

EXPLANATORY MEMORANDUM TO
THE CHARITIES ACTS 1992 AND 1993 (SUBSTITUTION OF SUMS) ORDER 2009
2009 No. 508

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This Order amends various financial thresholds in the Charities Acts 1992 and 1993.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 During the passage of the Charities Bill (now the Charities Act 2006), the Government made a commitment to there being a review of all financial thresholds in the Charities Acts within a year after Royal Assent of the Charities Act 2006, and to publish proposals for public consultation. This commitment was given in response to calls for simplification and increases of various thresholds in the Charities Acts. Whilst sympathetic with some of the de-regulatory ambitions, the government wanted to ensure that there was proper consultation on any proposals before changes were made.
 - 4.2 The public consultation following the review was completed last year. This Order gives effect to the relevant changes to the financial thresholds in the Charities Acts 1992 and 1993.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
 - 6.1 The Minister for the Third Sector, Kevin Brennan has made the following statement regarding Human Rights:

In my view the provisions of the Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 are compatible with the Convention rights.
7. **Policy background**
 - 7.1 Part 2 of the Charities Act 1992 (the “1992 Act”) regulates fund-raising by professional fund-raisers and commercial participators. There are various financial

thresholds in that Part of the 1992 Act which determine whether a person is a professional fund-raiser, the information to be given to donors and whether donors have a right to a refund of any donation they have made. The Charities Act 1993 (the “1993 Act”) is the key piece of legislation aimed specifically at regulating charities in England and Wales. There are numerous financial thresholds in that Act including those which determine whether a charity is required to register with the Charity Commission, the type of accounts the charity has to prepare and whether those accounts have to be audited or independently examined and whether various reports are required to be submitted to the Charity Commission.

7.2 In 2007, the Charity Commission and the Office of the Third Sector jointly carried out a review of the financial thresholds in these Acts. The aim of the review was to find the minimum amount of regulatory burden that was consistent with the effective regulation of charities in England and Wales. Regulations not aimed specifically at charities were outside the scope of the review.

7.3 The review was carried out using the following criteria as guidelines:

- there should be a logical case to be made for any change to a threshold;
- any change to a threshold should reduce the administrative burdens on charities and charity trustees;
- any change should simplify or rationalise the regulatory framework;
- any change should be consistent with maintaining an effective regulatory framework; and
- any change should provide for transparent and accountable reporting.

Recommendations for a number of changes to the financial thresholds in both the 1992 and 1993 Acts were made. These recommendations were the subject of a full public consultation (see section 8 below) and are set out in full in the consultation paper which is available on the Office of the Third Sector’s website:

http://www.cabinetoffice.gov.uk/third_sector/Consultations/completed_consultations/financial_thresholds_charities_act.aspx

7.4 Following the consultation, the Minister has approved the following changes to the financial thresholds to which this Order gives effect:

7.4.1 registered charities will be required to submit their annual accounts and Trustees Annual Report (TAR) to the Charity Commission if their income exceeds £25,000, rather than £10,000 (article 11);

7.4.2 charities that are not companies will be required to prepare their accounts on an accruals basis for any financial year in which their gross income exceeds £250,000 which is being raised from £100,000. Below this threshold, charities can opt to prepare their accounts on a simpler receipts and payments basis (article 9);

7.4.3 charities will be required to have their accounts externally examined if their income exceeds £25,000. This is being raised from £10,000 (article 10(b));

7.4.4 charities with gross income in a financial year exceeding £250,000 but not exceeding £500,000 will be required to have their accounts for that year audited if their total assets (gross) are worth more than £3.26 million. The lower income trigger is going up from £100,000 and the asset threshold is increasing from £2.8 million (articles 9 and 10(a));

7.4.5 the consideration limit below which a charity can recover the costs of proving its title to a rentcharge is increasing from £500 to £1000 (article 8);

7.4.6 the remuneration thresholds which determine whether certain persons are professional fund-raisers are being increased. In future, a person will be a professional fund-raiser if their relevant income exceeds £10 a day or £1000 a year. These figures are increasing from £5 a day and £500 a year (article 3). Corresponding changes are made to the earnings limits which determine whether a person is required to comply with any of the fund-raising controls in section 60A of the 1992 Act (article 5);

7.4.7 under the 1992 Act, there are qualified rights of refund for donors who make payments of £50 or more in response to certain types of appeal (these include, for example, broadcast appeals). These provisions are to be amended so that only donors making payments of £100 or more in response to such appeals can benefit from these rights (articles 4 and 6).

7.5 In accordance with the commitment made in the response to the consultation, the changes take effect on 1 April 2009 (subject to the transitional and savings provisions in articles 12 to 17 of the Order).

7.6 These changes reflect developments in best practice in regulation that have happened since the thresholds were introduced. In particular, they reflect a greater focus on risk and proportionality than was taken at that time. While this does not mean that small charities should be exempt from all regulation, the changes represent a lighter touch approach to routine regulatory and reporting requirements for small charities. The application of a proportionate and risk based approach is a strong argument for change and, together with the need to take account of inflation, forms the basis for the changes in this Order without a significant loss of regulatory confidence.

8. Consultation outcome

8.1 A full public consultation was carried out on the recommendations made by the review. The consultation ran from 11 December 2007 to 31 March 2008.

8.2 There were 58 responses to the consultation from a range of stakeholders. The consultation responses were broadly supportive of the attempt to reduce the regulatory burden for charities and their trustees. At the same time, there was no overall sense

among respondents that charity specific regulation imposed an undue burden on charities. In fact, critics of some of the proposals noted that potential savings from less regulation were not sufficient to balance the possible impact on sector accountability and transparency. Most respondents were opposed to more radical changes than those proposed.

8.3 The specific recommendations for change were almost all supported by a majority of the comments received. There was overwhelming support for retaining the requirement for all charities to prepare accounts and make them available on request, and for continuing to base reporting requirements on an annual cycle.

8.4 Two changes that were recommended following the review are not being taken forward as a result of feedback received on consultation.

8.4.1 A proposal to introduce a £25,000 threshold for the preparation of the Trustees' Annual Report ("TAR"). Currently all registered charities must prepare a TAR. Whilst there was some support for this proposal, there were strong arguments from other stakeholders that the preparation of the TAR is an important mechanism for the accountability and transparency of charities that should be retained.

8.4.2 A proposal to increase from £10,000 to £25,000 the threshold above which registered charities must refer to their registered charity status on written material. There was little support for this proposal, with the majority of consultation respondents in favour of preserving the existing threshold.

8.5 A full analysis of the consultation responses is available on the Office of the Third Sector website:

http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/responses/gov_res_thresholds.pdf

9. Guidance

9.1 The Office of the Third Sector and the Charity Commission will publicise these changes (building on publicity already given to the consultation and its outcome). Prior to commencement, the Office of the Third Sector will publish an explanation of these threshold changes explaining their practical impact for charities, fund-raisers and their advisors.

9.2 The Charity Commission website (<http://www.charitycommission.gov.uk>) provides detailed guidance on reporting and accounting requirements for charities, which is being updated to reflect the changes to the relevant financial thresholds.

10. Impact

10.1 An Impact Assessment is attached to this memorandum. While all changes given effect by the Order will improve the regulatory framework, only three will have a significantly measurable impact on costs. The attached Impact Assessment contains full details but in summary they will produce a total annual saving of £4.89 million for the charitable sector, broken down as follows:

- the change to accounts submission threshold (described in paragraph 7.4.1 above) will save 23,000 registered charities a total of £100,000 per year;
- the change to the accruals accounts preparation threshold (described in paragraph 7.4.2. above) will save a total of £3.6 million per year for 11,700 charities; and,
- the change to external examination of accounts (described in paragraph 7.4.3. above) will save a total of £1.19 million a year for 37,000 charities.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Section 73 of the Charities Act 2006 requires the Minister to appoint a person to review the operation of the Act 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 changes made to the reporting and accounting thresholds by or under the 2006 Act. Other financial thresholds (including those changed by this Order) will be reviewed periodically to take account of inflation and policy development on the approach to reporting and accountability of charities.

13. Contact

Khaled Moyeed at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6028 or email: khaled.moyeed@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Charity Commission
and Office of the Third
Sector

Impact Assessment of Options for Change in
Consultation on Charity Law Thresholds

Stage: Implementation

Version: 1

Date: 19/02/2009

Contact for enquiries: David Bogie, Charity Commission

Telephone: 020 7674 2396

What is the problem under consideration? Why is government intervention necessary?

The charity regulatory framework contains a range of financial thresholds. Many have not been changed since their introduction in the 1990s. During the passage of the Charities Act 2006, the Government made a commitment to review these thresholds to ensure that the regulatory framework continues to meet the modern standards of good regulation.

The changes covered by this Impact Assessment require secondary legislation.

What are the policy objectives and the intended effects?

To reduce the burden of regulation on charities and their trustees to the minimum that is consistent with the effective regulation of charities.

The changes are designed to reduce the costs for charities while maintaining necessary levels of accountability and transparency.

What policy options have been considered? Please justify any preferred option.

A joint Charity Commission and Office of the Third Sector review considered a range of options and led to a consultation document published in December 2007, *Financial Thresholds in the Charities Acts: Proposals for Change*. This Impact Assessment contains details of the changes to be taken forward in the light of that consultation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Effect will be monitored regularly and analysed as part of a wider review of the operation of the Charities Act 2006 due to commence in 2011.

Executive Director Sign-off For Implementation Stage Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the threshold changes.

Signed By: Rosie Chapman (Executive Director of Policy and Effectiveness, Charity Commission)

Date: 27 February 2009

Summary: Analysis & Evidence

Threshold Change:
1

Increase in Threshold for Submission of Accounts and Trustees' Annual Report to the Commission to £25,000

ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'	
One-off Y		
£ N/A		
Average Annual Cost (excluding one-off)		
£ N/A	Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'		

ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
One-off Y		
£		
Average Annual Benefit		
£ 100,000	Total Benefit (PV)	£ 100,000
Other key non-monetised benefits by 'main affected groups'		
This change will release a small amount of trustee time to be applied to activities more directly in furtherance of charitable purposes.		

Key Assumptions/Sensitivities/Risks

That this will save no more than 15 minutes staff time plus a small amount of postage, copying and so on.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales		
On what date will the policy be implemented?	1 April 2009		
Which organisation(s) will enforce the policy?	Charity		
What is the total annual cost of enforcement for these	N/A		
Does enforcement comply with Hampton principles?	Yes		
Will implementation go beyond minimum EU requirements?	N/A		
What is the value of the proposed offsetting measure per year?	N/A		
What is the value of changes in greenhouse gas emissions?	N/A		
Will the proposal have a significant impact on competition?	No		
Annual cost (£-£) per organisation (excluding one-off)	£0 - £10k N/A	£10k - £25k	Over £25k
Are any of these organisations excluded?	N/A	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase	£	Decrease	£ 100,000
Net		-£ 100,000	

Key:

Annual costs and benefits: Constant Price

Summary: Analysis & Evidence

Threshold Change: 2

Increase in Threshold for External Examination (Independent Examination) to £25,000

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off	Y	
£ N/A		
Average Annual Cost (excluding one-off)		
£ N/A		Total Cost (PV)
		£
Other key non-monetised costs by 'main affected groups'		
Lack of external scrutiny for charities in relevant income band might increase risks to those charities and reduce their accountability.		

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
One-off	Y	
£		
Average Annual Benefit		
£ 1.19 million		Total Benefit (PV)
		£ 1.19 million
Other key non-monetised benefits by 'main affected groups'		
This would release volunteer time be applied to activities that more directly further charitable causes.		

Key Assumptions/Sensitivities/Risks It is highly likely that some charities will continue to have some form of external scrutiny. The costs of doing so are assumed to be Business as Usual costs in this context and so excluded from the calculations. The savings are based on each charity saving the cost of an Independent Examination (the current

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales		
On what date will the policy be implemented?	1 April 2009		
Which organisation(s) will enforce the policy?	Charity		
What is the total annual cost of enforcement for these	N/A		
Does enforcement comply with Hampton principles?	Yes		
Will implementation go beyond minimum EU requirements?	N/A		
What is the value of the proposed offsetting measure per year?	N/A		
What is the value of changes in greenhouse gas emissions?	N/A		
Will the proposal have a significant impact on competition?	No		
Annual cost (£-£) per organisation (excluding one-off)	£0 - £10k N/A	£10 - £25k	Over £25k
Are any of these organisations excluded?	No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase	£	Decrease
		£ 1.19million
	Net	£-1.19 million

Key: Annual costs and benefits: Constant Price

Summary: Analysis & Evidence

Threshold Change: 3

Increase in Threshold for Preparation of Accounts
£250,000

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off	Y	
£ N/A		
Average Annual Cost (excluding one-off)		
£ N/A		Total Cost (PV)
		£
Other key non-monetised costs by 'main affected groups'		

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
One-off	Y	
£		
Average Annual Benefit		
£ 3.6 million		Total Benefit (PV)
		£ 3.6 million
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks Some charities may prefer to continue to prepare accruals accounts. The costs of doing so are assumed to be Business as Usual costs in this context and so excluded from the calculations. Savings assume that each charity saves the difference in preparation costs between two types of accounts.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	1 April 2009			
Which organisation(s) will enforce the policy?	Charity			
What is the total annual cost of enforcement for these	N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	N/A			
What is the value of changes in greenhouse gas emissions?	N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	£0 - £10k N/A	£10 - £25k	£25- 100k 250k	£100- 250k
Are any of these organisations excluded?	N/A	N/A	N/A	No

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£	Decrease	£ 3.6 million	Net	-£ 3.6 million

Key

Annual costs and benefits:

(Net) Present Value

Note on Costs.

All costs are taken from or based on the measurements in the Administrative Burdens Reduction Project (ABR). This estimated the costs of complying with charity regulation. The costs used are adjusted to remove Business as Usual costs (BaU). These are costs that would be incurred whether or not there was a legal requirement.

For charities, a large proportion of regulatory compliance is carried out by volunteers. The costs/savings include a valuation for voluntary work and so do not all represent actual expenditure.

Consultation

All of the changes covered by this Impact Assessment were supported by the response to the 2007 consultation *Financial Thresholds in the Charities Act: Proposals for Change*.

1. Submission of Accounts and Trustees Annual Report (TAR)

This change relates only to the requirement to send a copy of the accounts and a TAR to the Commission. It does not affect preparation requirements.

The current £10,000 submission threshold has not changed since its introduction in 1996. Inflation alone would argue for raising this threshold to around £14,500. Recent developments in best practice in regulation now place a greater focus on risk and proportionality than was the case at that time. Taken together these factors argue strongly for an increase in this threshold significantly more than the rate of inflation.

The Government has therefore decided that this threshold should be raised to £25,000. This is consistent with changes being made in other areas. This proposal would free around 23,000 charities from the need to send accounts and a TAR to the Commission annually. This would not bring significant savings in itself as most costs are associated with preparation.

Estimated financial saving is based on submission involving no more than 15 minutes of staff time plus some small costs for copying and postage. Cost per charity estimated at around £4.50. For charities of this size it is likely that the task will be carried out by one of the trustees and so costs are based on the hourly rate for trustees of £16.23 as used in the Admin Burdens Reduction Project

Total estimated saving £100,000.

2. External Examination of Accounts (Independent Examination)

Charities between £10,000 and £100,000 are required to have their accounts externally examined. They can choose an Independent Examination rather than audit.

While some accounts preparation and examination thresholds were changed by the 2006 Act, the £10,000 threshold for external scrutiny has not changed since 1996 when the relevant provisions of the 1993 Act were implemented.

Feedback from charities suggests that it can be difficult to recruit volunteers to carry out an Independent Examination. This can mean that an examiner must be paid for and this may represent a disproportionate cost for smaller charities.

The effects of inflation and the increased focus on proportionality and risk argue for a significant increase. The government also believes that an increase in this threshold follows naturally from the 2006 Act's increase in the audit threshold from £250,000 to £500,000.

The £10,000 threshold is therefore being increased to £25,000.

Savings

The ABR measurements showed that the average cost of an Independent Examination for charities below £100,000, after adjustment to remove Business as Usual costs was £32.17

The increase to £25,000 would cover around 37,000 charities (this is higher than the figure for the same increase in the threshold for accounts submission because it also applies to unregistered excepted charities) giving an annual saving of £1.19 million.

Note: Charities with income between £100,000 and £500,000 can also opt for Independent Examination if their assets are worth no more than £2.8 million.

The lower £100,000 threshold is being increased to £250,000 and the assets element from £2.8 million to £3.26 million. These changes are not expected to make a significant difference to costs.

3. Threshold for Preparation of Accruals Accounts

Non-company charities over £100,000 must prepare accruals accounts. Smaller non company charities can choose to prepare receipts and payments accounts offering more flexibility in layout and content. Their relative simplicity allows them to be prepared by non accountants.

Accruals accounts must follow the Charities SORP and are more complex than receipts and payments accounts. Feedback from charities suggests this complexity can prove very burdensome to smaller charities.

The £100,000 threshold has not changed since its introduction in 1996. Again, applying inflation and a modern proportionate and risk-based approach would support a significant increase in this threshold. This threshold is therefore being raised to £250,000.

This increase is consistent with the general increases in accounting thresholds both in the 2006 Act and described above. On the assumption that such charities would opt for Independent Examination it will also align the need to prepare accruals accounts with the requirement to use a qualified examiner who would be better able to advise the trustees about the SORP.

The preparation of accruals accounts will remain an option for charities between £100,000 and £250,000 but they will be able to choose the simpler and less expensive option of preparing receipts and payments accounts.

This would affect around 11,700 registered and unregistered excepted charities.

The total savings are based on the following costs from the original ABR measurement phase. All figures have been adjusted to remove business as usual costs.

1. Average cost of preparing accounts for charities with income below £100,000: £9.79

2. Average cost of preparing accounts for charities between £100,000 and £250,000: £320.57

3. Difference in costs between preparation methods: £310.78

Total saving: $11,700 \times £310.78 = £3.64$ million

In practice some charities between £100,000 and £250,000 may continue to prepare accruals accounts. Some may prefer to do so and other possible reasons include conditions of funding. But the additional cost of doing so would not arise from regulations and so is assumed to be business as usual cost in this context.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	N/A	N/A
Small Firms Impact Test	N/A	N/A
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	No (See Below)	No
Disability Equality	No (See Below)	No
Gender Equality	No (See Below)	No
Human Rights	N/A	N/A
Rural Proofing	N/A	N/A

Consultation included questions designed to confirm this.