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STATUTORY INSTRUMENTS

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**2009 No. 2648**

**The Charities Act 2006 (Commencement No.6 and Commencement No.5, Transitional and Transitory Provisions and Savings (Amendment)) Order 2009**

**Amendment of the Charities Act 2006 (Commencement No. 5, Transitional and Transitory Provisions and Savings) Order 2008**

3.—(1) The Charities Act 2006 (Commencement No.5, Transitional and Transitory Provisions and Savings) Order 2008<sup>(1)</sup> is amended as follows.

(2) In article 1—

(a) in paragraph (2)—

(i) after the definition of “company” insert—

““Education Action Forum” means an Education Action Forum established by virtue of section 10(1) of the School Standards and Framework Act 1998<sup>(2)</sup>”;

(ii) after the definition of “enactment” insert—

““exempt charity appointed day” means the day appointed for the commencement of section 11(3) of the 2006 Act”;

(iii) for the definition of “formerly specified educational institution” substitute—

““formerly specified educational institution” means—

(a) a body to which section 23(1)(a) or (b) of the School Standards and Framework Act 1998<sup>(3)</sup> applies; or

(b) an institution to which section 23(2) of that Act applies”;

(iv) after the definition of “relevant date” insert—

““relevant educational charity” means a charity which is—

(a) an Education Action Forum; or

(b) a formerly specified educational institution”;

(v) for the definition of “relevant specified institution” substitute—

““relevant specified institution” means a relevant educational charity which falls within section 3A(2)(d) of the 1993 Act”;

(vi) after the definition of “relevant specified institution” insert—

““standard financial year” means, in relation to a relevant educational charity, the first financial year of that charity to begin on or after the transitional period end date;

“the transitional period end date” has the meaning given by paragraph (3)”;

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<sup>(1)</sup> S.I. 2008/3267 (C.150).

<sup>(2)</sup> 1998 c.31.

<sup>(3)</sup> Section 23 was amended by the Charities Act 2006, Schedule 8, paragraph 194.

(vii) for the definition of “transitory financial year” substitute—

““transitory financial year” means—

(a) in relation to an Education Action Forum, a financial year which begins—

(i) on or after 31st January 2009; but

(ii) before the exempt charity appointed day;

(b) in relation to a formerly specified educational institution, a financial year which begins—

(i) on or after 31st January 2009; but

(ii) before 1st September 2010;”;

(b) after paragraph (2) insert—

“(3) For the purposes of this Order, “transitional period end date” means—

(a) in relation to—

(i) an Education Action Forum, or

(ii) a person acting, or who has acted, as charity trustee for or trustee of such a charity,

the exempt charity appointed day;

(b) in relation to—

(i) a formerly specified educational institution, or

(ii) a person acting, or who has acted, as charity trustee for or trustee of such a charity,

1st September 2010.”.

(3) For article 6(2) substitute—

“(2) Despite paragraph (1), the Commission must not enter in the register any qualifying excepted charity—

(a) which—

(i) is an Education Action Forum; and

(ii) requests to be so registered before the exempt charity appointed day; or

(b) which—

(i) is a formerly specified educational institution; and

(ii) requests to be so registered before 1st September 2010.”.

(4) For the heading preceding article 11 substitute—

*“Education Action Forums and formerly specified educational institutions: transitional and transitory provisions and savings”.*

(5) In sub-paragraphs (a) and (b) of article 11(1) for “1st October 2009” substitute “1st September 2010”.

(6) After article 11 insert—

“**11A.**—(1) An Education Action Forum to which this article applies—

(a) is excepted from the duty to be registered under subsection (1) of section 3A of the 1993 Act until the exempt charity appointed day; and

(b) for the purposes of any enactment other than the 1993 Act is to be treated, before that day, as a charity which is not required to be registered by virtue of subsection (2) of section 3A of the 1993 Act.

(2) This article applies to any Education Action Forum which is not excepted under section 3A(2)(c) of the 1993 Act from the requirement to be registered under section 3A(1) of that Act(4).”.

(7) In article 12—

(a) in paragraphs (1) and (2) of article 12 for “formerly specified educational institution” substitute “relevant educational charity”; and

(b) in paragraph (1)(b)(ii) for “institution” substitute “charity”.

(8) In article 13—

(a) for paragraph (1) substitute—

“(1) The charity trustees of a relevant educational charity are not required to comply with the provisions of the 1993 Act specified in paragraph (2) in respect of any financial year of the charity which is a transitory financial year.”;

(b) in sub-paragraphs (a) and (b) of paragraph (2) for “formerly specified educational institution” substitute “relevant educational charity”;

(c) for paragraph (3) substitute—

“(3) Nothing in sections 43, 44 and 44A of the 1993 Act applies to a relevant educational charity which is not a relevant specified institution in respect of any financial year of the charity which is a transitory financial year.”; and

(d) for paragraph (4) substitute—

“(4) The charity trustees of a relevant educational charity which is not a qualifying excepted charity are not required to comply with section 45 of the 1993 Act in respect of any financial year of the charity which is a transitory financial year.

(5) In so far as it relates to compliance with section 45 of the 1993 Act, section 49 of the 1993 Act does not apply to the charity trustees of a relevant educational charity which is not a qualifying excepted charity in respect of any financial year of the charity which is a transitory financial year.”.

(9) For article 14 substitute—

“**14.** The Commission may not require, under section 46(5) of the 1993 Act, the charity trustees of a relevant educational charity which is not a relevant specified institution to prepare an annual report in respect of any financial year of the charity which is a transitory financial year.”.

(10) For paragraph (1) of article 15 substitute—

“(1) Despite articles 13 and 14, the charity trustees of a relevant educational charity must—

(a) keep proper books of account with respect to the affairs of the charity during any financial year of the charity which is a transitory financial year; and

(b) if not required by or under the authority of any Act to prepare a statement of accounts in respect of any such financial year, prepare—

(i) an income and expenditure account relating to that financial year; and

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(4) Only those Education Action Forums (as defined in article 1 of the Charities 2006 (Commencement No. 5, Transitional and Transitory Provisions and Savings) Order 2008 (S.I. 2008/3267 (C.150)) whose gross income does not exceed the financial limit in section 3A(2)(c) of the Charities Act 1993 are excepted under that section from the requirement to be registered by the Charities Act 1993 (Exception from Registration) Regulations 2008 (S.I. 2008/3268).

(ii) a balance sheet relating to the end of that financial year.”.

(11) For article 16 substitute—

“**16.**—(1) Where a qualifying request is made, the accounts to be treated as the most recent accounts of the relevant educational charity are the accounts specified in paragraph (2).

(2) The specified accounts of the charity are—

- (a) the accounts of the charity most recently audited in pursuance of any statutory or other requirement; or
- (b) if its accounts are not required to be so audited, the accounts most recently prepared in respect of that charity (whether under article 15 or otherwise).

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

- (a) in the case of a relevant educational 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 standard financial year; and
- (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 standard financial year.”.

(12) For article 17 substitute—

“**17.**—(1) The provisions of the 1993 Act specified in paragraph (2) do not apply to a relevant educational charity before the transitional period end date.

(2) The provisions of the 1993 Act specified for the purposes of paragraph (1) are sections 6, 18 and 28(1).”.

(13) After article 17 insert—

“**18.**—(1) No inquiry instituted by the Commission under section 8 of the 1993 Act before the exempt charity appointed day may extend to an Education Action Forum.

(2) Subject to paragraph (3), the Commission must not instigate an inquiry under that section on or after the exempt charity appointed day—

- (a) in relation to one or more Education Action Forums and in respect of any period beginning before that day; or
- (b) which covers any period beginning before that day and would extend to one or more Education Action Forums.

(3) The Commission may, if it considers it appropriate to do so, instigate an inquiry under that section on or after the exempt charity appointed day into an Education Action Forum in respect of any matter—

- (a) arising before that day but during a financial year of the charity which—
  - (i) began before the exempt charity appointed day; but
  - (ii) ends on or after that day; and
- (b) of which it becomes aware on or after that day.

**19.—**(1) No inquiry instituted by the Commission under section 8 of the 1993 Act before 1st September 2010 may extend to a formerly specified educational institution.

(2) Subject to paragraph (3), the Commission must not instigate an inquiry under that section on or after 1st September 2010—

- (a) in relation to one or more formerly specified educational institutions and in respect of any period beginning before that date; or
- (b) which covers any period beginning before that date and would extend to one or more formerly specified educational institutions.

(3) The Commission may, if it considers it appropriate to do so, instigate an inquiry under that section on or after 1st September 2010 into a formerly specified educational institution in respect of any matter—

- (a) arising before that date but during a financial year of the charity which—
  - (i) began before 1st September 2010; but
  - (ii) ends on or after that date; and
- (b) of which it becomes aware on or after that date.

**20.—**(1) For the purposes of the provisions of the 1993 Act specified in paragraph (2), a relevant educational charity is to be treated before the transitional period end date as if it were an exempt charity.

(2) The provisions of the 1993 Act specified for the purposes of paragraph (1) are sections 9, 16 and 69G.

**21.—**(1) Section 17(7) of the 1993 Act does not apply to a relevant educational charity before the transitional period end date.

(2) Where immediately before the transitional period end date a relevant educational charity was preparing or promoting a Bill in Parliament, section 17(7) of the 1993 Act does not apply to any expenditure incurred on or after that date in the preparation or promotion of that Bill.

**22.—**(1) For the purposes of section 24 of the 1993 Act (including the purposes of that section as applied by section 25 of that Act), a relevant educational charity is to be treated before the appointed day as if it were an exempt charity.

(2) In this article, “appointed day” means the day appointed for the commencement of section 11(10) of the 2006 Act.

**23.—**(1) For the purposes of section 33 of the 1993 Act, a relevant educational charity is to be treated before the transitional period end date as if it were an exempt charity.

- (2) Any charity proceedings—
- (a) relating to a relevant educational charity; and
  - (b) taken before the transitional period end date,

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

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

**24.—**(1) Section 36 of the 1993 Act does not apply—

- (a) to a relevant educational charity before the transitional period end date; or

(b) after that date to a disposition of land held by or in trust for such a charity to which paragraph (2) or (3) applies.

(2) This paragraph applies to a disposition of land held by or in trust for an Education Action Forum if—

(a) the charity trustees proposed that the relevant land be disposed of (whether by conveyance, transfer, lease or otherwise) before the exempt charity appointed day; but

(b) the disposition had not been effected before that day.

(3) This paragraph applies to a disposition of land held by or in trust for a formerly specified educational institution if—

(a) the charity trustees proposed that the relevant land be disposed of (whether by conveyance, transfer, lease or otherwise) before 1st September 2010; but

(b) the disposition had not been effected before that date.

**25.** For the purposes of section 37(10) of the 1993 Act, a relevant educational charity is to be treated as ceasing to be an exempt charity on the transitional period end date.

**26.—**(1) Section 38 of the 1993 Act does not apply—

(a) to a relevant educational charity before the transitional period end date; or

(b) after that date to a mortgage of land held by or in trust for such a charity to which paragraph (2) or (3) applies.

(2) This paragraph applies to a mortgage of land held by or in trust for an Education Action Forum if the charity trustees—

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

(b) had not executed it before that day.

(3) This paragraph applies to a mortgage of land held by or in trust for a formerly specified educational institution if the charity trustees—

(a) proposed that the mortgage be executed before 1st September 2010; but

(b) had not executed it before that date.

(4) For the purposes of this article 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.

(5) In this article “mortgage” has the meaning given by section 38 of the 1993 Act.

**27.—**(1) For the purposes of section 73(4) of the 1993 Act, a relevant educational charity is to be treated before the transitional period end date as if it were an exempt charity.

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

(a) repay to a relevant educational charity (“C”) the whole or part of any relevant sums received by P by way of remuneration or expenses; or

(b) pay to C the whole or part of the monetary value of any relevant benefit in kind received by P.

(3) For the purposes of this article—

- (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 C at any time—
  - (i) before the transitional period end date; and
  - (ii) when P was disqualified by section 72 of the 1993 Act for acting as such a trustee; and
- (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 transitional period end date.”.