

SCHEDULE 2

Article 3

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

PART 1

ACCOUNTS AND REPORTS

Accounts to be prepared and retained by charities ceasing to be exempt in respect of current financial years

1. Subsections (1) and (2) of section 46 of the 1993 Act continue to apply to a section 11 charity in relation to—

- (a) the current financial year; and
- (b) the books of accounts and statements of account prepared in respect of any financial year of the charity which began before the appointed day.

Charity Commission not to request annual reports from charities ceasing to be exempt

2. The Commission may not require, under section 46(5) of the 1993 Act, the charity trustees of a section 11 charity to prepare an annual report in respect of the current financial year of the charity.

Requests for accounts made to charities ceasing to be exempt

3.—(1) Where a qualifying request is made, the accounts to be treated as the most recent accounts of a section 11 charity are the accounts specified in sub-paragraph (2).

(2) The specified accounts are—

- (a) the accounts of the charity most recently audited in pursuance of any statutory or other requirement; or
- (b) if its accounts were not required to be so audited, the accounts most recently prepared in respect of that charity.

(3) In this paragraph, “qualifying request” means a request made under section 47(2) of the 1993 Act for the most recent accounts of a section 11 charity at any time before—

- (a) in the case of a section 11 charity which is a company, the charity trustees of that charity have prepared an annual report under section 45 of that Act in respect of the financial year of the charity beginning immediately after the current financial year; or
- (b) in any other case, the charity trustees of that charity have prepared—
 - (i) a statement of accounts under section 42(1) of that Act; or
 - (ii) an account and statement under section 42(3) of that Act,in respect of the financial year of the charity beginning immediately after the current financial year.

Preparation of accounts etc. by excepted charities

4.—(1) Subsection (3A) of section 46 of the 1993 Act(1) does not apply, before the relevant day, in relation to an exempt charity which is not a specified exempt charity.

(1) Section 46(3A) was inserted by paragraph 139(3) of Schedule 8 to the Charities Act 2006.

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- (2) For the purposes of this paragraph—
- (a) “the relevant day” means—
- (i) in relation to—
 - (aa) an excluded fund; or
 - (bb) an institution administered by or on behalf of such a fund and falling within paragraph (w) of Schedule 2 to the 1993 Act,the day appointed for the commencement of section 11(9) of the 2006 Act for the purposes of inserting paragraphs (a) and (b) of Note 1 at the end of Schedule 2 to the 1993 Act;
 - (ii) in relation to a relevant fund, the day appointed for the commencement of section 11(10) of the 2006 Act;
 - (iii) in relation to an exempt charity included in paragraph (y) of Schedule 2 to the 1993 Act, the day appointed for the commencement of section 11(8) of the 2006 Act;
 - (iv) in relation to any other exempt charity which is not a specified exempt charity, the day appointed for the commencement of section 12 of the 2006 Act in relation to that exempt charity or exempt charities of that particular description.
- (b) “relevant fund” means—
- (i) a common investment fund (within the meaning of section 24 of the 1993 Act);
 - (ii) a common deposit fund (within the meaning of section 25 of that Act); or
 - (iii) other similar fund,
- which is, by virtue of subsection (8) of section 24 of that Act (or of that subsection as applied by section 24(9) or 25(2) of that Act), an exempt charity.

PART 2

JURISDICTION OF THE CHARITY COMMISSION AND THE COURT

Inquiries under section 8 of the 1993 Act in relation to relevant charities

5.—(1) Subject to sub-paragraphs (2) and (3), the Commission must not instigate any inquiry under section 8 of the 1993 Act (“section 8 inquiry”) on or after the appointed day—

- (a) in relation to one or more relevant charities and in respect of any period beginning before that day; or
- (b) which covers any period beginning before the appointed day and would extend to one or more relevant charities.

(2) The Commission may, if it considers it appropriate to do so, instigate a section 8 inquiry on or after the appointed day into a section 11 charity in respect of a relevant matter which it becomes aware of on or after the appointed day.

(3) The Commission may, if it considers it appropriate to do so, instigate a section 8 inquiry on or after the appointed day into a specified exempt charity in respect of a relevant matter if—

- (a) subject to sub-paragraph (4), a request is made by the principal regulator of the charity under this sub-paragraph; and
- (b) the Commission was not aware before the appointed day of the matter to which the request relates.

(4) A principal regulator may only make a request under sub-paragraph (3) in respect of a relevant matter which it becomes aware of on or after the appointed day.

(5) For the purpose of this paragraph “relevant matter” means a matter arising in relation to a charity—

- (a) before the appointed day; but
- (b) during the current financial year of that charity.

Costs of a relevant charity in promoting a Bill before Parliament

6. Where immediately before the appointed day a relevant charity was preparing or promoting a Bill in Parliament, section 17(7) of the 1993 Act does not apply in respect of any expenditure incurred by that charity on or after that day in the preparation or promotion of that Bill.

Costs of a formerly exempt charity in promoting a Bill before Parliament

7. The commencement of paragraph 5 of Schedule 5 to the 2006 Act by article 2 of this Order does not affect the operation of paragraph 11 of Schedule 2 to the Charities Act 2006 (Changes in Exempt Charities) Order 2010(2).

Ongoing charity proceedings relating to a relevant charity

- 8.—(1) Any charity proceedings—
- (a) relating to a relevant charity; and
 - (b) taken before the appointed day,

continue on or after that day as if they had been authorised by the Commission.

(2) In this paragraph “charity proceedings” has the meaning given by section 33(8) of the 1993 Act.

Need for an Order under section 36 of the 1993 Act in relation to a charity ceasing to be an exempt charity

9.—(1) Nothing in section 36 of the 1993 Act applies to a disposition of land held by or in trust for a section 11 charity to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a disposition of land held by or in trust for a section 11 charity if—

- (a) the charity trustees proposed that the relevant land be disposed of (whether by conveyance, transfer, lease or otherwise) before the appointed day; but
- (b) the relevant disposition had not been effected before that day.

Need for an order under section 38 of the 1993 Act in relation to a charity ceasing to be an exempt charity

10.—(1) Nothing in section 38 of the 1993 Act applies to a mortgage of land held by or in trust for a section 11 charity to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a mortgage of land held by or in trust for a section 11 charity if the charity trustees—

- (a) proposed that the mortgage be executed before the appointed day; but

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- (b) had not executed it before that day.
- (3) For the purposes of sub-paragraph (2) it does not matter whether the mortgage—
 - (a) will only have effect to secure the repayment of sums paid by way of the proposed loan or grant or discharge of a proposed obligation; or
 - (b) will also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (4) In this paragraph “mortgage” has the meaning given by section 38 of the 1993 Act.

Persons acting as charity trustee of or trustee for a relevant charity whilst disqualified

11.—(1) The Commission may not make any order under section 73(4) of the 1993 Act which would require a person (“P”) to—

- (a) repay to a relevant charity the whole or part of any relevant sums received by P by way of remuneration or expenses; or
 - (b) pay to the charity the whole or part of the monetary value of any relevant benefit in kind received by P.
- (2) For the purposes of this paragraph—
- (a) a sum by way of remuneration or expenses or a benefit in kind received by P is a relevant sum or benefit in kind if it is received by P in connection with P’s acting as a charity trustee of or trustee for the relevant charity at any time—
 - (i) before the appointed day; and
 - (ii) when P was disqualified by section 72 of the 1993 Act for acting as such a trustee;
 - (b) it does not matter whether—
 - (i) the sums received by P by way of remuneration or expenses are, or
 - (ii) the benefit in kind received by P is,received by P before, on or after the appointed day.

Effect of changes to exempt charity status

12.—(1) The commencement of subsections (3), (7) and, for the purposes specified in Schedule 1, (9) of section 11 of the 2006 Act by this Order—

- (a) does not affect—
 - (i) any proceedings brought in any court or to the Tribunal in respect of any decision, order or direction made or any other matter arising before the appointed day;
 - (ii) any order made or judgment given in any proceedings mentioned in sub-paragraph (i) whether that order is made or judgment given before, on or after the appointed day;
 - (b) does not affect the validity of anything done before the appointed day on the basis that a section 11 charity was an exempt charity; and
 - (c) does not require any section 11 charity to be treated as not having been an exempt charity at any time before the appointed day.
- (2) In this paragraph “Tribunal” has the meaning given by section 97(1) of the 1993 Act⁽³⁾.

(3) The definition of “Tribunal” in section 97(1) of the Charities Act 1993 was amended by the Transfer of Functions of the Charity Tribunal Order 2009 (S.I. 2009/1834).

Exempt charity status of common deposit and common investment funds

13. For the purposes of section 24(8) of the 1993 Act (including the purposes of that section as applied by section 25(2) of that Act) a section 11 charity is to be treated as if it continued to be an exempt charity.

Charities treated as exempt charities

14.—(1) This paragraph applies for the purpose of any enactment which provides for a charity or class of charities to be treated as if it were an exempt charity.

(2) In any such enactment the reference to a charity, or class of charities, being treated as an exempt charity, or exempt charities, is to be read as a reference to that charity, or class of charities, being treated as an exempt charity which is not a specified exempt charity or, as the case may be, exempt charities which are not specified exempt charities.

PART 3

INTERPRETATION

15. In this Schedule—

“appointed day” means 1st June 2010;

“the Commission” means the Charity Commission;

“company” has the meaning given by section 97(1) of the 1993 Act⁽⁴⁾;

“current financial year” means, in relation to a charity, a financial year—

(a) which began before the appointed day; but

(b) ends on or after that day;

“financial year” has the meaning given by section 97(1) of the 1993 Act;

“relevant charity” means—

(a) a section 11 charity; or

(b) a specified exempt charity;

“section 11 charity” means a charity which ceased to be an exempt charity on the appointed day by virtue of the commencement of section 11(3), (7) or (9) of the 2006 Act by article 2 of this Order.

⁽⁴⁾ The definition of “company” in section 97(1) of the 1993 Act was amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), Schedule 1, paragraph 139.