

EXPLANATORY MEMORANDUM TO
THE CHARITIES (EXCEPTION FROM REGISTRATION)
(AMENDMENT) REGULATIONS 2014

2014 No. 242

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 instrument**
 - 2.1 These Regulations extend the temporary exception granted to certain religious charities from the requirement to be registered with the Charity Commission. The exception will otherwise expire on 31st March 2014. These Regulations extend it until 31st March 2021.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The register of charities in England and Wales was established by the Charities Act 1960 (“the 1960 Act”), along with the legal requirement for most charities to register with the Charity Commission. The provision allowing the Charity Commission and the Minister to except some charities from registration was included in the 1960 Act. This was so that charities whose existence was publicly documented elsewhere, and ones in whose existence there was not thought to be great public interest, could be excused from registration.
 - 4.2 The current registration requirements are prescribed in section 30 of the Charities Act 2011 (“the 2011 Act”). Certain charities are excused from registration by virtue of section 30(2) of the 2011 Act. These charities include those that are excepted (either permanently or temporarily) from registration by regulations made by the Minister for the Cabinet Office, provided that their gross annual income does not exceed £100,000 (the £100,000 threshold).
 - 4.3 The great majority of excepted charities are of one of these types: religious charities connected with particular denominations, boy scout and girl guide charities and armed forces charities. These Regulations deal only with excepted religious charities connected with particular denominations.
 - 4.4 The temporary exception granted to such religious charities by the Charities (Exception from Registration) Regulations 1996 (“the 1996 Regulations”) would originally have expired on 1st March 2001. This was extended until 1st October 2002 by the Charities (Exception from Registration) (Amendment)

Regulations 2001¹, again by the Charities (Exception from Registration) (Amendment) Regulations 2002² until 1st October 2007, again by the Charities (Exception from Registration) (Amendment) Regulations 2007³ until 1st October 2012 and again by the Charities (Exception from Registration) (Amendment) Regulations 2012⁴ (“the 2012 Regulations”) until 31st March 2014. These Regulations extend the temporary exception until 31st March 2021 and revoke the 2012 Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Although excepted charities are subject to the Charity Commission’s jurisdiction, some aspects of the general regulatory framework for charities set out in the 2011 Act do not apply to them. An example is that they are not routinely required to submit annual reports and accounts to the Charity Commission. In 2002, the Prime Minister’s Strategy Unit (“the 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*”⁵. In relation to excepted charities, it did not believe that there was any continuing justification for allowing such charities to escape these regulatory requirements. It asserted (para 7.89) that “to promote trust and confidence in the regulatory system as a whole it is important that all organisations with charitable status should be subject to the same accountability requirements”.

7.2 The review recommended (para 7.91) that “excepted charities with incomes above the new proposed registration threshold should be required to register. A higher registration threshold could be set to ensure a manageable process of registration”. The Government response to the Strategy Unit accepted its recommendation to set a higher initial registration threshold for excepted charities. This was set in the Charities Act 2006 (“the 2006 Act”), now partly consolidated into the 2011 Act, at the £100,000 threshold. Excepted charities with incomes at or below the £100,000 threshold are not required to register, but those with incomes greater than that threshold must register.

¹ SI 2001/260.

² SI 2001/1598.

³ SI 2007/2655.

⁴ SI 2012/1734.

⁵

http://webarchive.nationalarchives.gov.uk/20061101004827/http://cabinetoffice.gov.uk/strategy/work_areas/voluntary_sector/index.asp

- 7.3 Section 32(3) of the 2011 Act precluded any lowering of the £100,000 threshold until the report on the impact of the 2006 Act, required by section 73 of the 2006 Act, had been laid in Parliament. This was done in July 2012 and the Government published its response in September 2013.
- 7.4 The review report, “*Trusted and Independent: Giving charity back to charities*”⁶, included a recommendation (chapter 5, recommendation 9) that the exception should end in stages over a period of three years, based on a general registration threshold for all charities of a gross annual income of more than £25,000. Currently most charities have to register if their gross annual income is more than £5,000.
- 7.5 The charity sector opposed the increase in the general registration threshold from £5,000 to £25,000, arguing that allowing smaller charities not to register would undermine public trust and confidence in charities as a whole. In its response to the review⁷ the Government accepted this. In relation to the proposed phased reduction of the £100,000 threshold, the Government concluded that now is not the right time to require smaller excepted charities to register with the Charity Commission. For the same reason, the Government considers it inappropriate at this stage to remove the exception for the religious charities connected with particular denominations. The main concern is that to do so will impose an unnecessary regulatory burden on up to 26,000 small religious charities at a time when many of them may be under pressure. This is why these Regulations extend the exception of these religious charities until 31st March 2021.

8. Consultation outcome

- 8.1 The Regulations continue the existing position for a fixed period and therefore no formal consultation has been undertaken. However, the Cabinet Office has written to the representative bodies of the charities affected proposing three options, allowing the 1996 Regulations to lapse, so ending the exception, and extending them for five years and seven years respectively. The extension periods proposed are longer than that proposed in the review report because maintaining the lower £5,000 general registration threshold will require many more charities to register and create a greater burden, both on charities and the Charity Commission, than would be the case if the threshold was set at £25,000.
- 8.2 The representative bodies unanimously preferred the seven year extension. The 1996 Regulations will be extended on the basis that during the period of the extension the Charity Commission will work with the representative bodies to prepare the charities affected for registration.

⁶ <https://www.gov.uk/government/consultations/charities-act-2006-review>

⁷ <https://www.gov.uk/government/publications/government-response-to-recommendations-on-the-legal-framework-for-charities>

9. Guidance

9.1 The Office for Civil Society has advised the parent bodies of the church denominations affected by this instrument that a further seven year extension to the 1996 Regulations is being sought.

10. Impact

10.1 There is expected to be no impact on business, charities or voluntary bodies.

10.2 There is expected to be no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Cabinet Office will, by March 2019, review the progress the Charity Commission is making with the representative bodies to prepare the charities for registration.

13. Contact

David Hale at the Office for Civil Society, Cabinet Office, Tel: 020 7271 6280 or email: david.hale@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.