



Exempt charities - changes under the Charities Act 2006

Existing position

Exempt charities are those institutions listed in Schedule 2 to the Charities Act 1993 which are exempt from registration with the Charity Commission. They include universities and further education colleges, industrial and provident societies, and national museums and institutions such as the Science Museum, the Tate Gallery and the National Maritime Museum.

Exempt charities cannot voluntarily register with the Commission but are still subject to charity law, and their trustees have the same duties and responsibilities as the trustees of registered charities. The Charity Commission does not have powers to supervise their activities, but it can give formal advice or make an Order or Scheme if the trustees of an exempt charity apply for this.

Only a few provisions of the Charities Act 1993 apply to exempt charities. For example, while the ss.36 and 38

restrictions on the disposition and mortgage of land do not apply, the trustees of an exempt charity must give the statements and certificates required by ss.37 and 39 for dispositions and mortgages. Under s.46 an exempt charity is required to keep proper books of account. Also, the provisions which disqualify individuals from being charity trustees in s.72 Charities Act 1993 apply to exempt charities.

It has long been assumed that exempt charities have their own regulators who would supervise their compliance with charity law. For example, charitable industrial and provident societies are regulated by the Financial Services Authority; the Housing Corporation is the regulator of those societies which are housing associations. Universities are regulated by the Higher Education Funding Council for England (HEFCE), and further education colleges by the Learning and Skills Council.

The Charities Act 2006 – new provisions for exempt charities

In 2002 the Government's Strategy Unit Report on the charity and not-for-profit sector identified concerns that exempt charities were not complying as they should with charity law. As a result the Charities Act 2006 has introduced certain provisions to govern exempt charities.

Section 11 of the Charities Act 2006 will allow the Government's Minister for the Cabinet Office to remove institutions from Schedule 2 of the 1993 Act if he/she considers that they should no longer be exempt charities. The removed charities will then have to register with the Charity Commission. Initially only such exempt charities with an annual income of over £100,000 per annum will

have to register, but this threshold is an interim level and may be reduced in the future. The Charity Commission state that this reduction will not happen for at least 5 years when there will be a review of the 2006 Act.

In cases where there is a clear regulatory body other than the Commission - such as the Housing Corporation. The relevant such charities will continue to be exempt from registration and will be regulated by their current regulator, to be known as a "*principal regulator*". Thus HEFCE will be the principal regulator of universities and the Learning and Skills Council will be the principal regulator of further education colleges.

The Charity Commission and principle regulators

Section 12 and Schedule 5 of the Charities Act 2006 amends the Charities Act 1993 to apply several provisions under that statute which previously did not apply to exempt charities. For example, the Charity Commission will in future be given power to require an exempt charity's name to be changed; to call for the charity's documents; to institute inquiries; to act for the protection of the charity; or to give directions about the dormant bank accounts of an exempt charity.

Section 13 of the new Act imposes a new general duty on principal regulators to take responsibility for ensuring that the charities within their jurisdiction will in future comply with charity law.

Section 14 of the 2006 Act requires the Charity Commission

to consult the principal regulator of an exempt charity before the Commission exercises any of its specific powers in relation to that charity.

Also, under the 2006 Act the Charity Commission will be given greater powers to intervene in an exempt charity's activities and will be able to investigate these charities if requested to do so by a principal regulator. Thus the Housing Corporation, as the principal regulator of registered social landlords, might invite the Charity Commission to open an inquiry into the activities of a charitable housing association. This might occur if the Corporation did not have sufficient resources or expertise to deal with a specific charity issue.

Implementation of new provisions

The Office of the Third Sector (the part of the Government's Cabinet Office now responsible for the charity sector) will be working with principal regulators to agree how the new arrangements will work and to make sure that they have the powers they need to supervise compliance with charity law. Principal regulators may be given new statutory powers to enable them to carry out the compliance objective. To allow for this period of consultation, and to give the Charity Commission time to prepare for the changes, the provisions of the Charities Act 2006 relating to exempt charities are not expected to come into force before 2008.

The board of an exempt charity (whose members are the charity trustees) should therefore be aware that in future there will be a greater focus on the compliance of exempt charities with charity law.

Burges Salmon is a law firm with offices in Bristol and London, which advises on charity formation, trustees' duties, fundraising, trading subsidiaries and project structures, as well as on all the commercial, property and litigation issues affecting charities.

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