

## SCHEDULE 2

Article 3(2)

### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

#### PART 1

##### ACCOUNTS AND REPORTS

###### CHAPTER 1

###### NEW EXEMPT CHARITIES

###### **Application of Part 6 of and Schedule 5A to the 1993 Act to new exempt charities in respect of the current and earlier financial years**

1. Part 6 of and Schedule 5A to the 1993 Act (Charity Accounts, Reports and Returns)(1) continue to apply to a new exempt charity in relation to any financial year of the charity which began before the appointed day as if the charity had not become an exempt charity.

###### **Accounts to be prepared under section 46 of the 1993 Act by new exempt charities**

2. Where a new exempt charity is not required by or under the authority of any Act other than the 1993 Act to prepare periodical statements of account, the first statement of account which the charity produces under section 46(1) of the 1993 Act must relate to a period of not more than 15 months beginning on the day immediately following the last day of the current financial year.

###### CHAPTER 2

###### FORMERLY EXEMPT CHARITIES

###### **Accounts to be prepared and retained by formerly exempt charities in respect of current financial years**

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

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(1) Part 6 of the Charities Act 1993 comprises sections 41 to 49A of that Act. Section 41 was amended by the Charities Act 2006, Schedule 8, paragraph 132. Section 42 was amended by the Charities Act 2006, Schedule 8, paragraph 133, by [S.I. 2006/2951](#), Schedule, paragraph 4(q), and by [S.I. 2009/508](#), article 9. Section 43 was amended by [S.I. 2005/1074](#), article 3, by the Charities Act 2006, section 28 and Schedule 8, paragraph 134, by [S.I. 2008/527](#), article 2, by [S.I. 2008/948](#), Schedule 1, paragraphs 17 and 192, and by [S.I. 2009/508](#), article 10. Section 43A was inserted by [S.I. 2005/1074](#), article 3. Section 43A was amended by the Charities Act 2006, Schedule 8, paragraph 135, by the National Health Service (Consequential Provisions) Act 2006 ([c.43](#)), Schedule 1, paragraph 161, and by the Local Government and Public Involvement in Health Act 2007 ([c.28](#)), Schedule 9, paragraph 1, and Schedule 18. Section 43B was inserted by [S.I. 2005/1074](#), article 3. Section 43B was amended by the Charities Act 2006, Schedule 8, paragraph 136 and by the National Health Service (Consequential Provisions) Act 2006, Schedule 1, paragraph 162. Section 44 was amended by the Charities Act 2006, Schedule 8, paragraph 137, by [S.I. 2008/527](#), article 3 and by [S.I. 2008/948](#), Schedule 1, paragraph 192. Section 44A was inserted by the Charities Act 2006, section 29. Section 45 was amended by the Deregulation and Contracting Out Act 1994 ([c.40](#)), section 29, by [S.I. 2005/1074](#), article 3, by the Charities Act 2006, Schedule 7, paragraph 4, and Schedule 8, paragraph 138 (the amendments made by Schedule 7 are not yet in force), by [S.I. 2006/2951](#), Schedule, paragraph 4(t), by [S.I. 2008/527](#), article 4, by [S.I. 2008/948](#), Schedule 1, paragraph 192, and by [S.I. 2009/508](#), article 11. Section 46 was amended by [S.I. 2005/1074](#), article 3 and by the Charities Act 2006, section 29 and Schedule 8, paragraph 139 (some of the amendments made by paragraph 139 are not yet in force). Section 47 was amended by [S.I. 1994/1935](#), Schedule 1, paragraph 7, the Deregulation and Contracting Out Act 1994, Schedule 11, paragraph 12, and Schedule 17, by the Charities Act 2006, Schedule 8, paragraph 140, by [S.I. 2008/527](#), article 5, and by [S.I. 2008/948](#), Schedule 1, paragraph 192. Section 48 was amended by the Deregulation and Contracting Out Act 1994, section 30, by the Charities Act 2006, Schedule 7, paragraph 5, and Schedule 8, paragraph 141 (the amendments made by Schedule 7 are not yet in force) and by [S.I. 2006/2951](#), Schedule, paragraph 4(u). Section 49 was substituted by the Charities Act 2006, Schedule 8, paragraph 142. Section 49A was inserted by the Charities Act 2006, section 30. Schedule 5A to the Charities Act 1993 was inserted by the Charities Act 2006, Schedule 6. Schedule 5A was amended by [S.I. 2008/527](#), article 8 and by [S.I. 2008/948](#), Schedule 1, paragraph 192.

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- (a) the current financial year of that charity; 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 certain formerly exempt charities**

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

#### **Requests for accounts made to formerly exempt charities**

5.—(1) Where a qualifying request is made, the accounts to be treated as the most recent accounts of the formerly exempt 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 formerly exempt charity at any time before—

- (a) in the case of a formerly exempt 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.

## **PART 2**

### **JURISDICTION OF THE CHARITY COMMISSION AND COURT IN RELATION TO NEW EXEMPT AND FORMERLY EXEMPT CHARITIES**

#### **CHAPTER 1**

#### **NEW EXEMPT CHARITIES**

#### **Inquiries under section 8 of the 1993 Act relating to new exempt charities**

6.—(1) The Charity Commission may for the purpose of any relevant inquiry continue to treat a new exempt charity as if it had not become an exempt charity.

(2) The Charity Commission must notify the principal regulator of the relevant exempt charity of any decision to continue any inquiry with regard to that charity.

(3) In this paragraph “relevant inquiry” means, in relation to a new exempt charity, an inquiry which was instituted under section 8 of the 1993 Act—

- (a) before the appointed day; and

- (b) with regard to that charity or a class of charities into which it falls.

#### **Power to act for the protection of charities**

7.—(1) The Charity Commission may take any action, on or after the appointed day, in relation to—

- (a) a new exempt charity which is or was the subject of a relevant inquiry; or
- (b) the charity trustees of such a charity,

that it could take under the 1993 Act in relation to a charity which is not an exempt charity or (as the case may be) the charity trustees of a charity that is not an exempt charity.

(2) The Charity Commission must notify the principal regulator of the relevant new exempt charity of any action taken in reliance on sub-paragraph (1) above.

- (3) In this paragraph “relevant inquiry” has the meaning given by paragraph 6.

#### **Need for an order under section 36 of the 1993 Act in relation to a new exempt charity**

8.—(1) Section 36 of the 1993 Act continues to apply to a relevant disposition of land held by or in trust for a new exempt charity as it applies to a disposition of land held by or in trust for a charity which is not an exempt charity.

(2) A disposition of land held by or in trust for a new exempt charity is a “relevant disposition” if—

- (a) the charity trustees proposed that the land in question 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 new exempt charity**

9.—(1) Section 38 of the 1993 Act continues to apply to a relevant mortgage of land held by or in trust for a new exempt charity as it applies to a mortgage of land held by or in trust for a charity which is not an exempt charity.

(2) A mortgage of land held by or in trust for a new exempt charity is a “relevant mortgage” if the charity trustees—

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

## **CHAPTER 2**

### **FORMERLY EXEMPT CHARITIES**

#### **Inquiries under section 8 of the 1993 Act relating to formerly exempt charities**

10.—(1) Subject to sub-paragraph (2), the Charity Commission must not instigate any inquiry under section 8 of the 1993 Act on or after the appointed day—

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- (a) in relation to one or more formerly exempt 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 formerly exempt charities.

(2) The Charity Commission may, if it considers it appropriate to do so, instigate an inquiry under section 8 of the 1993 Act on or after the appointed day into a formerly exempt charity in respect of a matter—

- (a) arising before the appointed day but during the current financial year of the charity; and
- (b) of which it becomes aware on or after the appointed day.

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

**11.** Where immediately before the appointed day a formerly exempt charity was preparing or promoting a Bill in Parliament, section 17(7) of the 1993 Act continues to apply in respect of any expenditure incurred on or after that day in the preparation or promotion of that Bill as if the relevant charity remained an exempt charity.

#### **Ongoing charity proceedings relating to a formerly exempt charity**

- 12.—**(1) Any charity proceedings —
- (a) relating to a formerly exempt charity; and
  - (b) taken before the appointed day,

continue on or after that day as if they had been authorised by the Charity 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 formerly exempt charity**

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

(2) This sub-paragraph applies to a disposition of land held by or in trust for a formerly exempt 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 formerly exempt charity**

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

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

- (a) proposed that the mortgage be executed before the appointed day; but
  - (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 formerly exempt charity while disqualified**

**15.**—(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 formerly exempt charity the whole or part of any relevant sums received by P by way of remuneration or expenses; or
  - (b) pay to that 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 charity trustee of or trustee for the formerly exempt 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.

**PART 3**  
**GENERAL**

**Effect of changes to exempt charity status**

- 16.**—(1) The commencement of 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—
    - (i) a formerly exempt charity was an exempt charity; or
    - (ii) a new exempt charity was not an exempt charity;
  - (c) does not require—
    - (i) any formerly exempt charity to be treated as not having been an exempt charity;
    - (ii) any new exempt charity to be treated as having been an exempt charity,  
at any time before the appointed day.

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(2) In this paragraph “Tribunal” has the meaning given by section 97(1) of the 1993 Act<sup>(2)</sup>.

### **Exempt charity status of common deposit and common investment funds**

17. The 1993 Act has effect as if the reference in section 24(8) of that Act to “a scheme which admits only exempt charities” were a reference to a scheme which admits—

- (a) only exempt charities;
- (b) only exempt charities and formerly exempt charities; or
- (c) only formerly exempt charities.

## **PART 4**

### **INTERPRETATION**

#### **Interpretation**

18. In this Schedule—

- (a) “appointed day” means the day appointed for the commencement of section 11(3) of the Charities Act 2006;
- (b) “current financial year” means, in relation to a charity, a financial year which—
  - (i) began before the appointed day; but
  - (ii) ends on or after that day;
- (c) “financial year” has the meaning given by section 97(1) of the 1993 Act;
- (d) “formerly exempt charity” means a charity which—
  - (i) ceased to be an exempt charity, on the appointed day, or
  - (ii) is one of a particular description of charities which ceased to be exempt charities on that day,by virtue of a provision of this Order;
- (e) “new exempt charity” means a charity which becomes an exempt charity, on or after the appointed day, by virtue of article 2(7) of this Order;
- (f) “principal regulator” has, in relation to an exempt charity, the meaning given by section 13 of the Charities Act 2006.

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(2) 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).