

(3) 1960 c.xxiii.

(4) Section 78 of the Charities Act 2006 defines “the 1993 Act” as “the Charities Act 1993 (c.10). Schedule 2 to the 1993 Act was amended by the National Lottery Act 1993 (c.39), Schedule 5, paragraph 12; by the Education Act 1996 (c.56), Schedule 38; by the Education Act 1997 (c.44), Schedule 7, paragraph 7; by the Teaching and Higher Education Act 1998 (c.30), Schedule 4; by the School Standards and Framework Act 1998 (c.31), Schedule 31; by S.I. 2005/3239, Schedule 1, paragraph 4; by the National Lottery Act 2006 (c.23), Schedule 3; by the Charities Act 2006 (c.50), section 11 and Schedule 8, paragraph 177 (not all of the amendments made by section 11 of the Charities Act 2006 are in force); by the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), Schedule 12, paragraph 8 (the amendments made by the 2009 Act are not yet in force) and by the Charities Act 2006 (Changes in Exempt Charities) Order 2010, article 2 (S.I. 2010/500).

- (c) falling within paragraph (w) of that Schedule to that Act and administered by or on behalf of an institution included—
  - (i) in paragraph (a) of that Schedule other than an excluded fund; or
  - (ii) in paragraph (b), (c), (h), (i) or (k) to (v) of that Schedule;and references to “specified exempt charities” are to be read accordingly.

### **Commencement**

2. Subject to the following provisions of this Order, the day appointed for the commencement of the provisions of the 2006 Act specified in Column 1 of Schedule 1 is 1st June 2010 except that—
  - (a) where a particular purpose is specified in Column 3 of that Schedule in relation to any such provision, the relevant provision comes into force on that date for that particular purpose only;
  - (b) where any limitation is specified in Column 3 of that Schedule in relation to any such provision, the relevant provision comes into force on that date subject to the specified limitation.

### **Transitional and transitory provisions and savings**

3. Schedule 2 (which contains transitional and transitory provisions and savings) has effect.

27th February 2010

*Angela Smith*  
Minister of State  
Cabinet Office

## SCHEDULE 1

Article 2

## PROVISIONS OF THE 2006 ACT COMING INTO FORCE ON 1ST JUNE 2010

<i>Provision(s) of the 2006 Act</i>	<i>Subject matter of provisions</i>	<i>Particular purpose or other limitation</i>
Section 11(1)	Changes in exempt charities	In so far as it relates to subsections (2), (3), (6) and (7) of and, for the purposes for which it is commenced by article 2 of this Order, subsection (9) of section 11 of the 2006 Act.
Section 11(2), (3), (6) and (7)	Changes in exempt charities	
Section 11(9)	Changes in exempt charities	In so far as it inserts paragraph (c) of Note 1 and Note 2 at the end of Schedule 2 to the 1993 Act.
Section 12	Increased regulation of exempt charities under 1993 Act	In so far as it relates to the specified exempt charities.
Section 13(1) to (3)	General duty of principal regulator in relation to an exempt charity	In so far as they relate to the specified exempt charities.
Section 14	Commission to consult principal regulator before exercising powers in relation to exempt charity	In so far as it relates to the specified exempt charities.
Section 29(2)	Duty of auditor etc. of charity which is not a company to report matters to the Commission	In so far as it relates to the specified exempt charities.
Section 75(1) to (3)	Amendments, repeals, revocations and transitional provisions	In so far as they relate to the provisions of Schedules 8, 9 and 10 commenced by article 2 of this Order.
Schedule 5	Exempt charities: increased regulation under 1993 Act	In so far as it relates to the specified exempt charities.
Schedule 8, paragraph 104	Minor and consequential amendments	In so far as it inserts a new section 10B into the 1993 Act or refers to section 10B for the purpose of enabling disclosure of information to and by principal regulators of the specified exempt charities.
Schedule 8, paragraph 139(3)	Minor and consequential amendments	For all remaining purposes.

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<i>Provision(s) of the 2006 Act</i>	<i>Subject matter of provisions</i>	<i>Particular purpose or other limitation</i>
Schedule 8, paragraph 176	Minor and consequential amendments	In so far as it refers to section 10B of the 1993 Act for the purposes for which paragraph 104 of Schedule 8 to the 2006 Act has been commenced by article 2 of this Order.
Schedule 9	Repeals and revocations	In so far as they relate to the specified exempt charities the entries relating to sections 6(9), 9(4), 16(4)(c) and (5), 17(7), 28(10), 33(2) and (7), and 73(4) of the 1993 Act.
Schedule 9	Repeals and revocations	The entries relating to paragraphs (b) and (x) of Schedule 2 to the 1993 Act.
Schedule 10, paragraph 8	Transitional provisions and savings	In so far as it relates to the amendments made by section 29(2) of the 2006 Act (as commenced by article 2 of this Order) and the duty imposed by new section 46A(2) of the 1993 Act in relation to the specified exempt charities.

## SCHEDULE 2

Article 3

### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

## PART 1

### ACCOUNTS AND REPORTS

#### **Accounts to be prepared and retained by charities ceasing to be exempt in respect of current financial years**

1. Subsections (1) and (2) of section 46 of the 1993 Act continue to apply to a section 11 charity in relation to—

- (a) the current financial year; and
- (b) the books of accounts and statements of account prepared in respect of any financial year of the charity which began before the appointed day.

### **Charity Commission not to request annual reports from charities ceasing to be exempt**

2. The Commission may not require, under section 46(5) of the 1993 Act, the charity trustees of a section 11 charity to prepare an annual report in respect of the current financial year of the charity.

### **Requests for accounts made to charities ceasing to be exempt**

3.—(1) Where a qualifying request is made, the accounts to be treated as the most recent accounts of a section 11 charity are the accounts specified in sub-paragraph (2).

(2) The specified accounts are—

- (a) the accounts of the charity most recently audited in pursuance of any statutory or other requirement; or
- (b) if its accounts were not required to be so audited, the accounts most recently prepared in respect of that charity.

(3) In this paragraph, “qualifying request” means a request made under section 47(2) of the 1993 Act for the most recent accounts of a section 11 charity at any time before—

- (a) in the case of a section 11 charity which is a company, the charity trustees of that charity have prepared an annual report under section 45 of that Act in respect of the financial year of the charity beginning immediately after the current financial year; or
- (b) in any other case, the charity trustees of that charity have prepared—
  - (i) a statement of accounts under section 42(1) of that Act; or
  - (ii) an account and statement under section 42(3) of that Act,in respect of the financial year of the charity beginning immediately after the current financial year.

### **Preparation of accounts etc. by excepted charities**

4.—(1) Subsection (3A) of section 46 of the 1993 Act<sup>(5)</sup> does not apply, before the relevant day, in relation to an exempt charity which is not a specified exempt charity.

(2) For the purposes of this paragraph—

- (a) “the relevant day” means—
  - (i) in relation to—
    - (aa) an excluded fund; or
    - (bb) an institution administered by or on behalf of such a fund and falling within paragraph (w) of Schedule 2 to the 1993 Act,  
the day appointed for the commencement of section 11(9) of the 2006 Act for the purposes of inserting paragraphs (a) and (b) of Note 1 at the end of Schedule 2 to the 1993 Act;
  - (ii) in relation to a relevant fund, the day appointed for the commencement of section 11(10) of the 2006 Act;
  - (iii) in relation to an exempt charity included in paragraph (y) of Schedule 2 to the 1993 Act, the day appointed for the commencement of section 11(8) of the 2006 Act;
  - (iv) in relation to any other exempt charity which is not a specified exempt charity, the day appointed for the commencement of section 12 of the 2006 Act in relation to that exempt charity or exempt charities of that particular description.

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(5) Section 46(3A) was inserted by paragraph 139(3) of Schedule 8 to the Charities Act 2006.

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- (b) “relevant fund” means—
- (i) a common investment fund (within the meaning of section 24 of the 1993 Act);
  - (ii) a common deposit fund (within the meaning of section 25 of that Act); or
  - (iii) other similar fund,
- which is, by virtue of subsection (8) of section 24 of that Act (or of that subsection as applied by section 24(9) or 25(2) of that Act), an exempt charity.

## PART 2

### JURISDICTION OF THE CHARITY COMMISSION AND THE COURT

#### **Inquiries under section 8 of the 1993 Act in relation to relevant charities**

5.—(1) Subject to sub-paragraphs (2) and (3), the Commission must not instigate any inquiry under section 8 of the 1993 Act (“section 8 inquiry”) on or after the appointed day—

- (a) in relation to one or more relevant charities and in respect of any period beginning before that day; or
- (b) which covers any period beginning before the appointed day and would extend to one or more relevant charities.

(2) The Commission may, if it considers it appropriate to do so, instigate a section 8 inquiry on or after the appointed day into a section 11 charity in respect of a relevant matter which it becomes aware of on or after the appointed day.

(3) The Commission may, if it considers it appropriate to do so, instigate a section 8 inquiry on or after the appointed day into a specified exempt charity in respect of a relevant matter if—

- (a) subject to sub-paragraph (4), a request is made by the principal regulator of the charity under this sub-paragraph; and
- (b) the Commission was not aware before the appointed day of the matter to which the request relates.

(4) A principal regulator may only make a request under sub-paragraph (3) in respect of a relevant matter which it becomes aware of on or after the appointed day.

(5) For the purpose of this paragraph “relevant matter” means a matter arising in relation to a charity—

- (a) before the appointed day; but
- (b) during the current financial year of that charity.

#### **Costs of a relevant charity in promoting a Bill before Parliament**

6. Where immediately before the appointed day a relevant charity was preparing or promoting a Bill in Parliament, section 17(7) of the 1993 Act does not apply in respect of any expenditure incurred by that charity on or after that day in the preparation or promotion of that Bill.

#### **Costs of a formerly exempt charity in promoting a Bill before Parliament**

7. The commencement of paragraph 5 of Schedule 5 to the 2006 Act by article 2 of this Order does not affect the operation of paragraph 11 of Schedule 2 to the Charities Act 2006 (Changes in Exempt Charities) Order 2010(6).

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(6) [S.I. 2010/500](#).

### **Ongoing charity proceedings relating to a relevant charity**

- 8.—(1) Any charity proceedings—
- (a) relating to a relevant charity; and
  - (b) taken before the appointed day,

continue on or after that day as if they had been authorised by the Commission.

(2) In this paragraph “charity proceedings” has the meaning given by section 33(8) of the 1993 Act.

### **Need for an Order under section 36 of the 1993 Act in relation to a charity ceasing to be an exempt charity**

9.—(1) Nothing in section 36 of the 1993 Act applies to a disposition of land held by or in trust for a section 11 charity to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a disposition of land held by or in trust for a section 11 charity if—

- (a) the charity trustees proposed that the relevant land be disposed of (whether by conveyance, transfer, lease or otherwise) before the appointed day; but
- (b) the relevant disposition had not been effected before that day.

### **Need for an order under section 38 of the 1993 Act in relation to a charity ceasing to be an exempt charity**

10.—(1) Nothing in section 38 of the 1993 Act applies to a mortgage of land held by or in trust for a section 11 charity to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a mortgage of land held by or in trust for a section 11 charity if the charity trustees—

- (a) proposed that the mortgage be executed before the appointed day; but
  - (b) had not executed it before that day.
- (3) For the purposes of sub-paragraph (2) it does not matter whether the mortgage—
- (a) will only have effect to secure the repayment of sums paid by way of the proposed loan or grant or discharge of a proposed obligation; or
  - (b) will also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(4) In this paragraph “mortgage” has the meaning given by section 38 of the 1993 Act.

### **Persons acting as charity trustee of or trustee for a relevant charity whilst disqualified**

11.—(1) The Commission may not make any order under section 73(4) of the 1993 Act which would require a person (“P”) to—

- (a) repay to a relevant charity the whole or part of any relevant sums received by P by way of remuneration or expenses; or
- (b) pay to the charity the whole or part of the monetary value of any relevant benefit in kind received by P.

(2) For the purposes of this paragraph—

- (a) a sum by way of remuneration or expenses or a benefit in kind received by P is a relevant sum or benefit in kind if it is received by P in connection with P’s acting as a charity trustee of or trustee for the relevant charity at any time—

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- (i) before the appointed day; and
- (ii) when P was disqualified by section 72 of the 1993 Act for acting as such a trustee;
- (b) it does not matter whether—
  - (i) the sums received by P by way of remuneration or expenses are, or
  - (ii) the benefit in kind received by P is,received by P before, on or after the appointed day.

### **Effect of changes to exempt charity status**

**12.**—(1) The commencement of subsections (3), (7) and, for the purposes specified in Schedule 1, (9) of section 11 of the 2006 Act by this Order—

- (a) does not affect—
    - (i) any proceedings brought in any court or to the Tribunal in respect of any decision, order or direction made or any other matter arising before the appointed day;
    - (ii) any order made or judgment given in any proceedings mentioned in sub-paragraph (i) whether that order is made or judgment given before, on or after the appointed day;
  - (b) does not affect the validity of anything done before the appointed day on the basis that a section 11 charity was an exempt charity; and
  - (c) does not require any section 11 charity to be treated as not having been an exempt charity at any time before the appointed day.
- (2) In this paragraph “Tribunal” has the meaning given by section 97(1) of the 1993 Act<sup>(7)</sup>.

### **Exempt charity status of common deposit and common investment funds**

**13.** For the purposes of section 24(8) of the 1993 Act (including the purposes of that section as applied by section 25(2) of that Act) a section 11 charity is to be treated as if it continued to be an exempt charity.

### **Charities treated as exempt charities**

**14.**—(1) This paragraph applies for the purpose of any enactment which provides for a charity or class of charities to be treated as if it were an exempt charity.

(2) In any such enactment the reference to a charity, or class of charities, being treated as an exempt charity, or exempt charities, is to be read as a reference to that charity, or class of charities, being treated as an exempt charity which is not a specified exempt charity or, as the case may be, exempt charities which are not specified exempt charities.

## **PART 3**

### **INTERPRETATION**

**15.** In this Schedule—

- “appointed day” means 1st June 2010;
- “the Commission” means the Charity Commission;

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(7) The definition of “Tribunal” in section 97(1) of the Charities Act 1993 was amended by the Transfer of Functions of the Charity Tribunal Order 2009 (S.I. 2009/1834).



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“company” has the meaning given by section 97(1) of the 1993 Act<sup>(8)</sup>;

“current financial year” means, in relation to a charity, a financial year—

(a) which began before the appointed day; but

(b) ends on or after that day;

“financial year” has the meaning given by section 97(1) of the 1993 Act;

“relevant charity” means—

(a) a section 11 charity; or

(b) a specified exempt charity;

“section 11 charity” means a charity which ceased to be an exempt charity on the appointed day by virtue of the commencement of section 11(3), (7) or (9) of the 2006 Act by article 2 of this Order.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Charities Act 2006. The provisions specified in Schedule 1 to this Order are brought into force on 1st June 2010, subject to the transitional, transitory and savings provisions specified in article 3 and Schedule 2.

The transitional and transitory provisions and savings include:

- (a) provisions setting out the accounting and reporting requirements that will apply to the current financial year of charities which are ceasing to be exempt (paragraphs 1 to 3 of Schedule 2);
- (b) provision setting out the circumstances in which the Commission may instigate an inquiry under section 8 of the Charities Act 1993 in respect of charities which are ceasing to be exempt, or in respect of which it will now have increased powers, in relation to matters arising before 1st June 2010 (paragraph 5 of Schedule 2); and
- (c) provisions to make clear how the loss of exempt charity status or an increase in the Commission’s regulatory jurisdiction will affect matters arising before or ongoing on 1st June 2010 (paragraphs 6 to 11).

Provision is also made concerning the interpretation of references to exempt charities in existing legislation and to preserve the treatment of certain collective investment and deposit funds as exempt charities pending the commencement of section 11(10) of the Charities Act 2006.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

Various provisions of the Charities Act 2006 have been brought into force by a commencement order made before the date of this Order. In addition, various provisions are being brought into force in

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<sup>(8)</sup> The definition of “company” in section 97(1) of the 1993 Act was amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), Schedule 1, paragraph 139.

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April 2010 by a commencement order made before the date of this Order. The relevant provisions of the 2006 Act are:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.1	01.04.2008	S.I. 2008/945
s.2:		
partially	27.02.2007	S.I. 2007/309
for all remaining purposes	01.04.2008	S.I. 2008/945
s.3:		
partially	27.02.2007	S.I. 2007/309
for all remaining purposes	01.04.2008	S.I. 2008/945
s.4:		
partially	27.02.2007	S.I. 2007/309
for all remaining purposes	01.04.2008	S.I. 2008/945
s5:		
partially	01.04.2008	S.I. 2008/945
partially	01.04.2009	S.I. 2008/945, as amended by S.I. 2009/841
for all remaining purposes	01.04.2010	S.I. 2008/945, as amended by S.I. 2009/841
s.6	27.02.2007	S.I. 2007/309
s.7:		
partially	27.02.2007	S.I. 2007/309
for all remaining purposes	18.03.2008	S.I. 2008/751
s.8:		
partially	27.02.2007	S.I. 2007/309
for all remaining purposes	18.03.2008	S.I. 2008/751
s.9:		
partially	27.02.2007	S.I. 2007/309
partially	31.01.2009	S.I. 2008/3267
s.10	27.02.2007	S.I. 2007/309

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.11:	27.02.2007	S.I. 2007/309
partially	31.01.2009	S.I. 2008/3267
partially		
ss. 15 and 16	18.03.2008	S.I. 2008/751
s.17:		
	27.02.2007	S.I. 2007/309
partially		
	18.03.2008	S.I. 2008/751
for all remaining purposes		
ss. 18 to 21	18.03.2008	S.I. 2008/751
ss. 22 to 28	27.02.2007	S.I. 2007/309
s29 (partially)	01.04.2008	S.I. 2008/945
s.30:		
	27.02.2007	S.I. 2007/309
partially		
	01.04.2008	S.I. 2008/945
for all remaining purposes		
s. 31	18.03.2008	S.I. 2008/751
s.32	27.02.2007	S.I. 2007/309
s.33	01.04.2008	S.I. 2008/945
s.34 (partially)	27.02.2007	S.I. 2007/309
s.35	27.02.2007	S.I. 2007/309
ss. 36 and 37	18.03.2008	S.I. 2008/751
s.38:		
	27.02.2007	S.I. 2007/309
partially		
	01.04.2008	S.I. 2008/945
partially		
s.39	27.02.2007	S.I. 2007/309
ss. 40 and 41	18.03.2008	S.I. 2008/751
s.42	27.02.2007	S.I. 2007/309
s.43	18.03.2008	S.I. 2008/751
s.44	28.11.2007	S.I. 2007/3286
s.45 (partially)	01.04.2008	S.I. 2007/3286
s.46	01.04.2008	S.I. 2007/3286
s.47 (partially)	01.04.2008	S.I. 2007/3286
s.67	01.04.2008	S.I. 2007/3286
s.68:		

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
partially	27.02.2007	S.I. 2007/309
partially	01.04.2008	S.I. 2007/3286
s.69	27.02.2007	S.I. 2007/309
s.70	01.04.2007	S.I. 2007/309
s.71	27.02.2007	S.I. 2007/309
s.72	27.02.2007	S.I. 2007/309
s.73	31.01.2009	S.I. 2008/3267
s.75:	27.02.2007	S.I. 2007/309
partially	28.11.2007	S.I. 2007/3286
partially	18.03.2008	S.I. 2008/751
partially	01.04.2008	S.I. 2007/3286 and S.I. 2008/945
partially	31.01.2009	S.I. 2008/3267
partially	30.09.2009	S.I. 2009/2648
partially	01.04.2010	S.I. 2008/945, as amended by S.I. 2009/841
s.76	27.02.2007	S.I. 2007/309
Schedules 1 and 2	27.02.2007	S.I. 2007/309
Schedule 3	18.03.2008	S.I. 2008/751
Schedule 4:	27.02.2007	S.I. 2007/309
partially	18.03.2008	S.I. 2008/751
partially	31.01.2009	S.I. 2009/3267
partially		
Schedule 6:	27.02.2007	S.I. 2007/309
partially	01.04.2008	S.I. 2008/945
for all remaining purposes		
Schedule 7 (partially)	27.02.2007	S.I. 2007/309
Schedule 8:	27.02.2007	S.I. 2007/309
partially	18.03.2008	S.I. 2008/751

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
partially	01.04.2008	S.I. 2007/3286 and S.I. 2008/945
partially	31.01.2009	S.I. 2008/3267
partially	30.09.2009	S.I. 2009/2648
partially		
Schedule 9:		
	27.02.2007	S.I. 2007/309
partially	28.11.2007	S.I. 2007/3286
partially	18.03.2008	S.I. 2008/751
partially	01.04.2008	S.I. 2008/945
partially	30.09.2009	S.I. 2009/2648
partially	01.04.2010	S.I. 2008/945, as amended by S.I. 2009/841
partially		
Schedule 10:		
	27.02.2007	S.I. 2007/309
partially	28.11.2007	S.I. 2007/3286
partially	18.03.2008	S.I. 2008/751
partially	01.04.2008	S.I. 2007/3286 and S.I. 2008/945
partially	31.01.2009	S.I. 2008/3267
partially	01.04.2010	S.I. 2008/945, as amended by S.I. 2009/841
partially		