

EXPLANATORY MEMORANDUM TO
THE CHARITIES ACT 2006 (INTERIM CHANGES IN THRESHOLD FOR
REGISTRATION OF SMALL CHARITIES) ORDER
2007 No. 789

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

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Order, made under section 10 of the Charities Act 2006, raises from £1,000 to £5,000 the gross income threshold above which small charities are required to register with the Charity Commission. It also removes the current requirements for charities that hold permanent endowment or use or occupy land to register, regardless of their income.

3. **Matters of special interest to the joint committee on Statutory Instruments**

- 3.1 None.

4. **Legislative background**

- 4.1 The register of charities in England and Wales was established by the Charities Act 1960, along with the legal requirement for most charities to register with the Charity Commission.

- 4.2 The current registration requirements are prescribed in Section 3 of the Charities Act 1993.

- 4.3 The Charity Commission has a statutory duty under Section 3(1) of the Charities Act 1993 to keep a register of charities. Section 3(2) requires that every charity other than those excused registration by section 3(5) be put on the register by the Commission. The charity trustees of any charity not excused registration by section 3(5) have a duty (section 3(7)(a)) to apply to the Commission for the charity to be registered, and to provide the Commission with a copy of the charity's trusts and any other documents that the Commission requires in order to be able to consider the application.

4.4. The following classes of charity are excused registration by section 3(5) of the Charities Act 1993:

- (i) exempt charities (These are covered by the Charities Act 1993 in sections 3(5A)(a), 3(5A)(b), 3(5B)(a)(i), 3(5B)(a)(ii), 24(8), 25(2) and in Schedule 2.);
- (ii) charities excepted from registration by order made by the Charity Commission or regulations made by the Secretary of State;
- (iii) any charity that meets all of the following three conditions:
 - its annual income from all sources is £1000 or less; and
 - it has no permanent endowment (as defined in sections 97(1) and 96(3) of the Charities Act 1993); and
 - it does not use or occupy any land;
- (iv) any charity the only property of which is a registered place of worship.

4.5. Although charities in all of these classes are not required to register, charities in classes (ii), (iii) and (iv) may register voluntarily. Any charity in these three classes that has been registered voluntarily is entitled also to have itself removed from the register at its request.

4.6 The Charities Act 2006 received Royal Assent on 8 November 2006. Article 2 of the Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007 brought section 10 of the Charities Act 2006 into force on 27 February 2007.

4.7 Section 10 of the Charities Act 2006 allows the Minister for the Cabinet Office to change the threshold for registration of small charities (class (iii) in paragraph 4.4 above) before the provisions of new section 3A(1)-(5) as inserted by section 9 of the Charities Act 2006 are brought into force.

4.8 A timetable for the implementation of the Charities Act 2006 is available on the Cabinet Office website at: http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/charities_act_2006/implementation.asp

5. Extent

5.1 This Instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 The Parliamentary Secretary and Minister for the Third Sector, Ed Miliband, has made the following statement regarding Human Rights:

In my view the provisions of the Charities Act 2006 (Interim Changes in Threshold for Registration of Small Charities) Order 2007 are compatible with the Convention rights.

7. Policy background

- 7.1 Better regulation policy requires, among other things, that organisations should not be subjected to regulatory requirements, such as those imposed on registered charities by the Charities Act 1993, that are disproportionate to the harm that might result if an organisation fails or is mismanaged. These very small charities present an extremely low risk of harm. Nor should organisations be subjected to regulation that they do not have the capacity readily to understand and comply with. Again, these charities, often being entirely volunteer-run, and with limited resources, may find it difficult to comply with the requirements that flow from registration.

- 7.2 In 2002 the Prime Minister's Strategy Unit published a report on proposals for charity law reform, "*Private action, Public benefit: a review of charities and the wider not-for-profit sector*"¹ In relation to the registration of small charities it recommended:

- (i) raising the annual income threshold for registration to £10,000;
- (ii) abolishing the two criteria relating to permanent endowment and to land use or occupation;
- (iii) ending the system of voluntary registration.

- 7.3. In responding² to the Strategy Unit recommendations the Government took into account the responses to the public consultation on the Strategy Unit's review. This included the almost unanimous, and sometimes vehement, opposition from small charities to the prospect that voluntary registration would be ended, and that public interest in the existence, activities and accountability of charities – including smaller ones – had increased in recent years. The Government also considered that an organisation with annual income approaching £10,000 was not necessarily an organisation of trivial resources and that, if not registered, the risk of abuse of its resources was heightened.

¹ http://www.cabinetoffice.gov.uk/strategy/work_areas/voluntary_sector/index.asp

² http://www.cabinetoffice.gov.uk/third_sector/documents/charity_reform/charitiesnotforprofit_eng.pdf

- 7.4 The Government therefore decided to continue excusing very small charities from registration, but not to implement the Strategy Unit's recommendations in full.
- 7.5 During Parliamentary debate on the Charities Bill, the Government committed to review all the financial thresholds of Charity statute within one year of the Bill receiving Royal Assent. That review will take place later in 2007, and will include further consideration of whether the general registration threshold for small charities is set at the right level. Any further changes to the registration threshold for small charities could be made by Order.

8. Impact

- 8.1 A Regulatory Impact Assessment was prepared for the Charities Bill, and is available on the Cabinet Office website at: http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/charities_act_2006/background.asp.
- 8.2 The changes brought about by this Order are expected to relieve 38,000 small charities from the need to be registered with the Charity Commission. All these charities would remain within the Commission's regulatory jurisdiction whether they were registered or not.
- 8.3 The Charity Commission has indicated that charities which are already on the register, but have a gross annual income below £5,000 will remain on the register unless they ask to be removed.
- 8.4 Until new section 3A(6) is inserted into the Charities Act 1993 by the commencement of section 9 of the Charities Act 2006, new charities with an income below £5,000 will be able to request voluntary registration, although the Charity Commission will not be required to register them.

9. Contact

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