

**EXPLANATORY MEMORANDUM TO**  
**THE CHARITIES (EXCEPTION FROM REGISTRATION)**  
**(AMENDMENT) REGULATIONS 2012**

**2012 No. 1734**

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations extend the temporary exception granted to certain religious charities from the requirement to be registered with the Charity Commission. The exception will otherwise expire on 1st October 2012. These Regulations extend it until 31st March 2014.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The register of charities in England and Wales was established by the Charities Act 1960 (“the 1960 Act”), along with the legal requirement for most charities to register with the Charity Commission. The provision allowing the Charity Commission and the Minister to except some charities from registration was included in the 1960 Act. This was so that charities whose existence was publicly documented elsewhere and ones in whose existence there was not thought to be great public interest could be excused registration.
  - 4.2 The current registration requirements are prescribed in section 30 of the Charities Act 2011 (“the 2011 Act”). Certain charities are excused from registration by virtue of section 30(2) of the 2011 Act. These charities include those that are excepted (either permanently or temporarily) from registration by regulations made by the Minister for the Cabinet Office, provided that their gross annual income does not exceed £100,000.
  - 4.3 The great majority of excepted charities are of one of these types: religious charities connected with particular denominations, boy scout and girl guide charities and armed forces charities. These Regulations deal only with excepted religious charities connected with particular denominations.
  - 4.4 The temporary exception granted to such religious charities by the Charities (Exception from Registration) 1996 (“the 1996 Regulations”) would originally have expired on 1st March 2001. This was extended until 1st October 2002 by

the Charities (Exception from Registration) (Amendment) Regulations 2001<sup>1</sup>, again by the Charities (Exception from Registration) (Amendment) Regulations 2002<sup>2</sup> until 1st October 2007 and again by the Charities (Exception from Registration) (Amendment) Regulations 2007<sup>3</sup> (“the 2007 Regulations”) until 1st October 2012. These Regulations extend the temporary exception until 31st March 2014 and revoke the relevant part of the 2007 Regulations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Although excepted charities are subject to the Charity Commission’s jurisdiction, some aspects of the general regulatory framework for charities set out in the Charities Act 2011 do not apply to them. An example is that they are not routinely required to submit annual reports and accounts to the Charity Commission. In 2002, the Prime Minister’s Strategy Unit (“the Strategy Unit”) published a report on proposals for charity law reform, “*Private action, public benefit: a review of charities and the wider not-for-profit sector*”<sup>4</sup>. In relation to excepted charities, it did not believe that there was any continuing justification for allowing such charities to escape these regulatory requirements. It asserted (para 7.89) that “to promote trust and confidence in the regulatory system as a whole it is important that all organisations with charitable status should be subject to the same accountability requirements”.

7.2 The review recommended (para 7.91) that “excepted charities with incomes above the new proposed registration threshold should be required to register. A higher registration threshold could be set to ensure a manageable process of registration”. The Government response to the Strategy Unit accepted its recommendation to set a higher initial registration threshold for excepted charities. This was set in the Charities Act 2006 (“the 2006 Act”), now partly consolidated into the 2011 Act, at £100,000 annual income. Excepted charities with incomes of or below the £100,000 threshold are not required to register, but those with higher incomes must register.

7.3 Section 32(3) of the 2011 Act precludes any lowering of the £100,000 threshold for excepted charities until the report on the impact of the 2006 Act,

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<sup>1</sup> SI 2001/260.

<sup>2</sup> SI 2001/1598.

<sup>3</sup> SI 2007/2655.

<sup>4</sup>

required by section 73 of the 2006 Act, has been completed. A review is currently under way and the reviewer expects that the Minister will be able to lay the report before Parliament before the summer recess. However the Government will then need time to consider the content of the report, in particular whether and how to implement the Strategy Unit's recommendation to remove the exceptions and make registration solely dependent on a new income threshold for all charities. It will not be able to do this before 1st October 2012, the date on which the exception under the 1996 Regulations expires. This is why these Regulations extend the exception of these religious charities until 31st March 2014.

## **8. Consultation outcome**

8.1 The Regulations merely continue the existing position for a fixed period and therefore no formal consultation has been undertaken. Any change proposed as a result of the review of the 2006 Act will be subject to consultation.

## **9. Guidance**

9.1 The Office for Civil Society has advised the parent bodies of the church denominations affected by this instrument that this extension to the 1996 Regulations is being sought.

## **10. Impact**

10.1 There is expected to be no impact on business, charities or voluntary bodies.

10.2 There is expected to be impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The current review of the impact of the 2006 Act will consider the success of the exceptions from the requirement to register, including the exception extended by these Regulations. The results of the review are expected to be published on or around 16 July 2012.

## **13. Contact**

David Hale at the Office for Civil Society, Cabinet Office, Tel: 020 7271 6280 or email: david.hale@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.