

Charities Act 2006 explained

December 2007

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Executive Summary

After 4 years of drama and some measure of political theatre, altogether consuming over 80 hours of Parliamentary debate in both Houses, the Charities Act 2006, along with the mammoth Companies Act 2006, finally reached the Statute Book on 8 November.

This Briefing Paper provides a reasonably comprehensive review of the Charities Act as it applies to Christian charities, including churches. Where known, the expected timing of the implementation of the new law is included in the detailed text. Some provisions will require the making of Regulations by Parliament in order to complete the legislative process. Reference is also made to the specific charity provisions of the Companies Act.

Charities Act 2006

The Act is in 4 parts.

Part 1

Defines 'charity' and provides for a 'public benefit' requirement which is to be applied to all charities, including religious ones.

Part 2

- Establishes, for the first time, a Charity Tribunal (who will, for example, receive appeals from Charities against decisions of the Charity Commission);
- Requires the registration of charities according to the new thresholds and criteria. Most notably, churches from the historic denominations who, until now, came within the "excepted charity" status, will be required to register if gross income exceeds £100,000 per annum. All other churches will be required to register if gross income exceeds £5,000 per annum.
- Provides for new audit and independent examination thresholds. Under the Act, charities will be able to opt for an independent examination if their gross income is up to £500,000 (replacing the £250,000 limit), although examiners of charities with income between £250,000 and £500,000 will have to hold one of the accountancy qualifications specified in the Act. If gross assets exceed £2.8 million, the audit threshold is reduced to £100,000.
- Introduces a new charity structure, the Charitable Incorporated Organisation, giving limited liability status through a single regulator, the Charity Commission.
- Permits trustees to be remunerated for services provided to the charity (other than as a trustee), so long as defined safeguards are met.
- Permits trustee indemnity insurance to be purchased out of charity assets, even where there is no power to do this in the governing document, provided that document does not specifically prohibit the purchase.

Part 3

Introduces a revised regime for public charitable collections, amends the rules for professional fundraisers and provides the Government with power to regulate fundraising activities in the future, should they deem it desirable.

It also provides power to the Government to give financial assistance to charitable, benevolent or philanthropic institutions.

Part 4

Contains largely administrative and operational provisions.

Where known, the timing of implementation of each provision is given in the text of the Briefing Paper.

Companies Act 2006

The Companies Act, which is a substantial piece of legislation applying mainly to commercial companies, also makes some additional changes relevant to charitable companies.

- The time limit for filing accounts is reduced from ten months from the financial year end date to nine months.
- The audit exemption for charitable companies with gross income of up to £90,000 is retained.
- Charitable companies will now also be exempt from audit if:
 - a) Gross income is between £90,000 and £500,000 p.a., and
 - b) 'balance sheet total' does not exceed £2.8 million, and
 - c) it otherwise qualifies as a 'small company' for Companies Act purposes, and
 - d) a Charities Act independent examination is carried out.

1 Introduction

- 1.1 This Paper seeks to provide a comprehensive review of the Charities Act 2006 as it applies to Christian charities, including churches. It does not cover charity law in general and makes no comment on the Charities Acts of 1992 and 1993 unless the context requires it.
- 1.2 Unless otherwise stated, reference to 'The Act' or 'The Charities Act' means the Charities Act 2006. Other Acts are referred to in full. The term 'charity' or 'charities' can be taken to include churches unless otherwise stated.
- 1.3 Reference is also made to the specific charity provisions made in the Companies Act 2006, which received Royal Assent on the same day as the Charities Act. At the time of writing, we do not have detail as to the precise timetable for the coming into force of the Companies Act 2006 provisions, although our understanding is these will all be implemented by October 2008.
- 1.4 Detail is given on when each of the various provisions of the Charities Act will come into force. This will be over a period of two years or so. Some provisions will require the making of Regulations by Parliament in order to complete the legislative process.

2 The birthing of the Act

- 2.1 The Charities Act has perhaps been one of the most debated Acts in history having been introduced in three Queen's speeches.
- 2.2 It started life in July 2001 when the Prime Minister commissioned a review of the law and regulation of charities and not for profit organisations. This resulted in the Cabinet Office Strategy Unit publishing a consultation paper 'Private Action, Public Benefit' in September 2002. A draft Act was published in May 2004 and an actual Act in December of that year. After falling because of the General Election, the Act was reintroduced in the Lords in May 2005.
- 2.3 After 4 years of drama and some measure of political theatre altogether consuming over 80 hours of Parliamentary debate in both Houses, the Charities Act 2006, along with the mammoth Companies Act 2006, finally reached the Statute Book on 8 November.

3 Structure of the Act

- 3.1 The Act is divided into four parts and this Paper broadly follows this structure. Somewhat disappointingly, it is not a consolidating Act and therefore it has to be read alongside and amends provisions in the earlier Acts.
- 3.2 The four parts deal with:
 - The definition of charity and charitable purposes
 - The regulation of charities
 - Fundraising by and funding of charities and other benevolent or philanthropic organisations.
 - Legal administrative provisions

4 Geographical jurisdiction of the Act

- 4.1 Save for a few very limited circumstances, the Act has jurisdiction in England and Wales only.
- 4.2 Scotland has its own charity legislation now embodied in the Charities and Trustee Investments (Scotland) Act 2005, which received Royal Assent on 14th July 2005. That Act applies in general to Scottish charities but there are implications for cross border charities (English and Welsh charities 'operating' in Scotland).
- 4.3 At present, Northern Irish charities are 'regulated' by HM Revenue and Customs as there is no comprehensive charity legislation specific to the region. However, the Department for Social Development in Northern Ireland has recently finished a consultation on reforming charity law and regulation. Following this, a draft Order in Council that will give effect to the proposals was published at the end of January 2007.
- 4.4 Appendix 1 provides a brief summary of some of the key provisions of the Charities and Trustee Investments (Scotland) Act 2005 and a summary of the key proposals in the Northern Ireland draft Order in Council.

5 What is charity?

5.1 Statute

- 5.1.1 Until now, there has been no statutory definition of what constitutes charitable activity. The meaning of the term 'charitable activity' is legally derived from the court case of Special Commissioners of Income Tax v Pemsel (1891) which has provided the base point for deciding what is or is not charitable activity today.
- 5.1.2 Lord Macnaughten in Pemsel's case set out to define a charity in a legal sense. In his judgement, he concluded that the term comprised of four principle divisions, the so called 'Heads of Charity':
 - The relief of poverty
 - The advancement of education
 - Trusts for the advancement of religion
 - Other purposes beneficial to the community and not falling within any of the above three heads.

5.2 Case law

- 5.2.1 As a result, the development of the definition of 'charitable purposes' has been by virtue of case law rather than Statute for several hundred years. Indeed, the Courts have expanded the meaning of charity, principally under the last head (other purposes beneficial to the community) as society has developed and perception of what constitutes activity beneficial to the community has broadened.

5.3 Definition of charity within the Act

- 5.3.1 For the first time the meaning of charitable purpose is to be defined in Statute.
- 5.3.2 The Act is drafted in such a way as to attempt, for the most part, to preserve what is currently understood to be charitable, taking account of the various court decisions over the years, whilst allowing for the development of the meaning of charity in future – in much the same way as the term has been widened over the last 400 years.
- 5.3.3 A charity must have charitable purposes only; a body with both charitable and non charitable purposes cannot be a charity.

5.3.4 The charitable purposes specified in the Act are not intended to be all encompassing but are meant to provide broad heads covering the great majority of purposes that are recognised as charitable. The Act recognises that there will be other charitable purposes not specifically listed.

5.4 What does the Act change?

5.4.1 In terms of defining what is and what is not charity, the Act makes few changes and, for the most part, does not seek to disturb the underlying case law. However, there are several areas that are worthy of note.

5.4.2 Public benefit

5.4.3 One deliberate change concerns public benefit. Until now, it has been legally assumed that purposes for the advancement of religion, advancement of education and relief of poverty are for the public benefit. No other "purposes" benefit from this presumption and therefore it was felt appropriate that this should be withdrawn.

5.4.4 This change, which is viewed by many in the Christian Sector as both a significant change and a potential threat, is considered further in Section 6.

5.4.5 Definition of Religion

5.4.6 During the course of the Act's passage through Parliament a definition of 'Religion' has been added:

"Religion" includes—

- a) a religion which involves belief in more than one god, and
- b) a religion which does not involve belief in a god"

One can draw one's own conclusions as to where public perception is headed!

An attempt by a vociferous group of secular humanist peers during the House of Lords debates on the Act to amend the main head of charity to "The advancement of religion or belief or other systems or philosophies of belief or ethics which are not included in ... [the definition of religion, as above]" was defeated.

5.4.7 The Heads of charity in the Act

5.4.8 The Act provides for 13 'Heads' of charity. These are not fully stated purposes in themselves but rather heads under which lie a range of different purposes capable of fulfilling the description:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;

- j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown, or the efficiency of the police, fire and rescue services or ambulance services;
- m) any other purposes within subsection (4).

Subsection (4) covers purposes recognised as charitable under existing charity law or the Recreational Charities Act 1958, purposes analogous or within the spirit of any purposes as charitable under existing charity law etc. and purposes analogous to any purposes subsequently regarded as analogous. The last sentence being a parliamentary draftsman's way of including the possibility of growth and development of charitable purposes over time.

- 5.4.9 The advancement of health includes the prevention or relief of sickness, disease or human suffering.
- 5.4.10 The advancement of citizenship or community development includes:
 - a) rural or urban regeneration, and
 - b) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
- 5.4.11 The advancement of amateur sport means sport or games which promote health by involving physical or mental skill or exertion ; and
- 5.4.12 Paragraph (j) above encompasses relief given by the provision of accommodation or care to the classes of persons mentioned.
- 5.4.13 Note the insertion of the prevention as well as relief of poverty! Times and attitudes have surely changed since 1601!

5.4.14 Implementation

The new definition of charity will not be implemented until the new Charity Tribunal is in place, which is currently expected to be early in 2008.

6 Public benefit

- 6.1 For an activity to be charitable in law, it has to be carried out for the public benefit. Until now, there was a legal assumption that, unless shown to the contrary, activities within the first three heads of Paragraph 5.1.2 (including the advancement of religion) are carried out for the public benefit.
- 6.2 The withdrawal of the presumption is in part prompted by a desire to see a level playing field between charities but also in the light of the past registration of (for example), religious bodies offering dubious public benefit and possibly even, in many eyes, public damage. There has also been hot debate over the nature of the benefit offered by public schools.
- 6.3 Whilst it understandable that the Government should want to withdraw the public benefit presumption, it does present some threats to the Christian charitable sector. Many inside the church have expressed concern that whilst they are clear that the promotion of Christian principles, acts of worship etc. do provide a public benefit, this is not easily demonstrated in objective terms, often being more in the nature of an intangible benefit.

- 6.4 It would appear however that the Charity Commission do not see the provisions of the Act as having a dramatic effect on the law and still regard themselves as bound by previous court decisions as to what constitutes 'public benefit'. This being the case, churches that find themselves having to register for the first time because they have previously fallen within Exception from Registration (see later comment) should have little to fear from the new public benefit requirement as their particular form of 'advancement of religion' should already be accepted by the Commission without requiring further proof.
- 6.5 That said, Opposition members in particular tested the Government on their attitude to public benefit during the Standing Committee debates on the Bill. In particular, they challenged the Charity Commission's stated position that public benefit must be assessed "in the light of modern conditions" and that keeping up with "modern society" is required if a charity is not to have its charitable status revoked.
- 6.6 This was an important challenge since the Charity Commission will be responsible under the Act for producing guidance on and for policing the public benefit requirement.
- 6.7 Religious charities would be quite rightly concerned if 'keeping up with modern society' in effect means that they are required to abandon or water down some of their key tenets and moral codes rather than by holding to them to advance a better world than modern society offers.
- 6.8 Thankfully, the Government did defend the church's position quite robustly during the latter stages of the debates on the Bill. The Government comment as recorded in Hansard take on particular significance in relation to the Public Benefit issue given that the courts in reaching decisions on matters relating to an Act of Parliament must take account of the intention of Parliament in bringing a particular provision. Some key quotes from those debates are therefore reproduced here:

Ed Miliband, Parliamentary Secretary, Cabinet Office, responding to Anne Widdecombe, Standing Committee A, 25 October 2006, Col 1608:

"... I want to reassure her that removing the presumption that the advancement of religion provides public benefit is not intended to lead to a narrowing down of the range of religious activities that are considered charitable. Nor is the process intended to be onerous for individual religious institutions."

6.8.1

Anne Widdecombe: "... will the Minister say briefly whether it is his understanding that the fact that a particular religion teaches a traditional and certainly non-modern sexual morality could never be held by the Charity Commission to disqualify that religion from charitable status? It is as simple as that".

Edward Miliband: I can certainly give the right hon. Lady that assurance".

Standing Committee A 25 October 2006, Col 1608

6.8.2

"I want to reassure the right hon. Member for Maidstone and The Weald [Anne Widdecombe] on the point of principle. I also want to reassure her that the burdens will not be onerous for religious charities. As with all charities, public benefit has two dimensions. First, there must be an identifiable benefit. Secondly, it must be accessible not only to the adherents of a particular religion, but to the wider community. However, the Government, the courts and the Charity Commission have recognised that religious activities bring benefits not only to those who take part in them, but to the whole of society. Religion has an important role to play in society through faith and worship, motivating charitable giving and contributing in other ways to stronger communities. Both those dimensions will thus usually be apparent from the doctrines, beliefs and practices of a religion. The Charity Commission is clear that most established religions should not have any difficulty in demonstrating their value to society from their beliefs."

Standing Committee A 25 October 2006, Col 1609

6.8.3

Andrew Selous MP: "I would be extremely grateful if the right hon. Lady confirmed that, as her colleague Lord Bassam of Brighton [*Government Minister, House of Lords*] said in the Lords on 3 February 2005, the proselytising activities of religious charities will still be deemed to be a public benefit. In Committee on 4 July, the hon. Member for Doncaster, North (Edward Miliband) said that he could offer reassurance so far as missionary work was concerned. Given that the Charity Commission will interpret these matters, I should like the right hon. Lady to put it on the record that proselytising activity will still be deemed to be a public benefit.

Hilary Armstrong Minister for the Cabinet Office: "It certainly will; my understanding, based on my discussions with the Charity Commission, is that it has no problem with that at all".

Standing Committee A 25 October 2006, Col 1617

- 6.9 These assurances from Government Ministers are welcome. But those responsible for monitoring and advising the church on matters of charity law and practice must keep a close eye on both future decisions of the Charity Commission and judicial decisions lest shifting public opinion or perception of the value of, for example, Christian worship influences these decisions. We must be prepared to challenge any such drift on the basis of Hansard and be prepared to use the Charity Tribunal set up under the Act.
- 6.10 From a more positive perspective, the questions that have been raised on this subject during the passage of the Bill through Parliament should encourage church leaders to sharpen their focus on the impact and outcomes of their church's endeavours – so as to demonstrate public benefit in tangible as well as intangible ways, taking the reporting principles of SORP 2005 (Accounting and Reporting by Charities) to heart. Demonstrating a Christian distinctive is an important aspect of this.
- 6.11 The Charity Commission is charged with issuing guidance 'to promote awareness and understanding of the operation of the public benefit requirement'. Before it issues or amends the Guidance, it is obliged to carry out public and other consultation as it considers appropriate. Whilst this Guidance will not be legally binding on charity trustees, they must have regard to it when exercising their powers and duties.

6.12 Implementation

The introduction of the public benefit requirement is expected to come into force in late March 2008, once the new Charity Tribunal is in place. The provisions requiring the Charity Commission to develop guidance and consult on the public benefit test became law on 27th February 2007 and public consultation started in March 2007. The Commission expect to have published their high level guidance on the public benefit/requirement in the first quarter of 2008. Sub Sectoral consultations (including with the faith sector) will commence at the beginning of 2008.

7 The Charity Commission

7.1 The Act establishes The Charity Commission for England and Wales as a body independent of Government Ministers and Departments but responsible to the Crown.

7.2 The Commission is given 5 statutory objectives as follows:

- To increase public trust and confidence in charities.
- To promote awareness and understanding of the operation of the public benefit requirement.
- To promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of charities.
- To promote the effective use of charitable resources.
- To enhance the accountability of charities to donors, beneficiaries and the general public.

7.3 It also has 6 general functions under the Act:

- Determining whether institutions are or are not charities.
- Encouraging and facilitating the better administration of charities.
- Investigating misconduct or mismanagement of charities and taking appropriate action to protect charities.
- The issue etc of public charitable collections certificates.
- Disseminating information in relation to the Commissions objectives or functions.
- Giving information or advice or making proposals to Ministers in relation to the Commissions objectives or functions.

7.4 The above functions include the maintenance of the public register of charities.

7.5 They have a duty to exercise their functions in a proportionate, accountable, consistent and transparent way.

7.6 A theme of the Act is to make the Charity Commission more accessible to the public and less 'Civil Service' orientated, to separate out the functions of advisor and policeman and to provide for an independent Charity Appeals Tribunal to whom appeals against decisions of the Charity Commission can be taken.

7.7 Implementation

Broadly, these provisions became law on 27th February 2007.

8 The Charity Tribunal

- 8.1 Under the existing law, a right of appeal exists in relation to some decisions of the Charity Commissioners. Even then, this is only to the High Court which can be a difficult and expensive process.
- 8.2 This Act therefore creates a new Charity Tribunal to act as the “court of first instance” to deal with appeals against, and reviews of, legal decisions by the Commission. It will also take referrals from the Commission or the Attorney General which involve the operation or application of charity law.
- 8.3 The Tribunal will not deal with customer service complaints. These will continue to be dealt with internally or through the Independent Complaints Reviewer.

8.4 Implementation

It is anticipated that the Tribunal will be established in February 2008.

9 Registration of charities

- 9.1 The current charity registration thresholds are to be abolished. This includes the tests that refer to occupation of land or permanent endowment.
- 9.2 Under the Act, all charities are required to register with the Charity Commission if their gross income exceeds £5,000, unless prior to the Act’s enactment, the charity was:

- ‘Excepted’ from registration
- Exempted from registration.

in which case, slightly amended rules will apply. Excepted status is to be withdrawn under the Act and therefore a transitional registration threshold will apply.

- 9.3 ‘Excepted charities’ include some but not all churches. Churches that can claim excepted status are broadly limited to churches within:

- The Methodist Church
- Baptist and Congregational churches
- Independent churches affiliated to the Fellowship of Independent Evangelical Churches (FIEC)
- The Presbyterian Church of Wales
- The Church of England
- The Church in Wales
- The Religious Society of Friends (Quakers)
- The United Reformed Church

These churches will have a compulsory requirement to register if gross income exceeds a threshold of £100,000. This is a transitional measure with the threshold reducing over time to converge with the threshold applying to charities generally.

On this, the Government have indicated during the course of the Lords’ debates that they may be minded to raise the generally applying threshold from £5,000 to £10,000 when the operation of the new Act is reviewed after one year.

- 9.4 For churches not listed in Paragraph 9.3 above, the registration threshold under the new Charities Act is £5,000 and not £100,000 and applies from 23rd April 2007.

- 9.5 The Act includes a statutory obligation on the Commission to register charities that request to be voluntarily registered.
- 9.6 Once the provisions of the Act are implemented, very few if any Christian charities will qualify as exempt charities.

9.7 Implementation

The relieving provisions for increasing the registration threshold from £1,000 to £5,000 became law on 23rd April 2007.

From 1 October 2008, existing 'excepted' charities (see paragraph 9.3) with an annual income exceeding £100,000 will be required to register with the Commission. Excepted churches under this threshold will retain their excepted status until 1 October 2012.

Because of the burden on the Commission to register formerly excepted charities, the statutory right of charities to be voluntarily registered will not be commenced until this process has been completed. In the meantime, the Commission will register excepted charities on a voluntary basis ahead of the requirement for their registration.

10 Audit and independent examination of accounts

10.1 Audit – unincorporated charities

- 10.1.1 Presently, if a charity has gross income or total expenditure which exceeds £250,000 in the current or either of the previous two financial years, then a full statutory audit of the accounts is required. The Act increases this financial threshold as set out below.
- 10.1.2 The main threshold will rise from £250,000 to £500,000 and will apply to gross income only.
- 10.1.3 A second, asset based test is introduced which also tests gross income at a lower level. Where gross income exceeds £100,000, if 'gross assets' exceed £2.8 million, then despite being below the main threshold, an audit will still be required.

10.1.4 Definition of 'gross assets'

- 10.1.5 The Act does not use the phrase 'gross assets' but refers to "the aggregate value of its assets (before deduction of liabilities)".
- 10.1.6 Trustees of smaller charities should therefore carefully consider the question of property revaluation and 'gearing up' e.g. to finance perhaps significant property acquisitions. As Lord Phillips commented in the early debates on the Bill:

"Why is the £2.8 million taken before deduction of liabilities? That seems very odd, even bizarre, if you have a land charity with £3 million in assets and a mortgage of £2.5 million"

Lord Bassam for the Government undertook to look at this again and give Lord Phillips a private response. Unfortunately nothing has changed since then and the nature of the Government's response to a perfectly valid question is not known.

- 10.1.7 Charities with a modest gross income but holding a perhaps historic but valuable property may find themselves subject to statutory audit for the first time. We are pleased that the asset test has been set relatively high but still feel that this is a rather blunt test. However, the three year audit window is dropped. The tests will therefore only apply to the current financial year although trustees will need to consider the impact in Year 1 of going through the audit threshold in Year 2.

10.2 Audit – charitable companies

- 10.2.1 Charitable companies are outside of the independent examination regime. Where gross income is below £90,000 and gross assets do not exceed £2.8 million, there is also exemption from the audit requirement. Many charities at this income level therefore opt for a voluntarily independent examination to provide the trustees with some degree of comfort.
- 10.2.2 Despite the independent examination requirement kicking in for unincorporated charities at £10,000, the nearest equivalent for charitable companies, the s249 Companies Act 1985 Report (a report on the accounts by a suitably qualified 'Reporting Accountant') does not become obligatory until gross income exceeds £90,000. Below this, the trustees / directors are at liberty to do nothing!
- 10.2.3 For accounting periods starting on or after 27 February 2007, the upper thresholds for an s249 Report are now £500,000 and gross assets not exceeding £2.8 million. Above this, a statutory audit is required. However, these provisions are likely to be short lived as they will be repealed when the provisions for the audit of charitable companies contained in parts 15 and 16 of the Companies Act 2006 come into force. The new provisions are expected to apply to Financial Years beginning on or after 6 April 2008.
- 10.2.4 The Companies Act 2006 makes some substantial changes to the thresholds for audit and independent examination of charitable companies which largely harmonise, for the first time, with the rules for unincorporated charities.
- 10.2.5 In brief, the Companies Act makes the following provisions in relation to charitable companies in England and Wales and Northern Ireland:
- a) Accounts must be prepared using UK rather than International Accounting Standards;
 - b) In all cases, company accounts must meet the true and fair view standard and therefore, must be prepared on the accruals basis of accounting in full compliance with SORP 2005: Accounting and Reporting by Charities.
 - c) Where gross income is not more than £500,000 in the year and the balance sheet total is not more than £2.8 million, the company will be exempt from audit provided that an Independent Examination in accordance with the Charities Act 1993 provisions (as amended by Charities Act 2006) is carried out. The 'balance sheet total' refers to the aggregate of the assets (only) shown in the company's balance sheet.
- 10.2.6 The Companies Act also makes parallel but not identical provisions for charities in Scotland, cross referencing to Scottish law and regulations. Further details on these can be found in Appendix 1, Paragraph 1.7
- 10.2.7 Note, that if 10% or more of the members of a charitable company request that an audit is obtained, the above exemption is disappplied.
- 10.2.8 As can be seen, these provisions and those of the Charities Act, once enacted will provide a broadly similar regime for both incorporated and unincorporated charities.

10.3 Independent examination

- 10.3.1 An independent examination of the accounts represents an alternative to an audit where the income of an **unincorporated** charity falls below the audit threshold.
- 10.3.2 Provided that there are no conflicting requirements, such as in the charity's trust deed or governing document, trustees will now be able to opt to have an independent

examination instead of an audit right up to the new gross income limit of £500,000 (previously £250,000). The lower threshold below which no examination of any kind is necessary remains unchanged at £10,000.

- 10.3.3 At the lower threshold level of £10,000, charities will now only have to consider 'gross income' when assessing whether the threshold has been breached. Total expenditure will no longer be of relevance.
- 10.3.4 There is a further change that restricts the choice of examiner where gross income is between £250,000 (the current upper threshold) and the new upper threshold of £500,000, that is the proposed examiner must be eligible for appointment as a reporting accountant under s249D(3) Companies Act 1985¹, be a public finance accountant or be a Fellow of the Association of Charity Independent Examiners. Broadly, this means that a fully qualified accountant must be used or, if not, they must be a Fellow of ACIE. At the present time, most Fellows are likely to be qualified accountants in any event.
- 10.3.5 The restriction in Paragraph 10.3.4 does not in any way diminish the trustees' responsibilities under s43 Charities Act 1993 to only appoint an examiner who they believe has the "requisite ability and practical experience to carry out a competent examination of the accounts". It should not be assumed that just because an accountant is professionally qualified they possess practical experience to carry out a competent examination of charity accounts.

10.4 Implementation

The new provisions of Section 28 relating to audit and examination thresholds are brought into force for charities' financial years beginning on or after 27 February 2007. This means that in practice, the first accounting periods under the new regime will be those for the year ending 28 February 2008.

10.5 Prospective changes

- 10.6 The Government is committed to conducting a review of the financial thresholds in the Charities Act within 12 months of Royal Assent.
- 10.7 The Charity Commission Simplification Plan, published in December 2006 as part of the Government wide plan to reduce regulatory burdens proposes that the financial thresholds be increased at the lower end. Specifically, they propose that the financial limit below which there is no requirement on charities to complete an annual return and have their accounts independently examined is increased from the current threshold of £10,000 to, say, £25,000.
- 10.8 Any increase in limit will be subject to public consultation and secondary legislation and therefore may not be introduced until 2008.

10.9 Responsibilities of auditors and examiners

- 10.9.1 Amendments are made by the Act to tidy up and ensure consistency in duties of auditors on the one hand and independent examiners on the other to report matters to the Charity Commission and for protection of them against actions by trustees for breach of confidence.
- 10.9.2 Broadly, auditors and examiners have a duty to report directly to the Charity Commission, without reference to the charity:

¹ When parts 15 and 16 Companies Act 2006 are implemented, an Order under s77 Charities Act 2006 will amend this reference to s43 Charities Act 1993 which will be amended accordingly.

- Abuse or significant breaches of charity law or regulation
- 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 of the Charity Commission's functions under section 8 of the 1993 Act (power to institute inquiries into charities) or their protective powers under section 18.

10.9.3 Auditors and examiners will also have a discretionary power to communicate directly with the Charity Commission any other matter that he has reasonable cause to believe will be relevant to any of the functions of the Charity Commission.

10.10 Implementation

These provisions are now scheduled to be introduced in late March 2008.

11 Group accounts

11.1 Charities often carry out trading activities, and sometimes charitable activities, through companies and other entities they own or control. Best practice dictates that these charities should prepare a single set of 'group accounts' to consolidate the accounts of the charity and any of its subsidiaries in order to give a full picture of all the charity's activities and the resources it controls.

11.2 The parent charity is legally required to prepare accounts for the standalone charity but there is no legal basis for preparing 'group accounts'. The Act introduces a requirement for a parent charity to prepare group accounts which include the charity's subsidiaries in compliance with regulations as to form and content to be made by the Minister for the Cabinet Office.

11.3 A public consultation recently closed concerning the threshold above which group accounts should be required by law as opposed to good practice. In the context of group accounts, the consultation also covered the level at which an audit as opposed to independent examination will be required.

11.4 Implementation

A summary of consultation responses is expected shortly with the above provisions scheduled to be introduced late March 2008.

12 New form of charity – the Charitable Incorporated Organisation

12.1 At present, the main forms of charitable body are either an unincorporated trust or a company limited by guarantee and exclusively established for charitable purposes.

12.2 Trustees of an unincorporated charitable trust can often feel unduly exposed to personal liability, being jointly and severally liable for the actions of the charity. There may therefore be a desire to run the charity's activities through a limited liability (incorporated) structure. Not only does this structure offer more protection but can also be perceived more favourably by funders, banks and even the public.

12.3 But charities that want a corporate structure currently have to register both as charities and as companies. This means that they have to meet the dual regulatory burdens of both the Charity Commission and Companies House, comply with charity law and company law and prepare statutory accounts that comply with two separate accounting regimes at the same time.

12.4 The Act creates a new vehicle for these charities, the Charitable Incorporated Organisation (CIO). A CIO will have the advantages of a corporate structure, such as reduced personal liability for trustees, without the burden of dual regulation.

12.5 Overview

In overview, a CIO will:

- Be a legal body (i.e. with 'legal personality') in its own right;
- Have members and trustees – who do not need to be the same body of persons;
- Be able to sue and be sued in its own name;
- Have limited liability, offering protection to its trustees / directors;
- Be registered only with the Charity Commission who will be its sole regulator;
- Prepare accounts according to Charity Accounting regulations, with no reference to Company Law accounting requirements;

Existing charities should be able to convert to a CIO with relative ease. Unincorporated charitable trusts will transfer the net assets and operations to the new body; a charitable company (or charitable society under the Industrial and Provident Societies Act 1965) will be able to go through a conversion process.

There are some specific and detailed restrictions that may prevent a minority of charities from converting to a CIO.

12.6 Implementation

- 12.6.1 The CIO regime will require additional, secondary legislation. The Office of the Third Sector will start consultations in preparation for this legislation at the end of 2007.
- 12.6.2 CIO's are now expected to be available to charities from Summer 2008.

13 Trustee remuneration issues

- 13.1 It is well established that, unless a specific power allows (for example in a charity's trust deed or by virtue of a Charity Commission Order), trustees and persons connected with them should not receive any form of remuneration or benefit. To do so would be breach of trust and render the trustee vulnerable to repayment of the remuneration or benefits received.
- 13.2 The Act makes some slight relaxations here. However, trustees should not become too relaxed. It will still be the case that a trustee or a connected person cannot be remunerated without a specific power (which is unusual in any event) if the proposed remuneration or benefit relates to their capacity as:
- A trustee, or
 - An employee.
- 13.2.1 The new rules will not override any provision in a charity trust deed, an Order of the Commission or any statutory provision.
- 13.2.2 Subject to the above, remuneration will be permissible if:
- Stated safeguards are complied with (13.2.3 below);
 - There is no express provision in the trusts of the charity that prohibits that person receiving remuneration
 - Remuneration is provided for services to the charity (other than as a trustee).

13.2.3 The safeguards that must be adhered to are:

- The amount or maximum amount of the remuneration is both reasonable in the circumstances and set out in a written agreement between the charity and recipient. The trustees must have regard to any guidance issued by the Charity Commission concerning the making of such agreements;
- The trustees must be satisfied that the arrangement is in the best interests of the charity;
- The trustee(s) to be remunerated should take no part in any decision to remunerate or other matter connected with the relevant agreement (above);
- Remunerated trustees must remain a minority in number of the total trustees.

13.3 The Charity Commission will have power, by Order to:

- Require repayment in whole or in part of any remuneration that a trustee has received if he has taken part in the decision to remunerate himself (or a person connected with him);
- To prevent remuneration in whole or in part from being paid;
- Relieve a trustee (as well as an auditor or independent examiner) of a personal liability for breach of trust where the Commission are satisfied that the trustee, auditor or examiner has acted honestly, reasonably and where the trustee etc. ought fairly to be excused for the breach of trust. Currently such an Order can only be obtained by application to the courts.

13.4 Implementation

These provisions are scheduled to be introduced in February 2008 to coincide with the introduction of the Charity Tribunal.

14 Trustee Indemnity Insurance

14.1 Trustee Indemnity Insurance (TII) indemnifies trustees from personal liability for claims made against them for breach of trust, negligence or default as long as the mistake was honestly made and not the result of wilful misconduct. In practice, trustees are not held liable in this way for honest mistakes but anxiety about the possibility may give rise to reluctance on some people's part to become trustees.

14.2 Generally, a charity's own funds cannot not be used to pay for TII as this would bring an impermissible personal benefit to the trustees.

14.3 The Act now provides a statutory authority for trustees to purchase TII out of the charity's own resources without the prior permission of the Charity Commission so long as they are satisfied that it is in the best interests of the charity to do so and there is no provision in the charity's governing document which specifically forbids the purchase.

14.4 If there is a specific prohibition in the charity's governing document then trustees can still approach the Charity Commission with a request for an amendment so as to permit the purchase.

14.5 Implementation

These provisions became law on 27th February 2007.

15 Charity mergers

- 15.1 When two or more charities merge, concerns can arise over legacies and donations bequeathed to charities that are a party to the merger but may disappear as the result of a merger. Consequently, these charities are retained as dormant entities to protect against the possibility of the loss of a legacy that may become receivable at an unspecified future point.
- 15.2 The Act provides for the Commission to keep a public register of charity mergers. Registering a merger will be voluntary but where it is, gifts and legacies subsequently made to the previously separate charities will automatically be transferred to the new merged charity.
- 15.3 The Act appears to allow the registration of mergers that took place prior to the Act coming into being, which will allow charities to tidy up by striking off dormant charities and avoiding the unnecessary administration that maintenance of these would otherwise entail.

15.4 Implementation

The Register of Charity Mergers was introduced on 28 November 2007. Further details can be found at <http://www.charity-commission.gov.uk/enhancingcharities/rom.asp>

16 Other provisions

16.1 Fundraising solicitation statements

- 16.1.1 Currently professional fundraisers and commercial participators fundraising for charities must have a written agreement with the charity, and must make a statement telling potential donors that they are getting paid when they ask for money.
- 16.1.2 The Act makes changes to these 'solicitation statements':
- They will have to include the amount the professional fundraiser or commercial participator will be paid for fundraising for the appeal, or if the specific amount isn't known, to give a reasonably accurate estimate of what they'll receive.
 - Slightly different statements will also have to be made by employees, officers and trustees of charities who act as collectors. This doesn't apply to volunteers

16.1.3 Implementation

These provisions are scheduled to be commenced from 1 January 2008.

16.2 Public charitable collections

- 16.2.1 The Act provides for a new system for licensing charitable collections in public replacing previous rules dating back to 1916 and 1939. It applies to all such collections, including face-to-face fundraising.
- 16.2.2 There is a new role for the Commission in checking whether charities and other organisations are fit and proper to carry out public collections and will be responsible for issuing public collections certificates, valid for up to five years. A collection in a public place will not be permitted unless the organisation concerned both holds a certificate and has obtained a permit from the relevant local authority. Failure to comply will result in a fine of up to £5,000.
- 16.2.3 Because of the need for the Charity Commission to develop the regulations and guidance and set up the new systems for their role, the new regime is not expected to be functional for a few years.

16.3 Collections in public places

- 16.3.1 Previous legislation referred to 'street' collections. The Act extends this to collections in 'public places' which includes some privately owned land, such as railway station ticket halls and supermarket forecourts. Once a charity has a public collections certificate it will be able to apply to a local authority for a permit to hold collections at certain times in certain places in that local authority area.
- 16.3.2 Local authorities will ensure that there are not too many collections taking place at the same time, in the same place.

16.4 Door to door collections

- 16.4.1 Previous legislation referred to 'house to house' collections. The Act refers instead to 'door to door' collections, to make clear that this includes business premises.
- 16.4.2 A charity with a public collections certificate will be able to conduct door to door collections without permission from a local authority, but it must inform the local authority that the collection is taking place.

16.5 Local, short-term collections

Some collections will be exempt from licensing and will not require either a certificate or permit, but organisers will have to notify the local authority that the collection is taking place; so small scale activities like carol singing should not be disproportionately affected.

16.6 Implementation

The provisions set out in Paragraphs 16.2 to 16.5 will require a consultation process on regulations and guidance which is yet to be fully prepared. This, together with the need for the Charity Commission to build the necessary resources will mean that the new licensing regime is unlikely to come into force before 2009.

16.7 Freedom for smaller charities to evolve and change

- 16.7.1 The Act liberalises and extends the powers for a smaller, unincorporated charity with income of less than £10,000 a year, to make a resolution without having to go through the Charity Commission to:
- make changes to its objects (purposes)
 - transfer their assets to another charity whose objects are consistent with their own
 - modify particular powers and procedures in the trusts of the charity.
- 16.7.2 Very small charities will be able to benefit from amended rules allowing them to spend capital ('permanent endowment'). Previously the trustees had to satisfy themselves that the charity's property was too small for any useful purpose. The test is now amended to one of whether the purposes for which the fund was established 'can be carried out more effectively' by spending some or all of the capital. There will no longer be a need for Charity Commission concurrence before the capital funds are spent.

16.7.3 Implementation

The provisions under the third bullet point of Paragraph 16.7.1 above (relating to the modification of a charity's powers and procedures) and which apply to **all** charities which are not a body corporate became law on 27th February 2007.

The remaining provisions are due to come into force in February 2008.

16.8 Charitable companies amendment to Memorandum & Articles of Association

16.8.1 Charitable companies must obtain the prior consent of the Charity Commission if they want to make changes to their memorandum and articles of association. The Act cuts down the occasions where they'll have to seek permission before making these changes making the process both quicker and easier.

16.8.2 Implementation

This provision is now scheduled to be introduced in late March 2008.

16.9 Power to spend capital: larger charities

16.9.1 A similar power to that in Paragraph 16.7.2 above is available for larger funds with a single purpose but subject to safeguards given the larger amounts involved. Charity Commission concurrence will be required and they will give due consideration to the intentions of the original donor.

16.9.2 Implementation

These provisions are scheduled to be introduced in February 2008.

16.10 Flexibility for transferring the assets of 'failed' appeals or trusts

16.10.1 Charities occasionally run appeals that fail to get enough money to meet their original aim and funds can exist for which there are no longer any beneficiaries.

16.10.2 The 'cy-pres' (literally 'near to') doctrine has previously restricted the Commission's and the Court's ability to allow charities to use these 'failed' funds in flexible ways.

16.10.3 The Act allows the Commission and the Courts to take into account current social and economic circumstances when approached by charities seeking more freedom in how they can use donated money when they can't use it as originally planned, but it will also take into account the spirit in which the original donation was made.

16.10.4 Implementation

These provisions are scheduled to be introduced in February 2008.

16.11 Charity Commission power to ensuring charity property is properly used

16.11.1 On rare occasions, charity trustees are unwilling to apply charity property for its intended charitable purposes. The Act enables the Commission to deal with this by making a direction for them to do so with or without opening a formal inquiry.

16.11.2 Implementation

This provision is scheduled to be introduced in February 2008.

Appendix – Charity law in Scotland and NI

1 Scotland

1.1 New charity laws for Scotland received Royal Assent on 14th July 2005. The Charities and Trustee Investments (Scotland) Act 2005 (CTISA) came into operation on 1 April 2006.

1.2 There follows a brief introduction to new charity laws in Scotland which also serves to alert charities south of the border to potential implications for them.

1.3 CTISA provides for, amongst other things:

- The establishment of the Office of the Scottish Charity Regulator;
- New Heads of Charity for Scotland ('The Charity Test');
- A new registration regime;
- A new accounting and annual returns regime;
- A new charity structure, the SCIO (Scottish Charitable Incorporated Organisation)
- New Fundraising controls for Scotland.

1.4 Office of the Scottish Charity Regulator

1.4.1 The Scottish Act establishes OSCR as the new regulator and guardian of the new Scottish Charity Register, reporting directly to the Scottish Parliament. Its role includes:

- Determining whether bodies are charities;
- Keeping the public register of charities;
- Monitoring compliance with the new Act;
- Identifying and investigating apparent misconduct.

Their policing function will initially focus on a complete review of Scottish charities' governance, fundraising, gifts, loans and payments to trustees.

1.4.2 Like the Charities Act 2006, there is provision in CTISA for an appeals procedure against OSCR decisions.

1.5 The Charity Test

1.5.1 The test of whether a body is charitable will be judged against 16 Heads of Charity, which are very similar to the 13 English heads.

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health (including the prevention or relief of sickness, disease or human suffering);
- e) the saving of lives;
- f) the advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility);

- g) the advancement of the arts, culture, heritage or science;
- h) the advancement of public participation in sport (which involves physical skill and exertion);
- i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the person for whom the facilities or activities are primarily intended;
- j) the advancement of human rights, conflict resolution or reconciliation;
- k) the promotion of religious or racial harmony;
- l) the promotion of equality and diversity;
- m) the advancement of environmental protection or improvement;
- n) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation and care);
- o) the advancement of animal welfare;
- p) any other purposes that may reasonably be regarded as analogous to any of the preceding purposes,-

1.6 Public Benefit

Until the Charities Act, all Scottish charities were presumed to exist for the public benefit. The Act withdraws this privilege. Now public benefit will be determined by OSCR. Inevitably this will be very subjective, especially as Scotland does not have the benefit that England and Wales has, of several centuries of case law to rely on.

1.7 Accounts etc.

1.7.1 The new charity accounting regulations ("The Accounts Regulations") for Scotland have been enacted (SSI 2006/18) in relation to financial years starting on or after 1 April 2006.

1.7.2 Gross income of over £100,000

Unincorporated charities with a gross income of £100,000 or over and all charitable companies will be required to produce full accruals accounts in compliance with SORP 2005: Accounting and Reporting by Charities.

1.7.3 Gross income under £100,000

Unincorporated charities with a gross income under £100,000 will be able to produce simplified accounts on a receipts and payments basis comprising a receipts and payments account, a statement of balances, notes to the accounts and an annual report.

1.7.4 Gross income over £500,000 (unincorporated charities)

Unincorporated charities with a gross income of £500,000 or over must have their accounts professionally audited. Charities with a gross income of under £500,000 will be able to have an independent examination instead of an audit, unless gross assets exceed £2.8 million and the charity has either opted to or must prepare accruals accounts (per paragraph 1.7.2 above).

This is subtly different from the equivalent provision for England and Wales. There, if a charity with a gross income of under £100,000 opts to prepare accruals accounts they will not be required to have a full audit even if gross assets exceed £2.8 million.

Scottish Charitable Companies

1.8 Introduction

For charitable companies, reference needs to be made to: The Charities and Trustee Investment (Scotland) Act ("CTISA"), the Accounts Regulations (SSI 2006/18), the Companies Act 2006 and The Charities Act 2006 (England & Wales)! The Companies Act is in the course of implementation with different sections coming into force over a period of time.

The following is a summary of the prospective position of those charitable companies.

1.9 Manner of accounting

1.9.1 Receipts and payments accounts

Because it is a requirement of the Companies Acts that the accounts of companies give a 'true and fair view' in their annual accounts, charitable companies do not have the option of preparing receipts and payments accounts (which cannot give a true and fair view by definition). Therefore all charitable companies must prepare accruals accounts and comply with SORP.

1.9.2 Charities not subject to a statutory audit

Company charities that are not subject to a statutory audit may take advantage of the concessions in SORP for what it refers to as 'smaller charities'. Paragraph 5.3 of Appendix 5 of SORP defines a smaller charity as one that is not subject to a statutory audit. So, that leads onto the question of when a statutory audit is required...

1.10 External Scrutiny

Each of the thresholds that follow apply to accounting periods commencing on or after 27 February 2007.

1.10.1 Gross income of up to £90,000: independent examination

At present, at this threshold a charitable company that has **both** gross income of below £90,000 and gross assets of less than £2.8 million is exempt from a professional audit under Company law.

But the accounting provisions of s44 CTISA and The Charities Accounts (Scotland) Regulations 2006 ("The Accounts Regulations") apply to both charitable companies and trusts alike. Section 44 (1)(c) CTISA requires the accounts of a charity to be either examined or audited. Therefore an audit exempt company will require an independent examination.

As accruals accounts are being prepared, the Examiner must be a qualified accountant within the meaning of Regulation 11 of the Accounts Regulations. All of Stewardship's Independent Examination Team are suitably qualified.

1.10.2 Gross income from £90,000 to £500,000 "Audit Exemption Report"

Section 32 Charities Act 2006 (which generally applies only in England and Wales) amended Section 249A(4) of The Companies Act 1985 which applies throughout the UK with effect from accounting periods commencing on or after 27 February 2007.

Now, a charitable company with a gross income of £90,001 and £500,000 (formerly £250,000) **and** gross assets of under £2.8 million may, under Company Law, opt for a report by an Independent Reporting Accountant (known as an "audit exemption report").

In these circumstances, Regulation 12 of the Accounts Regulations states that provided the Accountant's Report is submitted to OSCR with the annual report and accounts, the company will not require a professional audit or an Independent Examination.

The Reporting Accountant must be a qualified member of one of the accountancy bodies listed in the Companies Act 1985. Stewardship can provide a suitably qualified accountant from its team to undertake this kind of Report.

This threshold and regime is likely to be short lived in view of the further change in Paragraph 1.10.4 below.

1.10.3 Gross income of over £500,000 or gross assets of over £2.8 million

A charitable company that exceeds either of the above two thresholds is required to have a full professional audit of their accounts by a registered auditor.

1.10.4 Further Prospective change

The Companies Act 2006 contains provision for the abolition of the Independent Reporting Accountant's Report. This will mean that charities that qualify as **small** charities under the **Companies Acts** will be subject to the same external scrutiny rules as non company charities (i.e. they will only need to consider an independent examination or audit under CTISA and the Accounts Regulations).

Companies that exceed the small companies threshold will continue to be subject to the Companies Acts external scrutiny regime.

Currently, a company is 'small' in terms of the Companies Acts if it meets any 2 of the following three conditions:

- Gross income of less than £5.6 million
- Balance Sheet total (gross assets) not exceeding £2.8 million
- Average number of employees not exceeding 50.

It is currently expected that the regime set out in Paragraphs 1.10.1 to 1.10.3 will cease to have effect for accounting periods beginning on or after 6 April 2008. This date is provisional and will need to be confirmed by the publication of the appropriate Commencement Order for Parts 15 and 16 of Companies Act 2006.

1.11 Annual returns

Annual returns, similar to England and Wales, must be submitted to OSCR along with accounts nine months after the charity's financial year end. Charities with an income of over £25,000 have to submit a supplementary monitoring return. Where income exceeds £100,000, this supplementary return is more detailed.

1.12 New Scottish Charitable Incorporated Organisation

The Act makes provision for a Scottish CIO on much the same terms as that proposed in the Charities Act.

1.13 Non-Scottish Charities

Foreign charities (which includes English and Welsh charities) have to:

- Register as a charity with OSCR if they occupy land or premises in Scotland or have activities in shops, offices or similar premises in Scotland. It is thought that this affects around 600 English charities.
- Submit an annual return and accounts, if there is an obligation on them to register with OSCR. The good news here is that whilst Scottish domestic charities will need their accounts to comply with the Scottish Charity Accounting Regulations, English and Welsh charities are able to submit their normal accounts, without even needing to separate out their Scottish operations in any way – so long as those accounts are acceptable to the Charity Commission.
- Comply with the new Scottish fundraising regulations if a fundraising campaign operates in Scotland (for example a UK wide campaign). This is independent of any need or otherwise for the charity to register with OSCR.
- Further details are available in Stewardship's two Briefing Papers:
 - "Charity accounting, registration and tax relief in Scotland"
 - "Guidance for English, Welsh and NI charities operating in Scotland"
- Available by clicking onto http://www.stewardship.org.uk/briefing_papers.htm

2 Northern Ireland

- 2.1 The Department for Social Development (DSD) is the main charity authority in Northern Ireland. On 29 January 2007 a draft of "The Charities (Northern Ireland) Order 2007" was laid before the Westminster Parliament. Since then, jurisdiction for this law has passed back to the Northern Ireland Assembly and because of this, progress in enacting new charity law in Northern Ireland has been delayed by at least 12 months. The main thrust of the draft Order is to:
- Provide a statutory definition of 'charity' and 'charitable purpose'
 - Introduce a Charity Commission and Charity Tribunal for Northern Ireland.
 - Introduce a NI Register of Charities.
 - Require NI charities to produce accounts to a specified standard and make them available to the public.
 - Deals with the regulation of charities and of public charitable collections.
 - Provide for a NI Charitable Incorporated Organisation
 - Make it easier for charities to dispose of land.
 - Make it easier for small charities to amalgamate or wind themselves up.
- 2.1.1 The proposed statutory definition very closely mirrors that set out in the Charities Act for England and Wales.
- 2.1.2 One major concern which emerged from last year's white paper consultation was the potential burden on charities operating across the UK. The Department has indicated that the new Commission will work with other charity regulators such as OSCR and the Charity Commission of England and Wales so as to limit the reporting / accounting material that may have to be produced by such bodies.

2.2 Registration

Unlike in England and Wales, all charities operating in Northern Ireland will be required to register with the Charity Commission for Northern Ireland.

2.3 Audit and Independent Examination

The Draft Order in Council was subject to a consultation process. As a result of that process, the previously proposed financial thresholds for audit and independent examination which were greatly at a divergence with England, Wales and Scotland have been broadly brought into line the other jurisdictions. The Order now provides as follows:

2.3.1 Gross income of up to £100,000

Receipts and payments accounts plus Statement of Assets and Liabilities. Option to have Independent Examination rather than full audit.

2.3.2 Gross income £100,000 to £500,000

Accounts to comply with accounting requirements set out by Regulations made by DSD. Option to have Independent Examination rather than full audit. The Examiner must be a member of one of a number of specified professional accountancy bodies.

2.3.3 Gross income £500,000 +, or Gross income £100,000 + and total value of assets more than £2,800,000

Accounts to comply with accounting requirements set out by Regulations made by DSD. Full professional audit required.

2.3.4 Charitable companies

A report by a Reporting Accountant (as is presently required in England and Wales for charitable companies with gross income of between £90,000 and £250,000 but which will be abolished under the Charities Act) will be required for NI charities if gross income is between £90,000 and £500,000. If gross income is above £500,000 a full audit is required.