

# CHARITIES ACT 2006

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

12. Many of the provisions in the Act amend the Charities Act 1992 and the Charities Act 1993, which are referred to below as “the 1992 Act” and “the 1993 Act” respectively.

#### *Sections 1 – 3: Meaning of “charity”; Meaning of “charitable purposes”; The “public benefit” test*

13. The preamble to the Statute of Charitable Uses 1601 (sometimes known as the Statute of Elizabeth I) contained a list of purposes or activities that is sometimes described as the first statutory definition of charitable purposes; but that list - because it was in the preamble, not the body of the Act - did not form part of the statute law. It was, in effect, a list of purposes or activities that the State believed were of general benefit to society, and to which the State wanted to encourage private contributions.
14. The list in the preamble to the 1601 statute has nevertheless formed the foundation of the modern definition of charitable purposes, which has developed entirely through case law. This has come about because the courts, in considering whether or not a particular purpose was charitable in law, have tended to look for an analogy between the purpose under consideration and the 1601 list, and to recognise the purpose as charitable if an analogy with the 1601 list could be found.
15. [Section 1](#) provides a general statutory definition of charity for the purposes of the law for the first time. It follows the definition of charity in the Charities Act 1993.
16. [Section 1\(1\)](#) establishes the meaning of charity. By specifying that a body or trust is a charity if established for charitable purposes “only”, section 1(1)(a) preserves the current rule to the effect that a body or trust which has non-charitable as well as charitable purposes is not a charity.
17. [Section 1\(1\)\(b\)](#) excludes institutions outside England and Wales from the scope of charity as defined by the Act since the jurisdiction of the High Court extends only to England and Wales.
18. [Subsections \(2\) and \(3\)](#) of section 1 deal with references to a charity in legislation apart from this Act. Subsection (3) covers legislation and documents in which a charity is defined by reference to the Charitable Uses Act 1601 or the preamble to that Act and provides for that definition to be supplanted by the one in this Act. Subsection (2) covers all other definitions of charity in legislation apart from this Act and preserves those definitions.
19. [Section 2](#) of the Act contains the first statutory definition of “charitable purpose”. This definition still relies on a considerable body of case law.
20. The meaning of “charitable purpose” is supplied by section 2(1), which provides that a purpose is charitable if it meets two criteria:

- that it falls under one or more descriptions or “heads” of charity in section 2(2); and
  - that it is for the public benefit.
21. Each of the paragraphs in section 2(2) is a description or “head” of charity rather than a fully-stated purpose in itself. Within each of those descriptions lie a range of purposes all of which fit the description but each of which is a different purpose in its own right. The list of descriptions, taken as a whole with the purposes underlying the descriptions, encompasses everything which is to be a charitable purpose.
  22. The list of descriptions of charitable purposes in *subsection (2)* of section 2 contains 12 specific descriptions (paragraphs (a) to (l)) and one general description (paragraph (m)) which brings in the purposes described by *subsection (4)*. The list of specific descriptions covers the great majority of purposes that are recognised as charitable but does not cover everything: paragraph (a) of subsection (4) covers those purposes that are currently recognised as charitable but that do not fall under any of the specific descriptions in paragraphs (a) to (l).
  23. Paragraphs (b) and (c) of section 2(4) cover purposes that are analogous to, or within the spirit of, any other charitable purposes (i.e. purposes falling within any of paragraphs (a) to (l) of subsection (2), existing charitable purposes, or purposes which themselves have been recognised as charitable under subsection (4)(b) or (c)). These provisions enable the meaning of “charitable purpose” to be expanded in the future by allowing for the possibility of new charitable purposes to be recognised.
  24. *Subsection (5)* of section 2 preserves the existing meaning of the terms used in the specific descriptions in subsection (2) or (3) of that section.
  25. **Section 3** deals with public benefit. Under the existing law there is a presumption that purposes for the relief of poverty, the advancement of education, or the advancement of religion – in other words the purposes that would fall under paragraphs (a) to (c) of section 2(2) - are for the public benefit. No other purposes benefit from that presumption. The effect of the presumption at present is that, when the status (charitable or non-charitable) of an organisation established for the relief of poverty, the advancement of education, or the advancement of religion is being considered, the organisation’s purpose is presumed to be for the public benefit unless there is evidence that it is not for the public benefit. By contrast, organisations established for all other purposes, which do not benefit from that presumption, have at the time their status is being considered to provide evidence that their purpose is for the public benefit.
  26. *Subsection (2)* of section 3 abolishes the presumption that organisations for the relief of poverty, the advancement of education, or the advancement of religion enjoy, putting all charitable purposes on the same footing. Abolishing the presumption will not by itself have the effect of depriving poverty relief, educational and religious organisations that were registered as charities while the presumption existed of their charitable status.
  27. *Subsection (3)* makes clear that the term “public benefit”, wherever it occurs in sections 1-3, refers to the existing concept in charity law in England and Wales. The concept of public benefit will remain in the common law. Guidance that the Charity Commission issues under section 4 (see below) will explain the public benefit concept.

#### ***Section 4: Guidance as to operation of public benefit requirement***

28. The Act gives the Charity Commission a set of new objectives (see section 7), one of which is to promote understanding and awareness of the operation of the public benefit requirement. Section 4 requires the Commission to issue guidance in pursuance of that objective (*subsection (1)*) and allows the Commission to revise its guidance from time to time (*subsection (3)*). Revision of the guidance will be needed if there are changes in society which bring about developments in the legal concept of public benefit.

*These notes refer to the Charities Act 2006 (c.50)  
which received Royal Assent on 8 November 2006*

29. *Subsection (4)* requires the Commission to carry out consultations before issuing its guidance under this section. It must also carry out consultations before revising guidance that it has already issued, unless it thinks that consultations are not needed (because, for example, the revisions are so slight as not to justify the time and expense of consultations).
30. *Subsection (5)* requires the Commission to publish its guidance under this section, but allows it to choose the most appropriate manner of publication – for example, as a printed document; as a document on a website; etc.
31. Although the Commission will be legally required by subsection (1) of this section to issue guidance, the guidance will not be legally binding on charity trustees. *Subsection (6)* will not put charity trustees under a legal obligation to agree with or to follow the guidance but it will require them to take the guidance into consideration when doing anything, in the administration of their charity, to which the guidance is relevant.

### ***Section 5: Special provisions about recreational charities, sports clubs etc.***

32. *Subsections (1) – (3)* of this section make changes to the Recreational Charities Act 1958. The 1958 Act provides that:
  - it is a charitable purpose to provide, in the interests of social welfare, facilities for recreation or other leisure-time occupation where those facilities are made available either to the public as a whole or to women only (section 1(2) of the 1958 Act);
  - certain purposes connected with the provision of facilities for the welfare of miners are charitable purposes (section 2 of the 1958 Act).
33. The Act affects both of these provisions of the 1958 Act, which are now thought to be incompatible with the European Convention on Human Rights.
34. Subsection (2) of the section amends section 1(2) of the 1958 Act so that facilities made available to men only are to be regarded as charitable on the same basis as facilities made available to the public as a whole or to women only. This amendment does not affect the charitable status of any organisation which is currently charitable under the 1958 Act.
35. Subsection (3) repeals section 2 of the 1958 Act. The effect of this will be that miners' welfare organisations that can show that they are charitable under the definition of charity contained in section 1 of the Act will retain their charitable status. Other miners' welfare organisations will not retain their charitable status.
36. *Subsections (4) and (5)* make special provision for sports clubs which are registered with the Her Majesty's Revenue and Customs under the Community Amateur Sports Club (CASC) scheme established by the Finance Act 2002. Some such clubs are established for purposes which would make them charities under the definition in section 1 of this Act. Subsection (4) of this section provides that any club which has charitable purposes and is registered as a CASC is not a charity.

### ***Sections 6 and 7 and Schedules 1 and 2: The Charity Commission***

37. Currently the Charity Commission has no legal existence as a body: the functions that are usually described as "the Charity Commission's" functions are in fact functions held by the Charity Commissioners for England and Wales (the "Commissioners") personally. *Subsection (1)* of section 6 inserts a new section, 1A, into the 1993 Act. Section 1A(1) creates a new body corporate called the Charity Commission for England and Wales, with an equivalent name in Welsh. The Commission will be a non-Ministerial Government Department and *subsections (4) and (5)* ensure that it will have a significant degree of independence from Ministers and other Government Departments in the performance of its functions.

38. Other provisions in section 6 transfer the Commissioners' functions to the new Commission (subsection (4)), abolish the office of Charity Commissioner (subsection (3)), and ensure that references to the Commissioners in other enactments passed before the commencement of this section are, from its commencement, understood as references to the new Commission (subsection (5)).
39. *Subsection (7)* of section 6 gives effect to Schedule 2 of the Act, which contains provisions to deal with aspects of the transition between the Commissioners and the new Commission.
40. Provisions for the new Commission's membership, staffing, committees, procedures, and annual reporting are in Schedule 1A to the 1993 Act, inserted by Schedule 1 to the Act and given effect by section 6(2) of it.
41. *Section 7* inserts new four sections – sections 1B to 1E - into the 1993 Act. These provide the Commission with, respectively, five objectives, six general functions, six general duties, and incidental powers. The Commission's objectives describe what the Commission is to seek to achieve; its functions describe the activities it is to carry out in seeking to achieve its objectives; and its general duties describe ways in which, as far as it practicable, it must act, and matters to which it must have regard, in performing its functions and in managing its affairs. Other provisions in the Act require the Commission to report annually to the Minister for the Cabinet Office on the discharge of its functions, the extent to which it believes its objectives have been met, and the management of its affairs (see paragraph 11 of Schedule 1A to the 1993 Act, inserted by Schedule 1 to the Act). Subsection (2) of section 1E is to ensure that the Commission does not directly involve itself in the administration of any charity.

### ***Section 8: The Charity Tribunal***

42. Under the existing law, a right of appeal to the High Court exists in relation to some decisions of the Charity Commissioners. This section creates a new tribunal to act as the "court of first instance" for appeals and applications in respect of certain decisions of the new Charity Commission. It also enables the Tribunal to consider matters referred to it by the Attorney General or, with the Attorney's consent, by the Charity Commission, the reference being made before the Commission has made any decision on the matter.
43. *Subsection (1)* of section 8 provides for a new Part 1A of the 1993 Act to be inserted after section 2 of the 1993 Act. Part 1A contains new sections 2A to 2D covering, respectively, the creation of the Tribunal; its practice and procedure (which provides (section 2B(1) to (9)) for the matters to be covered in the Lord Chancellor's rules which would regulate the exercise of the right of appeal or to make a reference to the Tribunal and practice and procedure); appeals from the Tribunal to the High Court; and the powers of the Attorney General to intervene in proceedings before the Tribunal, or on appeal from the Tribunal to the High Court, where he is not a party to those proceedings.
44. *Subsection (2)* of section 8 gives effect to Schedule 3, which inserts the new Schedule 1B into the 1993 Act. Schedule 1B covers the membership of the Tribunal and appointments to it; its staff and facilities; the composition of its panels, who are to exercise its functions; and its practice and procedures.
45. *Subsection (3)* of section 8 gives effect to Schedule 4, which inserts the new Schedules 1C and 1D into the 1993 Act. Schedule 1C provides for specified rights of appeal to the Tribunal against specified decisions of the Commission, prescribing, in the case of each specified decision, which persons have the right of appeal and what powers the Tribunal has in relation to the appeal or to the Commission's decision or action which is the subject of the appeal. The powers of the Tribunal are set out in the table in new Schedule 1C. The Commission would be the respondent to such an appeal. In certain cases the Tribunal would consider applications to review matters (being those listed in paragraph 3 of Schedule 1C) in the same way as the High Court would consider an application for judicial review. Those reviewable decisions are listed in paragraph

3(2)(a) to (g), along with orders made by the Commission under section 69(1) of the 1993 Act (paragraph 3(2)) which are also reviewable. Schedule 1D makes provision for references to the Tribunal. The Commission (paragraph 1) will be able to refer to the Tribunal matters involving the operation or the application of charity law relating to its functions. The Attorney General (paragraph 2) will be able to refer to the Tribunal questions involving the operation or the application of charity law. The Commission would require the consent of the Attorney General to make a reference. Schedule 1D makes further provision in respect of such references, including;

- the powers of the Commission in relation to matters referred to the Tribunal;
- the suspension of time limits whilst a reference is in progress;
- enabling the Commission to act before the Tribunal has made its decision if all the parties to the proceedings, and any charities likely to be affected by the Commission's action, agree that the Commission can act;
- rights of appeal in respect of matters already determined on reference to the Tribunal.

### ***Section 9: Registration of Charities***

46. **Section 9** substitutes three new sections – 3, 3A and 3B – for existing section 3 of the 1993 Act. New section 3 deals with the register of charities, which the Charity Commission must continue to keep. Section 3 prescribes the content of the register and the circumstances in which the Commission must or may remove charities, or institutions which are no longer considered to be charities, from it.
47. Section 3A prescribes the requirements for the registration of charities, making different provision for different descriptions or classes of charity.
48. Section 3B deals with the duties of charity trustees in connection with registration.
49. Sections 3 and 3B in effect reproduce, in a new structure, provisions of existing section 3. The registration requirements in section 3A represent a substantial change by comparison with the registration requirements in existing section 3.
50. Section 3A begins (*subsection (1)*) with the general rule that every charity must be registered. *Subsection (2)* then provides that four classes or descriptions of charity (specified in paragraphs (a) to (d) of that subsection) are not required to be registered. These are:
  - (paragraph (a)) exempt charities. The institutions specified in Schedule 2 to the 1993 Act are not deemed or confirmed by that Schedule to be charities but, so far as they are charities, they are exempt charities. Section 11 of the Act (see below) makes amendments to Schedule 2;
  - (paragraphs (b) and (c)) charities – usually known as excepted charities – that are excepted either by order made by the Charity Commission (paragraph (b)) or by regulations (paragraph (c)). In a change to the existing position, under which no excepted charity is required to register, an excepted charity will be required to register if its gross income exceeds £100,000;
  - (paragraph (d)) charities whose gross income does not exceed £5,000. This financial threshold is designed to release the smallest charities, defined by their income, from the registration requirement; currently the equivalent threshold is £1,000. At the same time the requirement in existing section 3, that a charity must register if (regardless of the level of its income) it possesses a permanent endowment or uses or occupies land, is not being retained and will therefore no longer apply. The combined effect of raising the threshold and not retaining that requirement is to release several thousand small charities from the duty to register. However, such charities may (*subsection (6)* of section 3A) register if they wish.

51. In *subsection (3)*:
- paragraph (a) preserves the effect of excepting orders made by the Charity Commission under the existing law; and
  - paragraph (b) prevents the Commission from making an order to create any new exceptions after the commencement date.
52. *Subsection (4)* makes similar provision in relation to charities excepted by regulations made by the Minister for the Cabinet Office, except that it requires him to make regulations which have the effect of excepting from the registration requirement those formerly-exempt charities whose income does not exceed £100,000.
53. *Subsections (7) and (8)*, read together, allow the Minister for the Cabinet Office by order to:
- reduce the annual income threshold applying to excepted charities – set by the Act at £100,000 – above which such charities will be required to register; or
  - alter the minimum registration threshold – set by the Act at £5,000 – below which any charities are not required to register.
- An order reducing the threshold applying to excepted charities can be made only after the report on the operation of this legislation has been laid before Parliament, as specified in Section 73.
54. Section 3B reproduces the existing law on the duties of trustees in connection with registration.

#### ***Section 10: Interim changes in threshold for registration of small charities***

55. This section allows the Minister for the Cabinet Office to change the threshold for registration of small charities before he brings the provisions of section 3A(1)-(5) into force.

#### ***Section 11: Changes in exempt charities***

56. This section amends Schedule 2 to the 1993 Act, to remove some specified institutions from that Schedule and to include other specified institutions in that Schedule. The effect of removing the specified institutions is that they will no longer be exempt charities. The inclusion of certain institutions, specified in *subsections (4) and (5)*, is a technical change that will have no effect on the exempt status of the institutions.
57. *Subsection (11)* allows the Minister for the Cabinet Office, provided he meets the condition in *subsection (12)*, to make orders removing other particular institutions, or institutions of a particular description, from Schedule 2 to the 1993 Act, or adding other particular institutions, or institutions of a particular description, to Schedule 2 to the 1993 Act.
58. *Subsection (13)* provides a power for the Minister for the Cabinet Office to amend or modify enactments in connection with charities that cease to be exempt charities, or become exempt charities, under this section. This power would be used, for example, to mitigate the risk of dual accounting régimes arising for charities that lose their exempt status and become subject to registration with, and regulation by, the Charity Commission.
59. Any order made under this section would be subject to the affirmative resolution procedure.

***Section 12: Increased regulation of exempt charities under 1993 Act***

60. This section gives effect to the amendments to the 1993 Act specified in Schedule 5 to this Act. These amendments apply to exempt charities provisions of the 1993 Act which formerly did not apply to them. However, the Charity Commission's power to institute inquiries into exempt charities under section 8 of the 1993 Act (conferred by paragraph 2 of Schedule 5) is limited: the Commission may only exercise that power, in relation to an exempt charity, on the request of the charity's principal regulator (see note on section 13).

***Section 13: General duty of principal regulator in relation to exempt charity***

61. This section gives the Minister for the Cabinet Office power (*subsection (4)(b)*) to make regulations prescribing a body or a Minister of the Crown as the principal regulator of an exempt charity. A body or Minister prescribed as a principal regulator of an exempt charity will have, in relation to that charity, the duty (*subsections (2) and (3)*) to do all that it or he reasonably can to promote compliance by the charity trustees with their legal obligations.
62. *Subsection (5)* will allow the Minister for the Cabinet Office to make regulations amending or otherwise modifying Acts of Parliament, Statutory Instruments and other enactments for certain purposes. These could include the purpose of giving a principal regulator any new statutory powers that it needs to carry out its duty to meet the compliance objective in relation to the exempt charity(ies) for which it is principal regulator.

***Section 14: Commission to consult principal regulator before exercising powers in relation to exempt charity***

63. The principal regulators of exempt charities will not have the full powers of the Charity Commission. This section inserts a new section, 86A, into the 1993 Act, requiring the Charity Commission to consult the principal regulator of an exempt charity before the Commission exercises any of its specific powers in relation to that charity.

***Section 15: Application cy-près by reference to current circumstances***

64. This section amends section 13 of the 1993 Act by substituting 'the appropriate considerations' for 'the spirit of the gift' in that section. The effect is to require the Charity Commission, when making a scheme to alter the purposes for which charity property is to be applied, to take into account not only the spirit of the gift of the property but also the social and economic circumstances prevailing at the time of the proposed alteration in the purpose.

***Section 16: Application cy-près of gifts by donors unknown or disclaiming***

65. This section, by amending section 14(4) of the 1993 Act, gives the Charity Commission the power to decide whether property is to be treated as belonging to donors who cannot be identified. Under the existing law only the court has that power.

***Section 17: Application cy-près of gifts made in response to certain solicitations***

66. This section inserts a new section, section 14A, into the 1993 Act. Section 14A applies to property (which includes money) given for specific charitable purposes in response to an appeal which contains a certain type of statement. The statement is described in *subsection (2)* and is to the effect that unless, at the time of making his donation, the donor asks (by making a "relevant declaration" as described in *subsection (3)*) to be given the chance to reclaim his donation if the specific purposes for which he is giving it fail in future, the donation will be applied cy-près.

67. *Subsections (4)-(6)* set out the process to be followed where the purposes have failed and where the donor has made a relevant declaration. The trustees holding the property must notify the donor that the purposes have failed and ask him whether he wants the property (or a sum equal to its value) returned. If he does, the trustees must return it to him. If either the trustees cannot find the donor, or the donor indicates that he does not wish the property returned, then the property can be applied cy-près as if the donor had disclaimed his right to have it returned to him.
68. *Subsection (7)* applies where the purposes have failed and where the donor has not made a “relevant declaration”. It allows the property to be applied cy-près as if the donor had disclaimed his right to have it returned to him.
69. Paragraph (b) of *subsection (8)* makes clear that this section applies both where the donor has received something of value in return for his donation and where he has not. Paragraph (c) makes clear that where an appeal consists of some solicitations which contain the statement described in subsection (2) and some which do not contain that statement, the donor (unless he proves otherwise) will be regarded as having responded to a solicitation containing the statement.

### **Section 18: Cy-près schemes**

70. This section alters the cy-près rule. The cy-près rule is a well-established legal rule that applies when the purposes for which charitable property is held are being changed by the court or by the Charity Commission. The occasions on which charitable purposes can be changed to new purposes by the court or the Commission are set out in section 13 of the 1993 Act, as amended by section 18 of this Act. At present the cy-près rule requires the new purposes to be as close as practicable (bearing in mind the reason why the need to change the purposes arose in the first place) to the original purposes.
71. **Section 18** alters the cy-près rule by inserting into the 1993 Act a new section 14B, *subsection (1)* of which requires the court or the Commission to act, when making a scheme to change charitable purposes, in accordance with the remaining provisions (i.e. *subsections (2) to (6)*) of new section 14B.
72. *Subsection (2)* of new section 14B requires the court or the Commission, when making a scheme changing the charitable purposes for which particular property given to a charity is held, to have regard to certain matters (see next paragraph). This applies either when the scheme is transferring the property from one charity to another or when there is no transfer and the scheme simply changes the purposes of the charity that holds the property. “Property given” to a charity includes (by virtue of *subsection (5)*) both the property in the form in which it was originally given and any property derived from it. The effect is that if, for example, a piece of land was given to a charity and sold by the charity, the money representing the proceeds of the sale would also count as the “property given”.
73. The three matters to which the court or the Commission must have regard when making a scheme changing the charitable purposes for which property is held are set out in *subsection (3)* of new section 14B. One of those matters is the desirability of choosing new purposes which are close to the original purposes; but that is not paramount. The court or the Commission must give equal weight to the other two matters. One of these is the spirit of the gift by which the property came to the charity. The other is the need to ensure that the charity has purposes which are suitable and effective in the light of current social and economic circumstances.
74. *Subsection (4)* of new section 14B allows the court or the Commission, when making a scheme which transfers a charity’s property to another charity, to require the trustees of the receiving charity to use the property for purposes as similar as practicable to the original purposes for which the property was held. This is to cover cases where the original purposes are still useful but the court or the Commission believes that the property can be more effectively used in conjunction with other property.



**Section 19 – Power to suspend or remove trustees etc. from membership of charity**

75. This section inserts into the 1993 Act a new section 18A, which applies when the Charity Commission – at any time after it has started a statutory inquiry into a charity – makes an order suspending or removing from office any trustee, charity trustee, officer, agent or employee of a charity who is also a member of that charity.
76. In some cases under the present law, a person who has been suspended or removed from office can use his membership of the charity to help vote himself back into, or reacquire in other ways, the office from which he has been suspended or removed. The Act gives the Commission power to prevent this by:
- (*subsection (2)* of section 18A) allowing it also to suspend the membership of someone whom it was suspending from office. The person’s suspension from membership would last as long as his suspension from office; or
  - (*subsection (3)* of section 18A) allowing it also to terminate the membership of someone whom it was removing from office and to prohibit that person from taking up his membership again without the Commission’s agreement.
77. There is a presumption, in *subsection (4)* of section 18A, that a person should be entitled to take up his membership again five years after it was terminated. That presumption can be overturned only if there are special circumstances.

**Section 20 – Power to give specific directions for protection of charity**

78. This section inserts into the 1993 Act a new section 19A, which allows the Charity Commission at any time after it started a statutory inquiry into a charity and has found either:
- that there is or has been any misconduct or mismanagement in the administration of the charity; or
  - that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,
- to direct any of the persons listed in the *subsection (2)* of section 19A to take a specific action which the Commission thinks is expedient in the interests of the charity.
79. “Charity trustees” in paragraph (a) of *subsection (2)* attracts the definition of “charity trustees” in section 97(1) of the 1993 Act: the persons having the general control and management of the administration of a charity. Paragraph (b) of *subsection (2)* covers a person who is a trustee for the charity but who is not a “charity trustee” within that definition. An example would be a custodian trustee of the charity’s property.
80. *Subsection (3)* of section 19A:
- prevents the Commission from directing a person to do something which is expressly prohibited by an Act of Parliament or by his charity’s own constitution; but
  - allows the Commission to direct a person to do something which he does not have power to do under his charity’s constitution or otherwise.
81. Where a person is directed by the Commission to take some action which is not otherwise within his power, and he takes that action in accordance with the Commission’s direction, *subsection (4)* protects him from any allegation that he acted improperly, although *subsection (5)* preserves the contractual and other rights of other parties in respect of anything so done.

***Section 21 – Power to direct application of charity property***

82. This section inserts into the 1993 Act a new section 19B. *Subsection (2)* of new section 19B gives the Charity Commission, in certain circumstances, power to make an order directing a person who is in possession or control of charity property to apply that property in the way specified in the Commission's order.
83. *Subsection (1)* of new section 19B sets out the circumstances in which this power is exercisable.
84. *Subsection (3)* makes similar provision to subsection (3) of new section 19A (see paragraph 80) above.
85. *Subsections (4)* and (5) make similar provision to subsections (4) and (5) of new section 19A (see paragraph 81 above).

***Section 22 - Relaxation of publicity requirements relating to schemes etc.***

86. This section substitutes for section 20 of the 1993 Act, which sets out the procedures to be followed by the Charity Commissioners for giving publicity to schemes and certain orders, a new section 20 and a new section 20A. The purpose of the changes is to speed up the formal procedure for the making of schemes and orders by the Charity Commission and to reduce the cost to charities, by making advertising of the changes a matter of Commission discretion.
87. *Subsections (1)* and (2) of new section 20 state that the Commission may not establish a scheme for a charity without:
- giving public notice; and
  - if it is a local charity, informing the parish council or chairman of the parish meeting.
88. *Subsection (3)* makes the timing of such notices a discretionary matter for the Commission. Under the current law, public notice must have been given for at least a month before the date of making the scheme.
89. *Subsection (4)* allows the Commission to disapply either or both of the publicity requirements in subsection (2) if it is satisfied that either or both is unnecessary. *Subsection (5)* says that the Commission must take into account any representations made to it but may proceed with the proposals without further notice at its own discretion without necessarily modifying them. After an order is made it must be displayed publicly for at least a month in the Commission's office and, if it is a local charity, at a convenient place in the charity's area. The latter requirement may be disregarded should the Commission deem it unnecessary. *Subsection (7)* gives the Commission discretion as to what information is included in the public notices and how it is presented.
90. Section 20A contains similar provision to section 20 in relation to orders of the Commission to remove trustees, officers, agents or employees of charities from their position as such within a charity. The Commission can determine the length of public notice given (*subsection (3)*), whether or not such a notice is necessary (*subsection (4)*) and the form and content of the notice (*subsection (7)*). *Subsection (5)* requires the Commission to notify the person being removed from his position not less than one month before the order is made, inviting representations from him within a stated time. This does not apply if the person cannot be found or has no known address in the United Kingdom. *Subsection (8)* allows the notice to be given by post to the recipient's last known address in the UK.

***Section 23 - Participation of Scottish and Northern Irish charities in common investment schemes etc.***

91. Under sections 24 and 25 of the Charities Act 1993 the Charity Commissioners may make schemes for the establishment of, respectively, common investment funds (CIFs) and common deposit funds (CDFs), which are collective investment vehicles specially designed for charities. A CIF is akin to a unit trust while a CDF is akin to a deposit account for cash. Under the existing law the only investors from which CIFs and CDFs are allowed to accept investments are charities established in England and Wales.
92. **Section 23** amends sections 24 and 25 of, and inserts new section 25A into, the Charities Act 1993 to allow CIFs and CDFs the opportunity to accept investments from charities established in Scotland and Northern Ireland which are eligible for UK tax reliefs. Section 23 will not automatically widen the scope of every CIF and CDF in this way, but will allow individual CIFs and CDFs to make their own decisions as to whether or not to accept investments from such charities in Scotland and Northern Ireland.

***Section 24 – Power to give advice and guidance***

93. The Charity Commissioners have power under section 29 of the 1993 Act to give a charity trustee who applies in writing for it, their opinion or advice on any matter affecting the performance of his duties as such. If the trustee acts in accordance with the advice or opinion given by the Commissioners, he is deemed to have acted in accordance with the trusts of the charity. This protection is withdrawn, however, if the trustee knows or suspects that the Commissioners' opinion or advice was given without their knowing all the material facts of the matter. Protection is also withdrawn where the court or Tribunal has already given a decision on the same matter, and where proceedings are under way to obtain the court's or Tribunal's decision.
94. **Section 24** substitutes a new section 29 for the existing section 29. The overall effect of new section 29 is to preserve, with one minor extension, the existing power described above, and to add a more general power for the Commission to give advice.
95. *Subsections (1) to (3)* of the new section 29 reproduce in essence the existing power. Subsection (1)(b) makes the extension, which is to allow the Commission's opinion or advice to be sought on any matter relating to the proper administration of the charity not just, as at present, on any matter relating to the applicant's performance of his duties.
96. *Subsections (4) and (5)* give the Commission a more general power to give advice and guidance, as part of its new function (set out in new section 1C(2) of the 1993 Act, inserted by section 7 of the Act) of encouraging and facilitating the better administration of charities. The Commission may use this new power to give advice to individual charities, to classes of charity, or to all charities, and may do so in whatever form and manner – for example, through letters, through publications made generally available, through documents placed on its website - it considers appropriate.

***Section 25 – Power to determine membership of charity***

97. Some charities have a body of members with voting and other constitutional rights, such as the right to elect some or all of the trustees of the charity. If, for example, a charity's membership records were incomplete, there might be a dispute as to who the members of the charity were. That could in turn impede the proper administration of the charity - for example, by casting doubt as to whether or not particular people have been validly elected as trustees.
98. **Section 25** inserts a new section 29A into the 1993 Act. New section 29A gives the Charity Commission, or a person appointed by the Commission for the purpose, the power to decide authoritatively who the members of a charity are. The Commission, or the person it has appointed for the purpose, may exercise this power in two circumstances. The first is when the charity in question applies for such a decision to

be made. The second is at any time after the Commission has begun a statutory inquiry into the charity under section 8 of the 1993 Act.

99. An amendment made to section 97(1) of the 1993 Act by Schedule 8 to the Act has the effect that, if the charity in question has a body of members distinct from the charity trustees, “members” in the new section 29A means that body of members.

***Section 26 – Power to enter premises and seize documents etc.***

100. This section inserts into the 1993 Act a new section, section 31A, which gives the Charity Commission power to enter premises for certain purposes and on certain conditions. The Charity Commissioners have had since 1960 an enforceable power to call for documents and search records, but have never had power to enter premises to take possession of documents or information.
101. The power of entry is exercisable subject to obtaining a warrant from a justice of the peace. *Subsection (1)* of new section 31A sets out the circumstances in which a justice of the peace may issue a warrant.
102. The conditions in *subsection (2)* include the condition (paragraph (a) of that subsection) that an inquiry has been instituted under section 8 of the 1993 Act. Section 8 gives the Commission power to institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.
103. *Subsection (3)* sets out the actions which a warrant authorises the Commission employee named in the warrant to take. The documents which that person may take into his possession are limited, by paragraph (c) of that subsection, to documents falling within paragraph (b) of subsection (2) – that is, to documents which are relevant to the inquiry in question and which the Commission could require to be furnished or produced under its power in section 9(1) of the 1993 Act. *Subsection (3)(d)* allows the Commission employee to take possession of computer disks and other electronic storage devices containing information of the same description. *Subsection (4)* provides that the warrant must be executed within one month of its issue.
104. *Subsection (6)* provides that a written record of the entry and seizure must be made, and sets out the matters it must include. *Subsection (7)* provides that the written record must be presented on request to the occupier or his representative. *Subsection (8)* provides that unless it is not practicable, the Commission employee must prepare the written record whilst on the premises and, if it is requested, provide the copy of the record before leaving the premises.
105. *Subsection (9)* allows the Commission to retain documents or devices that it has seized for as long as it needs to retain them for the purposes of its inquiry. An effect of paragraph (a) of this subsection is that, if keeping a photocopy of a document will suffice for the purpose of the inquiry, the Commission must return the original document.
106. *Subsection (10)* provides for the Commission to return a seized document or device either to the person from whom the Commission seized it, or to any of the charity trustees. This would allow the Commission to give direct to the trustees property which belongs to the charity but which was in someone else’s possession when seized.
107. *Subsection (2)* of this section applies section 50 of the Criminal Justice and Police Act 2001 to the Charity Commission’s power of seizure. That would in some circumstances allow a Commission employee to seize something (such as a computer):
- when he believed that it contained information the Commission was entitled to take but he could not determine, on the premises, whether or not it did in fact contain that information; or
  - when he knew that it contained information the Commission was entitled to take but he could not, on the premises, extract the information from the computer.

***Section 27: Restrictions on mortgaging***

108. **Section 27** makes a number of amendments to section 38 of the 1993 Act. At present, the grant of any mortgage over charity land requires the authority of the court or the Charity Commission, unless it is being granted by way of security for the repayment of a specific loan. Where the mortgage is granted for such a purpose, that authority is not necessary so long as the trustees obtain and consider proper advice, before executing the mortgage, on certain matters concerned with whether the loan is expedient in the interests of the charity. This section extends the circumstances in which a charity does not require the formal authority of the court or the Commission to allow land belonging to a charity to be used as security.
109. The substitution made by *subsection (2)* provides for the extension of the circumstances in which consent is not required, and prescribes the matters on which the trustees must obtain written advice in the case of a mortgage to secure the repayment of a proposed loan or grant (new subsection (3)), and in the case of a mortgage to secure the discharge of any other proposed obligation (new subsection (3A)).
110. New subsections (3B) to (3D) make provision for the régime for which consent is not required to be extended to mortgages which are intended to secure not only the loan which is under immediate consideration, but also any future loan which the lender might make to the borrower. This is subject to the requirement in new subsection (3D) that such a future transaction must not be entered into unless proper advice (as prescribed by new subsection (3) or (3A)) has been taken in respect of that transaction.

***Section 28: Annual audit or examination of accounts of charities which are not companies***

111. **Section 28** makes a number of amendments to section 43 of the 1993 Act. At present under section 43 of the 1993 Act a charity which is not a company must have its accounts for a particular financial year professionally audited (that is, audited by a person eligible under the Companies Act 1989 to audit the accounts of a company) if either:
- its gross income or total expenditure exceeded £250,000 in that financial year; or
  - its gross income or total expenditure exceeded £250,000 in either of the two years preceding that financial year.
112. The substitution made by *subsection (2)* of this section removes from the requirement to have an audit any references to the expenditure of a charity, which means that the level of a charity's expenditure is no longer relevant in determining whether or not its accounts must be audited. Nor is there any longer a requirement to consider the income of the charity in the preceding two years before the year in question. New section 43(1) sets the audit requirement at an income level of £500,000 per annum and introduces an additional asset value threshold of £2.8million. The asset value threshold applies only to those charities that are required to prepare a full annual statement of accounts under section 42(1) (i.e. the threshold does not apply to charities which prepare the simpler form of accounts under section 42(3)). This means that the asset threshold would apply at present only to charities with gross income of more than £100,000 per annum.
113. The amendment made by *subsection (3)* to section 43(2) preserves the requirement that a charity's auditor must be a person eligible to audit company accounts. The purpose of the amendment is to apply to auditors of charity accounts the rules on ineligibility on grounds of lack of independence that are contained in Part 2 of the Companies Act 1989.
114. *Subsection (4)* amends section 43(3) of the Charities Act 1993. This section relates to the requirement placed on charities which fall below the audit requirement threshold to have their accounts independently examined. Section 28 of the Deregulation and Contracting Out Act 1994 amended section 43(3) so that the requirement to have an independent examination was placed on charities whose gross income or total expenditure in that year exceeded £10,000. This amendment removes the consideration

of expenditure from the requirement to have an independent examination. The accounts of charities with incomes above £10,000 but below the new threshold of £500,000 would be subject to independent examination.

115. *Subsection (5)* provides for the new subsection (3A) to be inserted after section 43(3) of the 1993 Act. This new subsection relates to those charities which would have been required to have an audit under the previous régime but will not be so required under the new régime - that is, those with incomes above the old threshold of £250,000 but below the new threshold of £500,000. Where those charities do not have their accounts professionally audited the accounts are required to be independently examined by someone with a relevant qualification. For the purposes of the Act a relevant qualification would be membership of a body recognised under section 249D(3) of the Companies Act 1985, which would currently be one of the following bodies:

- Institute of Chartered Accountants in England and Wales;
- Institute of Chartered Accountants of Scotland;
- Institute of Chartered Accountants in Ireland;
- Association of Chartered Certified Accountants;
- Association of Authorised Public Accountants;
- Association of International Accountants;
- Association of Accounting Technicians;
- Chartered Institute of Management Accountants;
- Institute of Chartered Secretaries and Administrators;
- Or;
  - a member of the Chartered Institute of Public Finance and Accountancy, or;
  - a Fellow of the Association of Charity Independent Examiners.

The Minister for the Cabinet Office has the power by order (given by *subsection (6)*) to add a description of person to the list, to remove a description of person from the list, or to alter an entry in the list.

116. *Subsection (6)* substitutes a new section 43(8) of the 1993 Act for the existing section 43(8). Under this new subsection the Minister for the Cabinet Office retains the power to amend the audit threshold and the requirements for independent examination.

### ***Section 29: Duty of auditor etc. of charity which is not a company to report matters to Commission.***

117. Auditors of registered charities which are not companies have a specific statutory duty (a “whistleblowing” duty) to report to the Charity Commission abuse or significant breaches of charity law or regulation. This duty arises under regulation 7(5) of the Charities (Accounts and Reports) Regulations 2005<sup>1</sup>. Auditors who comply with the duty have statutory protection from the risk of action for breach of confidence or defamation. Auditors of charitable companies, however, would have to rely on the protection given by case law if they made a similar report in the ‘public interest’.

118. *Subsection (1)* of section 29 inserts new section 44A into the 1993 Act. Currently section 44 of the 1993 Act confers on the Secretary of State a power to make regulations about the duties of auditors under section 43; that power has been exercised in the Charities (Accounts and Reports) Regulations 2005. Regulation 7(5)

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<sup>1</sup> SI 2005/572

of those regulations imposes on the auditor of a charity a duty to communicate to the Commissioners in writing any matter relating to the activities or affairs of the charity which he has reasonable cause to believe is, or is likely to be, of material significance for the exercise in relation to the charity of the Commissioners' functions under section 8 (inquiries) or 18 (protective powers) of the 1993 Act. The effect of that duty is to release an auditor acting in pursuance of regulation 7(5) from his duty of confidentiality to the trustees of the charity and to enable him to report relevant matters about the charity without risking action for breach of confidence. The new section 44A prescribes the “whistleblowing” duties and powers of auditors and extends those duties and powers to independent examiners. New section 44A also provides that, where auditors or independent examiners act in accordance with their “whistleblowing” duties or powers, no duty to which they are subject – such as the duty of confidentiality towards their clients - would be contravened merely as a result of the information or opinion contained in their report (section 44A(1)-(7)).

119. *Subsection (2)* of section 29 amends section 46 of the 1993 Act, which makes special provision as respects the accounts and annual reports of exempt and excepted charities. Subsection (2)(b) provides for new sections 46(2A) and (2B) to be inserted after section 46(2) of the 1993 Act. It confers on the auditor or independent examiner of an exempt charity which is not a company the same duties, powers and protection as auditors and independent examiners of unincorporated charities are given under new section 44A(2) to (7).

### **Section 30: Group Accounts**

120. **Section 30** inserts new section 49A into the 1993 Act and gives effect to new Schedule 5A inserted into the 1993 Act by Schedule 6 to the Act. These introduce a requirement on a charity (“the parent charity”) which has subsidiaries under its control to prepare annual accounts relating to the whole group consisting of the parent and all of its subsidiaries. The present requirement is generally that the parent and each of its subsidiaries should prepare accounts relating to itself alone.
121. Paragraph 3 of new Schedule 5A provides the requirement for parent charities to prepare group accounts which must comply with regulations made by the Minister for the Cabinet Office regarding their form and contents. Paragraph 4 provides certain exceptions to the requirement to prepare group accounts, and enables regulations made by the Minister for the Cabinet Office to prescribe further exceptions. Paragraph 5 provides for the preservation of group accounts.
122. Paragraph 6 of new Schedule 5A makes provision for the audit of the accounts of larger groups, and paragraph 7 provides for the examination of accounts of smaller groups. The relevant gross income and asset thresholds for the purposes of determining larger groups would be prescribed in regulations made by the Minister for the Cabinet Office.
123. **Paragraph 10** makes provision for the annual reports of parent charities to include such information as may be prescribed in regulations about the activities of their subsidiaries. It also includes a requirement for the group accounts to be submitted to the Commission with the copy of the annual report along with a copy of the report on the accounts made by the auditor or independent examiner.
124. Other provision made by new Schedule 5A includes supplementary provisions relating to audits of group accounts; the extension of the duty of auditors or reporting accountants to report matters to the Commission; provision relating to excepted and exempt charities; the requirement for group accounts to be available for public inspection; and an extension of relevant existing offences to the requirements to prepare group accounts

***Section 31: Relaxation of restriction on altering memorandum etc. of charitable company***

125. **Section 31** amends section 64 of the 1993 Act. *Subsection (2)* replaces section 64(2) with a revised section 64(2). The revised section 64(2) limits the occasions on which alterations of a charitable company's memorandum or articles of association would require the prior written consent of the Charity Commission, referred to as regulated alterations.
126. *Subsection (2)* provides for a new subsection (2A) to be inserted after section 64(2). The regulated alterations for which the Charity Commission's prior written consent is required are provided for by section 64(2A)(a)-(c).

***Section 32: Annual audit or examination of accounts of charitable companies***

127. The provisions in this section relate specifically to the audit thresholds for charitable companies. The revised thresholds will ensure greater consistency in the audit thresholds for charitable companies and unincorporated charities. The provisions in this section amend sections 249A and 249B of the Companies Act 1985 and have been developed in conjunction with the Department of Trade and Industry.
128. *Subsection (1)* amends section 249A(4) of the Companies Act 1985. Section 249A(4) of the 1985 Act provides for the circumstances in which a charitable company may have a reporting accountant's report rather than an audit. Currently charitable companies with incomes between £90,000 and £250,000 per annum (section 249A(4)(b) of the 1985 Act) and assets of less than £1.4 million (section 249A(4)(c) of the 1985 Act) may have a reporting accountant's report. Paragraphs (a) and (b) of subsection (1) respectively increase the reporting accountant conditions so that charitable companies with gross incomes of more than £90,000 but not more than £500,000 and those with assets of not more than £2.8 million would be able to have a reporting accountant's report as opposed to an audit.
129. *Subsection (2)* provides for the associated increase in the audit exemption threshold where a charitable company is a parent company or subsidiary undertaking. Section 249B(1C) of the Companies Act 1985 provides that, where a charitable company is a parent company or subsidiary undertaking, an audit exemption for a particular year is available if in that year the group turnover is not more than £350,000 net (£420,000 gross). The charitable group threshold is 40% higher than that for the individual charitable company threshold. For that reason subsection (2) provides that the new threshold for audit exemption for charitable groups is 40% higher than the new threshold for charitable companies individually. The new threshold is therefore £700,000 net or £840,000 gross.

***Section 33: Duty of auditor etc. of charitable company to report matters to Commission***

130. **Section 33** provides for the new section 68A to be inserted after section 68. It extends to persons acting as auditors of charitable companies under Chapter 5 of Part 11 of the Companies Act 1985, and to reporting accountants of charitable companies under section 249C of that Act, the duties, powers and protection given to auditors and independent examiners under section 44A(2)-(7) of the 1993 Act.

***Section 34 and Schedule 7: Charitable incorporated organisations***

131. **Section 34** and **Schedule 7** make provision for a new legal form, the Charitable Incorporated Organisation ("CIO"). The CIO is the first legal form to be created specifically to meet the needs of charities. Its purpose is to avoid the need for charities which wish to benefit from incorporation to register as companies and be liable to dual regulation by Companies House as well as the Charity Commission.



132. The suggestion of a new legal form for charities was first made in the Department of Trade and Industry's review of company law in 2001<sup>2</sup>. It was subsequently developed by an advisory group set up by the Charity Commission. The proposal was endorsed by the Strategy Unit whose report provides a summary of the CIO's main characteristics<sup>3</sup>. Further detail was given in a background paper. In its reply to the Strategy Unit, the Government accepted the proposals for CIOs and said that it proposed to review the need for other legal forms five years after the CIO is introduced<sup>4</sup>.
133. The Act sets out the basic framework for the CIO. Further technical provisions, which may need amendment in the light of experience of the CIO's operation, will be contained in secondary legislation. An exposure draft of the relevant secondary legislation is available at [http://communities.homeoffice.gov.uk/activecomms/ac-publications/publications/290701/charities\\_dummy\\_reg.pdf](http://communities.homeoffice.gov.uk/activecomms/ac-publications/publications/290701/charities_dummy_reg.pdf).
134. **Section 34** is preparatory. Schedule 7, which contains the substantive provisions, proceeds by inserting a new Part 8A (sections 69A-Q) and a new Schedule 5B into the Charities Act 1993 and making various minor amendments to that Act. The new Part 8A contains provisions dealing with the nature and constitution of the CIO; its registration as a charity; the conversion of a charitable company, registered industrial and provident society or community interest company into a CIO; the amalgamation of CIOs; the transfer of a CIO's property, rights and liabilities to another CIO; and the Minister for the Cabinet Office's power to make regulations about the winding up, insolvency and dissolution of CIOs, and about their administration. The new Schedule 5B contains supplementary technical provisions. Part 2 of Schedule 7 contains amendments to the Charities Act 1993.
135. Section 69A requires a CIO to be a body corporate with a constitution, a principal office in England or Wales and one or more members with no or limited liability.
136. Section 69B specifies the matters that must be stated or provided for in the CIO's constitution, requires the constitution to be in a form specified by the Charity Commission and written in English (or in either English or Welsh if the CIO's principal office is in Wales), and enables the Minister for the Cabinet Office to make further provision in regulations.
137. Section 69C requires the CIO's name to appear in legible characters in various business and financial documents, and for these documents to state that the organisation is a CIO if that is not clear from the organisation's name.
138. Section 69D creates criminal offences of failure to comply with the previous section, and one other offence.
139. Section 69E allows any one or more persons to apply to the Commission for a CIO to be constituted and registered as a charity, requires the applicants to supply the Commission with the CIO's proposed constitution and any other documents or information that may be required and specifies the circumstances in which the Commission may or must refuse the application.
140. Section 69F provides that if the Charity Commission registers a CIO as a charity it becomes by virtue of its registration a body corporate constituted in accordance with the application. The entry in the register is to include the date of registration and a note saying that the charity is constituted as a CIO, and a copy of the entry is to be sent to the CIO at its principal address.
141. Section 69G allows a charitable company or a registered industrial and provident society (except for a company or society which has a share capital not fully paid up, or which is an exempt charity) to apply for conversion to a CIO. It requires the

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<sup>2</sup> Modern Company Law: Final Report, para. 4.63ff

<sup>3</sup> Box 5.3 on page 58 – see footnote 1 for the web address of the Strategy Unit's report

<sup>4</sup> paras. 4.14-15 – see footnote 2 for the web address of the Government's response to the Strategy Unit report

Charity Commission to be supplied with certain documents and information, including a copy of the special or unanimous written resolution that the company or registered society should be converted to a CIO and a copy of the resolution adopting the CIO's proposed constitution. If the application is made by a company limited by guarantee the constitution must specify the amount up to which the members are liable, which amount is not to be less than the amount to which they would be liable if the assets of the company were wound up. Where the members' guarantee is £10 or less, it is automatically extinguished on conversion of the company to a CIO.

142. Section 69H and section 69I contain supplementary provisions about the conversion of companies and registered industrial and provident societies. Section 69J provides the Minister for the Cabinet Office with a power to make regulations providing for the conversion of a community interest company into a CIO, and for its registration as a charity.
143. Section 69K allows any two or more CIOs to apply to the Commission to be amalgamated. Before such an application can be granted, each of the CIOs affected has to pass a resolution either by a 75 per cent majority of those voting at a general meeting or unanimously otherwise than at a general meeting, and to give notice of the proposed amalgamation in the way that in the opinion of the trustees will make it most likely to come to the attention of those affected. Those affected may make written representations to the Charity Commission, and the Commission may refuse an application if there is a serious risk that the new CIO would be unable to pursue its purposes. The Commission may also refuse an application to amalgamate if it is not satisfied that the constitution of the amalgamated CIO makes the same, or substantially the same, provision on these matters:
- purposes;
  - application of property on dissolution;
  - benefits authorised to be paid to trustees or members of the CIO, or persons connected with trustees or members,
- as the constitutions of each of the CIOs forming the amalgamated CIO.
144. Section 69L contains supplementary provisions on amalgamations.
145. Section 69M allows one CIO to transfer all its properties, rights and liabilities to another. If a CIO resolves to make such a transfer, the Charity Commission must be sent a copy of the resolution, and may direct the CIO to give public notice of the resolution. If the Commission so directs, it must take into account any representations made by interested parties. The resolution does not take effect until it is confirmed by the Commission, and the Commission must refuse to confirm it if there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor. The Commission may refuse to confirm the resolution if it is not satisfied that the constitution of the transferee CIO makes the same, or substantially the same, provision on these matters:
- purposes;
  - application of property on dissolution;
  - benefits authorised to be paid to trustees or members of the CIO, or persons connected with trustees or members,
- as the constitution of the transferring CIO. A resolution would be deemed to be confirmed within six months of its receipt by the Commission, unless the Commission had already confirmed or refused to confirm the resolution, or had extended the period of its consideration by up to an additional six months.

146. Section 69N allows the Minister for the Cabinet Office to make regulations about the winding up, insolvency, dissolution, and revival and restoration to the register following dissolution, of CIOs.
147. Sections 69O-Q contain miscellaneous supplementary provisions, including at section 69Q a power for the Minister for the Cabinet Office to make regulations about applications for registration of CIOs, the administration of CIOs, and CIOs generally.
148. The new Schedule 5B makes further provision about CIOs. Paragraph 1 enables a CIO to do anything which is calculated to further its purposes and gives the CIO's charity trustees the responsibility of managing its affairs. Paragraphs 2 to 4 contain provisions to do with the CIO's constitution. Paragraphs 5 to 8 concern the validity of acts done by the CIO and provide that, in general but with some limitations, the validity of those acts may not be called into question on the ground that the CIO lacked constitutional capacity. Paragraphs 9 and 10 require members of a CIO and CIO charity trustees, subject to regulations made by the Minister for the Cabinet Office, to act in the way most likely to further the purposes of the CIO and, in the case of trustees, to exercise reasonable care and skill. Paragraph 11 prevents CIO charity trustees from benefiting personally in certain circumstances from arrangements or transactions entered into by the CIO. Paragraph 14 allows a CIO to amend its constitution and specifies the circumstances in which it may do so. Paragraph 15 requires the CIO to send the Charity Commission a copy of the amendment and allows the Commission to refuse to register it in certain circumstances.
149. The remainder of the Schedule consists of minor, largely consequential, amendments to the Charities Act 1993.

### ***Section 35: Waiver of trustee's disqualification***

150. Currently a person that has been disqualified from being a charity trustee by virtue of section 72(1)(a) to (f) of the Charities Act 1993 may apply to the Charity Commission to waive his disqualification either generally or in relation to a particular charity or class of charity. Paragraphs (a) and (b) of section 72(4) prohibit a waiver from being granted in relation to a charity which is a company on specified grounds.
151. **Section 35** provides for new subsection (4A) to be inserted into section 72 of the 1993 Act. Under new subsection (4A) the Charity Commission must grant an application for a waiver from disqualification from a person who has been disqualified by virtue of section 72(1)(d) or (e) for more than 5 years unless it is satisfied that there are special circumstances for not granting the waiver. However, that would not apply where the Charity Commission was prohibited from granting the waiver under subsection (4)(a) and (b).

### ***Section 36: Remuneration of trustees etc. providing services to charity***

152. A trustee (including the director of a charitable company) may not directly or indirectly receive any remuneration, or other form of valuable benefit, from his charity without authority. Currently authority for a trustee's remuneration can come from either:
- a provision in the charity's governing instrument; or
  - an order made by the Charity Commission (under section 26 of the Charities Act 1993) or by the court; or
  - statutory provision (e.g. Schedule. 1 to the Housing Act 1996, which allows for the remuneration of charity trustees of some charitable housing associations in some circumstances).
153. This section inserts two new sections, 73A and 73B, into the 1993 Act. Section 73A provides a statutory power for the trustee body to pay remuneration to a person who either is a trustee of the charity or is connected (as defined in section 73B(5)) with a

trustee of the charity who might receive a benefit as a result of the connected person's remuneration. An example of a connected person's remuneration benefiting a trustee is where persons A and B are spouses with joint finances, person A is a trustee of a charity, and person B receives remuneration from that charity. Section 73A also provides safeguards to prevent misuse of this power.

154. *Subsections (2) to (6)* set out the conditions that need to be met for remuneration to be payable under this section.
155. *Subsection (7)* provides that this section does not apply to remuneration for services provided by a person acting in the capacity of trustee, nor under a contract of employment. Neither does this section apply to any other remuneration to which a person is entitled specified in the provisions and orders that are set out in *subsection (8)*.
156. New section 73(B)(2) and (3) contains two safeguards to prevent misuse of the power: the duty to have regard to Charity Commission guidance, and the requirement to act in accordance with the duty of care set out in section 1(1) of the Trustee Act 2000.

### ***Section 37: Disqualification of trustees receiving remuneration by virtue of section 36***

157. This section inserts a new section, 73C, into the 1993 Act. Where a trustee or connected person is (or would be) entitled to receive remuneration under an agreement or proposed agreement within section 73A (inserted by section 36), new section 73C provides (*subsection (2)*) that the trustee in question is disqualified from acting as a trustee in relation to decisions or other matters about that agreement. For this section a "connected person" is as defined in section 73B(5) (inserted by section 36).
158. *Subsection (3)* prevents a person's disqualification from invalidating his acts done while disqualified.
159. *Subsection (4)* allows the Charity Commission to make an order under *subsection (5) or (6)* where a person has done something he was disqualified by *subsection (2)* from doing, and he or a connected person has received, or is due to receive, remuneration. *Subsection (5)* allows the Charity Commission to order the person to repay to the charity any remuneration received (*subsection (5)(a)*), including, by virtue of *subsection (5) (b)*, the value of any benefit in kind. Where the person is due to receive the agreed remuneration, *subsection (6)* allows the Charity Commission to direct that the person is not to receive the remuneration.

### ***Section 38: Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty***

160. Currently a charity trustee seeking relief from personal liability for a breach of trust must apply to the court. The court can grant relief, where it believes that the trustee has acted honestly and reasonably and ought fairly to be excused, under section 61 of the Trustee Act 1925 or, for directors of charitable companies, section 727 of the Companies Act 1985. The Charity Commission does not currently have the power to grant relief in that way.
161. This section provides the Commission with such a power. It inserts a new section, 73D, into the 1993 Act. Section 73D confers power on the Charity Commission to provide relief from liability (in whole or in part) to a trustee for breach of trust or duty, where the trustee has acted honestly and reasonably, and where the trustee ought fairly to be excused for the breach. It also extends that power to apply to persons appointed by a charity (under section 43 of the Charities Act 1993) as auditor or independent examiner and to persons appointed by a charitable company (under Chapter 5 of Part 11 of the Companies Act 1985) as auditor or reporting accountant.
162. This section also inserts into the 1993 Act new section 73E, which extends the court's existing power to grant relief to an auditor or independent examiner of an

unincorporated charity appointed under the current section 43 of the Charities Act 1993. New section 73E gives the court power to relieve from liability all those who report on the accounts (including group accounts) where the court does not already have this power under section 727 of the Companies Act 1985. It also gives the court power to relieve from liability the charity trustees of a CIO.

***Section 39: Trustees' indemnity insurance***

163. This section inserts new section 73F into the 1993 Act. It provides trustees with a statutory power to purchase trustee indemnity insurance and to pay the premiums with the charity's money, subject to certain limitations and conditions.
164. *Subsection (1)* provides the power for trustees to purchase indemnity insurance, subject to the limitations set out in *subsections (2) and (3)*. *Subsections (4) and (5)* provide (a) that trustees must satisfy themselves that it is in the charity's best interests to purchase trustee indemnity insurance under this section and (b) that, in so doing, they will be subject to the duty of care in section 1(1) of the Trustee Act 2000.
165. *Subsections (6) and (7)* provide a power for the Minister for the Cabinet Office to amend subsections (2) and (3) by order, subject to the affirmative resolution procedure.
166. *Subsection (8)* provides (a) that this section does not allow purchase of indemnity insurance where it is expressly prohibited by the charity's trusts, and (b) that this section has effect despite any provision in the charity's trusts prohibiting the trustees from receiving personal benefit from the charity's funds.

***Sections 40, 41, and 42: Power to transfer all property; Power to replace purposes; and Power to modify powers or procedures***

167. At present, section 74 of the 1993 Act gives the charity trustees of certain unincorporated charities with low annual income (currently £5,000 or less) the power, subject to specified controls and conditions, to make a resolution:
  - to transfer all the property of the charity to one or more other charities; or
  - to modify the trusts of the charity by replacing all or any of the purposes of the charity with other charitable purposes; or
  - to modify particular powers and procedures in the trusts of the charity.
168. *Section 74* removes the need for charity trustees who wish to make any such transfer or modification, but who do not otherwise have the power to do so, to apply to the Charity Commission to make a scheme effecting the transfer or modification. Under section 74 the Commission's concurrence in writing to the resolution is needed before the transfer or modification can take effect, but for small charities the process of obtaining that concurrence is normally much simpler and quicker than the process of applying for a scheme.
169. *Sections 40–42* of the Act preserve the essence of the current section 74 arrangements for low-income charities while modifying and extending some elements of them.
170. *Section 40* substitutes for existing section 74 three new sections 74, 74A, and 74B, which deal with the power to transfer a charity's property to one or more other charities. New section 74B makes specific provision for such a transfer where the charity has a permanent endowment (property which is subject to a restriction preventing its expenditure).
171. *Section 41* inserts into the 1993 Act a new section, 74C, which deals with the power to modify a charity's trusts by replacing all or any of the charity's purposes with other charitable purposes.

172. **Section 42** inserts into the 1993 Act a new section, 74D, which deals with the power to modify powers or procedures in the trusts of a charity.

**Section 43: Power to spend capital**

173. Section 75 of the 1993 Act gives to the trustees of very small unincorporated charities which have permanent endowment not consisting of any land the power to resolve, by a simple administrative procedure, to spend that endowment. Very small charities in this context are ones whose gross annual income is not more than £1,000. Permanent endowment is property which is subject to a restriction preventing its expenditure. Where permanent endowment is held as an investment the income from the investment must be spent but the capital may not be. The purpose of section 75 is to allow trustees of charities with slender resources to remove the restriction on expenditure of capital, so that the capital can be spent as well as the income. This is useful because the income is often so small that little if anything can be achieved by spending the income alone.
174. **Section 43** substitutes for the existing section 75 a new section 75, which modifies and extends the current régime for expenditure of capital by small charities.
175. The principal changes brought about by the new section 75 are:
- one of the conditions of the existing section 75 is that, before making a resolution, trustees must be satisfied that the charity's property is too small for "any useful purpose" to be achieved by spending the income alone. It is sometimes difficult for trustees to conclude that a sum of money is so small that there is not any useful purpose to be achieved by spending it. *Subsection (4)* of new section 75 substitutes a different test of whether the purposes for which the fund is established "could be carried out more effectively" by spending some or all of the capital;
  - the requirement for the Charity Commission to go through a procedure of concurrence with the trustees' resolution is removed.
176. **Section 43** also inserts two new sections, 75A and 75B, into the 1993 Act.
177. Section 75A provides the same power in relation to larger funds with a single purpose, but subject to some safeguards because of the larger sums involved. *Subsections (5) to (11)* prescribe some safeguards which apply where the permanent endowment in question came to the charity by a lifetime gift from, or under the will of, a person, or as a grant or other form of donation from an institution, or by way of donations from several sources but with a common purpose (such as a disaster appeal). The safeguards are meant to ensure, by requiring the Charity Commission's concurrence to be obtained and by requiring the Commission to take into account the wishes of the donor as well any changes in the charity's circumstances since the gift was made, that the intentions of the donor or donors in making the gift are treated with due consideration.
178. Section 75B applies in cases where the Charity Commission has made a direction to a specific effect under section 96(5) of the 1993 Act. That provision allows the Commission to direct that an institution (typically a trust) which is established for some special purposes of, or in connection with, a charity shall be treated either as part of that charity or as a distinct charity by itself. Where the Commission has directed that a special trust is a distinct charity, section 75B allows that charity's trustees to resolve to spend certain permanent endowment subject to conditions and controls which mirror those described above for subsections (5) to (11) of section 75A.

**Section 44: Merger of charities**

179. **Section 42** inserts four new sections, 75C, 75D, 75E and 75F, into the 1993 Act.
180. New section 75C establishes the register of mergers. *Subsection (3)* provides for the register to contain only those mergers which are notified to the Commission. *Subsection (4)* defines the two types of merger that can be registered: the first is a merger in

which a charity (or more than one charity) – say charity A - transfers all its property to another charity – charity B - then, on or after the transfer, ceases to exist. The second is where two or more charities – charities C and D - create a new charity – charity E - then transfer all their property to the new charity and, on or after the transfer, go out of existence. Mergers of both types may only be registered once all of the charities transferring their property to another charity have completed the transfer of all of their property (*subsection 6*). Mergers of charities which have both permanent endowment and unrestricted property are provided for by *subsection (5)*. *Subsection (7)* makes registration of the merger a requirement for any charities making use of the vesting declaration provided for by new section 75E.

181. New section 75D makes supplementary provision about the register of charity mergers. *Subsection (2)* gives the Charity Commission the power to decide what information, in addition to the date on which property was transferred to the merged charity, should appear in the register about each merger. The register must be open to the public (*subsection (3)*) and the information on it must be made available in legible form even if the Commission holds the information not in a legible form (such as on a computer) (*subsection (4)*). This group of provisions for the register of mergers closely follows the provisions for the content and availability of the register of charities kept by the Commission.
182. New section 75E provides a mechanism for ensuring the automatic transfer of property which is being transferred in the course of a merger. This mechanism is available for both types of merger. It enables a vesting declaration to be made by the charity trustees of a transferring charity (which, in the examples given in paragraph 181 above, are charity A and charities C and D) before any transfer takes place. The effect of making a vesting declaration which fulfils the requirements of *subsection (1)* is as described in *subsection (2)*. The only property that cannot be transferred by operation of the vesting declaration is property of the sort described by *subsection (3)*. *Subsection (4)* makes it clear that transferred land must still be registered with the Land Registry where there is such a requirement.
183. Section 75F deals with a gift to a charity where the gift takes effect after the date of registration of a merger affecting the charity. In the example of a merger in which charity A transfers all its property to charity B then ceases to exist, there might later be gifts – such as legacies under wills written before the merger – which fall due to charity A after it has ceased to exist. *Subsection (2)* provides that such a gift takes effect as if the gift had originally been made to charity B rather than charity A. *Subsection (3)* provides an exclusion from this provision for gifts that are to be held as permanent endowment.

#### ***Section 45: Regulation of public charitable collections***

184. This section and the following 21 sections comprise Chapter 1 of Part 3 of the Act, which provide for the regulation of public charitable, philanthropic and benevolent collections. They build on provisions in Part 3 of the 1992 Act. Part 3 of the 1992 Act was never brought into effect, and will be replaced by these provisions. The arrangements currently in force for regulating public charitable collections derive (in the case of street collections) from a law of 1916 and (in the case of house to house collections) from a law of 1939.
185. *Subsection (1)* of section 45 defines the two types of public charitable collection: collections in a public place, and door to door collections. *Subsections (2), (3) and (4)* provide for the definitions relevant to this Chapter, including that a charitable appeal in this context covers an appeal for philanthropic and benevolent purposes, and that giving money for the purposes of a charitable appeal covers giving by whatever means, including by direct debit. *Subsections (5) and (6)* provide definitions relevant to this section, including the definition of public place.

***Section 46: Charitable appeals that are not public charitable collections***

186. This section defines charitable appeals that are not public charitable collections and therefore do not come under this licensing scheme. It reflects section 65(2) of the 1992 Act, with the addition of *subsections (1)(c) and (2)* which specifically exclude any appeal on land to which the public has unrestricted access, either because of the express or implied permission of the occupier of the land or where the public has a statutory right of access, for example under the Countryside and Rights of Way Act 2000, and where the occupier is the promoter of the collection. This provision is intended to exclude collections undertaken by organisations such as the National Trust on their own land from the scope of the scheme.

***Section 47: Other definitions for the purposes of this Chapter***

187. This section provides further definitions for the purposes of this Chapter.

***Section 48: Restrictions on conducting collections in a public place***

188. This section sets out the restrictions on collecting in a public place. *Subsection (1)* provides that a collection in a public place cannot be undertaken unless the organisation (a) holds a public collections certificate (granted under section 52) and (b) has obtained a permit from the relevant local authority (granted under section 59).
189. *Subsection (2)* exempts from these requirements collections in a public place which are local short-term collections, provided for by section 50.
190. *Subsection (3)* provides that where a promoter undertakes a collection in a public place, other than an exempt local short-term collection, without a public collections certificate and a permit the promoter is guilty of an offence and is liable for a fine of up to level 5 on the standard scale (currently £5,000).

***Section 49: Restrictions on conducting door to door collections***

191. This section provides in *subsection (1)* that a collection by means of visits door to door cannot be undertaken unless the organisation (a) holds a public collections certificate (granted under section 52) and (b) has (within a period to be prescribed in regulations) notified the local authority of the matters mentioned in *subsection (3)* of this section and has provided the local authority with a copy of its public collections certificate.
192. *Subsection (2)* exempts from these requirements door to door collections which are exempt as local short-term collections, provided for by section 48.
193. *Subsection (4)* provides that where a door to door collection, which is not an exempt local short-term collection, is undertaken without a public collections certificate and without notifying the local authority of the matters referred to in subsection (3) the promoter is guilty of an offence and is liable for a fine of up to level 5 on the standard scale (currently £5,000)
194. *Subsection (5)* provides a separate offence with a lesser maximum penalty if the door to door collection appeal is for goods only.

***Section 50: Exemption for local short-term collections***

195. This section sets out the conditions under which a collection would be exempt from the requirement to obtain a public collections certificate and (for collections in a public place) a permit to collect.
196. *Subsection (1)* provides for collections that are exempt from the requirement to obtain a public collections certificate and, in the case of a collection in a public place, a permit. An exempt collection is one (a) that is a local, short-term collection as defined in *subsection (2)*, and (b) where the promoters notify the local authority in whose area the



collection is to take place of the matters set out in *subsection (3)* within the prescribed period before the first day of the proposed collection. However, if the local authority serve a notice on the promoters under *subsection (4)*, as described in paragraph 199, the collection will not be an exempt collection.

197. *Subsection (2)* provides that a collection is a local, short-term collection if the appeal is local in character and does not exceed the prescribed period. Regulations under section 63 will prescribe matters that local authorities must take into account in determining whether an appeal is local in character.
198. Promoters would notify the local authority in whose area the collection was to take place. A collection is only an exempt collection for the purposes of this section if the local authority has not notified the promoter under *subsection (1)* within the prescribed period preceding the date of the collection that the collection does not qualify as a local, short-term collection. The power for local authorities to determine that a collection is not exempt, and provision for service of that decision, is contained in *subsection (4)*. A local authority may serve such a notice where it appears to the authority that the proposed collection is not a local, short-term collection, or that the promoter has breached regulations or been convicted of a relevant offence. A right of appeal against such a decision is provided in section 62(1).
199. *Subsection (6)* provides that where a promoter undertakes an exempt local short-term collection without complying with the notification requirements in this section, the promoter is guilty of an offence and is liable for a fine of up to level 3 on the standard scale (currently £1,000).

### ***Section 51: Applications for certificates***

200. *Subsection (1)* enables a person proposing to undertake public charitable collections (other than exempt local short-term collections) to apply to the Charity Commission for a public collections certificate. That would be the first stage in the process. The second stage of the process, once a public collections certificate had been issued, would involve either the submission of an application to the local authority for a permit for a collection in a public place (section 58) or, for a door to door collection, notification to the local authority about the collection (section 49).
201. *Subsection (2)* provides for the time period for the application to be specified in regulations, but enables the Charity Commission to allow individual applications at shorter notice, for example applications related to an urgent disaster appeal.
202. *Subsection (3)* provides for the information which must be submitted as part of the application process, and enables the applicant to seek in the application a period for which the certificate would be in force of up to five years. *Subsections (5) and (6)* set out how the Commission may make regulations for the purposes of this section.

### ***Section 52: Determination of applications and issue of certificates***

203. *Subsections (1) and (2)* provide that on receiving an application (section 51) the Charity Commission may make such inquiries as it thinks fit, and after making such inquiries determine the application by either issuing the certificate, or refusing the application on grounds specified in section 53.
204. *Subsection (3)* provides for the certificate itself: the matters it must specify are to be provided for in regulations, and its duration is to be the period (up to five years) specified in the application, or such shorter period as the Charity Commission thinks fit.
205. *Subsections (4), (5), and (6)* enable the Charity Commission to attach conditions to a public collections certificate it issues. The conditions would have to be consistent with the provisions of regulations made under section 63.

206. Where the Charity Commission refuses to issue a certificate, or issues a certificate with conditions, it must serve notice on the applicant and set out its reasons (*subsection (7)*), including setting out the right of appeal conferred by section 57 and the time limits within which to appeal (*subsection (8)*).

***Section 53: Grounds for refusing to issue a public collections certificate***

207. This section sets out the grounds the Charity Commission may rely on for refusing to award a public collections certificate.
208. The grounds available in *subsection (1)* include grounds which are equivalent to the grounds provided by paragraphs (c) to (g) of section 69(1) of the 1992 Act. In addition there are new grounds: (1)(d) where the Commission is not satisfied that due diligence will be exercised in respect of a collection; (1)(g) where the applicant has failed to provide information; (1)(h) where it appears to the Commission that the information provided is false or misleading; (1)(i) where conditions attached to a certificate have been breached, or conditions attached to a permit persistently breached; (1)(j) where it appears to the Commission that the applicant or anyone authorised by him has breached a provision of regulations made under section 63.
209. *Subsection (2)* sets out (a) relevant offences that may lead to refusal to issue a certificate, and (b) the due diligence required by subsections (1)(c) and (1)(d).
210. *Subsections (4), (5), and (6)* are based on sections 69(3)(b) and (4) of the 1992 Act. They enable the consideration of the required due diligence (set out in subsection (2)(b) of this section) in connection with collections which were carried out under legislation and regulations that pre-date this legislation.
211. *Subsection (7)* provides that all types of collections under this Chapter can be considered for the purposes of assessing whether due diligence was exercised in connection with past collections (at subsection (1)(c)). *Subsection (8)* provides definitions for this section that replicate section 69(5) of the 1992 Act.

***Section 54: Power to call for information and documents***

212. This section provides a power for the Charity Commission to request information or documents held by applicants or certificate holders where the information or documents are relevant to the exercise of its functions under this Chapter.

***Section 55: Transfer of certificates between trustees of unincorporated charity***

213. This section provides a fast-track method for unincorporated charities to transfer a public collections certificate between trustees. It enables the Charity Commission to direct that a public collections certificate in force be transferred from its holder(s) to another trustee(s) within the same unincorporated charity, where the holder(s) is (or was) a trustee of the charity, and the recipient(s) and the charity trustees consent to the transfer. *Subsections (4) and (5)* require the Commission, where it refuses to make a direction under this section, to give notice of its refusal, of its reasons for refusal, and of the fact that there is a right of appeal (conferred by section 57(2)). *Subsection (7)* provides that a public collections certificate is not transferable otherwise than under this section.

***Section 56: Withdrawal of, or addition or variation of conditions in, certificates***

214. *Subsection (1)* of this section enables the Charity Commission to withdraw or suspend a public collections certificate, or to attach or vary conditions to such a certificate in force, where *subsection (2), (3) or (4)* applies. *Subsection (6)* provides that the Commission's exercise of its powers in subsection (1) does not prevent the Commission from exercising the powers on subsequent occasions, taking account of any conditions it had previously applied to a certificate. The service of notice of a decision, including

the provision of reasons and notice of the right of appeal, is provided for in *subsections (7) and (8)*.

215. *Subsection (10)* provides that a decision by the Commission under subsection (1) to withdraw or suspend a certificate, or add conditions or vary such conditions, will not take effect until the time for bringing an appeal has expired or, if an appeal is brought, until its conclusion. However, *subsection (9)* enables the Commission to exercise its powers under subsection (1) with immediate effect where it considers it is in the public interest to do so.
216. *Subsection (11)* provides that a suspension under subsection (1) shall, subject to any appeal or withdrawal of the certificate, be for no longer than six months, unless the Commission decides sooner to remove the suspension.

### ***Section 57: Appeals against decisions of the Commission***

217. This section sets out the rights of appeal against Charity Commission decisions relating to public collections certificates.
218. *Subsection (1)* specifies the right of appeal for applicants. *Subsections (2) and (3)* set out the rights of appeal for certificate holders. The Lord Chancellor's rules for the Tribunal will set out the period within which these rights of appeal may be exercised following the Charity Commission's service of the relevant notification on the person in question. *Subsection (4)* provides for the Attorney General to appeal to the Tribunal against a decision of the Commission. *Subsections (5), (6) and (7)* provide for the decisions that the Tribunal may make in respect of such appeals.

### ***Section 58: Applications for permits to conduct public charitable collections in a public place***

219. This section sets out the process for applications to local authorities for a permit to conduct a collection in a public place. It builds upon the provisions of section 67 of the 1992 Act. *Subsection (1)* provides that promoters of exempt collections as defined in section 50 do not need to apply for a permit. Likewise a permit is not required for door to door collections, as these are less likely to lead to undue inconvenience to members of the public. Otherwise all collections in a public place require an application for a permit to the local authority in which the collection is proposed to take place. *Subsection (3)* sets out the information required on the application, some of which will be prescribed in regulations. *Subsection (2)* sets out the applications process, the timetable for which will be prescribed in regulations. *Subsection (4)* makes provision for urgent permit applications outside the prescribed period in circumstances where either the public collections certificate application has not been determined by the end of the permit application period, or where it has been determined but with insufficient time for a permit application to be made within the prescribed period.

### ***Section 59: Determination of applications and issue of permits***

220. This section builds on the provisions in section 68 of the 1992 Act. It defines the process for local authorities' determining and issuing of permits to collect in a public place. *Subsection (1)* provides for the local authority within a prescribed period to issue a permit, or refuse to issue a permit on the grounds of capacity set out in section 60. *Subsection (2)* provides for the date(s) of collection(s). *Subsection (3)* enables local authorities to attach conditions to a permit. The types of conditions that local authorities can apply are limited to those within paragraphs (a) to (d) of subsection (3). *Subsection (4)* provides that any condition attached to a permit must be consistent with regulations made under section 63. *Subsections (5) and (6)* require a local authority, where it has decided to refuse or to attach any condition to a permit, to give notice of its decision to the applicant; and the notice must state that the applicant has the right of appeal to the magistrates' court conferred by section 62.

### ***Section 60: Refusal of permits***

221. This section builds on section 69(1)(a) and (b), and 69(2) of the 1992 Act. It sets out, in *subsection (1)*, the ground that local authorities may rely on to refuse to award a permit to conduct a collection in a public place, which is that allowing the collection to go ahead would cause undue inconvenience to members of the public, due to the reasons set out in paragraphs (a) to (d). *Subsection (2)* enables the local authority to have regard to collections that have already been authorised in determining whether the proposed collection would cause undue inconvenience. *Subsection (3)* precludes local authorities having regard under subsection (2) to collections which take place in one location on land to which the public has access by virtue of the owner's permission or of any enactment, and where the occupier consents to the collections. *Subsection (4)* specifies which existing authorised collections local authorities can consider in deciding whether to grant or refuse a permit.

### ***Section 61: Withdrawal or variation etc. of permits***

222. This section is based on the provisions of section 70 of the 1992 Act, with the addition of subsections (4) and (6). *Subsection (1)* enables a local authority to withdraw a permit, or attach or vary conditions to a permit, on the grounds specified in *subsections (2), (3), or (4)*. *Subsection (6)* provides that the local authority's exercise of its powers does not prevent it from exercising the powers on subsequent occasions, taking account of any conditions it had previously attached or varied.
223. *Subsections (7) and (8)* require a local authority, where it has decided to withdraw, or to attach a condition to, or to vary an existing condition on, a permit, to give notice of its decision to the applicant; and the notice must state that the applicant has the right of appeal to the magistrates' court conferred by section 62.
224. *Subsection (9)* requires local authorities to notify the Charity Commission of a withdrawal of a permit. *Subsection (10)* provides that where a local authority withdraws or attaches or varies the conditions on a permit in force, the decision would not take effect until the time limit for bringing an appeal had expired or an appeal had been concluded.

### ***Section 62: Appeals against decisions of local authority***

225. This section sets out, in *subsections (1), (2), and (3)* the rights of appeal to magistrates' courts against local authority decisions. It builds on the provisions of section 71 of the 1992 Act.
226. *Subsections (4) and (5)* provide that the proceedings are subject to the Magistrates' Courts Act 1980, and set out the timetable for the appeal. *Subsection (6)* provides for an appeal against the decision of the magistrates' court to the Crown Court. *Subsections (7) and (8)* provide the remedies available to the magistrates' court or the Crown Court in such appeals. *Subsection (9)* places a local authority under a duty to comply with the directions of the court, although in the case of directions given by the magistrates' court this is stayed until the time for bringing an appeal to the Crown Court has expired, or any appeal before the Crown Court has been concluded.

### ***Section 63: Regulations***

227. *Subsections (1) to (3)* of this section contains provision, similar to section 73 of the 1992 Act, for the regulations which the Minister for the Cabinet Office may make in relation to public charitable collections. *Subsection (5)* enables the regulations made under this section to provide that failure to comply with a specified provision of the regulations be an offence, with a maximum penalty of a level 2 fine (currently £500) for the offence. *Subsection (6)* requires consultation prior to the making of regulations under this section.

### **Section 64: Offences**

228. This section provides for the same offences as section 74 of the 1992 Act in respect of charitable collections. *Subsection (2)* of this section is wider than that of the 1992 Act, as it includes the different types of applications and notifications proposed in the Act. The maximum penalty of a level 5 fine (currently £5,000) provided for by *subsection (3)* of this section is higher than the corresponding maximum penalties in section 74 of the 1992 Act.

### **Section 65: Offences by bodies corporate**

229. This section reflects section 75 of the 1992 Act, for the purposes of this Chapter and regulations made under it. It specifies the circumstances in which officers of corporate bodies, as well as the corporate body itself, are guilty of an offence.

### **Section 66: Service of documents**

230. This section reflects section 76 of the 1992 Act, for the purposes of this Chapter. It specifies the requirements for serving notices to persons or corporate bodies under this Chapter. In the case of a person other than a body corporate, these include delivering it to the person, leaving it at his last known address in the UK, or posting it to him at that address. A notice may be served on a body corporate by delivering or sending it to the body's registered or principal office in the UK or, if the body does not have such an office in the UK, any place where it carries on its business. A person or corporate body may also notify a specific address for the service of notices under this Chapter.

### **Section 67: Statements indicating benefits for charitable institutions and fund-raisers**

231. This section amends section 60 of the 1992 Act.
232. *Subsections (2)* and *(3)* read with *subsection (5)* amend sections 60(1)(c) and 60(2)(c) of the 1992 Act to require a professional fundraiser to state the amount of his remuneration in connection with an appeal; or, if that amount is not known at the time of the appeal, to give as accurate an estimate of the amount as is reasonably possible in the circumstances. Currently a professional fundraiser is required to state only in general terms the method by which his remuneration is determined, which has in practice been imprecise and has offered little assistance to those it was designed to help.
233. *Subsection (4)* amends section 60(3)(c) of the Charities Act 1992, which requires a commercial participator to make a general statement outlining the method of determining the benefit to the charitable institution or institutions concerned. *Subsection (4)* substitutes for section 60(3)(c) a revised section 60(3)(c) which, when read with the amendment made by *subsection (5)*, requires the statement to indicate:
- the amount (or an estimate of the amount if the amount is not known at the time) of the consideration given for goods or services sold or supplied by the commercial participator which is to be given to or applied for the benefit of the charitable institution or institutions concerned;
  - the amount (or an estimate of the amount if the actual amount is not known at the time) of the proceeds of the promotional venture undertaken by a commercial participator which are to be given to or applied for the benefit of the charitable institution or institutions concerned;
  - where an agreement with a commercial participator has been made authorising him to represent that charitable contributions are to be given to or applied for the benefit of the institution concerned, the statement would indicate the amount (or an estimate of the amount if the amount is not known at the time) of the sums given by way of donation in connection with the sale or supply of goods or services

which are to be given to or applied for the benefit of the charitable institution or institutions concerned.

234. *Subsection (5)* provides for a new subsection (3A) to be inserted after subsection (3) of section 60 of the 1992 Act. New subsection (3A) provides that the notifiable amount of remuneration is the actual amount if that is known at the time of the statement, otherwise an estimated amount of the remuneration or sum, calculated as accurately as possible in all the circumstances.

### ***Section 68: Statements indicating benefits for charitable institutions and collectors***

235. This section inserts new sections 60A and 60B into the 1992 Act. They provide that where paid employees, officers, or trustees of a charity or connected company are acting as collectors, they must make a statement when making appeals.
236. New section 60A makes provision for collectors who are paid employees, officers, or trustees of a charity or connected company and who are soliciting a donation for a charitable institution or charitable, philanthropic or benevolent purpose.
237. *Subsection (4)* of new section 60A specifies the information that must be given in a statement where the collector is soliciting a donation for one or more specific charitable institutions. *Subsection (5)* specifies the information that must be given where the collector is soliciting for a charitable, philanthropic, or benevolent purpose, rather than for a specific institution. Cabinet Office guidance will set out forms of statements that could be used.
238. *Subsections (6) and (7)* define which persons are covered by this section. *Subsection (8)* provides an offence for failure to comply with these provisions, conviction for which carries a maximum penalty of a level 5 fine (currently £5,000). *Subsection (9)* applies the defence in s.60(8) of the 1992 Act, which refers to the taking of reasonable precautions and the exercising of due diligence.
239. New section 60B provides an exclusion for lower-paid collectors from the requirements in section 60A. It is based on section 58(3) of the 1992 Act, which provides the same exclusion for lower-paid professional fundraisers. *Subsections (2) and (5)* specify the earnings limits. *Subsection (6)* provides an order-making power for the Minister for the Cabinet Office to vary the earnings limits in this section.

### ***Section 69: Reserve power to control fund-raising by charitable institutions***

240. The Government accepted the Strategy Unit recommendation that a self-regulatory initiative should be established based on a new voluntary Code of Practice which would promote and raise awareness of good practice in fundraising. The Institute of Fundraising sponsored an independent Commission (“The Buse Commission”) to explore different models for a system of self-regulation, to consult and to recommend a preferred model. Proposals for the scheme were published early in 2005, and the Fundraising Standards Board<sup>5</sup> launched to the charity sector in summer 2006. It is expected to launch to the public early in 2007. The Government believes that self-regulation should be the first resort in improving fundraising standards and practices. The advantage of self-regulation in that area is that fundraising organisations would be centrally involved in devising and implementing regulation and would be more committed to it. However, the Minister for the Cabinet Office retains the power to impose statutory regulation should self-regulation prove to be ineffective: it is section 67 that empowers the Minister for the Cabinet Office to do that. In 2005 the Government consulted on the principles for assessing the success of the self-regulation of fundraising. The consultation has now closed, but copies of the consultation paper and the Government’s response outlining the success criteria that will be used are

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5 Further information about the Fundraising Standards Board is available on its website: [www.fsboard.org.uk](http://www.fsboard.org.uk)

available at <http://communities.homeoffice.gov.uk/activecomms/charity-law-and-reg/reg-pub-charitable-collect/>.

241. *Subsection (1)* of this section confers a new power on the Minister for the Cabinet Office by inserting a new section 64A into the 1992 Act. The power is to make regulations to control charity fundraising (defined in new section 64A(2)) if the Minister for the Cabinet Office deems it necessary or desirable. In particular, the regulations may impose a good practice requirement on persons managing charitable institutions (in charities those persons are the charity trustees). Such regulations would be subject to the affirmative resolution procedure.
242. *Subsections (4) and (5)* of new section 64A, read together, define the good practice requirement. The power enables, under *subsection (6)*, the regulations to provide that persistent failure to comply with the regulations constitutes an offence the penalty for which, on summary conviction, is a fine not exceeding level 2 on the standard scale (currently £500).

***Section 70: Power of relevant Minister to give financial assistance to charitable, benevolent or philanthropic institutions***

243. This section gives a “relevant Minister” (ie a Secretary of State or the Minister for the Cabinet Office) an express statutory power to give financial assistance to organisations that are established for charitable, benevolent or philanthropic purposes. This power extends to funding only those activities which benefit the whole or any part of England. Government funding of similar organisations operating in Wales is devolved to the National Assembly for Wales (see section 71).
244. Under section 70 the Secretary of State or Minister for the Cabinet Office may give financial assistance in any form (*subsection (2)*). Such assistance may be given subject to terms and conditions (*subsections (3) and (4)*). The Secretary of State or Minister for the Cabinet Office may delegate his functions under this section (*subsections (6) and (7)*). He must report annually on any exercise of the power conferred by this section (*subsections (8) and (9)*).

***Section 71: Power of the National Assembly for Wales to give financial assistance to charitable, benevolent or philanthropic institutions***

245. This section gives the National Assembly for Wales an express statutory power to give financial assistance to organisations that are established for charitable, benevolent or philanthropic purposes. This power extends to funding only those activities which directly or indirectly benefit the whole or part of Wales.
246. Under section 71 the Assembly may give financial assistance in any form (*subsection (2)*). Such assistance may be given subject to terms and conditions (*subsections (3) and (4)*). The Assembly may delegate its functions under this section (*subsections (6) and (7)*).
247. The Assembly must report annually on the exercise of the power under this section (*subsection (8)*).

***Section 72: Disclosure of Information to and by Northern Ireland Regulator***

248. Charity law reform is under way in Northern Ireland, through the vehicle of the draft Charities (Northern Ireland) Order 2006 which was published in July 2006. Section 72 of the Act gives Ministers a power to make regulations authorising public bodies to disclose information to the proposed new Northern Ireland charity regulator (if and when it comes into existence), to put that regulator on a par with the charity regulators in the other UK territories. This could not be provided for in the Northern Ireland order since it needs to authorise bodies outside Northern Ireland to disclose information to the Northern Ireland charity regulator

*These notes refer to the Charities Act 2006 (c.50)  
which received Royal Assent on 8 November 2006*

249. *Subsection (1)* provides that this section only applies if a charity regulator is established in Northern Ireland. *Subsection (2)* provides the regulation-making power. *Subsection (3)*, and *subsections (5) to (8)*, make specific provision for the disclosure of Revenue and Customs Information which mirror the restrictions on the disclosure of such information to and from other UK charity regulators.
250. Any regulations made under the power in section 72 would be subject to the affirmative resolution procedure.

### ***Section 73: Report on the operation of this Act***

251. **Section 73** requires the Minister for the Cabinet Office to institute a review of the operation of the Act within five years after Royal Assent (*subsection (1)*).
252. *Subsection (2)* sets out particular matters that the review must address. The reviewer must compile a report of his conclusions (*subsection (3)*), and the Minister for the Cabinet Office must lay a copy of the report before Parliament (*subsection (4)*).

### ***Section 74: Orders and regulations***

253. The Act contains a number of provisions giving the Secretary of State or Minister for the Cabinet Office power to make orders and regulations. Section 74 applies to any orders and regulations the Secretary of State or Minister for the Cabinet Office makes under the Act.
254. *Subsection (2)* is a common-form provision setting out matters for which orders or regulations may provide.
255. *Subsections (3) to (5)* distinguish between regulations which are subject to the “negative resolution” procedure and those which are subject to “affirmative resolution”. The distinction is essentially that “negative resolution” regulations take effect as soon as they are made, but can be cancelled if Parliament passes a resolution striking them down, while “affirmative resolution” regulations need a positive resolution from Parliament to bring them into effect. Regulations and orders made under powers listed in paragraphs (a) to (e) of subsection (4) require the “affirmative resolution” procedure; all other orders and regulations except for commencement orders made under section 79, are to be made by the “negative resolution” procedure.

### ***Section 75: Amendments, repeals and transitional provisions***

256. *Subsections (4) and (5)* of this section are standard provisions in many Acts, giving the Minister for the Cabinet Office or Secretary of State an order-making power which allows him to make supplementary etc. provision for the purposes of this Act or for giving full effect to it. An order under subsection (4) may modify any “enactment”, which includes both primary and secondary legislation.

### ***Section 76: Pre-consolidation amendments***

257. This section provides the Minister for the Cabinet Office with an order-making power to facilitate the consolidation of charities legislation in whole or in part. *Subsection (1)* specifies the power. *Subsections (2), (3) and (4)* provide for the timing for such an order to come into force, and limit the use of this power so that it may not be re-exercised once an order made under this section has come into force.

### ***Section 77: Amendments reflecting changes in company law audit provisions***

258. This section provides the Minister for the Cabinet Office with an order-making power to amend the Charities Act 1993 and this Act to reflect changes in company law.
259. During the passage of the Companies Bill in the 2005-6 Session of Parliament amendments were tabled the effect of which would have been to take small charitable



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companies out of the company law régime for accounts scrutiny and to place them within the charity law régime. The Government accepted that there was merit in the idea of changing the treatment of small charitable companies so that, as far as their accounts scrutiny was concerned, they would in future be required to comply with the requirements of charity law rather than those of company law. Amendments were made in the Companies Bill (now the Companies Act 2006) to achieve that, but changes are also required in the Charities Act 1993 and this Act. This order-making power will enable those changes to be made.

260. The power also allows for the group accounting requirements to be changed so that, for the preparation of group accounts, a group of charities headed by a charitable company is put in the same position as a group headed by any other form of charity (*subsection (1) (b)*).

The order-making power in this section is subject to the affirmative resolution procedure.

### ***Section 78: Interpretation***

261. This section supplies the meaning of various words and phrases where used in this Act..

### ***Section 79: Commencement***

262. *Subsection (1)* brings this section, and the other provisions listed in this subsection, into effect on the date the Act received the Royal Assent. *Subsection (2)* provides for the remainder of the Act to be brought into force by order – known as a commencement order - made by the Minister for the Cabinet Office. *Subsection (3)* allows him to make commencement orders bringing different provisions of the Act into force on different dates.

### ***Section 80: Short title and extent***

263. All provisions in the Act extend to England and Wales. *Subsections (3) and (4)* specify which provisions of this Act also extend to Scotland. *Subsections (5) and (6)* specify the provisions of the Act that also extend to Northern Ireland. In general, amendments and repeals of provisions extending to Scotland or Northern Ireland will similarly extend there (see *subsections (7) to (9)*).