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## EXPLANATORY NOTE

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

This Order, which (with the exception of articles 1 and 3) comes into force on 1st April 2008, amends the Charities Act 1993 (“the 1993 Act”), including some provisions which are prospectively inserted into that Act by the Charities Act 2006 (“the 2006 Act”). Articles 1 and 3 come into force on the day after the day on which this Order is made.

The Order only extends to England and Wales since matters relating to charities are devolved in both Scotland and Northern Ireland.

Article 1 provides that the amendments made by this Order will only apply in relation to financial years of charities which begin on or after 1st April 2008.

Articles 2 to 7 of the Order make amendments to the 1993 Act in consequence of changes made by section 1175 of and Schedule 9 to the Companies Act 2006 (c. 46) to provisions of company law relating to the auditing of accounts of charitable companies and the preparation of reports in respect of such accounts.

Section 1175 and Schedule 9 to the Companies Act 2006 remove from company law special rules about the audit of companies that are charities. The purpose of those changes to company law is to change the treatment of small charitable companies, so that, as far as their accounts scrutiny is concerned, they will be required to comply with the requirements of charity law, rather than those of company law. That in turn also requires amendments to charity law so as to bring small charitable companies within the accounts scrutiny provisions relating to charities. Those amendments to charity law are made by means of Articles 2 to 7 of this Order.

Article 2(3) substitutes new paragraphs (a) and (b) in section 43(3A). That subsection, which has been added to the 1993 Act by the 2006 Act, specifies persons who are qualified to act as independent examiner of a charity’s accounts. It does so in part by reference to membership of bodies specified in section 249D(3) of the Companies Act 1985. However section 249D is prospectively repealed by the Companies Act 2006; accordingly the new provisions list the bodies specified in section 249D(3). Article 2(4) inserts new subsection (3B) in section 43. This subsection lists the bodies referred to in new section 43(3A)(a).

Article 2(5) inserts new paragraph (c) in section 43(8). This amendment enables the Minister for the Cabinet Office to make amendments to section 43(3B).

Article 2(6) substitutes a new section 43(9) in the 1993 Act. Section 43 provides for the annual audit or examination of the accounts of a charity and section 43(9), as originally enacted, disappplied the whole section in the case of a charity that is a company. The new section 43(9) provides that the audit and examination requirements in section 43 do not apply to a charity that is a company if the accounts are required to be audited in accordance with company law.

Article 3 amends section 44(1)(b) of the 1993 Act. Section 44 makes supplementary provision relating to the audit and examination of accounts of charities. The amendment is consequential on the amendment made by article 2(6) described above.

Article 4 amends section 45(5) of the 1993 Act. Section 45 makes provision in relation to the annual report of a charity. Section 45(5), as amended by the 2006 Act, requires a charity which is a company, when it transmits to the Charity Commission a copy of an annual report under section 45, to have attached to it a copy of the charity’s relevant annual accounts and a copy of any auditor’s or reporting accountant’s report on the accounts. Article 4 makes amendments consequential on the removal of

the reporting accountant regime for small charitable companies by the provisions of the Companies Act 2006 mentioned above.

Article 5 makes amendments to section 47(3)(c) of the 1993 Act, which are consequential on the amendment made by article 2(6) described above. Section 47 deals with the public inspection of annual reports and subsection (2) requires charity trustees of a charity to supply a person on request with a copy of the charity's most recent accounts, subject to conditions set out in the subsection. Subsection (3) specifies what qualifies as a charity's most recent accounts and paragraph (c) deals with the case of a charity which is a company.

Article 6 makes a consequential amendment to section 68A(1) of the 1993 Act. Section 68A is prospectively inserted in the 1993 Act by the 2006 Act and imposes on an auditor or reporting accountant of a charity which is a company a "whistle-blowing duty" (i.e. a duty to report certain matters to the Charity Commission). The amendment made by article 6 is again consequential on the removal of the reporting accountant regime by the Companies Act 2006.

Article 7 amends section 69 of the 1993 Act, which gives the Charity Commission the power to order an auditor to investigate and audit the accounts of a charity which is a company. The amendment is consequential on the amendment made by article 2(6) described above. Since under section 43, as amended by this Order, the Charity Commission has the power to order the audit of the accounts of a charity which is a company, in the circumstances set out in subsection (4), section 69 is amended so as only to apply where the accounts of the charity are required to be audited under Part 7 of the Companies Act 1985.

Article 8 of the Order makes amendments to Schedule 5A to the 1993 Act, as prospectively inserted by the 2006 Act, for the purposes of or in connection with applying provisions of Schedule 5A to the 1993 Act (which deals with group accounts) to charitable companies that are not required to produce group accounts under company law.

Article 8(2) substitutes a new paragraph 1(2) of Schedule 5A, which omits the current exclusion of companies from the definition of "parent charity" for the purposes of the Schedule. Article 8(4) amends paragraph 3(1) of the Schedule, which relates to the preparation of group accounts. Paragraph 3(1), as amended, provides that the duty to prepare group accounts will apply to a parent charity which is a company if the charity is not required to prepare consolidated accounts for the year under section 227 of the Companies Act 1985. This duty will continue to apply even if the charity chooses to prepare consolidated accounts under the Companies Act 1985.

The remaining paragraphs of article 8 make amendments to Schedule 5A consequential on the application of that Schedule to charitable companies in the circumstances described above.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Office of the Third Sector, 35 Great Smith Street, London. SW1P 3BQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.