
Exempt Charities

Contents	Page
What is this guidance about?	2
Meaning of words and expressions used	2
What is an exempt charity?	3
Why are some charities exempt?	4
Are exempt charities subject to other rules or statutory provisions?	4
Trustees' duties and responsibilities	5
How does the 1993 Act affect exempt charities?	5
Registration	5
Change of name	6
Inquiries	6
Schemes	6
Promoting a Bill	6
Protection of charities	7
Dormant bank accounts	7
Charity proceedings	7
Dispositions and mortgaging of land	7
Accounts, auditing and Annual Reports	7
Disqualification of trustees	8
How can we help exempt charities?	9
Confirmation of charitable status	9
Applying for a Scheme	9
Official Custodian for Charities	10
Common investment and common deposit funds	10
Giving trustees specific authority to do certain things	10

Ex gratia payments	10
Formal advice to trustees	11
Certificates of incorporation	12
Financial benefits	12
Do the statutory controls regulating fundraising affect exempt charities?	12
Contacting us	13
Schedule 2 to the Charities Act 1993	14

What is this guidance about?

1. This guidance explains how the Charities Act 1993 affects exempt charities and how we can help them.

Meaning of words and expressions used

2. In this guidance:

The 1993 Act means the Charities Act 1993, as amended by the Charities Act 2006.

The 2006 Act means the Charities Act 2006. Although many of the provisions in this Act are in force, those relating to exempt charities are not expected to take effect before 2009. You can find further information about this Act on our website.

Disposition means any sale, lease or exchange of land. This includes the grant of a right of way or other rights and all other transactions in which trustees part with, or grant an interest in, their land except for the release of a rentcharge and any disposal to secure a mortgage.

Governing document means any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commission, or other formal document.

Land means land in England or Wales with or without buildings and includes any estate or interest in land, such as a lease or a right of way.

Permanent endowment means property (land, buildings, investments or cash) which may not be spent by the trustees as if it were income.

Trustees means **charity trustees**. Charity trustees are the people who are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors, or they may be referred to by some other title.

References to **sections** are to sections of the Charities Act 1993 unless otherwise stated.

Must or **need to** are used to refer to actions that the trustees, or their agents or employees, have to take by law.

Where we use terms such as the trustees **should** or we **suggest, recommend** or **advise** we are referring to actions which the trustees, their agents or employees could take, and which we consider to be good practice, but which are not legal requirements.

What is an exempt charity?

3. For the purposes of the 1993 Act an exempt charity is:

- any institution established for charitable purposes which is included in Schedule 2 to the 1993 Act; or
- a common investment fund or a common deposit fund established by a Scheme of the Commission which permits only exempt charities to participate (see paragraph 26).

Why are some charities exempt?

Are exempt charities subject to other rules or statutory provisions?

Types of exempt charity, with corresponding statutory provisions

4. Schedule 2 of the 1993 Act is set out in full in the Annex to this guidance (pages 14-17). If the trustees are in any doubt as to whether their charity falls within paragraph (w) of that Schedule, they should seek our advice.

5. Certain charities are exempt from our supervision because they are considered to be adequately supervised by, or accountable to, some other body or authority. Although not subject to our jurisdiction, an exempt charity is subject to:

- the legal rules generally applicable to charities; and
- the provisions of the 1993 Act (unless specifically excluded).

6. Yes. There are some additional statutory provisions to which certain types of exempt charity are subject. The following table gives some examples.

Type of exempt charity	Statutory provisions
Companies	Companies Acts and the legal rules relating to companies
Higher education corporations	s.125A of the Education Reform Act 1988, as inserted by s.41 of The Teaching and Higher Education Act 1998
Registered Industrial and Provident Societies	The Industrial and Provident Societies Acts
Registered Friendly Societies	Financial Services and Markets Act 2000 and the Mutual Societies Order 2001

Trustees' duties and responsibilities

7. The trustees of an exempt charity have duties and responsibilities which are no less demanding than those of trustees of other charities. For example, the trustees of an exempt charity:

- must act reasonably and prudently in all matters relating to the charity;
- must always act in the best interests of the charity;
- must apply the income and property of the charity only for the purposes set out in the governing document;
- must protect all the property of the charity;
- must invest the funds of the charity only in accordance with their powers of investment (as granted by the Trustee Act 2000, the charity's governing document, or a combination of both);
- must regularly review the effectiveness of the charity.

8. More information on this subject is contained in our guidance **The Essential Trustee: What you need to know (CC3)**.

How does the 1993 Act affect exempt charities?

9. Exempt charities do not have to comply with many of the provisions of the 1993 Act, and we cannot exercise our supervisory powers under that Act in respect of exempt charities. The legal position of exempt charities in relation to the 1993 Act is set out in paragraphs 10-23.

Registration

10. An exempt charity is not required to be registered with us under section 3 and is not permitted to be registered on a voluntary basis.

11. The voluntary registration of an exempt charity before 1 September 1992 ceased to have any effect from that date. It follows that an exempt charity may not describe itself as a registered charity and may not use a registered number (even if it had one previously).

Change of name

12. We cannot require an exempt charity to change its name under section 6.

Inquiries

13. We cannot institute an inquiry into an exempt charity under section 8 nor call for documents relating only to an exempt charity under section 9.

Schemes

14. We may establish a Scheme altering the trusts of an exempt charity on the application of the trustees (see paragraph 26). However, we cannot establish a Scheme under section 16(6) where the trustees of an exempt charity have, in our view, unreasonably refused to apply for one. The absence of such a power of compulsion does not exempt the trustees from their general duty of ensuring that the trusts of their charity are sufficient to enable them to administer it effectively.

Promoting a Bill

15. An exempt charity is not required to obtain the consent of the Court or the Commission under section 17(7) before incurring expenditure in preparing or promoting a Bill in Parliament.

Protection of charities

16. We cannot exercise our powers under sections 18 and 18A to act for the protection of charities. For example, we cannot make an Order of our own motion to suspend or remove a trustee of an exempt charity.

Dormant bank accounts

17. A dormant bank account is a bank or building society account held on behalf of a charity which can no longer be traced or whose trustees can no longer be traced. We cannot give a direction under section 28 to transfer a dormant bank account of an exempt charity to another charity or charities.

Charity proceedings

18. Our authority is not needed under section 33 before charity proceedings in respect of an exempt charity are commenced in the courts.

Dispositions and mortgaging of land

19. The restrictions on dispositions and mortgaging of charity land, contained in sections 36 and 38 respectively, do not apply to exempt charities. However, an exempt charity must include in the documentation relating to a disposition or mortgage certain statements as required by sections 37 and 39 respectively. The trustees of an exempt charity should seek legal advice on these matters. Further information on this subject can be found in our guidance **Disposing of Charity Land (CC28)**.

20. The provision of sections 41 to 45 concerning the keeping of accounting records, the preparation of annual statements of accounts, the annual audit or examination of accounts and the preparation of an Annual Report, do not apply to an exempt charity.

21. However, under section 46 an exempt charity is required:

- to keep proper books of account;
- to prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than 15 months and a balance sheet relating to the end of that period (unless required by or under the authority of any other Act to prepare periodical statements of account); and
- to preserve the books and statements for at least 6 years unless the charity ceases to exist and the Commission's consent is given in writing to their being destroyed or otherwise disposed of.

22. Under section 47(2), the trustees of an exempt charity must also comply within 2 months with a written request from any member of the public for a copy of the charity's most recent accounts. They may charge a reasonable fee in respect of the costs of complying with the request.

Disqualification of trustees

23. The provisions of section 72 relating to the disqualification of trustees apply to all charities, including an exempt charity. Section 72(4) gives us the power to grant a waiver from such a disqualification. However, we cannot make an Order under section 73(4)(a) to direct a trustee of an exempt charity who has acted while disqualified under section 72 to repay any sums received from the charity during the period of disqualification.

How can we help exempt charities?

24. We can help exempt charities in a number of ways. We can provide information and advice, and can exercise our powers to make Schemes and Orders upon the application of the trustees. Some examples are given in paragraphs 25 to 35.

Confirmation of charitable status

25. Occasionally an exempt charity will need to produce evidence that it is a 'recognised charity'. This usually arises when the charity is seeking to take advantage of the financial benefits enjoyed by registered charities (see paragraph 35). There is no formal process for certifying its status, unlike a registered charity where we can quote its registered number. We may be prepared to confirm by letter that, on the date of the letter, the institution would have been registered as a charity had it not been exempt. If trustees feel that they need such confirmation, they should apply to us setting out the reasons why the confirmation is required and enclosing a copy of the governing document(s). Applicants may be asked to provide further information.

Applying for a Scheme

26. The trustees of an exempt charity may apply to us for an Order under section 26 or a Scheme under section 16 of the 1993 Act. The Order or Scheme may amend, modify or (in the case of a Scheme) replace the charity's governing document where there is no other provision for the changes to be made (eg by statutory instrument or by the trustees themselves). Our guidance **Changing your Charity's Governing Document (CC36)** gives further information.

Giving trustees specific authority to do certain things

Official Custodian for Charities

27. Under section 16, we may make an Order to vest land belonging to an exempt charity in the Official Custodian for Charities. The advantages of this course of action are described in our guidance **The Official Custodian for Charities' Land Holding Service (CC13)**.

Common investment and common deposit funds

28. The trustees of two or more exempt charities may apply to us for a Scheme to establish a common investment fund (CIF) or a common deposit fund (CDF) under section 24 or section 25 of the 1993 Act. CIFs and CDFs are investment vehicles in which only charities may participate. Each CIF and CDF is itself a charity, but if the Scheme establishing it permits only exempt charities to participate, then it too is an exempt charity and cannot be registered.

29. The trustees of an exempt charity may wish to do something which would be of benefit to their charity, but which they do not have the power to do under the terms of the governing document. If this is not specifically precluded by an Act of Parliament or by the governing document, we may be able to authorise the trustees to do what they want by an Order made under section 26 of the 1993 Act.

Ex gratia payments

30. An ex gratia payment is a payment which the trustees feel they have a moral obligation to make, but which they:

- are not legally obliged to make;

- are not authorised by the charity's governing document to make; or
- cannot justify as being in the interests of the charity.

31. Trustees of an exempt charity who wish to make a voluntary payment in those circumstances must apply to us for permission to do so. The same procedure applies where trustees are considering the waiver of rights to receive property to which the charity is otherwise legally entitled. Further information is available in our guidance **Ex Gratia Payments by Charities (CC7)**.

Formal advice to trustees

32. Under section 29 of the 1993 Act, the trustees of an exempt charity can write to us for formal advice where there is doubt about whether they would, by taking a particular course of action, be acting properly as trustees.

33. The trustees, in acting on that advice, are deemed to have acted in accordance with their trusts unless they know or have reasonable cause to suspect that:

- the advice was given in ignorance of material facts;
- material facts have changed since the advice was given;
- a decision of the Courts has been obtained on the matter; or
- proceedings to obtain a decision of the Courts are pending.

Certificates of incorporation

34. Where the trustees of an exempt charity apply to us under section 50 of the 1993 Act for a certificate of incorporation of the trustees as a body corporate, we will grant such a certificate unless we consider that incorporation would not be in the interests of the charity. For further details see our guidance **Incorporation of Charity Trustees (CC43)**.

Financial benefits

35. Exempt charities are entitled to exactly the same financial benefits as registered charities. They are entitled to claim:

- relief from income tax, corporation tax and capital gains tax;
- exemption from inheritance tax; and
- relief from business or non-domestic rates.

36. Further information about tax benefits can be obtained from HM Revenue and Customs. Their address is:

HMRC Charities
St John's House
Merton Road
Stanley Precinct
Bootle
Merseyside L69 4EJ

Tel: 0845 3020 203

Do the statutory controls regulating fundraising affect exempt charities?

37. Yes. The fundraising controls affect **all** charities, including exempt charities. Further details of the controls themselves and general advice on fundraising are given in our guidance **Charities and Fundraising (CC20)**.

Contacting us

38. If the trustees of an exempt charity want advice from us on any matter affecting their charity, they can write to us or speak to Charity Commission Direct staff on 0845 300 0218.

39. When writing, the trustees should enclose with their letter a full copy of (each of) the governing document(s) of the charity (unless they know that we already have a copy) and quote any reference number which may have been used in previous correspondence.

40. We will let the trustees know if any further information is needed (eg the charity's accounts) before their letter can be answered.

We aim to make our publications as useful and easy to read as possible. If you have any suggestions about how this guidance may be improved, please write to the Print and Publishing Manager at our Taunton office.

© Crown copyright 2008. This publication (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified. This publication can also be accessed at the department's website at: www.charitycommission.gov.uk

Annex

Schedule 2 to the Charities Act 1993

The following institutions, so far as they are charities, are exempt charities within the meaning of this Act, that is to say -

- (a) any institution which, if the Charities Act 1960 had not been passed, would be exempted from the powers and jurisdiction, under the Charitable Trusts Acts 1853 to 1939, of the Commission or Minister of Education (apart from any power of the Commission or Minister to apply those Acts in whole or in part to charities otherwise exempt) by the terms of any enactment not contained in those Acts other than section 9 of the Places of Worship Registration Act 1855;¹
- (b) the universities of Oxford, Cambridge, London, Durham and Newcastle, the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle, Queen Mary and Westfield College in the University of London and the colleges of Winchester and Eton;
- (c) any university, university college, or institution connected with a university or university college, which Her Majesty declares by Order in Council to be an exempt charity for the purposes of this Act;²
- (da) the Qualifications and Curriculum Authority;³
- (f) the Qualifications, Curriculum and Assessment Authority for Wales;⁴

-
- (i) a successor company to a higher education corporation (within the meaning of section 129(5) of the Education Reform Act 1988) at a time when an institution conducted by the company is for the time being designated under that section;
 - (k) the Board of Trustees of the Victoria and Albert Museum;
 - (l) the Board of Trustees of the Science Museum;
 - (m) the Board of Trustees of the Armouries;
 - (n) the Board of Trustees of the Royal Botanic Gardens, Kew;
 - (o) the Board of Trustees of the National Museums and Galleries on Merseyside;
 - (p) the trustees of the British Museum and the trustees of the Natural History Museum;
 - (q) the Board of Trustees of the National Gallery;
 - (r) the Board of Trustees of the Tate Gallery;
 - (s) the Board of Trustees of the National Portrait Gallery;
 - (t) the Board of Trustees of the Wallace Collection;
 - (u) the Trustees of the Imperial War Museum;
 - (v) the Trustees of the National Maritime Museum;
 - (w) any institution which is administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of or in connection with, the last-mentioned institution;⁵

- (x) the Church Commission and any institution which is administered by them;
- (y) any registered society within the meaning of the Industrial and Provident Societies Act 1965 and any registered society or branch within the meaning of the Friendly Societies Act 1974;
- (z) the Board of Governors of the Museum of London;
- (za) the British Library Board;
- (zb) the Community Fund.⁶

¹ In practice paragraph (a) includes:

- the universities of Birmingham, Bristol, Exeter, Hull, Leeds, Leicester, Liverpool, Manchester, Nottingham, Reading, Sheffield and Southampton;
- the Imperial War Museum;
- the National Maritime Museum;
- the Representative Body of the Welsh Church and any property vested in or administered by it; and
- property within the Church Funds Investment Measure 1958.

² The remaining universities not covered by (a) and:

- institutions connected with the Universities of London, Manchester and Wales; and
- some medical and postgraduate medical schools, colleges and institutions.

³ Inserted by Schedule 19, paragraph 175 of the Education Act 1993, as amended by The Education Act 1997.

⁴ Inserted by Schedule 15, paragraph 5 of the Education Act 1993, as amended by the Education Act 1997.

⁵ If the trustees are in any doubt as to whether their charity falls within paragraph (w), they should seek the advice of the Commission.

⁶ Inserted by the National Lottery etc Act 1993.

NB The original paragraph (d) (grant maintained schools) was repealed by the School Standards and Framework Act 1998.

The original paragraphs (e) (the National Curriculum Council) and (g) (the School Examinations and Assessment Councils) were repealed by the Education Act 1996.

The original paragraphs (h) (Higher Education Corporations) and (j) (Further Education Corporations) were repealed by the Teaching and Higher Education Act 1998.

Where reference is made to the Trustees; the Board of Trustees; or the Board of Governors the exemption extends to every aspect of the institutions including the land and buildings of the appropriate institution.

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC3 The Essential Trustee: What you need to know
- CC28 Disposing of Charity Land
- CC33 Acquiring Land
- CC36 Changing your Charity's Governing Document

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch y Comisiwn Elusennau Uniongyrchol ar 0845 300 0218.

For a complete list of all our publications, audio-cassettes and CDs, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during opening hours - Monday to Friday 08:00 - 20:00 and 09:00 - 13:00 Saturdays by telephoning us on **0845 300 0218**; or
- write to **Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG**.

Notes

Notes