

2008 No. 3267 (C. 150)

CHARITIES, ENGLAND AND WALES

**The Charities Act 2006 (Commencement No. 5, Transitional and
Transitory Provisions and Savings) Order 2008**

Made - - - - *19th December 2008*

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(a):

Citation and interpretation

1.—(1) This Order may be cited as the Charities Act 2006 (Commencement No. 5, Transitional and Transitory Provisions and Savings) Order 2008.

(2) In this Order—

“the 2006 Act” means the Charities Act 2006;

“the Commission” means the Charity Commission;

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

“enactment” includes section 36 of the Charities and Trustee Investment (Scotland) Act 2005(c);

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

“formerly specified educational institution” means—

(a) a body to which section 23(1)(a) or (b) of the School Standards and Framework Act 1998(d) applies;

(b) an Education Action Forum established by virtue of section 10(1) of that Act; or

(c) an institution to which section 23(2) of that Act applies;

“old section 3(2) of the 1993 Act” means section 3(2) of the 1993 Act as it was in force immediately before 31st January 2009(e);

“old section 3(5) of the 1993 Act” means section 3(5) of the 1993 Act as it was in force immediately before 31st January 2009(f);

“qualifying excepted charity” means a charity within section 3A(2)(b), (c) or (d) of the 1993 Act;

“the register” and “registered” are to be construed in accordance with section 97(1) of the 1993 Act;

(a) 2006 c.50.

(b) See the definition of “1993 Act” in section 78(1) of the Charities Act 2006 (c.50).

(c) 2005 asp. 10.

(d) 1998 c.31. Section 23 was amended by the Charities Act 2006 (c.50), Schedule 8, paragraph 194. Paragraph 10 of Schedule 1 was amended by the Charities Act 2006, Schedule 8, paragraph 195.

(e) Section 3(2) of the 1993 Act was in force immediately before 31st January 2009 as originally enacted.

(f) Section 3(5) of the 1993 Act was in force immediately before 31st January 2009 as amended by S.I. 2007/789, article 2.

“relevant date” means the day appointed for the commencement of section 9 of the 2006 Act for the purpose of inserting new section 3A(6) of the 1993 Act;

“relevant specified institution” means a formerly specified educational institution which falls within section 3A(2)(d) of the 1993 Act.

“transitory financial year” means, in relation to a formerly specified educational institution, a financial year which begins—

- (a) on or after 31st January 2009; but
- (b) before 1st October 2009.

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 the Schedule is 31st January 2009 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.

The register of charities and registration of excepted charities: transitional and transitory provisions and savings

3. The commencement of section 9 of the 2006 Act by article 2 of this Order, for the purposes specified in Column 3 of the Schedule, does not affect—

- (a) any decision made by the Commission before 31st January 2009 under section 3 of the 1993 Act, as it was in force immediately before that date—
 - (i) to enter or, as the case may be, not to enter an institution in the register; or
 - (ii) to remove or, as the case may be, not to remove an institution from the register;
- (b) any proceedings brought in the court or to the Charity Tribunal before 31st January 2009 in respect of a decision falling within sub-paragraph (a); or
- (c) the operation of the 1993 Act in relation to any proceedings brought to the Charity Tribunal—
 - (i) on or after 31st January 2009; and
 - (ii) in respect of a decision falling within sub-paragraph (a).

4.—(1) Subject to paragraph (2), where—

- (a) a request had been made before 31st January 2009 by a relevant charity under old section 3(2) of the 1993 Act; and
- (b) the Commission had not made a decision in respect of that request before that date,

the Commission may enter the charity in the register or, as the case may be, must remove the relevant charity from the register.

(2) The Commission—

- (a) must enter a relevant charity in the register if it is satisfied that the charity is required to be registered under section 3A(1) of the 1993 Act;
- (b) must not remove a relevant charity from the register if it is satisfied that the charity is required to be registered under that provision of that Act.

(3) Schedule 1C to the 1993 Act applies to a decision made by the Commission under this article as it applies to a decision made by the Commission under section 3A of that Act.

(4) In this article, “relevant charity” means a charity excepted from the requirement to register by paragraph (b) or paragraph (c) of old section 3(5) of the 1993 Act immediately before 31st January 2009.

5. In addition to the name, and particulars, of every charity registered in accordance with section 3A of the 1993 Act, the register shall contain—

- (a) the name of—
 - (i) every charity which—
 - (aa) was registered, whether at the request of the charity or otherwise, under old section 3(2) of the 1993 Act; and
 - (bb) had not been removed from the register before 31st January 2009;
 - (ii) every charity registered in accordance with article 4 which is not required to be registered under section 3A(1) of the 1993 Act; and
 - (iii) every charity registered in accordance with article 6; and
- (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.

6.—(1) The Commission may enter a qualifying excepted charity in the register if that charity requests to be so registered—

- (a) on or after 31st January 2009; but
- (b) before the relevant date.

(2) Despite paragraph (1), the Commission must not enter in the register any qualifying excepted charity which—

- (a) is a formerly specified educational institution; and
- (b) requests to be so registered before 1st October 2009.

7.—(1) During such time as section 3A(6) of the 1993 Act is not in force—

- (a) section 3(6) of the 1993 Act applies with the modifications specified in paragraph (2); and
- (b) any reference to “a charity registered in accordance with section 3A of the Charities Act 1993” in any enactment other than the 1993 Act is to be treated as a reference to a charity—
 - (i) which is for the time being registered—
 - (aa) in accordance with section 3A(1) of the 1993 Act; or
 - (bb) under article 4 or 6 of this Order; or
 - (ii) which—
 - (aa) is a qualifying excepted charity;
 - (bb) was registered before 31st January 2009; and
 - (cc) for the time being remains on the register.

(2) The reference to “a charity which is for the time being registered under section 3A(6) below” in section 3(6) is to be treated as a reference to a qualifying excepted charity which is for the time being registered.

8.—(1) The Commission may, at any time before the relevant date, remove a qualifying excepted charity, which is for the time being registered, from the register without that charity requesting to be so removed.

(2) This article applies in addition to section 3(4) of the 1993 Act.

9. For the purposes of articles 7 and 8 it does not matter whether a qualifying excepted charity was excepted from the requirement to register under old section 3(5) of the 1993 Act or section 3A(2) of the 1993 Act, as the case may be, at the time it was registered.

Preparation etc. of accounts by excepted charities: transitory provision and savings

10.—(1) During such time as section 46(3A) of the 1993 Act is not in force, section 46(3) of the 1993 Act, as amended by the provisions of the 2006 Act commenced by article 2 of this Order for the purposes specified in Column 3 of the Schedule, applies with the modifications specified in paragraph (2).

(2) Section 46(3) of the 1993 Act applies as if the reference to “subsections (3A) and (3B) below” were a reference to subsection (3B) only.

Formerly specified educational institutions: transitional and transitory provisions and savings

11.—(1) A formerly specified educational institution to which this article applies—

- (a) is excepted from the duty to be registered under subsection (1) of section 3A of the 1993 Act until 1st October 2009; and
- (b) for the purposes of any enactment other than the 1993 Act is to be treated, before 1st October 2009, as a charity which is not required to be registered by virtue of subsection (2) of section 3A of the 1993 Act.

(2) This article applies to any formerly specified educational institution which is not excepted under section 3A(2)(c) of the 1993 Act from the requirement to be registered under section 3A(1) of that Act(a).

12.—(1) Subsections (1) and (2) of section 46 of the 1993 Act continue to apply to a formerly specified educational institution in relation to—

- (a) any relevant financial year; and
- (b) the books of accounts kept and statements of account prepared in respect of—
 - (i) any such financial year; or
 - (ii) any financial year of the institution which ended before 31st January 2009.

(2) In this article, “relevant financial year” means, in relation to a formerly specified educational institution, a financial year—

- (a) which began before 31st January 2009; but
- (b) ends on or after that date.

13.—(1) The charity trustees of a formerly specified educational institution are not required to comply with the provisions of the 1993 Act specified in paragraph (2) in respect of any transitory financial year.

(2) The specified provisions are—

- (a) if the formerly specified educational institution is not a company—
 - (i) sections 41, 42, 48 and 49A; and
 - (ii) Schedule 5A;
- (b) if the formerly specified education institution is a company—
 - (i) sections 48 and 49A; and
 - (ii) Schedule 5A.

(3) Nothing in sections 43, 44 and 44A of the 1993 Act applies to a formerly specified educational institution which is not a relevant specified institution in respect of any transitory financial year.

(4) In addition—

(a) Only those formerly specified educational institutions (as defined in article 1 of this Order) whose gross income does not exceed the financial limit in section 3A(2)(c) of the Charities Act 1993 are excepted under that section from the requirement to be registered by the Charities Act 1993 (Exception from Registration) Regulations 2008 (S.I. 2008/3268).

- (a) the charity trustees of a formerly specified educational institution which is not a qualifying excepted charity are not required to comply with section 45 of the 1993 Act in respect of any transitory financial year; and
- (b) accordingly, in so far as it relates to compliance with section 45 of the 1993 Act, section 49 of the 1993 Act does not apply to those charity trustees in respect of any transitory financial year.

14. The Commission may not require, under section 46(5) of the 1993 Act, the charity trustees of a formerly specified educational institution which is not a relevant specified institution to prepare an annual report in respect of any transitory financial year.

15.—(1) Despite articles 13 and 14, the charity trustees of a formerly specified educational institution must—

- (a) keep proper books of account with respect to the affairs of the institution during any transitory financial year; and
- (b) if not required by or under the authority of any Act of Parliament to prepare a statement of accounts for a transitory financial year, prepare—
 - (i) an income and expenditure account relating to that financial year; and
 - (ii) a balance sheet relating to the end of that financial year.

(2) Any books of accounts and statements of account kept or prepared under paragraph (1) must be kept for a period of at least six years unless—

- (a) the institution ceases to exist; and
- (b) the Commission consents in writing to their being destroyed or otherwise disposed of.

16.—(1) Where a qualifying request is made, the accounts to be treated as the most recent accounts of the relevant formerly specified educational institution for the purposes of section 47 of the 1993 Act are the accounts specified in paragraph (2).

(2) The specified accounts are—

- (a) the accounts of the institution most recently audited in pursuance of any statutory or other requirement; or
- (b) if its accounts are not required to be audited, the accounts most recently prepared in respect of that institution whether under article 15 or otherwise.

(3) In this article—

- (a) subject to paragraphs (4) and (5), “qualifying period” means, in relation to a formerly specified educational institution, the period of ten months from the end of the relevant financial year.
- (b) “qualifying request” means a request—
 - (i) made under section 47(2) of the 1993 Act for the most recent accounts of a formerly specified educational institution; and
 - (ii) made—
 - (aa) on or after 31st January 2009; but
 - (bb) before the end of the qualifying period.
- (c) “relevant financial year” means—
 - (i) in relation to a formerly specified educational institution which is not a company, the first financial year in respect of which the charity trustees are required to prepare—
 - (aa) a statement of accounts under section 42(1) of the 1993 Act; or
 - (bb) an account and statement under section 42(3) of that Act;
 - (ii) in relation to a formerly specified educational institution which is a company, the first financial year in respect of which the charity trustees are required to prepare an annual report under section 45 of that Act.

(4) Where the Commission allows a longer period under section 45(3)(b) or (3A) of the 1993 Act for the transmission to it by the charity trustees of the annual report for the relevant financial year, the “qualifying period”, in relation to the relevant institution, is such longer period as is allowed by the Commission.

(5) Where—

(a) the Commission makes a request for the transmission of the annual report for the relevant financial year under subsection (3A) of section 45 of that Act; and

(b) paragraph (b) of that subsection applies to the request,

the “qualifying period”, in relation to the relevant institution, is the period of three months from the date of the request.

(6) Paragraphs (4) and (5) apply whether the longer period is allowed or the request made, as the case may be—

(a) before the expiry of the period mention in paragraph (3)(a) above; or

(b) after the expiry of that period.

17.—(1) The provisions of the 1993 Act specified in paragraph (5) do not apply to any formerly specified educational institution before 1st October 2009.

(2) For the purposes of the provisions of the 1993 Act specified in paragraph (6) a formerly specified educational institution is to be treated, before 1st October 2009, as if it were an exempt charity.

(3) No inquiry instituted by the Commission under section 8 of the 1993 Act before 1st October 2009 may extend to any formerly specified educational institution.

(4) For the purposes of section 37(10) of the 1993 Act, a formerly specified educational institution is to be treated as ceasing to be an exempt charity on 1st October 2009.

(5) The provisions of the 1993 Act specified for the purposes of paragraph (1) are sections 6, 17(7), 18, 28(1), 36 and 38.

(6) The provisions of the 1993 Act specified for the purposes of paragraph (2) are sections 9, 16, 24, 25, 33, 69G, and 73(4).

Kevin Brennan
Parliamentary Secretary
Cabinet Office

19th December 2008

SCHEDULE

Article 2

PROVISIONS OF THE 2006 ACT COMING INTO FORCE ON 31ST JANUARY 2009

| <i>Provision(s) of the 2006 Act</i> | <i>Subject matter of provisions</i> | <i>Particular purpose or other limitation</i> |
|-------------------------------------|--|---|
| Section 9 | Registration of charities | For all remaining purposes other than the insertion of new section 3A(6) of the 1993 Act. |
| Section 11(1) | Changes to exempt charities | In so far as it relates to section 11(4) and (5) of the 2006 Act. |
| Section 11(4) and (5) Section 73 | Changes to exempt charities Report on operation of the 2006 Act | |
| Section 75(1) to (3) | Amendments, repeals, revocations and transitional | In so far as they relate to the provisions of Schedules 8, 9 |

| | | |
|---|--|---|
| | provisions | and 10 to the 2006 Act commenced by article 2 of this Order. |
| Schedule 4 | Appeals and applications to Charity Tribunal | In so far as it inserts paragraph 1 of Schedule 1C to the 1993 Act in relation to decisions of the Commission under section 3A of that Act. |
| Schedule 8, paragraphs 2 and 210 | Minor and consequential amendments | For all remaining purposes. |
| Schedule 8, paragraph 139(3) | Minor and consequential amendments | In so far as it inserts new section 46(3) and (3B) of the 1993 Act. |
| Schedule 8, paragraphs 77(3), 85, 87, 88, 100(3), 139(4) and (7), 191, 193 to 195 and 199 | Minor and consequential amendments | |
| Schedule 9 | Repeals and revocations | Only those entries relating to the Charities Act 1960 (c.58); section 6A(5) of the Housing Act 1985 (c.68); paragraphs 1(2), 26, 28, 29(2) to (4), (7) and (8) of Schedule 6 to the Charities Act 1993 (c.10); section 58(1)(b) of the Housing Act 1996 (c.52); section 41 of and paragraph 9 of Schedule 3 to the Teaching and Higher Education Act 1998 (c.30); section 23(1) of and paragraph 48 of Schedule 30 to the School Standards and Framework Act 1998 (c.31); and article 3(5) of the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074). |
| Schedule 10, paragraphs 21 to 27 | Transitional provisions and savings | |
| Schedule 10, paragraph 29 | Transitional provisions and savings | For all remaining purposes. |

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 the Schedule to this Order are brought into force on 31st January 2009, subject to the transitional and transitory and savings provisions specified in articles 3 to 17 of this Order.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Act have been brought into force by a commencement order made before the date of this Order:

| <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 |
| for all remaining purposes | 01.04.2009 | S.I. 2008/945 |
| 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 |
| s.10 | 27.02.2007 | S.I. 2007/309 |
| s.11 (partially) | 27.02.2007 | S.I. 2007/309 |
| ss. 15 and 16 | 18.03.2008 | S.I. 2008/751 |
| s.17: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| for all remaining purposes | 18.03.2008 | S.I. 2008/751 |
| 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: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| for all remaining purposes | 01.04.2008 | S.I. 2008/945 |
| 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: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| partially | 01.04.2008 | S.I. 2008/945 |
| 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: | | |
| 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.75: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| partially | 28.11.2007 | S.I. 2007/3286 |
| partially | 01.04.2008 | S.I. 2007/3286 |
| partially | 18.03.2008 | S.I. 2008/751 |
| partially | 01.04.2008 | S.I. 2008/945 |
| partially | 01.04.2009 | S.I. 2008/945 |
| 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: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| partially | 18.03.2008 | S.I. 2008/751 |
| Schedule 6: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| for all remaining purposes | 01.04.2008 | S.I. 2008/945 |
| Schedule 7 (partially) | 27.02.2007 | S.I. 2007/309 |
| Schedule 8: | | |
| partially | 27.02.2007 | S.I. 2007/309 |
| partially | 18.03.2008 | S.I. 2008/751 |
| partially | 01.04.2008 | S.I. 2007/3286 and S.I. 2008/945 |
| Schedule 9: | | |
| partially | 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 | 01.04.2009 | S.I. 2008/945 |
| Schedule 10: | | |
| partially | 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 | 01.04.2009 | S.I. 2008/945 |

2008 No. 3267 (C. 150)

CHARITIES, ENGLAND AND WALES

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Transitory Provisions and Savings) Order 2008

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