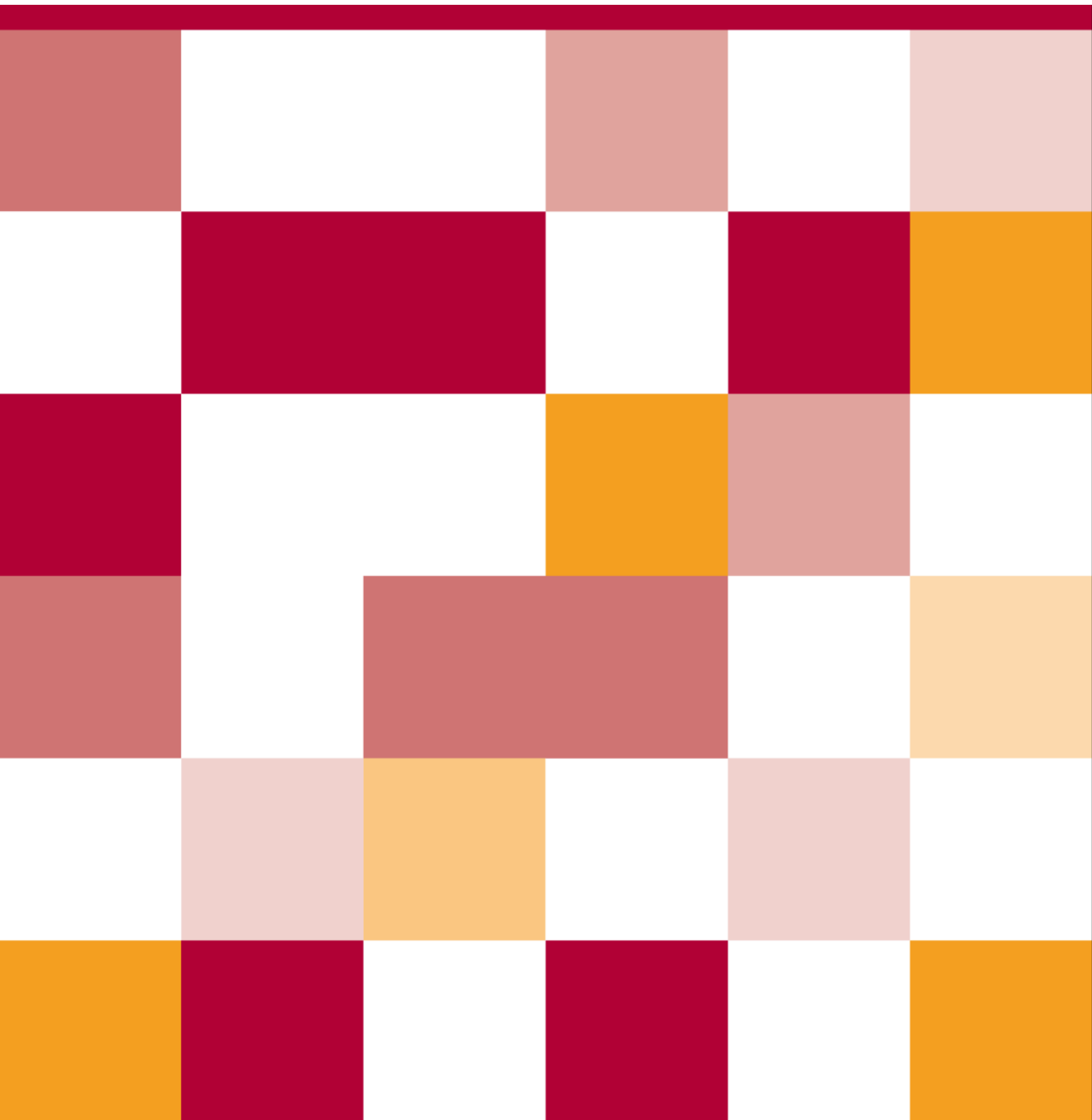




CabinetOffice
Office of the **Third Sector**

Charities Act 2006

Updated Implementation Plan
March 2010



Charities Act 2006: Implementation update

1. The Charities Act 2006 (the Act) received Royal Assent on 8 November 2006. The Act, and explanatory notes that accompany it are available on the website of the Office of Public Sector Information (<http://www.opsi.gov.uk/acts/acts2006a>). Much of the Act is now in force, and the remaining provisions are due to be rolled out over the following two years. This document explains what is already in force, and the timetable for implementing the remaining provisions.
2. Implementation is being led by the Office of the Third Sector in the Cabinet Office, working closely with colleagues in the Charity Commission and representatives from the sector itself.
3. More details about the implementation, including progress updates, will be available on the websites of the [Office of the Third Sector](#) and the [Charity Commission](#). The Office of the Third Sector also runs an email update group that you can subscribe to in order to keep in touch with developments. Please send an email to charities.act@cabinet-office.x.gsi.gov.uk with a request to join the 'Charities Act 2006 Email Update Group'.

Provisions in force

First Commencement Order – February 2007

These provisions came into force on 27 February 2007, unless otherwise specified below. The main provisions commenced by this Order were:

- The new Charity Commission, its objectives, functions and duties (*sections 6 & 7, schedules 1 & 2*).
- The requirement for the Commission to develop guidance and consult on the public benefit test (*section 4*). The Commission has since consulted on and published its guidance on public benefit, as well as producing and consulting on supplementary guidance relating to specific charitable purposes and fee-charging. The Commission's public benefit guidance is available [here](#).
- Interim changes to the registration threshold for small charities – which was followed by an order that increased the registration threshold to £5,000 annual income from 23 April 2007 (*section 10*).
- The relaxation of publicity requirements relating to schemes (*section 22*).
- The participation of Scottish and Northern Irish charities in Common Investment and Deposit Funds (*section 23*).
- Increases to the audit thresholds for unincorporated and incorporated charities for financial years beginning on or after 27 February 2007 (*sections 28 & 32*).
- The power for the Commission to determine the membership of a charity, an updated power to give advice and guidance, and the power for the Commission to enter premises and seize documents under a warrant (*sections 24, 25 & 26*).

- Changes to the restrictions on mortgages of charity land (*section 27*).
- Waiver of trustee's disqualification and the power for the Commission to relieve trustees and auditors from liability for breach of trust or duty (*sections 35 & 38*).
- The ability for charities to purchase trustee indemnity insurance (*section 39*).
- The power for unincorporated charities to modify powers or procedures (*section 42*).
- The reserve power to control fundraising by charitable institutions (*section 69*).
- Powers for Secretaries of State and the Minister for the Cabinet Office, to give financial assistance to charitable, philanthropic or benevolent organisations from 1 April 2007, along with a duty to report annually to Parliament. An equivalent power for the National Assembly for Wales from 27 February 2007 and duty to publish an annual report (*sections 70 & 71*).

These provisions were commenced by [The Charities Act 2006 \(Commencement No 1, Transitional Provisions and Savings\) Order 2007](#). A more detailed [explanation of the provisions](#) that were commenced by the first Commencement Order is available on the Office of the Third Sector website.

Second Commencement Order – November 2007

The main provisions commenced by this Order were:

- Provisions relating to mergers of charities (*section 44*). These provisions came into force on 28 November 2007.
- Statements indicating benefits for charitable institutions, professional fundraisers, and commercial participators (*sections 67 & 68*). These provisions came into force on 1 April 2008. The implementation of these provisions was put back three months at the request of sector representatives, in order to give professional fundraisers and commercial participators more time to prepare for the changes.

These provisions were commenced by [The Charities Act 2006 \(Commencement No 2, Transitional Provisions and Savings\) Order 2007](#).

Third Commencement Order – March 2008

The main provisions commenced by this Order were:

- The Charity Tribunal (*section 8 and schedules 3 & 4*).
- A new power facilitating the remuneration of trustees for providing (non-trustee) services to their charity (*sections 36 & 37*).
- Powers for unincorporated charities to transfer all property, to replace purposes or to spend capital (*sections 40, 41 & 43*).

- New powers for the Charity Commission – to remove or suspend trustees from membership of a charity, to give specific directions for the protection of charity property, and to direct the application of charity property (*sections 19, 20, & 21*).
- Changes to Cy Près occasions and Schemes (*sections 15 to 18*).

These provisions were brought into force by [The Charities Act 2006 \(Commencement No. 3, Transitional Provisions and Savings\) Order 2008](#). A more detailed [explanation of the provisions](#) commenced by this order is available on the Office of the Third Sector website.

Fourth Commencement Order – April 2008

The main provisions commenced by this Order were:

- The new definition of charity and the public benefit requirement (*sections 1, 2, & 3*). These provisions came into force on 1 April 2008.
- Special provisions relating to recreational charities, miners' welfare societies and community amateur sports clubs (*section 5*). The provisions relating to recreational charities came into force on 1 April 2008. Provisions relating to community amateur sports clubs came into force on 1 April 2009. Provisions relating to miners' welfare societies come into force on 1 April 2010 (this has been put back to address consequential amendments in other legislation).
- Provisions relating to audit and accounting for charities, including group accounts and changes to the accounting regime for small charitable companies (*sections 29, 30, 31, 33, and an order under section 77, and schedule 6*). These provisions came into force for financial years beginning on or after 1 April 2008, at the same time as an Order under s.77, and the Charities (Accounts and Reports) Regulations 2008 came into force.

Further information about the audit, accounting and reporting changes for charities made in 2008 can be found [here](#). The Commission has produced detailed guidance on the public benefit requirement and reporting public benefit, along with a commentary on the descriptions of charitable purposes in the Act, which are available [here](#).

Fifth Commencement Order – January 2009

- The requirement for 'excepted' charities with an income of over £100,000 to register with the Charity Commission (*parts of section 9*). These provisions came into force on 31 January 2009.

From 31 January 2009, existing excepted charities with an annual income exceeding £100,000 are required to register with the Charity Commission. The Commission has drawn up guidance for excepted charities and a timetable for how it proposes to process applications to register formerly excepted charities, which is available [here](#).

Some changes have also been commenced that affect a group of exempt educational institutions including governing bodies of foundation, voluntary and foundation special schools (other than governing bodies of community or community special schools), foundation bodies established under section 21 of the School Standards and Framework Act 1998, institutions associated with such bodies and Education Action Forums.

From 31 January 2009, this group of charities lost exempt status and became excepted charities. However, to ensure that these charities are in the same position as other exempt charities, transitional provisions in the commencement order meant that they were, until 1 October 2009, to continue to be treated for the purposes of the 1993 Act as if they were exempt charities. This means, for example, that they did not have to prepare charity accounts in respect of financial years beginning before 1 October 2009 or be subject to the general regulatory jurisdiction of the Commission before that date. These transitional protections have since been extended until 1 September 2010 (please see below).

Sixth Commencement Order – September 2009

- Extending the transitional protections for the formerly exempt educational institutions identified above so that they continue to be treated as if they were exempt charities until 1 September 2010. So, for example they remain outside much of the Charity Commission's regulatory jurisdiction and are not required to register or produce charity accounts and reports.

The Commencement Order also commenced a minor provision and repeal from the Charities Act 2006. It also made provision relating to Education Action Forums (EAFs) – this is legally necessary but in practice no such entities exist.

Provisions not yet in force

Exempt Charities

Implementation of provisions relating to exempt charities is being phased.

Provisions relating to certain groups of exempt charities are expected to come into force from June 2010 (*parts of section 9, sections 11 to 14, and schedule 5*).

First Tranche

Principal regulators will be appointed for some groups of exempt charities where an existing regulatory relationship already exists – these groups of charities will remain exempt. The role of a principal regulator will be to promote compliance with charity law. From 1 June 2010, some proposed principal regulators that are ready to take on the role will be appointed and some other groups of exempt charities will become excepted and subject to the Charity Commission's direct regulation, with the larger of these charities (>£100,000 income) required to register with the Charity Commission.

Groups of charities that will remain exempt and the proposed principal regulators to be appointed for them on 1 June 2010 are:

- i) Universities in England –Higher Education Funding Council for England (HEFCE)
- ii) Certain National Museums and Galleries – Secretary of State for Culture, Media and Sport and
- iii) Royal Botanic Gardens, Kew – Secretary of State for Environment, Food and Rural Affairs

The following exempt charities will become excepted charities on 1 June 2010:

- i) Universities in Wales
- ii) Students Unions in England and Wales
- iii) Colleges of the universities of Oxford, Cambridge and Durham
- iv) Eton and Winchester Colleges
- v) The Church Commissioners and institutions administered by them
- vi) The representative body of the Welsh church and property administered by it

If their gross annual income exceeds £100,000 they will be required to register with the Charity Commission.

The Commencement Order and Statutory Instruments bringing about these changes are available [here](#).

Later Tranches

Foundation and Voluntary Schools

Proposals for charity law regulation of certain categories of school body that are currently treated as exempt charities will be taken forward after the General Election, subject to the availability of parliamentary time. These are the governing bodies of foundation, foundation special, voluntary aided and voluntary controlled schools, foundation bodies, and institutions associated with such bodies. We refer to them together as foundation and voluntary (F&V) schools for the sake of ease.

As they are not regulated by the Charity Commission, the 2006 Act requires exempt charities to be regulated for their compliance with charity law. Wherever possible, we have identified suitable principal regulators who will promote compliance by charity trustees. Exempt charities for whom no principal regulator is identified will lose their exempt status and be required to register with the Charity Commission.

F&V schools lost their exempt charity status in January 2009 but transitional protections have since ensured that they continue to be treated as though they were exempt charities. It is currently proposed that exempt charity status be re-conferred on F&V schools in England, with the Secretary of State for Children, Schools and Families appointed as their

principal regulator. A similar position is being discussed in relation to F&V schools in Wales, with the Welsh Assembly Government as their principal regulator. The details of these arrangements are still under discussion. The transitional protections under which the relevant bodies are currently treated as if they continued to be exempt charities will need to be extended beyond 1 September 2010 until a more permanent solution can be put in place.

We are inviting views on proposals in the paragraphs above regarding F&V schools in England and Wales. We would appreciate your comments on the following questions:

- 1) Do you agree with the proposal to re-confer exempt charity status on F&V schools in England and Wales?
- 2) Is the Secretary of State for Children, Schools and Families a suitable principal regulator for F&V schools in England? Is there an alternative body that would be a more suitable principal regulator?
- 3) Is the Welsh Assembly Government a suitable principal regulator for F&V Schools in Wales? Is there an alternative body that would be a more suitable principal regulator?
- 4) Do you have any other comments on proposals for charity law oversight of F&V schools?

Please send your responses to the questions above by 30 June 2010 to charities.act@cabinet-office.x.gsi.gov.uk. Alternatively, you can write to us at the following address:

Foundation and Voluntary Schools' Consultation
Charity Law and Regulation Team
Office of the Third Sector
Room 2.7
2nd Floor, Admiralty Arch (South)
The Mall
London SW1A 2WH

Other Exempt Charities

There will be a further tranche of implementation for groups of exempt charities in early 2011. This will affect exempt charities where proposed principal regulators are not yet ready to take on the role, or where we need to consider possible consequential changes, for example to accounting and reporting provisions. These groups of charities are:

- i) Charitable Registered Social Landlords (RSLs)
- ii) Further Education Corporations
- iii) Charitable Industrial and Provident Societies (other than RSLs)

Further information about the implementation of provisions relating to these groups of exempt charities will be posted on the OTS website.

Charitable Incorporated Organisation (CIO)

Provisions relating to the Charitable Incorporated Organisation (CIO) are in *section 34* and *schedule 7*. In 2008, we published a joint consultation with the Charity Commission on the Secondary Legislation and model constitutions needed to complete the legal framework for the CIO. 90 responses were received, and we also received feedback at four consultation events. A number of changes have been made to the framework as a result of the consultation feedback. [A summary of consultation responses and next steps](#) were published on the OTS website in September 2009.

There was not sufficient time for the CIO Secondary Legislation to go through Parliament in the current session. The Charity Commission and officials in the Office of the Third Sector (OTS) are also working through some operational details, which they need to resolve before the CIO provisions can be implemented.

There are two main strands of work taking place. First, three sets of Regulations will be necessary to give effect to the CIO, two of which require the affirmative resolution of both Houses of Parliament. The aim is for the legislation to be taken through as soon as possible in the new Parliamentary session. In parallel, the Charity Commission is developing the guidance and model governing documents needed for the implementation of CIOs, and setting up the necessary systems and processes to support it.

The CIO is therefore not expected to be an option available for charities until the beginning of 2011.

Licensing regime for public charitable collections

The Charities Act 2006 provides for a new, modern licensing and regulatory regime. However, much of the detail of how the scheme will operate will need to be set out in Secondary Legislation and guidance. We commissioned independent research in 2009 to assist in this process.

We need sound evidence to implement the new system properly: minimising administrative burdens whilst ensuring a robust and cost-effective scheme is in place. As well as assessing the costs and benefits of the new licensing scheme compared to the existing system of licensing the research will aim to:

- inform the developmental and design phase of the new system of licensing building on the framework provided by the Charities Act 2006; and

- identify how best to take forward the implementation of cost-effective, risk-based and proportionate regulation of public charitable collections.

The evidence from the research will enable us to consider the most cost-effective way of doing so. The research project has concluded and the research results and proposals for next steps will be published in due course. The new system of PCC regulation would be one of the last parts of the Charities Act 2006 to be implemented.

Voluntary registration of excepted charities

While the Charity Commission is registering the large numbers of formerly excepted and exempt charities that it will have to register, the current law which enables the Charity Commission to exercise its discretion in relation to applications for voluntary registration will continue to be in force. Once those excepted and exempt charities that are required to register have been registered, the provision in the Act requiring the Commission to register charities that apply for voluntary registration will be commenced.

Other commitments

There were several other commitments made during the passage of the Charities Bill:

- Preparation of a [plain language guide to the Charities Act](#), aimed particularly at small charities. This was developed jointly by the Office of the Third Sector and the Charity Commission and was published in May 2007. Hard copies are available free of charge by calling 0845 015 0010 and quoting URN 07/Z2 “Charities Act 2006: what trustees need to know”.
- Consolidation of charity law is a matter for the Law Commission. We have worked with the Law Commission to develop a draft consolidation Bill. A public consultation on the draft Bill was closed in December 2009. Unfortunately there was insufficient Parliamentary time for the Bill in the current session. We will shortly publish a summary of the consultation responses and will explore with the Law Commission the potential for taking the Bill forward as soon as possible in the new Parliament.
- A review of the financial thresholds in the Charities Acts, to take place within a year of Royal Assent. We worked in partnership with the Charity Commission on the review, and proposals were subject to public consultation in 2007/08. The aim of the review was to determine the scope for raising or simplifying existing thresholds, which can be changed by an order made by the Minister. Several de-regulatory changes came into force on 1 April 2009. They raise financial thresholds that trigger some of the regulatory requirements applying to charities in England and Wales. The Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 and its explanatory memorandum are available on the [Office of the Public Sector Information](#) website. Further guidance on the threshold changes is available on the [Charity Commission](#) website.

- A review of the impact of the public benefit requirement within three years of the public benefit requirement coming into force (it came into force on 1 April 2008).
- An evaluation of the impact of the Charities Act 2006 to begin within five years of Royal Assent is required by section 73. Ministers would appoint a person to undertake the review, which would report to Parliament on the impact of the Act.

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