

**EXPLANATORY MEMORANDUM TO
THE CHARITIES ACT 2006 (CHANGES IN EXEMPT CHARITIES)
ORDER 2009**

2009 No.

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 This Order provides for certain charities to cease to be exempt charities and for others to become exempt charities. It also makes consequential amendments to existing legislation in connection with charities ceasing to be exempt charities either under this Order or the Charities Act 2006 (“the 2006 Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order was laid in draft before Parliament in substitution for the Order of the same title which was laid in draft before Parliament on 8 July 2009. Three amendments were made to the original draft before this Order was laid before Parliament:

(a) article 2(5) amended paragraph (i) of Schedule 2 to the Charities Act 1993 (“the 1993 Act”) with the intention of ensuring that only English successor companies to higher education corporations continued to be exempt charities. However, that provision incorrectly referred to such companies being exempt charities if the institution conducted by the higher education corporation is eligible for funding from the Higher Education Funding Council for England. To ensure that only Welsh successor companies ceased to be exempt charities, paragraph (i) should have been amended to refer to institutions conducted by a successor company. This error has been corrected;

(b) paragraph 10 of Schedule 1 to the Order now refers to orders amended by the Order, as well as Orders revoked by it; and

(c) a minor grammatical error in paragraphs 8 and 13 of Schedule 2 to the Order has been corrected.

4. Legislative Context

4.1 Exempt charities are those institutions, which in so far as they are charities, are comprised in Schedule 2 to the Charities Act 1993 (“the 1993 Act”). These institutions cannot register with the Charity Commission for England and Wales (“the Commission”) and are currently not subject to its regulatory jurisdiction (though they are required to comply with the general requirements of charity law).

4.2 The 2006 Act makes changes to the way in which exempt charities are regulated. These changes include those made by section 11 of the 2006 Act.

4.3 Section 11 amends Schedule 2 to the 1993 Act with the effect that particular charities and descriptions of charities will cease to be exempt charities. It also enables the Minister for the Cabinet Office (“the Minister”) to, by order, make further amendments to Schedule 2 to the 1993 Act so that charities, or descriptions of charities, become or cease to be exempt charities (section 11(11) of the 2006 Act).

4.4 The Minister may only make such an order if she is satisfied that it is desirable in the interests of ensuring appropriate or effective regulation of the charity or charities concerned in connection with their charity trustees’ compliance with their charity law obligations (section 11(12) of the 2006 Act).

4.5 An order made under section 11 of the 2006 Act may also remove from Schedule 2 to the 1993 Act an institution which has ceased to exist (section 11.11), as well as making consequential amendments or other modifications to any enactment (section 11.13).

4.6 A separate commencement order will be made bringing into force the provisions of section 11 of the 2006 Act in connection with which consequential amendments and other modifications are made by this Order. Regulations will also be made, in accordance with section 3A of the 1993 Act, to except, subject to the financial limit in subsection (2)(c) of that section, from the requirement to register with the Commission those institutions which, as a result of this Order, cease to be exempt charities. Currently charities whose gross income exceeds £100,000 will be required to register.

5. Territorial Extent and Application

5.1 This Order applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for the Cabinet Office, Angela Smith has made the following statement regarding Human Rights in respect of the Order:

In my view the provisions of the Order are compatible with the Convention rights.

7. Policy background

The Charities Act 2006

7.1 Exempt charities enjoy the status and the fiscal benefits accorded to other charities. Like all charities, they are required to comply with the basic principles of charity law but since 1992, they have not been allowed to register with the Commission and they fall outside the monitoring and investigative powers of the Commission, though not of its advice giving powers. These exemptions have been granted on grounds that they are adequately supervised by a Government department other than the Commission or another 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 promoting or monitoring their compliance with charity law obligations.

7.2 In 2001, the Strategy Unit carried out a review of the legal and regulatory framework for charities and not-for-profit organisations in England and Wales. The aim was to modernise charity law and develop greater accountability and transparency to build public trust and confidence in charities.

7.3 The Strategy Unit published the Review “Private Action, Public Benefit” in September 2002. It made a series of recommendations for the Government to consider. To help it in considering the recommendations, the Government carried out an open public consultation.

7.4 Following the consultation, the Government accepted the Strategy Unit’s recommendation that exempt charities enjoying the advantages of charitable status should, in return for those advantages, comply with some form of charity regulation. At the same time, it accepted that although some exempt charities were outside the jurisdiction of the Commission, they were subject to adequate – or, in some cases, excessive – regulation from other sources.

7.5 Accordingly provision was made in the 2006 Act to:

- (a) enable the Minister to appoint a principal regulator for each exempt charity (section 13)
- (b) enable the Minister to make further changes to Schedule 2 to the 1993 Act in order to confer or remove exempt charity status (section 11) and
- (c) increase the regulatory jurisdiction of the Commission in respect of exempt charities (sections 12 and 14 and Schedule 5).

7.6 The Cabinet Office proposes to implement the changes made by section 11 in several tranches. This instrument forms part of the first tranche of those changes. The Office of the Third Sector publishes an implementation plan for the 2006 Act which indicates that provisions relating to exempt charities will be implemented in tranches. The implementation plan is

regularly updated, and published at http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/implementation.aspx

Institutions ceasing to be exempt charities by virtue of this Order

7.7 Under the Order:

- (a) the colleges and halls in the universities of Cambridge and Durham;
- (b) the colleges in the University of Oxford;
- (c) higher education corporations in Wales;
- (d) any university in Wales, university college in Wales or institution connected with a university in Wales or university college in Wales that has been declared by Order in Council to be an exempt charity;
- (e) successor companies to higher education corporations which conduct institutions eligible to receive funding from the Higher Education Funding Council for Wales;
- (f) institutions connected to institutions mentioned in paragraph (a) to (e) above which were exempt charities because they were included in paragraph (w) of Schedule 2; and
- (g) the Board of Governors of the Museum of London.

will, in so far as they are charities, cease to be exempt charities.

(article 2(1) to (6) and (8) to (10)).

Why are these institutions ceasing to be exempt charities?

(a) Colleges and halls in the universities of Oxford, Cambridge and Durham

7.8 During consultation with the colleges and halls in the universities of Cambridge and Durham and colleges in the University of Oxford it was not possible to identify a suitable principle regulator for them. That is, in general terms, it was not possible to identify a body or Minister of the Crown which could undertake the role of promoting their charity trustees' compliance with their charity law obligations.

7.9 These institutions do not have a direct regulatory relationship with the Higher Education Funding Council for England (HEFCE). HEFCE will act as the principal regulator of all other HEIs in England that have exempt charity status. It was also considered not appropriate for their parent universities to be their principal regulators. This is because the parent universities are not sufficiently independent of the colleges and halls and are themselves also charities.

7.10 Therefore, it was concluded that enabling the Commission to regulate these institutions would be the most appropriate and effective means of regulating these institutions for their charity law compliance.

(b) Higher education institutions in Wales

7.11 The Higher Education Funding Council for Wales (HEFCEW) was considered as a possible principal regulator, but the Welsh Assembly Government did not consider HEFCEW suitable to regulate HEIs in Wales. No other suitable principal regulator could be found. It was therefore concluded that registration with the Commission would be the most appropriate and effective form of regulation of their charity law compliance.

(c) Board of Governors of the Museum of London

7.12 The Museum of London is not sponsored by the Secretary of State for Culture, Media and Sport who is proposed as principal regulator for several other national museums and galleries. It is sponsored by the Corporation of London, which was considered as a potential principal regulator. However, its relationship with the Corporation of London is not the same as that between the Secretary of State and the other museums and galleries. The museum was considered to have too close a relationship with the Corporation, which was deemed not to be sufficiently independent to be its principal regulator.

7.13 No other suitable body was identified as a potential principal regulator, and it was therefore concluded that the most appropriate way to regulate this institution for its charity law compliance would be to provide for it to be regulated by the Commission.

Other amendments to Schedule 2

(a) University of Manchester and King's College London

7.14 Article 2(2) inserts the University of Manchester and King's College London into paragraph (b) of schedule 2 to the 1993 Act.

7.15 These universities, and certain institutions connected with them, are already exempt charities, by virtue of private Acts of Parliament. The change ensures that any students' union of these institutions (consistently with other students' unions currently included in paragraph (w) of Schedule 2 to the 1993 Act) cease to be exempt charities.

(b) Institutions connected with the British Library Board

7.16 Article 2(7) provides for certain charities connected with the British Library Board to become exempt charities. This change is considered desirable to ensure appropriate regulation of these connected institutions. As a result of the change both these connected institutions and the Board itself will be regulated by the same Minister of the Crown for charity law compliance. The Secretary of State for Culture, Media and Sport will be appointed as their principal regulator.

(c) Institutions which have ceased to exist

7.17 The Order further amends Schedule 2 to the Charities Act 1993 to remove the references to the colleges and halls in the University of Newcastle and the halls in the University of Oxford as these institutions have ceased to exist.

Other provisions

7.18 The Order also makes consequential amendments, transitional provisions and savings.

7.19 The transitional provisions and savings make clear how provisions of the 1993 Act (and other legislation) which apply differently to exempt charities and non-exempt charities are to apply to the charities losing or gaining exempt status. They cover, for example, the accounting and reporting requirements that are to apply for the current financial year, the matters over which the Commission will have jurisdiction, and land transactions. Provisions are also made to make clear the effect of a change in exempt status on other on-going transactions.

7.20 To assist the reader of this instrument, a table is attached at **Annex A** to this memorandum setting out the groups of exempt charities that will be affected by this Order.

8. Consultation outcome

8.1 The Order has not been the subject of formal public consultation. However, the Office of the Third Sector and the Commission have been closely engaged with bodies representing the various groups of exempt charities affected by the Order, as well as the charities themselves. Officials have shared earlier drafts of the Order with the charities affected or bodies representing the groups of charities that will be affected by these changes.

9. Guidance

9.1 The Commission publishes detailed guidance on its website about the forthcoming changes in relation to the regulation of exempt charities, including guidance on registration for those charities that will be required to register. The guidance can be accessed on the Commission's website; www.charitycommission.gov.uk. The Commission has an office in Wales which is liaising directly with the Welsh charities that will be required to register as a result of these changes. It has also started working with charities in England that will lose their exempt status to help prepare them for registration.

10. Impact

10.1 This statutory instrument does not apply to the public sector, or business. The 2006 Act was the subject of a full regulatory impact assessment (including a specific chapter on the proposals relating to exempt charities).

The impact assessment on exempt charities can be read by following the link below:

http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/chapter_4_exempt_charities.pdf

10.2 The intention remains to minimise additional regulatory requirements on these charities, whilst ensuring that they come within a regulatory framework that includes promoting compliance with charity law obligations. Formerly exempt charities that will have to register with the Commission will incur some additional costs but this is justifiable as it brings them in line with all other charities. They are regulated for their charity law obligations in the same way that approximately 160,000 registered charities are. This moves towards a level playing field in terms of charity regulation, accountability and transparency, which should result in a greater trust and confidence in the sector as a whole.

Charities which cease to be exempt

10.3 There will be some additional costs for the charities that are required to register with the Commission. The Commission does not charge fees to register charities, but there are indirect costs associated with registration, which the Commission estimates at an average of £168.50 per charity (although there is likely to be a wide range depending on the complexity of the charity's governing document). The registration process can be completed online.

10.4 There are ongoing annual costs that apply to registered charities in relation to completing their annual return to the Commission. The annual return includes some basic details about the charity and its trustees, and is used by the Commission to maintain the accuracy of the register. The cost of providing an annual return depends on the size of the charity, but is estimated be the following:

- (i) Income between £100,000 and £250,000: £7.21
- (ii) Income between £250,000 and £500,000: £11.58
- (iii) Income between £500,000 and £1m: £23.79

These figures are based on the Commission's telephone survey on Annual Return preparation which was carried out in 2008.

10.5 Registered charities with an annual income of over £1 Million must also complete a Summary Information Return (SIR). This information is publicly available on the register of charities and is designed to provide members of the public with an overview of the charity, its activities and performance. The SIR can also be completed online. The cost of preparing both the SIR and the Annual Return is £123.52.

10.6 Formerly exempt charities will be required to prepare a Trustees Annual Report (TAR), and submit it along with their accounts to the Commission. TAR preparation costs vary depending on the size of the charity. The Commission carried out a survey in 2006 and the average costs of TAR preparation for charities with various income levels are below:

- (i) Income between £100,000 and £250,000: £287
- (ii) Income between £250,000 and £500,000: £316
- (iii) Income between £500,000 and £1m: £536
- (iv) Income over £1m: £534

10.7 Although there are no additional costs in accounts preparation, registered charities have to submit their annual accounts and TAR to the Commission, a process that can be undertaken online. The annual accounts and TARs of larger charities are publicly accessible on the Register of Charities.

10.8 The number of charities ceasing to be exempt as a result of this Order is estimated to be between 70 and 80, although the actual figure may be slightly higher depending on the number of connected charitable institutions that will also cease to be exempt.

10.9 There will be additional costs to the Commission as a result of this instrument, arising from registration of charities that cease to be exempt, and their ongoing regulation. The one-off cost to the Commission of registering a charity varies depending on the charity concerned, and can range from approximately £169 for a straightforward registration (using an approved governing document) to £2,370 for a more complex registration (for example, because of additional requirements for legal advice). The Commission has, over recent years, reduced its costs in this area by making use of online registration, and by providing model governing documents – the adoption of which makes the process of registration simpler both for the Commission and the charity concerned.

10.10 It is more difficult to estimate the ongoing costs to the Commission of regulating these 70-80 additional charities, which make up a small proportion of the total number of charities required to register for the first time under the 2006 Act. In the context of the Commission's regulation of the approximately 160,000 main charities on the register of charities, any increase in costs resulting from the Commission taking regulatory responsibility for this small number of formerly exempt charities is not expected to be significant, and will be absorbed within ongoing operational costs. (In 2008-9 the Commission registered 5,410 new charities and removed 7,433 inactive charities from the register.)

10.11 The 2007 Comprehensive Spending Review provided the Commission with funding specifically for implementation of the Charities Act 2006 provisions, including in relation to exempt charities.

Charities which become exempt

10.12 The only group of charities that become exempt are any charities connected to the British Library Board. Their compliance with charity law obligations will be monitored by the Secretary of State for Culture, Media and Sport. There is expected to be no additional cost as a result of regulation by a principal regulator.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Section 73 of the Charities Act 2006 requires the Minister to appoint a person to review the operation of the Act within five years of enactment, and for the report of the review to be laid before Parliament. The review will include evaluating the impact of changes made to exempt charities.

13. Contact

Khaled Moyeed at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6028 or email: khaled.moyeed@cabinet-office.x.gsi.gov.uk can answer any queries regarding this instrument.

The Charities Act 2006 (Changes in Exempt Charities) Order 2009

Institutions which, in so far as they are charities, cease to be exempt as a result of the Order

Provision will be made separately to except, in so far as they are charities and subject to a specified financial limit, these institutions from the requirement to register with the Charity Commission. The specified financial limit is currently gross income at or below £100,000. This limit may be lowered by the Minister for the Cabinet Office in future

Paragraph of Schedule 2 to the Charities Act which is amended	Institution or description of institutions which, in so far as they are charities, cease to be exempt as a result of the amendment	Provision in the Changes in Exempt Charities Order which makes the amendment
(b)	A college in the university of Oxford	Article 2(2)
(b)	A college or hall in the university of Cambridge	Article 2(2)
(h)	A college or hall in the university of Durham	Article 2(2)
(c)	A Welsh Higher Education Corporation	Article 2(4)
(i)	Any university in Wales, university college in Wales and institution connected with a university in Wales or university college in Wales which had been declared by Her Majesty by Order in Council to be an exempt charity	Article 2(3) and paragraphs 6 to 8 of Schedule 1
(i)	A successor company to a higher education corporation (within the	Article 2(5)

	meaning of section 129(5) of the Education Reform Act 1988) at a time when an institution conducted by the company is eligible, by virtue of an order made under that section, to receive support from funds administered by the Higher Education Funding Council for Wales	
<i>No additional amendment required</i>	Any institution which would be included in paragraph (w) because it is “connected” (within the meaning of that paragraph (w)) with any of the institutions included above and which is not a students’ union ¹	A consequence of article 2(2) to (5)
(z)	Board of Governors of the Museum of London	Article 2(6)

Institutions removed from Schedule 2 to the Charities Act 1993 because they have ceased to exist:

Colleges and halls in the University of Newcastle
Halls in the University of Oxford

¹ “Students’ unions” included in paragraph (w) of Schedule 2 to the 1993 Act cease, in so far as they are charities, to be exempt charities as a result of section 11(2) and (9) of the Charities Act 2006. The Charities Act 2006 (Commencement Order No.7, Transitional and Transitory Provisions and Savings) Order 2009 (S.I. 2009/XXXXX (C.XXX)) brought these provisions into force on [insert date].