

EXPLANATORY MEMORANDUM TO
THE CHARITIES (EXCEPTION FROM REGISTRATION) (AMENDMENT)
REGULATIONS 2021

2021 No. 55

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport 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 31st March 2021. These Regulations extend it until 31st March 2031.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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 publically documented elsewhere, and ones in whose existence there was not thought to be great public interest, could be excused from registration.

6.2 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 included those that are excepted (either

permanently or temporarily) from registration by Regulations made by the Secretary of State, provided that their gross annual income does not exceed £100,000 (the £100,000 threshold).

- 6.3 The great majority of excepted charities are 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.
- 6.4 The temporary exception was granted to such religious charities by the Charities (Exception from Registration) Regulations 1996 (“the 1996 Regulations”) and has since been extended several times, most recently by the Charities (Exception from Registration) (Amendment) Regulations 2014 (“the 2014 Regulations”). These Regulations extend the temporary exception until 31st March 2031 and revoke the 2014 Regulations.

7. Policy background

What is being done and why?

- 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 2011 Act 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”. In relation to excepted charities, 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 the £100,000 threshold. Excepted charities with incomes at or below the £100,000 threshold are not required to register, but those with incomes greater than that threshold must register.
- 7.3 Section 32(3) of the 2011 Act precluded any lowering of the £100,000 threshold until the report on the impact of the 2006 Act, required by Section 73 of the 2006 Act, had been laid in Parliament. This was done in July 2012 and the Government published its response in September 2013.
- 7.4 The review report, “Trusted and Independent: Giving charity back to charities”, included a recommendation (chapter 5, recommendation 9) that the exception should end in stages over a period of three years, based on a general registration threshold for all charities of a gross annual income of more than £25,000. Currently most charities have to register if their gross annual income is more than £5,000. The charity sector opposed the increase in the general registration threshold from £5,000 to £25,000, arguing that not allowing smaller charities to register would undermine public trust and confidence in charities as a whole. In its response to the review the Government

accepted this. The Government also concluded in 2014 that it was inappropriate to impose an unnecessary regulatory burden on small excepted charities at a time when many of them may be under pressure, so the exception was extended until 2021.

7.5 The Charity Commission estimates that there are approximately 35,000 excepted charities, representing roughly five times the Commission's annual registration capacity. Many of these charities have been impacted by the COVID-19 pandemic and lack the capacity and resources to manage the administrative burden of the registration process. Significant planning and support will be required to register these organisations with the Charity Commission. The Government has therefore concluded that it is inappropriate to impose a regulatory burden on these small charities at this time.

7.6 These Regulations extend the exception of these religious charities until 31st March 2031. This will enable the Charity Commission to develop a manageable approach for phasing these organisations onto the register over the course of the extension period. The Commission will begin liaising with church bodies in the first half of 2021-22 to co-design and consult on a programme of phased voluntary registration.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The changes being made are simply to replace the date of expiration of the exception in the existing Regulations, as indeed have previous amending Instruments. There are currently no plans to consolidate the existing Instrument as the amendment being made is limited to the date of the exception ending, and as the representative bodies of the charities affected are fully aware of and supportive of these changes.

10. Consultation outcome

10.1 The Regulations would preserve the existing position for a fixed period of time and therefore only informal consultation has been undertaken (as was also the case in relation to the last extension in 2014). The Office for Civil Society wrote to the representative bodies of the charities affected proposing two options, allowing the 1996 Regulations to lapse, so ending the exception, or extending them for a period of between five to ten years while working with the Charity Commission to prepare the affected organisations for registration.

10.2 The representative bodies unanimously supported a continuation of the exception for a fixed period of time. The 1996 Regulations will be extended on the basis that a comprehensive plan to phase organisations onto the register over the extension period will be developed. The Charity Commission will begin consultation on this programme of registration in the first half of 2021-22 financial year.

11. Guidance

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

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the Department for Digital, Culture Media and Sport will, by March 2026, review the progress the Charity Commission is making with the representative bodies to prepare the charities for registration.

15. Contact

- 15.1 Patrick Wanzala-Ryan at the Department for Digital, Culture, Media and Sport email: patrick.wanzala-ryan@dcms.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Maria Nyberg, Deputy Director for Stewardship and Partnerships at the Office for Civil Society at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Baroness Barran MBE at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.