

2EXPLANATORY MEMORANDUM TO
THE CHARITIES ACT 1993 (EXCEPTION FROM REGISTRATION)
REGULATIONS

2008 No. 3268

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

2. **Purpose of the instrument**

This instrument makes provision for certain charities to be excepted from the requirement to register with the Charity Commission for England and Wales (“the Commission”).

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

- 3.1 None.

4. **Legislative Context**

- 4.1 The Charities Act 2006 (Commencement No.5, Transitional and Transitory Provisions and Savings) Order 2008 (S.I. 2008/3267 (C. 150) (“CO5”) brings into force various provisions of the Charities Act 2006. These provisions include section 9. Section 9 inserts new sections 3 to 3B into the Charities Act 1993 (“the 1993 Act”), and is brought into force on 31st January 2009 for all purposes other than the insertion of new section 3A(6).

- 4.2 New sections 3 to 3B of the 1993 Act deal with the register of charities to be maintained by the Commission and the registration of charities in England and Wales. New section 3A(1) of the 1993 Act imposes a general duty on all charities in England and Wales to be registered in the register of charities. However, this duty does not apply to those charities which are excepted from this requirement under new section 3A(2).

- 4.3 New section 3A(4)(b) of the 1993 Act requires the Minister for the Cabinet Office (“the Minister”) to make regulations to ensure that, subject to compliance with any conditions specified by the Minister and the financial limit, certain charities are excepted from the requirement to be registered in the register of charities. The financial limit that currently applies is gross income of £100,000 and so any charity with a gross income exceeding this limit will be required to be registered. The institutions in respect of which such regulations must be made are those listed in new section 3A(5).

- 4.4 These Regulations are made in compliance with the duty in section 3A(4)(b) in so far as it relates to bodies falling within new section 3A(5)(a) of the 1993 Act.

4.5 In addition, there are a number of bodies which, by virtue of section 23 of the School Standards and Framework Act 1998 and section 9 of the Places of Worship Registration Act 1855 and in so far as they are charities, are to be treated as if the duty in new section 3A(4)(b) applied to them.

4.6 These Regulations also make provision to ensure that these bodies, in so far as they are charities and subject to the financial limit mentioned above, are excepted from the requirement to be registered in the register of charities.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Charities Act 2006 (“the 2006 Act”) makes a number of changes to improve the accountability, as a matter of charity law, of two specific groups of charities in England and Wales:

7.1.1 excepted charities – groups of charities which have historically been excepted from the requirement to register with the Charity Commission, and also from the requirements that flow from registration (notably the submission of annual accounts, an annual report and annual return); and

7.1.2 exempt charities – which have historically been excluded from most of the Commission’s regulatory jurisdiction and cannot register, even voluntarily, with the Commission.

7.2 The 2006 Act amends the registration requirements for charities in England and Wales. In future, excepted charities with an annual gross income over a certain threshold will be required to register with the Commission. That financial threshold has been set at gross income of £100,000 for the time being. The provisions of the 2006 Act requiring such excepted charities to register are being brought into force on 31 January 2009. In addition, after this date, it will not be possible for new exceptions from the requirement to be registered to be created other than for charities which lose their status as exempt charities.

7.3 The 2006 Act also makes various amendments to the 1993 Act as it applies to exempt charities. As far as registration is concerned, there are two alternatives for groups of charities which are currently exempt charities:

7.3.1 Wherever possible an existing regulator has been identified to take on the role of principal regulator of relevant exempt charities to promote

their compliance with charity law duties. In such cases the charities will remain exempt and will not be registered with the Commission; and,

- 7.3.2 Where it has not been possible to identify an existing regulator to take on the role of principal regulator of a group of exempt charities, those charities will cease to be exempt charities and will become excepted charities. In effect this means that those with an annual income exceeding £100,000 would be required to register with the Commission and meet the other regulatory requirements that flow from registration or not being an exempt charity.

7.4 All of these changes will of course mean increases in the number of applications made for registration. In order to assist the Charity Commission manage this increased workload the relevant provisions of the 2006 Act are being implemented in phases. The provisions relating to excepted charities are to come into force on 31 January 2009 and the commencement of provisions relating to exempt charities is due to begin from October 2009.

7.5 However, the changes that affect one group of exempt charities must be commenced at the same time as the provisions in the 2006 Act which make the changes relating to excepted charities. This group of exempt charities includes governing bodies of foundation, voluntary and foundation special schools (other than governing bodies of community or community special schools), foundation bodies established under section 21 of the School Standards and Framework Act 1998 and Education Action Forums.

7.6 When section 9 of the 2006 Act (and various other provisions of the Act making related consequential amendments) comes into force on 31st January 2009, for the purposes specified in CO5, this group of charities will lose their status as exempt charities and instead become excepted charities by virtue of regulations made by the Minister. This means that, subject to the financial limit mentioned above, they are not required to register with the Commission but will become subject to the Commission's general regulatory jurisdiction and required to comply with the requirements of the 1993 Act such as the requirement to prepare accounts and an annual report. These Regulations ensure that these charities are excepted, subject to the financial limit mentioned above, from the requirement to be registered with the Commission.

7.7 In addition, to ensure that these charities are in the same position as other exempt charities which will lose their status as such, CO5 makes provision to ensure that none of these charities will actually have to register with the Commission before 1st October 2009 and that they will continue for the purposes of the 1993 Act to be treated, before 1st October 2009, as if they continued to be exempt charities. This means, for example, that they will not have to prepare charity accounts in respect of financial years beginning before 1st October 2009 or be subject to the general regulatory jurisdiction of the Commission before that date. These Regulations should therefore be read alongside CO5.

7.8 The Office of the Third Sector is continuing to work with the Commission, Department for Children Schools and Families, and the Welsh Assembly Government to keep to a minimum the regulatory impact of bringing these types of educational charities within the scope of charity regulation. Further secondary legislation may be required to achieve this aim.

7.9 These Regulations also made to ensure that certain charities which are treated as if covered by the duty in section 3A(4)(b) are excepted from the requirement to register. The relevant charities are those which are:

- 7.9.1 institutions administered by or on behalf of a governing body or foundation mentioned in paragraph 7.5 above and established for the general purposes of, or any special purpose of or in connection with, that body or any of the schools mentioned in that paragraph;
- 7.9.2 foundations established otherwise than under the School Standards and Framework Act 1998 and having no property other than the premises of a foundation, voluntary or foundation special school (other than a community or community special school); and
- 7.9.3 places of worship to which section 9(1) of the Places of Worship Registration Act 1855 applies.

8. Consultation outcome

8.1 These Regulations have not been the subject of public consultation, as the Minister is under a duty to make these Regulations at the same time as section 9 of the 2006 Act is brought into force.

9. Guidance

9.1 The Office of the Third Sector publishes an implementation plan for the 2006 Act which indicated that the relevant provisions affecting excepted charities would be commenced in October 2008. The implementation plan is regularly updated, and published at http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/implementation.aspx

9.2 In September 2008 the Office announced that implementation of the provisions relating to excepted charities would be put back to January 2009 to give excepted charities more time to prepare for registration. The Office of the Third Sector and the Charity Commission also wrote to the umbrella bodies of various groups of excepted charities in September 2008 to explain the revised timetable for implementation of the relevant provisions, a similar letter will be sent out notifying the relevant groups of the commencement of the relevant provisions.

9.3 The Charity Commission has published guidance on changes to the registration requirement, including details for excepted charities that will have to register. This is available at <http://www.charitycommission.gov.uk/registration/regreq.asp>

10. Impact

10.1 This instrument does not impact on the public sector, or business. The changes to the registration regime and exempt charity status of the charities mentioned in paragraph 7.5 and 7.9.1 above are made by the 2006 Act itself. In addition, this instrument preserves, subject to the financial limit, the existing exceptions from registration for charities mentioned in paragraph 7.9.2 and 7.9.3 above. Any requirement to register with the Commission however derives from the introduction of the financial limit by the 2006 Act, not this instrument.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

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

13. Contact

Ben Harrison at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6029 or email: ben.harrison@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.