
DRAFT STATUTORY INSTRUMENTS

2009 No. XXXX

CHARITIES

The Charities (Pre-consolidation Amendments) Order 2009

Made - - - - *****

Coming into force in accordance with article 1

This Order is made in exercise of the powers conferred by sections 74(2) and (7), 76 and 78(6) of the Charities Act 2006(a).

A draft of this Order has been laid before Parliament in accordance with section 74(5) of that Act and approved by resolution of each House of Parliament.

Accordingly, the Minister for the Cabinet Office makes the following Order:

Citation and commencement

1. This Order may be cited as the Charities (Pre-consolidation Amendments) Order 2009 and comes into force (in accordance with section 76(3) of the Charities Act 2006) immediately before the Charities Act 2010 comes into force.

Amendments of enactments relating to charities

2.—(1) The Schedule (which contains amendments of enactments relating to charities(b)) has effect.

(2) Subject to paragraph (3), the amendments made by the Schedule have the same extent as the provision amended.

(3) The amendment of section 1 of the Recreational Charities Act 1958(c) made by paragraph 1 of the Schedule has the same effect in relation to the law of Scotland and Northern Ireland as the amendment of that section by section 5 of the Charities Act 2006(d).

CONSULTATION DRAFT
Parliamentary Secretary
Cabinet Office

(a) 2006 c.50.

(b) See the definitions of “amendments” and “the enactments relating to charities” in section 76(5) of the Charities Act 2006.

(c) 1958 c.17. Section 1 of the 1958 Act was amended by section 5(2) of the Charities Act 2006.

(d) As to the effect of the amendment of section 1 by section 5 of the Charities Act 2006 in relation to the law of Scotland or Northern Ireland see section 80(3) to (6) of the 2006 Act.

SCHEDULE

Article 2

AMENDMENTS OF ENACTMENTS RELATING TO CHARITIES

PART 1

AMENDMENTS OF RECREATIONAL CHARITIES ACT 1958 (c. 17)

1. In section 1(1) of the Recreational Charities Act 1958(a), for “the principle that a trust or institution to be charitable must be for the public benefit” substitute “the requirement in section 2(1)(b) of the Charities Act 2006 that a purpose falling within section 2(2) of that Act must be for the public benefit if it is to be a charitable purpose”.

2. Omit section 3(1) of that Act(b).

3. Omit section 5 of that Act(c).

PART 2

AMENDMENTS OF CHARITIES ACT 1993 (c. 10)

4. In section 1A(4) of the Charities Act 1993(d), for “other” substitute “of another”.

5. In section 2(1) of that Act(e), for “having perpetual succession and using an official seal which” substitute “whose official seal”.

6. In section 3A(11) of that Act(f), for paragraph (c) and the word “and” preceding that paragraph substitute—

“(c) subsections (6)(a) and (7)(a),

(d) in subsection (8), paragraph (a) and the words following paragraph (b),

(e) subsection (9), and

(f) this subsection.”

7.—(1) In the following provisions of that Act, for “furnish” substitute “provide”—

(a) section 8(3)(a) and (b)(g);

(b) section 9(1)(a) and (b)(i) and (4)(h);

(c) section 28(9)(i);

(a) 1958 c.17. Section 1 was amended by the Charities Act 2006, section 5.

(b) Section 3 was amended by the Statute Law Repeals Act 2004 (c.14), Schedule 1.

(c) There are no amendments to section 5.

(d) 1993 (c.10). Section 1A was inserted by the Charities Act 2006 (c.50), section 6(1).

(e) There are amendments to section 2 which are not relevant to this Order.

(f) Section 3A was inserted by the Charities Act 2006, section 9. There are amendments to section 3A which are not relevant to this Order.

(g) Section 8(3) was amended by the Charities Act 2006, Schedule 5, paragraph 2 and Schedule 8, paragraph 102. The amendments made by paragraph 2 of Schedule 5 are not yet in force.

(h) Section 9(1) was amended by the Charities Act 2006, Schedule 8, paragraph 103. Section 9(4) is prospectively repealed by the Charities Act 2006, Schedule 5, paragraph 3.

(i) Section 28(9) was amended by the Charities Act 2006, Schedule 8, paragraph 121.

The Draft Charities Consolidation Bill - Consultation on the draft Bill and pre-consolidation amendments - Annex D

(d) section 84(a).

(2) In the following provisions of that Act, for “furnished” substitute “provided”—

(a) section 9(3)(b);

(b) section 31A(2)(b) and (c)(c).

(3) In the following provisions of that Act, for “furnishing” substitute “provision”—

(a) section 85(1)(b)(d);

(b) section 97(2)(a) and (b)(e).

(4) Any regulations made or having effect as if made under section 85 of that Act are to be read as if any reference in the regulations to the furnishing of a document were a reference to the provision of the document.

8.—(1) In section 14(5)(c) of that Act(f), for “such claim” substitute “claims made in accordance with paragraph (b)”.

(2) In section 14(6)(a) of that Act, for “any such claims” substitute “claims made in accordance with subsection (5)(b)”.

9. In section 14B of that Act(g), after subsection (6) insert—

“(7) In this section references to the original purposes of the gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.”.

10.—(1) In section 17(2) of that Act(h), omit “and a draft of the order shall be laid before Parliament”.

(2) After section 17(2) of that Act insert—

“(2A) Subject to subsections (3) and (5), an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.”.

(3) In section 17(3) of that Act—

(a) omit “Without prejudice to the operation of section 6 of the Statutory Instruments Act 1946 in other cases,”, and

(b) for “the order shall not be made unless the draft has been approved by” substitute “no order may be made unless a draft of the order has been laid before and approved by a”.

11.—(1) In section 18(12)(i) of that Act, for “otherwise than by virtue of subsection (1)” substitute “by virtue of subsection (2), (4) or (5)”.

(2) In section 22(3) of that Act(j), for “section 18” substitute “section 18(1)(iii)”.

12.—(1) In section 20(2)(b) of that Act(k), for “to the parish or community council (or, where the parish has no council, to the chairman of the parish meeting)” substitute—

“to—

(i) the parish council or, if the parish has no council, to the chairman of the parish meeting, or

(a) Section 84 was amended by the Charities Act 2006, Schedule 8, paragraph 163.

(b) Section 9(3) was amended by the Charities Act 2006, Schedule 8, paragraph 103.

(c) Section 31A was inserted by the Charities Act 2006, section 26

(d) Section 85(1) was amended by the Charities Act 2006, Schedule 8, paragraph 164.

(e) There have been no amendments to section 97(2).

(f) There have been no amendments to section 14(5). Section 14(6) was amended by the Charities Act 2006, Schedule 8, paragraph 107. There are other amendments to section 14 of the 1993 Act which are not relevant to this Order.

(g) Section 14B was inserted by the Charities Act 2006, section 18.

(h) Section 17 was amended by the Charities Act 2006, Schedule 8, paragraph 110, and by S.I. 2006/2951, Schedule, paragraph 4(j).

(i) Section 18 was amended by the Charities Act 2006, Schedule 5, paragraph 6 and Schedule 8, paragraph 111. The amendments made by paragraph 6 of Schedule 5 to the 2006 Act are not yet in force.

(j) Section 22(3) was amended by the Charities Act 2006, Schedule 8, paragraph 114.

(k) Section 20 was substituted for that section as originally enacted by section 20 of the Charities Act 2006.

- (i) the community council or, if the community has no council, the council of the county or the county borough.”.
- (2) In section 79(7) of that Act(a), in paragraph (a), for “for references in subsections (1) and (2)” substitute “for references in subsection (1)” and after paragraph (a) insert—
- “(aa) for references in subsection (2) to a parish, a parish council or a parish meeting there shall be substituted respectively references to a community, community council or council of the county or (as the case may be) county borough;”.
- 13.** In section 22(1) of that Act(b), after “orders of the court” insert “in the same way”.
- 14.** In section 26(3) of that Act(c)—
- (a) for “thereby authorised” substitute “authorised by the order”, and
- (b) for “therewith” substitute “with that authority”.
- 15.** In section 36(4)(a) of that Act(d), omit “or of the Incorporated Society of Valuers and Auctioneers”.
- 16.** In section 43(1) of that Act(e), for “£100,000 or such other sum as is” substitute “the sum”.
- 17.** In section 43A(5) of that Act(f), for “Commission” substitute “Charity Commission”.
- 18.**—(1) In section 57(1) of that Act(g), for “and shall preserve all documents sent to it under this Part of this Act” substitute “and documents sent to the Commission under this Part shall be kept by the Commission for such period as it thinks fit”.
- (2) In section 57(2) of that Act, for “Any person may inspect such documents, under the direction of the Commission and any person may require a copy or extract of any such document” substitute “Documents kept under this section are to be open to public inspection at all reasonable times; and any person who is provided with a copy or extract of any document kept under this section may require it”.
- 19.** In section 69I(3) of that Act(h), for “register of friendly societies” substitute “mutual societies register”.
- 20.** In section 69M(5) of that Act(i), after “The resolution” insert “of the transferor CIO”.
- 21.** In section 74B(11) of that Act(j), for “any reference to any obligation imposed on the charity trustees by or under section 74 includes” substitute “the references in section 74(8) and 74A(2) to any obligation imposed on the charity trustees by or under section 74 include”.
- 22.**—(1) In section 79(2)(k) of that Act, omit “, ratepayers”.
- (2) Nothing in sub-paragraph (1) affects any appointment of a charity trustee made before the commencement of that sub-paragraph.
- (3) Where, immediately before the commencement of sub-paragraph (1)—
- (a) the charity trustees of a parochial charity included one or more persons elected by ratepayers, or

(a) Section 79(7) was amended by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 101(4).
(b) There have been no amendments to section 22(1).
(c) There have been no amendments to section 26(3).
(d) Section 36(4)(a) was amended by S.I. 2006/2951, Schedule, paragraph 4(o).
(e) Section 43(1) was substituted by the Charities Act 2006, section 28(1) and (2). Section 43(1), as substituted, was amended by S.I. 2009/508, article 10.
(f) Section 43A was inserted by S.I. 2005/1074, article 3. Section 43A(5) was amended by the Charities Act 2006, Schedule 8, paragraph 135.
(g) Section 57 was amended by the Charities Act 2006, Schedule 8, paragraph 147.
(h) Section 69I was inserted by the Charities Act 2006, Schedule 7. Schedule 7 to the 2006 Act is not yet in force.
(i) Section 69M was inserted by the Charities Act 2006, Schedule 7. Schedule 7 to the 2006 Act is not yet in force.
(j) Section 74B was substituted (together with section 74 and 74A), for section 74 as originally enacted, by the Charities Act 2006, section 40.
(k) Section 79(2) was amended by the Charities Act 2006, Schedule 8, paragraph 161.

(b) the sole charity trustee of a parochial charity was elected by ratepayers, no power to appoint a charity trustee arises under section 79(2) of the 1993 Act until such time as the person or persons so elected cease to be charity trustees of the parochial charity.

23. In section 80(1) of that Act(a), after “in relation to a charity” insert “; and for the purposes of section 31A(10) as it has effect by virtue of this subsection, the reference in section 31A(10)(b) to the charity trustees of the charity is to be read as a reference to the persons having the general control and management of the administration of the recognised body”.

24. In section 82 of that Act(b)—

- (a) in subsection (1), for “assurances or other deeds or instruments” substitute “documents”, and
- (b) in subsections (1), (2), (3) and (4) for “deed or instrument” substitute “document”.

25. In section 84 of that Act(c), for “open to inspection under Parts II to VI or section 75D of this Act” substitute “open to or available for inspection under any provision of this Act”.

26. In section 86(3) of that Act(d)—

- (a) in paragraph (a), after “cases” insert or “different descriptions of case or different purposes or areas”, and
- (b) in paragraph (b), after “consequential” insert “; transitory”.

27. In section 89 of that Act(e)—

- (a) in subsection (2), omit “(without prejudice to the requirements of this Act where the order is subject to appeal)”,
- (b) omit subsection (3),
- (c) in subsection (4), omit “subsection (3) above or of”, and
- (d) in subsection (5), after “so made” insert “and may make transitional provisions or savings”.

28. In Schedule 3 to that Act(f), in column 2, in paragraphs 1, 2(iii), 3, 3A, 4(iii) and 4A(iii), for “comprising” substitute “which includes” and in paragraphs 5 and 6, for “comprising or adjacent to the area in column 1” substitute “which—

- (i) includes, or include, the area in column 1, or
- (ii) is, or are, adjacent to the area in column 1.”

29.—(1) In Schedule 5A to that Act(g), in paragraph 8(2)(e), for “those applied” substitute “or of section 43(3) of this Act as applied”.

(2) In paragraph 9(1) of that Schedule, omit “and (7)”.

30. For the avoidance of doubt, in Schedule 7 to that Act, the reference to section 10 of the Universities of Durham and Newcastle-upon-Tyne Act 1963(h) is to be read as being, and as always having been, a reference to section 18 of the 1963 Act.

(a) Section 80(1) was amended by the Charities Act 2006, Schedule 8, paragraph 162.

(b) There have been no amendments to section 82.

(c) Section 84 was amended by the Charities Act 2006, Schedule 8, paragraph 163.

(d) Section 86(3) was amended by the Charities Act 2006, Schedule 8, paragraph 165 and by S.I. 2006/2951, Schedule, paragraph 4(y).

(e) Section 89 was amended by the Charities Act 2006, Schedule 8, paragraph 168.

(f) Schedule 3 was amended by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 101(5) and (6).

(g) Schedule 5A was inserted by the Charities Act 2006, Schedule 6. There are amendments to paragraph 8 of Schedule 5A which are not relevant to this Order.

(h) 1963 c. xi. Section 18 was repealed by the Charities Act 1993, Schedule 7. Schedule 1 was amended by the University and College Estates Act 1964 (c.51), Schedule 4.

PART 3

AMENDMENTS OF CHARITIES ACT 2006 (c. 50)

31. In section 74(4)(a) and (6) of the Charities Act 2006(a), for “section 11” substitute “section 11(11)(a) or (b) or (13)”.

PART 4

AMENDMENTS RELATING TO THE MEANING OF “CHARITY”

32. In—

- (a) sections 5A(7)(a) and 7D(5)(a) of the Industrial and Provident Societies Act 1965(b),
- (b) the definition of “charity” in section 18C(3) of the Disability Discrimination Act 1995(c) as inserted by the Disability Discrimination Act 1995 (Amendment) Regulations 2003(d), and
- (c) paragraph 2 of Schedule 5 to the Reserve Forces Act 1996(e),

for “as in the Charities Act 1993” substitute “as it has under section 1(1) of the Charities Act 2006”.

33.—(1) In the provisions listed in sub-paragraph (2), omit “within the meaning of the Charities Act 1993”.

(2) The provisions are—

- (a) section 1(3A) of the Leasehold Reform Act 1967(f);
- (b) section 5(3)(f) of the Rent (Agriculture) Act 1976(g);
- (c) section 15(2)(b) of the Rent Act 1977(h);
- (d) Grounds 6 and 14A of Schedule 2 to the Housing Act 1988(i);
- (e) paragraph 1(4)(a) of Schedule 3A to the Environmental Protection Act 1990(j);
- (f) section 33M of the Further and Higher Education Act 1992(k);
- (g) section 5(2) of the Leasehold Reform, Housing and Urban Development Act 1993(l);
- (h) the definition of “charitable housing trust” in section 158(1) of the Housing Act 1996(m).

34. In—

-
- (a) There are amendments to the Charities Act 2006 not relevant to this Order.
 - (b) 1965 c.12. Section 5A was inserted by the Co-operatives and Community Benefit Societies Act 2003 (c.15), section 2. Section 7D was inserted by the Co-operatives and Community Benefit Societies Act 2003, section 3, and amended by the Charities Act 2006, Schedule 8, paragraph 47.
 - (c) 1995 c. 50. Section 18C, as inserted by S.I. 2003/1673, regulation 11, was originally enacted as section 10 of the 1995 Act.
 - (d) S.I. 2003/1673.
 - (e) 1996 c.14. There are amendments to Schedule 5 which are not relevant to this Order.
 - (f) 1967 c.88. Section 1(3A) was inserted by the Leasehold Reform, Housing and Urban Development Act 1993 (c.28), section 67. Section 1(3A) was amended by the Housing Act 1996 (c.52), Schedule 9, paragraph 2(2), and by the Housing and Regeneration Act 2008 (c.17), Schedule 16. The amendments made by the 2008 Act are not yet in force.
 - (g) 1976 c.80. Section 5(3)(f) was amended by the Rent Act 1977 (c.42), Schedule 23, paragraph 73, and by the Charities Act 1993, Schedule 6, paragraph 30. There are other amendments to section 5 of the 1976 Act not relevant to this Order.
 - (h) 1977 c.42. Section 15(2)(b) was amended by the Charities Act 1993, Schedule 6, paragraph 30.
 - (i) 1988 c.50. Ground 6 of Schedule 2 was amended by the Local Government and Housing Act 1989 (c.42), Schedule 11, paragraph 109, by the Charities Act 1993, Schedule 6, paragraph 30, and by the Housing Act 1996 (c.52), Schedule 19. Ground 14A of Schedule 2 was inserted by the Housing Act 1996, section 149. Ground 14A of Schedule 2 was amended by the Civil Partnerships Act 2004 (c.33), Schedule 8, paragraph 43.
 - (j) 1990 c.43. Schedule 3A was inserted by the Clean Neighbourhoods and Environment Act 2005 (c.16), section 23(2).
 - (k) 1992 c.13. Section 33M was inserted by the Apprenticeships, Skills, Children and Learning Act [2009], Schedule 8.
 - (l) 1993 c.28. Section 5(2) was amended by the Housing Act 1996 (c.52), Schedule 9, paragraph 3(2), and by the Common and Leasehold Reform Act 2002 (c.15), Schedule 14.
 - (m) 1996 c.52. Section 158(1) was amended by the Anti-social Behaviour Act 2003 (c.38), section 13(7).

The Draft Charities Consolidation Bill - Consultation on the draft Bill and pre-consolidation amendments - Annex D

- (a) section 4A(6) of the Friendly and Industrial and Provident Societies Act 1968(a), and
- (b) section 32A(6) of the Friendly Societies Act 1974(b),

for “within the meaning of the Charities Act 1993,” substitute “as defined by section 1(1) of the Charities Act 2006”.

35. In section 4(13) of the Redundant Churches and other Religious Buildings Act 1969(c)—

- (a) omit the words following the definition of “prescribed charity”; and
- (b) after the definition of “the Commission” insert—
““the court” has the same meaning as in the Charities Act 1993;”.

36.—(1) In the provisions listed in sub-paragraph (2), omit the definition of “charity”.

(2) The provisions are—

- (a) section 622(1) of the Housing Act 1985(d);
- (b) section 169(9) of the Local Government and Housing Act 1989(e);
- (c) section 58(1) of the Charities Act 1992(f);
- (d) section 23A(10) of, and paragraph 8A(6) of Schedule 22 to, the School Standards and Framework Act 1998(g).

37. Omit section 38 of the Housing Associations Act 1985(h).

38. In section 60(1) of the Landlord and Tenant Act 1987(i), omit ““charity” means a charity within the meaning of the Charities Act 1993, and”.

39. In—

- (a) section 125A of the Education Reform Act 1988(j), and
- (b) section 22A of the Further and Higher Education Act 1992(k),

omit “within the meaning of the Charities Act 1993” and for “Schedule 2 to that Act” substitute “Schedule 2 to the Charities Act 1993”.

40. In—

- (a) section 128(5) of the Education Reform Act 1988(l), and
- (b) sections 27(5) and 33N(10) of the Further and Higher Education Act 1992(m),

-
- (a) 1968 c.55. Section 4A was inserted by S.I. 1996/1738, article 8. There are amendments to section 4A not relevant to this Order.
 - (b) 1974 c.46. Section 32A was inserted by S.I. 1996/1738, article 10. There are amendments to section 32A not relevant to this Order.
 - (c) 1969 c.22. Section 4 was substituted by the Charities Act 1992 (c.41), Schedule 5, paragraph 1. Section 4(13) was amended by the Charities Act 1993, Schedule 6, paragraph 10.
 - (d) 1985 c.68. The definition of “charity” in section 622(1) was amended by the Charities Act 1993, Schedule 6, paragraph 30. There are other amendments to section 622(1) which are not relevant to this Order.
 - (e) 1989 c.42. There are amendments to section 169 not relevant to this Order.
 - (f) 1992 c.41. The definition of “charity” in section 58(1) was amended by the Charities Act 1992, Schedule 6, paragraph 29(5). There are other amendments to section 58(1) which are not relevant to this Order.
 - (g) 1998 c.31. Section 23A was inserted by the Education and Inspections Act 2006 (c.40), section 33. Paragraph 8A of Schedule 22 was inserted by the Education and Inspections Act 2006, Schedule 4, paragraph 13.
 - (h) 1985 c.69. Section 38 was amended by the Charities Act 1993, Schedule 6, paragraph 21 and by S.I. 1996/2325, Schedule 1. Section 38 was repealed, in relation to Scotland, by the Housing (Scotland) Act 2001, (asp.10), Schedule 11.
 - (i) 1987 c.31. The definition of “charity” in section 60(1) was amended by the Charities Act 1993, Schedule 6, paragraph 30. There are other amendments to section 60 which are not relevant to this Order.
 - (j) 1988 c.40. Section 125A was substituted, for section 125A as inserted by the Teaching and Higher Education Act 1998 (c.30), section 41, by the Charities Act 2006, Schedule 8, paragraph 85. Section 125A, as substituted, was amended by the Charities Act 2006 (Changes in Exempt Charities) Order 2009 (S.I. 2009/XXXX), Schedule 1, paragraph 3.
 - (k) 1992 c.13. Section 22A was substituted, for section 22A as inserted by the Teaching and Higher Education Act 1998 (c.30), section 41, by the Charities Act 2006, Schedule 8, paragraph 88.
 - (l) 1988 c.40. Section 128(5) was amended by the Charities Act 1993, Schedule 6, paragraph 30.
 - (m) 1992 c.13. Section 27(5) was amended by the Further Education and Training Act 2007 (c.25), Schedule 1, paragraph 9. Section 33N was inserted by the Apprenticeships, Skills, Children and Learning Act [2009], Schedule 8.

for ““charity” and “charitable purposes” have the same meanings” substitute ““charitable purposes” has the same meaning”.

41. In section 58(1)(a) of the Housing Act 1996(a), for ““charity” and “trusts”, in relation to a charity, have” substitute ““trusts”, in relation to a charity, has” and in section 64 of that Act omit the entry relating to “charity”.

42.—(1) In section 23(4)(a) of the School Standards and Framework Act 1998(b), for ““charity” and “institution” have” substitute ““institution” has”.

(2) In Schedule 1 to that Act(c), in paragraph 10, for “within the meaning of the Charities Act 1993, and is an institution to which section 3A(4)(b) of that Act” substitute “and is an institution to which section 3A(4)(b) of the Charities Act 1993”.

43. In section 63(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004(d), in the definition of “English charity”, for “within the meaning of the Charities Act 1993 (see section 96 of that Act)” substitute “as defined by section 1(1) of the Charities Act 2006”.

44. In Schedule 4 to the Safeguarding Vulnerable Groups Act 2006(e), in—

- (a) paragraph 4(7), and
- (b) paragraph 8(6),

for ““charity” and “charity trustee” have the same meanings” substitute ““charity trustee” has the same meaning”.

(a) 1996 c.52. Section 58(1) was amended by the Charities Act 2006, Schedule 8, paragraph 191.

(b) 1998 c.31. There are no amendments to section 23(4).

(c) 1998 c.31. Paragraph 10 of Schedule 1 was amended by the Charities Act 2006, Schedule 8, paragraph 195.

(d) 2004 c.27. The definition of “charity” in section 63(1) was substituted for the definition, as originally enacted, by S.I. 2007/1093, Schedule 4, paragraph 24. The definition of “English charity” in section 63(1) was inserted by S.I. 2007/1093, Schedule 4, paragraph 24.

(e) 2007 c.27. There have been no amendments to paragraph 4(7) or 8(6) of Schedule 4.