

CHAPTER 5:**EXCEPTED CHARITIES****1. PROPOSAL**

- 1.1 This Regulatory Impact Assessment examines the impact of the measures to be included in the Charities Bill on charities that are currently excepted from the requirement to register with the Charity Commission (the Commission). The Charities Bill would provide for the registration of the currently excepted charities. There would be an initial registration threshold of £100,000 which would over time reduce to bring it into line with the threshold for other charities.

2. PURPOSE AND INTENDED EFFECT**2.1 *The objective***

- 2.1.1 Excepted charities, although required to comply with charity law, are not required to register with the Commission. It is possible for them to register voluntarily. The proposals contained in this document will not impact on the excepted charities that are on the register voluntarily. Those charities are already subject to the Commission's regular monitoring regime and oversight.
- 2.1.2 Proposals for changes to the arrangements governing excepted charities were set out in the Strategy Unit Review "Private Action, Public Benefit" which was published in September 2002. One of the main themes of the report was that charities needed to demonstrate greater accountability and transparency if public trust in the charitable sector was to be maintained. The objective of the proposed changes to excepted charities is to promote confidence in the integrity of charitable status by providing for excepted charities, subject to the income threshold, to be subject to the same accountability and transparency requirements as charities which are registered with the Commission. The organisations which would be affected by the changes are excepted charities and the Commission.
- 2.1.3 The Strategy Unit concluded that there was no principled justification for keeping the classes of charity that are currently excepted remaining outside registration with the Commission. It recommended that excepted charities with incomes above the new proposed registration threshold of £50,000 should be required to register. It proposed a temporary higher registration threshold above the general registration threshold in order to ensure a manageable process of registration. It was intended that at the higher registration threshold approximately 5,000 of the larger excepted charities would be required to register.

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- 2.1.4 Of the 88 respondents who commented on the Strategy Unit proposals in relation to the excepted charities a clear majority (69%) supported them. However, there were divisions. Support for ending excepted status was very strong among respondents who were not themselves excepted charities. Most of the respondents opposing the recommendation were excepted charities, predominantly religious bodies. They were typically concerned about placing additional burdens on the trustees of small local churches. Officials have taken action in order to contact and meet with the excepted charities to discuss their concerns. The concerns generally were found to be less to do with registration with the Commission and more to do with the requirements of charity law. For example, concern was expressed about the burden of trusteeship. However, the people responsible for the running of those charities are already the charity trustees, the issue of registration would make no difference to that. Trusteeship does not flow from registration, it flows from the roles and responsibilities undertaken.
- 2.1.5 The Commission has also taken action to set up a team to deal specifically with the registration of the excepted charities. The excepted charities have been advised to meet with the Commission to discuss any practical concerns they might have about the process of registration.
- 2.1.6 The Government accepted the Strategy Unit's recommendation but set the initial registration threshold for excepted charities at £100,000 annual income, rather than the £50,000 recommended by the Strategy Unit. That was because in response to the consultation exercise most excepted charities believed that the initial threshold of £50,000 was too low and many suggested that it should be raised to £100,000. We have estimated (Annex A) that approximately 5,000 excepted charities would be required to register at the initial threshold of £100,000.

2.2 Devolution

- 2.2.1 The policy would apply to currently excepted charities in England and Wales only and would not impact on charities based in Scotland and Northern Ireland.

2.3 Background

- 2.3.1 The exact number of excepted charities is not known precisely but in 2000 it was estimated at over 100,000¹. The main classes of charities which have been excepted by order of the Secretary of State are:
- boy scout and girl guide charities (the Charities (Excepting certain charities for Boy Scouts and Girl Guides from Registration) Regulations 1960);

¹ Estimate contained in a joint Home Office / Charity Commission consultation document on exceptions from registration - see www.charitycommission.gov.uk/enhancingcharities/charregvol.asp.

- various religious charities (the Charities (Exception from Registration) Regulations 1996 and by Order of the Charity Commissioners) ;
- armed forces charities (the Charities (Exception from Registration and Accounts) Regulations 1965); and
- certain trusts for the advancement of religion conditional on the upkeep of graves (the Charities (Exception from Registration) Regulations 1996 and by Order of the Charity Commissioners).

Particular charities have been excepted by Order of the Commission, most of which are connected to the Roman Catholic Church.

Some charities owning foundation schools are excepted from the duty to register by virtue of section 23 of the School Standards and Framework Act 1998. The University of Buckingham is also an excepted charity by virtue of the Charities (Exception of Universities from Registration) Regulations 1966.

- 2.3.2 Excepted charities are fully subject to the Commission's jurisdiction and are required to comply with the key principles of charity law. However, there are a number of requirements that flow from registration that do not apply to excepted charities (unless they had registered voluntarily with the Commission). The table attached at Annex B provides a broad outline of the requirements placed on excepted and registered charities and the provisions of the Charities Act 1993 that apply in terms of registered and excepted charities.
- 2.3.3 Excepted charities enjoy the status and the fiscal benefits accorded to other charities but they fall outside the regular monitoring arrangements provided by the Commission. The Commission register was created in the 1960s to provide publicly accessible information confirming the existence and status of individual charities. The purpose of the register at that time was largely to provide a public record of the existence of individual charities. The Charities Act 1960 empowered the Secretary of State and the Charity Commissioners to except some charities - either individually or in classes - from registration. The justification for exception was that the existence of those charities was publicly documented elsewhere or that there was not thought to be great public interest in those charities. The Commission's register, unlike now, was not at that time designed to provide the basis for the systematic monitoring of the sector. The Commission's register is now the primary national database of the existence, purposes and activities of charities and it is an important element of the public accountability of charities.
- 2.3.4 When the exceptions regime was introduced in the 1960s there were certain conditions attached to some of the exceptions. For example, the 1960s exception of religious charities was, for many of them, conditional upon the Commission being supplied with details of individual charities. Where there were conditions attached they were

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introduced in order to fill information gaps. Compliance with those conditions had long been ignored by both sides and that was one of the reasons why it was considered that a review of the exceptions regime was required. The Charities (Exception from Registration) Regulations 1996 were made as a stop gap measure to be replaced when the then review was completed and it was at that time these conditions were removed.

- 2.3.5 It is vital that public trust and confidence in the charitable sector should be maintained and if possible increased. Many charities rely heavily for their survival and growth on generating income from fundraising and being able to rely on the services of volunteers. Without continued public goodwill and support the activities of charities are likely to be significantly curtailed. Research indicates that, while overall levels of public trust in charities are high, the public has concerns about the quality of information available about charities and about their degree of accountability. Failure to ensure that information about excepted charities is readily available to the public and that those charities are held to account could result in the public having doubts about the probity and effectiveness of charities in general.

2.4 Risk assessment

- 2.4.1 The public sees charities as being value-driven and tends to have much higher expectations of charities than of non-charitable organisations. Charities rely on having a good reputation in order to continue. The absence of an effective mechanism for monitoring the compliance of excepted charities with the principles of charity law poses threats to the public perception of the integrity of charitable status, a threat which might not be confined to excepted charities but could extend to the whole of the charitable sector. A loss of public confidence in charities would be likely to result in a drop in charitable giving and a reduction in the number of volunteers which they would attract to work for them. As a consequence charities would become very much less effective. Since a dynamic and vibrant charitable sector makes a vital contribution to the economy of the UK and to wider society, it is important that measures should be put in place to maintain public trust in the integrity of charities.
- 2.4.2 Research published by the National Council for Voluntary Organisations in 1998 "Blurred Vision, Research Quarterly" 1st January, indicated that overall the level of trust in charities is high but it identified concerns about the accountability of charities and about the quality of information available about them.
- 2.4.3 While excepted charities may very well be complying with charity law, there is no formal mechanism for holding them to account for their compliance and, although it is possible for the public to obtain information about them it is not, unlike in the case of registered charities, held centrally. The Government recognises that a number of

the currently excepted charities have taken measures to ensure that information about them is more widely available. For example, a number of local churches publish their accounts at church meetings and on church notice boards, but those measures do not provide the degree of accessibility that the public might reasonably expect.

- 2.4.4 An excepted charity is obliged to provide information to a member of the public on demand but that information is confined to the accounts. A decision to leave the status quo for excepted charities would be unlikely to address the public concerns identified in the research.
- 2.4.5 There is a risk that the charitable funds and assets of an excepted charity might be being erroneously applied or even lost but, in the absence of a monitoring mechanism, that might never be identified or identified too late for the funds to be safeguarded. Although excepted charities are currently able to approach the Commission for advice and guidance that relationship is not formalised. On-going monitoring enables the Commission to offer advice and guidance which helps charities to operate in accordance with charity law and standards of best practice.
- 2.4.6 Excepted charities which do not have a clear understanding of charity law and which are not complying with it could find their failures exposed publicly. Adverse publicity could have a negative impact on the charitable sector as a whole.
- 2.4.7 A failure on the part of Government to address the lack of regulation for excepted charities would give rise to serious complaint from the very large number of charities who are required to register with the Commission. The responses to the Strategy Unit review showed that registered charities see no rationale for excepted charities being allowed to continue in their present state of unaccountability. They see it as an unjustified privilege which puts the integrity of the whole sector potentially in jeopardy.
- 2.4.8 Further all of the religious denominations covered by the blanket exceptions are Christian and that could give rise to complaints of bias on the part of other denominations. The Strategy Unit had concerns that the current situation might not be compliant with Human Rights legislation. Of course one way of dealing with that would be to extend the current exceptions regime to other denominations, but that would have a negative impact on the accountability and transparency of the sector and would impact on public confidence.

3. OPTIONS

- 3.1 We have identified 2 options for reforming the law on excepted charities so as to provide greater accountability. These options are considered below together with the option to maintain the status quo.

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- 3.2 **Option 1:** Leave the relevant legislation unchanged.
- 3.3 **Option 2:** Increase transparency and accountability among the currently excepted charities by introducing the Responsible Body approach. The joint Home Office / Charity Commission review published in 2000 “Charity Registration: When should it be voluntary?” (the Review) recognised that a number of umbrella bodies already performed a range of functions in respect of groups of charities that might include an element of support and regulation.
- 3.4 The Review considered whether the purposes of registration could be met by such an umbrella body and, if they were, whether this might justify exception (an umbrella body meeting this criterion was described as a Responsible Body). One option would be, therefore, to consider whether the Responsible Body model could apply in the case of the currently excepted charities or whether it would be beneficial for the currently excepted charities to consider changing their structures so that the Responsible Body model could apply to them. However, the intention of the Review was to identify Responsible Bodies from existing structures it did not propose that organisations changed their structures to fit in with the Responsible Body model. The Review described the purposes of registration as to:
- provide evidence of charitable status where this is of interest to the charity or the public;
 - provide a way for charities to be accountable, for example by making basic information publicly available and by enabling the general public and the Commission to get in touch with charities; and
 - enable large charities to be actively monitored (the Commission currently monitors registered charities with income or expenditure over £10,000 per annum).
- The responses to the consultation exercise showed widespread support for the purposes of registration. Annex C provides a breakdown of the criteria which the Review proposed a Responsible Body would have to meet in order to achieve the aims of registration.
- 3.5 **Option 3:** Require the currently excepted charities to register with the Commission subject to a higher initial registration threshold of £100,000 per annum. The Bill includes a provision to set the general registration threshold at £5,000 per annum.
- 3.6 The Joint Committee that scrutinised the draft Charities Bill recommended that the Home Office and the Ministry of Defence should explore ways of ensuring that the service non-public funds of the armed forces charities remain properly accounted for without bringing them within the remit of the Commission. However, the Government has not accepted that recommendation as it believes that it is based on a false premise as the Commission can under current law exercise the same powers in relation to excepted armed forces charities as it can in relation to registered charities. The Bill’s proposal to require larger

excepted armed forces charities to register with the Commission would not extend the Commission's jurisdiction over them.

4. BENEFITS

- 4.1 **Option 1:** Some, in that the continuation of the current exceptions regime would not have a costs implication for the charities concerned or the Commission. As explained above (2.3.3) the current exceptions regime has its roots in the 1960s. Exceptions were introduced for charities whose names appeared on some other list or because it was judged that the public was not interested in them. At that time the register of charities provided a list of charitable endeavour and was not the basis for the systematic monitoring of the charitable sector that it is today. Since the Commission's routine monitoring processes are based on the requirements placed on registered charities they do not cover unregistered charities, such as (almost all) excepted charities.
- 4.2 **Option 2:** Limited. The aim of the 2000 Review was to produce sustainable criteria for exception. The proposed approach was to consider whether there were any bodies carrying out the kind of functions that would meet the purposes of registration without the relevant charities having to register. If there were any Responsible Bodies, "their" charities would not have to register. Where there was not a Responsible Body the charities would have to register. For the purposes of this assessment we have also considered that the currently excepted charities might seek to change their structures so that they would fit within the Responsible Body model. At the time of the Review there was no possibility of Parliamentary time being made available to amend the primary legislation. The authors of the Review were restricted to working within the existing legislative framework. The benefits of this approach would be that it recognised existing systems, would enable information about charities to be more readily accessible and would provide for the monitoring of those charities without a duplication of effort. However, as indicated above the Responsible Body approach would not apply in the case of all the excepted charities.
- 4.3 A Responsible Body would not need to have systems that were identical to the Commission's. The Commission's monitoring system has to be designed to cover a wide range of charities. A Responsible Body would monitor only charities that were similar to each other. It could, therefore, restrict its focus to those issues that were of particular relevance to that group². The monitoring would not, however, be to the degree of independence as that undertaken by the Commission and would therefore command less credibility. The information while more accessible than at present would still be less so than if contained in the Commission's register. Although, it could be a condition of exception that information was as accessible to members of the public

² "Charity Registration: When should it be Voluntary?" Charity Commission / Home Office consultation.

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as the information available about registered charities on the Commission's register.

- 4.4 The principle disadvantage with this option, however, is that responses to the Review showed that the Responsible Body approach would not be appropriate for many of the currently excepted charities because their structures were not designed in that way. Of the 49 respondents to the Review who commented on the question about whether the Responsible Body approach was a sensible idea only 9 respondents agreed. For some of the charities concerned the Responsible Body approach is not compatible with their values and beliefs and their organisational structure does not lend itself to the Responsible Body concept. For example, one denomination is a voluntary association of autonomous churches. Each church is able to obtain advice and guidance from the Centre but the Centre does not have a controlling relationship in respect of the churches and could not adopt the Responsible Body approach.
- 4.5 **Option 3:** That would deliver the Government's objectives of increased accountability and transparency which was one of the main objectives of the Strategy Unit review. The Strategy Unit concluded 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"³. Requiring all excepted charities to register would create a 'level playing field' with registered charities and would result in consistent arrangements for the monitoring of charities, which is desired by many in the charitable sector⁴. The higher registration threshold would be set as an interim threshold which would over time move towards the general registration threshold. In accordance with the recommendation of the Joint Committee, before any plans are drawn up to lower the threshold the Home Office and the Charity Commission would monitor and report on the actual costs and benefits of the registration of those charities with an income above the £100,000 threshold. Any decision to reduce the threshold would be subject to further consultation and that would include an assessment as to the impact of any reduction.
- 4.6 Every charity would be directly monitored by the Commission, the organisation which has the best understanding of and greatest expertise in charity law and which has significant powers of investigation, intervention and advice giving. There would be no need to train Responsible Bodies in order to monitor charities' compliance with charity law or to monitor the Bodies in order to ensure that they had undertaken their role effectively. Regulation by the Commission would provide independent, proportionate regulation, whereas Responsible Bodies would have a relationship with the charities concerned and would not be independent from them.

³ Paragraph 7.89 of Strategy Unit Review "Private Action, Public Benefit".

⁴ Shown by the responses to the Strategy Unit Review.

- 4.7 Registration with the Commission would provide the excepted charities with a registered charity number which would assist them in obtaining funding and tax relief. A number of the excepted charities reported that they currently encounter difficulties with organisations that are not familiar with the concept of excepted charities.
- 4.8 Excepted charities are currently able to seek advice and guidance from the Commission but once they were registered the role would be more formalised. The Commission's advice and guidance helps charities to operate in accordance with charity law and standards of best practice. That applies not only in a general sense but also in particular cases where Commission assistance - often involving the use of their formal powers - can help charities in many ways. Charities would receive regular newsletters from the Commission which would increase awareness of developments in the wider charity sector.
- 4.9 The Responsible Body (Option 2) approach would not remove from the Commission their legal responsibility for unregistered charities. They would remain within the Commission's jurisdiction and subject to the full range of its powers, the difficulty would be that unlike option 3 they would not be subject to the Commission's on-going monitoring. The Review suggested that a Responsible Body would have to refer to the Commission any cases which were particularly difficult or complex.

5. EQUITY AND FAIRNESS

- 5.1 The objective of Option 3 is to create a fair and consistent system of registration and independent regulation for all charities. Under Option 3 all charities would be placed on a 'level playing field' in terms of the independent monitoring arrangements to which they are subject and the levels of accountability and transparency expected of them (subject to the interim higher registration threshold).
- 5.2 For the purposes of equity and fairness if Option 2 was adopted its adoption should apply in relation to other areas of the charitable sector. That would impact on the accountability and transparency of the sector as a whole as it might result in numerous lists of charities being monitored by numerous Responsible Bodies.
- 5.3 Consideration has been given to the impact of these proposals on minority groups. It is not considered that these proposals would have a disproportionate impact on such groups.

6. BUSINESS SECTORS AFFECTED

- 6.1 The registration of the excepted charities would impact primarily on the charitable sector.

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7. COSTS

7.1 We have tried to estimate the costs to charities and the Commission of each of the 3 options put forward. We are handicapped, however, by a lack of information and the costing remains speculative. The major gaps in our knowledge are set out below.

- We do not know the exact number of excepted charities which would have to be registered but it will be significant. There is a possibility that for some organisations it would be appropriate to group a number of charities together and so limit the number of actual registrations.
- We do not know how often the Commission may be called upon to intervene in the affairs of a charity where there is cause for concern and how protracted and complex such intervention might be. There is no reason to think that the Commission will have to intervene in the affairs of an excepted charity any more than in those they currently register. The Government recognises that the Commission currently has the power to investigate excepted charities. However, the Commission estimate that they have dealt with only a handful of such cases. That is to be expected. The absence of a mechanism to monitor the excepted charities means that the Commission would not necessarily be aware when problems have arisen.

7.2 Option 1 – retaining the status quo.

7.2.1 That would generate no obvious costs to charities or the Commission. The likely cost would be to public confidence in charities and in terms of the level of dissatisfaction of registered charities who are aggrieved that excepted charities are not subject to the same monitoring mechanisms as other charities but enjoy the same fiscal benefits.

7.2.2 However, there might be a cost to the excepted charities in terms of the potential loss or misapplication of funds that could occur in the absence of the regular monitoring and advice from the Commission.

7.3 Option 2 – adopt the Responsible Body approach.

7.3.1 The Responsible Body approach would not be appropriate for those of the currently excepted charities which do not have a hierarchical structure. The idea of the Responsible Body would not be compatible with the ethos of those organisations. If other organisations wanted to work towards a Responsible Body approach it would involve alterations to their working practices in order to establish an effective Responsible Body structure. We would be unable to quantify the costs of that for the charities as it would vary from one group of charities to another. That also goes beyond the intention of the original Home Office / Charity Commission review which was to

consider whether the purposes of registration could be met by an umbrella body and so justify exceptions from the requirement to register. Whether or not charities wished to formulate themselves in such a way that they fell within the Responsible Body structure would be a matter for them. The alternative would be for them to retain their current structure and register with the Commission.

- 7.3.2 There is a risk in the operation of the Responsible Body approach that the existing relationship between a potential Responsible Body and the charities for which it was responsible might prevent it from taking a firm line where problems arose.
- 7.3.3 In order for the operation of the Responsible Body approach to be effective it would be important for the Commission to have an active relationship with each Responsible Body. The legislation at present does not allow the Secretary of State or the Commission to control Responsible Bodies, although one option would be for that to be a condition of exception. The only sanction available, if a Responsible Body was not carrying out its functions, would be to require all the charities concerned to register with the Commission. The Review concluded that while the details of the arrangements between the Commission and the Responsible Body might vary from one Responsible Body to another according to the nature of the charities involved. The relationship might include the following provisions:
- asking Responsible Bodies to prepare an annual report to the Commission;
 - Responsible Bodies being subject to a specially designed monitoring process by the Commission; and / or
 - sampling by the Commission - requesting a selection of charities to submit their accounts or complete some other form of return to help assess the performance of their Responsible Body.
- 7.3.4 We have no way of calculating the costs to the Commission or the charities concerned in adopting the Responsible Body approach. For that approach to be effective it should be customised to meet the needs of individual groups of charities and the amount of work required by each group of charities would depend on the relationships already in existence. The costs to Commission would depend on the number of Responsible Bodies created.
- 7.3.5 As explained above (4.4) the vast majority of respondents to the Review did not support the Responsible Body approach. The Review recognised that there are also wider issues to be considered. If the Responsible Body approach was to be introduced there would be no principled justification for restricting its use to the currently excepted charities. Indeed for the purposes of equity it should be extended to other charities. If that were the case there would be a danger of a number of charities adopting the Responsible Body approach and a large number of charities being removed from the register of charities. One of the purposes of the Commission's register is to offer the public

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a reliable central record of charities in England and Wales. It should be the obvious place to look for anyone trying to obtain information about charities or a particular charity. If there were a large number of Responsible Bodies, each effectively running its own register, there is a risk that the public might end up with no clear idea of where to look for details of a charity.

7.3.6 The Government recognises that there might be ways of overcoming the difficulties outlined above (7.3.5) but does not believe that they would be effective. For example, one possible solution would be for each Responsible Body to clearly define the types of charities it retained information about and for there to be access to the Responsible Bodies' lists via links on the Commission's website. However, that would not be as effective as registration with the Commission where members of the public are able to access and search the central record of charities in England and Wales. Its effectiveness might also be dependent on members of the public linking the charity they wish to find out about with the relevant Responsible Body. The number of Responsible Bodies could also be restricted but on what basis? Any restrictions might be regarded as arbitrary and potentially unfair.

7.4 Option 3 - all excepted charities register with the Commission subject to an initial registration threshold of £100,000 per annum.

Costs to the currently excepted charities

7.4.1 We have been unable to come up with substantiated figures which would set out the costs, either financial or in terms of time, to individual excepted charities. To date there has been no research done on how long it takes charities to collate the information required by the Commission. Under charity law excepted charities are required to produce accounts in accordance with the provisions of the SORP in the same way as registered charities and they are required to follow the same audit or independent examiner requirements.

7.4.2 The Commission has produced figures on the costs to charities of filling out their Annual Return form and these are summarised in the following table. The figures contained in the table are taken from the Compliance Cost Assessment which accompanied the Charities (Annual Return) Regulations 1997. The Standard Information Return, a measure which will affect charities of over £1 million annual income, has not been taken into account. That has yet to be fully developed by the Commission but it is expected that it will not increase the costs for the large charities in compiling information required by the Commission by more than 25%. There would be no more than a handful of currently excepted charities with income at that level.

7.4.3 Excepted charities with incomes above the £100,000 threshold only would be required to register with the Commission. Therefore, the costs to the estimated 5,000 excepted charities required to register in

completing the Commission's annual return would be £31.75 in the first year and £23.80 in the subsequent years.

Size of Charity	First Year Costs	Subsequent Year Costs
Light touch charities (under £10,000 annual income)	£4.16	£1.80
Smaller Charities (Simple accounts): income between £10,000 - £100,000	£8.33	£6.00
Smaller Charities (Accrual accounts): £10,00 - £100,000	£14.60	£12.20
Larger Charities: income above £100,000.	£31.75	£23.80

- 7.4.4 The Commission estimate that it would take about 10 minutes for charities only updating the public record to submit the relevant information to the Commission and half-an-hour for other charities to complete the annual return. That would increase to just over three-quarters of an hour for the larger charities as more sections of the annual return would be relevant to them ⁵.
- 7.4.5 There would also be the additional costs for the charities of submitting the relevant documentation to the Commission. However, once registered that should be no more than the cost of posting the documentation annually to the Commission.
- 7.4.6 The Government recognises, however, that there is a risk for the currently excepted charities of the perceptions of volunteers at the local level. The Government is aware, for example, of difficulties faced by religious denominations in recruiting volunteers to become trustees and, in particular, to take on the role of Church Treasurer. The denominations are concerned that the added burden of regulation by the Commission would act as a further deterrent to volunteers. While the Government recognises those concerns it believes that fears around the burden of regulation by the Commission are based on mistaken perceptions rather than the reality of the situation. Once registered as a charity the trustees would be required to prepare and submit an annual return to the Commission as well as a trustee update form. They would also be required to submit annual accounts, which they are currently required to prepare to comply with the accounting regulations. In addition to the annual accounts they would be required to prepare and submit an annual report. While excepted

⁵ There is generally a positive correlation between the cost of completing an annual return and the size of a charity. That is because as a charity's income grows it is likely that more of the sections on the Annual Return will be relevant to it.

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charities are not routinely required to make an annual report they can be required to do so by the Commission under section 46 of the Charities Act 1993.

7.4.7 Some of the concerns which have been expressed about the burden of registration are actually about the role of a trustee. However, the people responsible for the running of those churches are already the charity trustees, the issue of registration would make no difference to that. Trusteeship does not flow from registration, it flows from the roles and responsibilities undertaken.

7.4.8 We understand from our discussions with some of the currently excepted religious denominations that some of the churches have trust deeds which would not comply with modern standards of governance, which the Commission would expect a charity to have in place. One of the denominations had undertaken a pilot study of 50 churches. They submitted the trust deeds of those churches for legal advice and asked for a quotation on the work that would have to be undertaken to make those deeds compliant with the Commission's model trusts. The quotation they received was for £250,000 for those 50 churches. However, another denomination had taken action to discuss matters with the Commission direct and reported that they would be working with them to develop model trust documentation which could be adopted by member churches. While the process of registration with the Commission would no doubt highlight any deficiencies in a charity's governing document that document would be deficient whether the charities concerned were required to register or not.

Costs to the Commission

7.4.9 The following table sets out theoretical adjusted costs should the Commission register and monitor all the currently excepted charities with incomes over £100,000 per annum. However, the Government recognises that even with the initial threshold of £100,000 income per annum the Commission would have to register and regulate a number of charities. A breakdown of the estimated charities involved is at Annex A. An explanation of the figures below is at Annex D.

Area of work undertaken	Costs incurred
Registration (one-off cost)	£500,000
Exercise of Legal Authority and giving of guidance	£130,000
Evaluations and Investigations	£27,533
Monitoring	£10,833
Referrals to legal	£16,111

Referrals to financial regulation	£12,611
Total costs (+/- 30% cost incurred to allow for inaccuracies)	One-off costs: £350,000-£650,000 Continuing costs: £137,962-£256,214

8. COMPETITION ASSESSMENT

- 8.1 The proposals would impact on a wide variety of charitable organisations including religious denominations and armed forces charities.
- 8.2 Whilst the activities of some charities may mirror those of non-charitable organisations in the business world, there are significant differences in the use charities may make of their resources. Charity law prescribes that their resources may be used only in furtherance of their charitable objects. They may undertake trading which is directly connected to, or is ancillary to, furthering their charitable purposes. However, if charities wish to undertake substantial trading which is not in direct pursuit of its purposes, it must set up a separate trading company to do so. Neither the proposed changes to excepted charities nor any other proposals in the draft Charities Bill will in anyway affect that position.
- 8.3 To the extent that any charity might be said to compete with another, for example, for public funds, the impact of these proposals may in fact aid competition. It could be argued that excepted charities at present have an advantage over registered charities in that they are not at present subject to monitoring to check whether they are complying with charity law. However, as a result of that they are less likely to receive advice and it is unlikely that any problems would have been identified and corrected.
- 8.4 These proposals should not require a detailed assessment of the competitive impact, particularly in that they do not change the existing requirement that excepted charities must comply with charity law. Nor do they affect the legislation concerning trading.

9. SMALL FIRMS' IMPACT TEST

- 9.1 The proposals to change the legislation governing excepted charities would not impact on small businesses. The views of the Small Business Service had been sought in relation to the changes to the exempt charities, which are relevant here. They were concerned that the more onerous accounting requirement for charities compared with those applying to small businesses might prove a burden. However, the Small Business Service has accepted that stakeholders legitimately have a greater desire for more information about charities than they do about small businesses.

10. ENFORCEMENTS AND SANCTIONS

- 10.1 The Commission already possesses powers of intervention and enforcement in respect of excepted charities and the adoption of Option 3 would enable them to monitor those charities on a regular basis. Where irregularities were identified the Commission would deal with them to ensure good governance and the correct application of charitable assets.
- 10.2 Criminal sanctions could be applied in respect of breaches of charity law by excepted charities but no new offences are created by these proposals. The Government recognises that there is a potential risk here in that without sanctions for failing to register there would be no deterrent to the currently excepted charities from remaining unregistered. However, the Government does not believe that specific sanctions should be imposed at this stage and indeed there is no specific sanction currently imposed on charities required to register at the general registration threshold and which fail to do so. That does not mean that there is no action which the Commission could take in the circumstances where a charity does not register with them even though they are required to do so. For example, it is a duty of the trustees to apply for registration and the Commission could make an order requiring them to register if they refuse to do so. Having done so, continued refusal to register could be treated in the same way as disobedience of an order of the High Court.
- 10.3 The Charity Commission would continue to bid for funding direct from HM Treasury to cover the additional costs arising from the proposals.

11. Monitoring and Review

- 11.1 The Government might wish to review these measures after a period of possibly five years. In particular the £100,000 interim registration threshold should be reviewed with a view to lowering it towards the general registration threshold. Decisions about lowering the threshold would be based on the capacity of the Commission and the charities concerned to deal with it. Before any plans are drawn up to lower the threshold the Home Office and the Charity Commission would monitor and report on the actual costs and benefits of the registration of those charities with an income above the £100,000 threshold. Any decision to lower the threshold would be subject to further consultation at which stage the impact of lowering the threshold would be considered in detail.

12. CONSULTATION

- 12.1 The consultation on the recommendations contained in "Private Action, Public Benefit" was carried out from 25 September to 31 December 2002. 1,087 written responses were received. An analysis of the

respondents is contained in ANNEX A of “Charities and Not-for-Profits: A Modern legal Framework”, the Government’s response to the consultation.

- 12.2 A summary of the responses to the consultation received on the matter of the excepted charities is at 2.1.3. In order to address the concerns of the excepted charities Home Office officials have taken action to contact and meet with the majority of the groups involved. As explained above, the Commission has also taken action to set up a team to deal specifically with the registration of the excepted charities. The excepted charities have been advised to meet with the Commission to discuss any practical concerns they might have about the process of registration.

13. SUMMARY AND RECOMMENDATION

- 13.1 Our clear preference is for Option 3. It best meets the objective of providing an effective mechanism for monitoring the compliance of excepted charities with charity law.

Option	Benefits	Costs
1. Do nothing	<p>Some:</p> <ul style="list-style-type: none"> ▪ No additional costs for the Commission or the charities concerned. However, there is no longer a principled justification for the current exceptions regime which has its roots in the 1960s. 	<ul style="list-style-type: none"> ▪ A large number of charities would be outside the regulatory and monitoring regimes imposed on the majority of the charitable sector. ▪ Excepted charities would continue to enjoy the fiscal benefits awarded to the charitable sector but without monitoring to check their compliance with charity law.
2. Adopt the Responsible Body approach	<p>Limited.</p> <ul style="list-style-type: none"> ▪ In theory it would meet the purposes of registration with the Commission but without the added burden of registration and regulation by them. ▪ Responsible Bodies would provide a more flexible approach to the support and regulation of the specific charities they are concerned with in that their approach could be tailored to meet issues specific to them. 	<ul style="list-style-type: none"> ▪ Responsible Body approach would not be acceptable for all of the currently excepted charities. ▪ For the purposes of equity the Responsible Body approach should be extended to all charities. That might result in numerous charities being removed from the central register of charities and would cause confusion. ▪ There is a risk that Responsible Bodies would be reluctant to take action where concerns had been identified with a charity. It would not be the same as independent monitoring. ▪ The Commission would be

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		required to monitor the Responsible Bodies to ensure consistency in approach.
<p>3. All excepted charities register with the Commission subject to a higher initial registration threshold of £100,000 per annum.</p>	<ul style="list-style-type: none"> ▪ Ensures consistency of support and regulation across the excepted charities. ▪ Ensures those in receipt of fiscal benefits are monitored for their compliance with charity law. ▪ Increased public confidence in all charities. ▪ Provides a fair and equitable approach to registration. 	<ul style="list-style-type: none"> ▪ One-off cost to the Commission in terms of registration of between £350,000 and £650,000 per annum. ▪ Continuing annual costs to the Commission of between £137,962 and £256,214 per annum. ▪ Increased costs for the charities of preparing annual returns and submitting other documentation to the Commission (details section 7). Costs of completing the annual return £31.75 in the first year and £23.80 in subsequent years.

ANNEX A:***Number of Excepted Charities affected by the new measures***

Organisation	No required to register at £100k threshold
Armed Forces	1,000 - 2,000
Baptist Union of Great Britain	200 - 300 (rough estimate by the Commission July 2003)
British and Foreign Unitarian Association	None
Church in Wales	55
Church of England	1,800 - 2,000
Fellowship of Independent Evangelical	Less than 75 (estimated)
Grace Baptist Churches	5
Guide Association	No information received
Methodist Church	650
Presbyterian Church of Wales	4/5
Religious Society of Friends	Limited number required to register
Roman Catholic	No information received
Scout Association	Unable to estimate (no central figures)
United Reformed Church	Unable to estimate (no central figures)
University of Buckingham	1

That equates to approximately 3,790 to 5,091 charities being required to register with the Commission.

The provisions in the draft Charities Bill in relation to excepted charities would make no difference to the position of excepted charitable trusts for the advancement of religion conditional on the upkeep of graves. In practice the current exception only applies to those with permanent endowment and an income below the current income threshold of £1,000. The changes to the general registration threshold would mean those charities would continue to be excepted from the requirement to register with the Commission.

The School Standards and Framework Act 1998 excepts any foundation established otherwise than under that Act, which has no property other than the premises of any school or schools falling within subsection (1)(a) of the Act, (and is not an exempt charity), from the requirement to register with the Commission. Charities excepted from the requirement to register under this section will not be affected by the changes to the exceptions regime in the draft Charities Bill, as the general income registration threshold for charities would have applied to them in any event.

However, it is not clear whether there are any charities remaining which consider themselves to be excepted from the requirement to register with the

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Commission by virtue of the Charities (Exception of Voluntary Schools from Registration) Regulations 1960. Those regulations excepted all voluntary schools, being charities and having no permanent endowment other than the premises of, or connected with, the school and it applied to schools within the meaning of Education Acts between 1944 to 1959. It is highly unlikely that there are any schools within this category.

For the purposes of the RIA we have used a round figure of 5,000 charities. It would seem reasonable to use a figure near the maximum given that we do not have figures for a number of the currently excepted charities.

ANNEX B:***Current Requirements of Registered and Excepted Charities***

Aspect of Regulation	Registered Charities	Excepted Charities
Required to register. Enforced by CC.	Yes – unless income is below £1,000	No (although they can register voluntarily if CC agrees).
Registered charity status must appear on charity documents (criminal offence for non-compliance). Enforced by CC/public vigilance and complaint to the Police.	Yes – but only if income above £10,000.	No – unless voluntarily registered and income above £10,000.
CC can order a change of charity's name if the name is too similar to that of another charity.	Yes	No – unless voluntarily registered
CC can investigate and apply statutory remedies if resources at risk or misconduct identified.	Yes	Yes
Trustees have a duty to apply to CC for a scheme if a charity's purposes become inoperable.	Yes	Yes
CC consent needed if charity wants to dispose of land for less than best price.	Yes, subject to section 36(9)	Yes, subject to section 36(9)
Trustees, staff etc entitled to seek advice or information from CC on any matter affecting their charity.	Yes	Yes
Trustees entitled to seek formal written advice from CC – trustees protected from liability if they follow that advice.	Yes	Yes
Required to prepare accounts: <ul style="list-style-type: none"> • receipts and payments accounts if income under £100,000 • accruals accounts in prescribed form following SORP if income over £100,000 Enforced by CC.	Yes, (charitable companies always have to prepare accruals accounts conforming with the requirements of company law)	Yes, (charitable companies always have to prepare accruals accounts conforming with the requirements of company law)
Required to prepare an annual report – Enforced by CC.	Yes	No (unless voluntarily registered, or required by CC to prepare a report).
Required to make annual return in form prescribed by the CC, consisting of: <ol style="list-style-type: none"> 1. information to update register entry 2. financial and other information to allow CC to monitor year's activities. (Criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.	Yes – 1 required regardless of size and 2 required only if income or expenditure over £10,000.	No (unless voluntarily registered).
Required to have accounts: <ul style="list-style-type: none"> • examined by an independent examiner (i.e. a competent lay person) if income under £250,000, although the charity could opt for an audit and indeed its governing document might require one; and • professionally audited if income over £250,000. Enforced by CC.	Yes (unless income or expenditure £10,000 or less – no examination required). The rules for charitable companies are different.	Yes (unless income or expenditure £10,000 or less – no examination required). The rules for charitable companies are different.
Required to submit accounts annually to CC within 10mths of	Yes	No (unless

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year end (criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.		registered voluntarily or specifically asked to do so by CC).
Required to provide latest accounts to member of public on request (criminal offence for persistent and unreasonable non-compliance). Enforced by CC/complaint to the Police.	Yes	Yes
Trustees subject to automatic disqualification from office on specified statutory grounds – e.g. bankruptcy' conviction for an offence of dishonesty etc. (Criminal offence to act as a trustee while being a disqualified bankrupt). Enforced by CC/complaint to the Police.	Yes	Yes
Simplified system allowing trustees to change purposes of charity, or wind up charity and transfer assets to another charity. Overseen by CC.	Yes – but only for charities which are not companies and which have an annual income of £5,000 or less	Yes – but only for charities which are not companies and which have an annual income of £5,000 or less
Trustees of an unincorporated charity can turn themselves into a corporate body of trustees with their own legal personality (but without altering the personality of the charity). Overseen by CC.	Yes	Yes
CC consent needed before trustees can start charity legal proceedings.	Yes	Yes
Criminal offence knowingly to give the CC false information, to alter or destroy documents etc. Enforced by CC/complaint to the Police.	Yes – applies to anyone in or out of the charity.	Yes – applies to anyone in or out of the charity.
Contact in specified form required between charity and any professional fundraiser or commercial participator working for it. ⁶ Enforced by aggrieved charity through the civil courts.	Yes	Yes
Charity has power to take out injunction to stop objectionable fundraising in its name ¹ .	Yes	Yes
Professional fundraisers asking for money for a charity must state that they are being paid and explain how payment calculated (criminal offence for non-compliance) ¹ . Enforced by complaint to the Police.	Yes	Yes
Licences or exemption orders required before a charity can make a public collection ⁷ . Enforced by local authorities / Police.	Yes	Yes
CC has power to investigate any charity established in Scotland which is controlled wholly mainly from England and Wales – reciprocal arrangements exist in Scottish charity law.	Yes	Yes

⁶ These requirements/powers apply to benevolent and philanthropic organisations as they apply to charities.

⁷ This is a requirement under Part III of the Charities Act 1992 which has never been brought into force. Existing similar legislation on street/house to house collections continues to apply.

ANNEX C:***Criteria for an effective Responsible Body***

- (A) Active monitoring, comparable with the Charity Commission's, to identify areas in which help and guidance might be needed.
- (B) Effective monitoring to prevent problems or to sort them out.
- (C) Clear minimum standards, which would support the Charity Commission's guidance on the hallmarks of a well-run charity.
- (D) Provision of an appropriate degree of public accountability. The detail would depend on the degree of public interest in the charities covered by the Responsible Body but possibilities include:
 - i). some form of contact list readily available to the public, such as a Yearbook or internet site, listing all the charities covered by the Responsible Body; or
 - ii). providing certain details that would be accessible via the Charity Commission. That might range from details of specific charities to simply a means of directing queries to the Responsible Body.
- (E) The Responsible Body should be willing to co-operate with the Commission. That would, for example, cover agreement to circulate Charity Commission guidance or advice to charities.

ANNEX D:

Commission Costs in RIA on the proposal to register excepted charities subject to an initial registration threshold of £100,000 pa.

To begin with some notes on context and underlying assumptions.

Numbers - a round figure of 5,000 excepted charities was used. This seemed a reasonable figure leaving aside the uncertainties of numbers outlined at Annex A.

Ranges - having calculated a figure it was used as the mid point of a range, plus/minus 30% to allow for the many variables and uncertainties.

Costs - the basic unit costs and number of actions upon which the figures are based are taken from the Commission targets for 2003/4.

There are two types of costs. The estimated costs of registration would be a one-off cost (possibly spread over several years). The other costs would occur annually.

Option 1 - being no change – hasn't been costed.

Option 2 - due to the high level of uncertainty around the number of charities that might wish to adopt the Responsible Body structure and the level of work required in order to change structures it would be impossible to cost this option with any degree of accuracy. The authors of the 2000 Review believed that the Responsible Body approach would operate for those groups of charities that already had an umbrella body taking on a support and regulation role only. Other excepted charities would be required to register.

Option 3 - currently excepted charities register with the Charity Commission subject to an initial threshold of £100,000 income per annum.

Option 3 has been looked at from two angles:

Simple Costs. It has been assumed that, proportionately, currently excepted charities that have to register will produce the same amount of work as other charities and worked out how much this would cost the Commission.

Adjusting the Commission's Proportion and Risk Thresholds ("Adjusted Costs")

In some areas there is also the option of reducing additional costs by adjusting the Commission's approach to regulatory and support work (very broadly speaking, spread the Commission's resources more thinly).

The registration costs have not been adjusted here - if 5,000 charities become registrable for the first time the Charity Commission is obliged to register them.

In other areas there is more flexibility. The Commission take a proportionate, risk based approach to their regulatory and advisory work, concentrating resources on areas of greater risk.

Risk assessments could be adjusted to contain elements of the additional work within current resources. For example, the Commission raises the criteria for opening a full investigation and/or for keeping investigations open.

The Commission could do this to varying degrees. For illustrative purposes the effect of reducing the impact on areas of flexibility by 50% has been shown.

Having noted that this approach could reduce additional costs to the Commission, it would also increase the risks of charitable assets being lost/misapplied, charities getting into difficulties and so on. More generally these increased risks for individual charities would also increase the risk of public confidence being undermined.

It should also be noted that, while the Commission is generally able to take operational decisions along these lines, it would be dependent on acceptance by bodies responsible for the external scrutiny of the Commission. For example, if the NAO criticised the Commission for the increased risks inherent in this approach, it could not be sustained.

Benefits/Balance

Two further points:

The costs of registering currently excepted charities may well be less than the longer term savings that result from raising the general registration threshold from £1,000 to £5,000.

The changes are not about regulation for its own sake. Charities benefit in a number of ways from being fully within the Commission's jurisdiction (registered or not). The Commission's investigative and protective powers can put charities back on a proper footing and ensure that charitable assets are protected and properly applied. Access to the Commission's advisory powers and guidance will benefit charities in a variety of ways.

Calculations

Registration

A round figure of £100 pounds per registration has been used. This is based on the Commission's target figure for staff cost per registration, adjusted to reflect the assumption that there will be little doubt about the charitable status of most of the currently excepted charities, so reducing the number of rejected/not proceeded with applications arising from the proposals.

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Cost to Commission

Option 3: 5,000 charities would be required to register. Therefore, 5,000 x £100 = £500,000.

This is the same for both Simple Costs and Adjusted Costs.

Annual Costs

Assumptions:

Costs of annual return process and mailing costs of adding to the register are taken to be covered by the +30% element of activities that arise from scrutiny (evaluations and so on).

For adjusted costs it has been assumed that the exercise of legal authority will remain the same but reduced other figures by 50%.

Simple Costs

Costs in the following areas of Option 3:

Exercise of Legal Authority and giving of guidance - £185,556

Evaluations and Investigations - £55,056

Monitoring - £21,611

Referrals to Legal - £32,222

Referrals to Financial Regulation - £25,222

Total - £319,667

Adjusted Costs

Costs in the following areas of Option 3:

Exercise of Legal Authority and giving of guidance - £130,000

Evaluations and Investigations - £27,533

Monitoring - £10,833

Referrals to Legal - £16,111

Referrals to Financial Regulation - £12,611

Total - £197,088

Conclusion

The above would give us the following costs for Option 3.

A. Simple Costs

One-Off Registration Costs: A figure of £500,000 leading to a range of £350,000 - £650,000 (+/- 30%).

Continuing Annual Costs: - A figure of £319,667 leading to a range of £223,767 - £415,567 (+/- 30%).

B. Adjusted Costs

One-Off Registration Costs: A figure of £500,000 leading to a range of £350,000 - £650,000 (+/- 30%).

Continuing Annual Costs: £197,088 leading to a range of £137,962 - £256,214 (+/- 30%).