



Report on The Charities Act 2006

Including:

Accounting Procedures

Cross-Border Charities

Financial Solutions

Ethical Investment

The logo for Whittingham Riddell consists of the letters 'WR' in a large, blue, cursive script font. Below this, the name 'Whittingham Riddell' is written in a black, serif font. At the bottom, the phrase 'chartered accountants' is written in a smaller, italicized, black serif font.

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Whittingham Riddell employs specialist staff and a dedicated team who service the charities and not-for-profit sectors. Our clients include, national charities and small locally based charities; clubs and membership organisations; and trade and sporting bodies. These clients deal with a range of services, including:

- Community
- Education
- Social
- Welfare
- Conservation & Environmental
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- Grant making
- Land based
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- Religious

Our extensive portfolio has enabled us to develop an in-depth knowledge of the issues facing these specialist sectors and we are well equipped to advise on the changing and increasingly complex reporting and accounting regulation. Sensitive to the needs of not-for-profit organisations, understanding their unique cultures and aspirations which set them aside from commercial organisations, we provide on-going support in an efficient and cost effective manner to suit the specific needs of our clients.

Our charities and not-for-profit team offers a proactive service which extends beyond the specifics of any engagement. We issue newsletters and guidance notes, deliver one-to-one bespoke training courses and host an annual charities update seminar free to attendees.

The range of services that we offer includes:

- Audit and Accounting
- Management Accounting and Bookkeeping
- Risk Management and Governance
- Tax and VAT
- Payroll
- Financial Planning
- Business and Strategic Planning

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The last few years have seen a large overhaul in the accounting for and regulation of charities in England and Wales.

The aim of this report is to set out the broad framework of The Charities Act 2006 and provide an overview of recent developments in accounting regulations and cross-border charities issues.

UK200 Charities Group of quality assured accountants, solicitors and business advisers, want to help Trustees' discharge their responsibilities properly and for charities to understand the complexities of the English and Welsh legislation. We work closely with the Charity Commission and the Office of the Scottish Charity Regulator (OSCR) on the application of the Statement of Recommended Practice for Accounting and Reporting for Charities (the 2005 SORP) working through to the annual report and accounts.

Services Provided by UK200 Charities Group members

UK200Group is a global association of over 120 UK quality assured Accountant and Lawyer firms and 44 International Associate firms. Our Charities Group of specialist proactive accountants and lawyers possess expert knowledge of the charity sector and help Trustees comply with the changing charity regulations. UK200 Charities Group provide training and professional networking for members. Charities Group products include client newsletters and a comprehensive charity risk matrix.

Business planning services

- Business planning
- Strategic reviews
- Systems reviews

Compliance services

- Audit
- Accountancy
- Independent examination
- Internal audit
- Registration

Cross-border Charities

- Advisory services
- Dual registration

Legal services

- Obtaining charitable status and incorporation

- Restructuring
- Director & Trustee duties and responsibilities
- Commercial agreements concerning charities

Sector specialisms

- Agriculture
- Arts and leisure
- Ecclesiastical charities
- Education
- Grant making charities
- Healthcare
- Housing associations
- Social welfare
- Sporting hobbies

Sourcing finance

- Budgets and cash flow projections

- Grant applications
- Lottery applications
- Raising finance

Support services

- Corporate governance issues
- Financial control reviews
- IT support
- Management accounting
- Payroll services
- Recruitment of personnel

Taxation advice

- Gift aid
- Payroll giving
- Property transactions
- Tax planning for development
- The implications of trading
- VAT planning

Charities need access to a bank providing flexible solutions that not only meet their needs but provides them with ethical financial solutions. Clydesdale Bank plc, a UK200Group Prime Partner, summarises their products which have been specifically designed for charities. Another UK200 Group Prime Partner, Gerrard, looks at the impact of the introduction of The Trustee Act 2000 on charities investments.

This UK200 Charities Group report is not intended as a definitive guide to all of the issues arising from these new Charity Laws as some issues, such as the public benefit test and its application in practice, merit separate detailed consideration in their own right.

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A Long and Winding Road...

Those with good memories may recall that the road to the Charities Act 2006 began over five years ago, in July 2001, when Tony Blair called upon the Strategy Unit to review the law and regulatory structures governing the voluntary sector, and report on how these structures could be modernised.

The Strategy Unit duly produced its report "Private Action, Public Benefit" for consultation in September 2002 in which it made 61 recommendations, the majority of which could only be implemented by legislative change. Having considered both the report and responses to the consultation on it the government published its response, "A Modern Legal Framework for the Voluntary Sector", in July 2003. This culminated in a draft Charities Bill being published in May 2004 for consultation and pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Joint Committee's report was published on 30 September 2004.

The Journey Through Parliament

The Charities Bill was introduced into the House of Lords on 20 December 2004 and was published the following day, together with the government's response to the Joint Committee report. The Bill completed its Second Reading and Grand Committee in the House of Lords but fell when the general election was called and Parliament dissolved on 11 April 2005. It was re-introduced in the House of Lords on 18 May 2005, and completed its Third Reading in the House of Lords on 8 November 2005. The Bill had its Second Reading in the House of Commons on 25 October 2006 and finally completed its passage through Parliament in the House of Lords on 7 November 2006. It received Royal Assent the following day. The Act, together with explanatory notes, can be found on the Office of Public Sector Information www.opsi.gov.uk/ACTS/acts2006a.htm.

Timetable for Implementation

The Act substantially amends and modernises the law and practice relating to charities in England and Wales. Only a handful of technical sections were brought into force upon enactment. The Office for the Third Sector has published a provisional timetable for implementing the remaining provisions of the Charities Act 2006 which can be found at www.cabinetoffice.gov.uk/third-sector.

The first Commencement Order is expected to be made in early 2007 with a second Order following later in the year. The sections in this report marked in red are expected to be brought into force by the first Order. Those marked in blue are expected to be brought into force by the second Order.

Some provisions may not be brought into force until 2008 or possibly even 2009. These include the new definition of charity, the public benefit test, the Charity Tribunal, the statutory powers to remunerate trustees, the Charitable Incorporated Organisation, the changes relating to Excepted and Exempt charities and the new licensing regime for public charitable collections.

This report on the Charities Act 2006 summarises the main provisions in the Act and needs to be read bearing in mind that many of the provisions dealt with below are not yet in force. You can subscribe to receive updates about the implementation of the Act at the Cabinet Office email address above.

This report is of a general nature only and no liability will be accepted by the UK200Group, Wilsons or the authors for any action taken or omitted to be taken in reliance on it or any part of it.

Overview

The Act is divided into four parts:

PART 1 (sections 1 – 5) deals with the

definition of charity, charitable purposes and public benefit.

PART 2 (sections 6 – 44) deals with the regulation of charities.

PART 3 (sections 45 – 71) deals with fundraising by and funding of charities and other benevolent or philanthropic organisations.

PART 4 (sections 72 – 80) contains the final provisions, which deal with disclosure of information, consequential amendments, repeals, transitional provisions, expenses, interpretation of terms in the Act, the short title, commencement and extent of the Act.

PART 1: DEFINING CHARITY

Part 1 of the Act introduces the first statutory definitions of "charity" and "charitable purpose" of general application for the purposes of the law of England and Wales.

Meaning of "Charity"

Section 1(1) defines a charity as any body or trust established for charitable purposes only which falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. Therefore any organisation which has a mixture of charitable and non-charitable purposes is excluded from the definition of "charity" as is any organisation outside England and Wales. This reflects the position under existing law and section 1(1) largely follows, but is not identical to, the meaning of charity defined by section 96(1) of the Charities Act 1993, for the purposes of that Act.

Meaning of "Charitable Purpose"

Charitable purpose is defined in section 2 as any purpose falling within one of the 13 "heads" listed in section 2(2) and which is for public benefit.

Statutory Heads

The 13 “heads” of charity listed in section 2(2) are:

1 The prevention or relief of poverty.

The Act confirms that both helping those in financial need and preventing people from falling into poverty are charitable.

2 The advancement of education.

3 The advancement of religion.

Section 2(3)(a) confirms that polytheistic religions and religions that do not involve belief in a god are included in this definition. In the Scottish charity legislation the definition of religion extends to “any philosophical belief”. There was some debate about whether the English legislation should follow suit and extend the “advancement of religion” head to cover both religious and other non-religious ethical belief systems. The definition of “religion” has not been extended to cover organisations promoting non-religious belief systems, but such organisations might still be charitable, for example if they promote moral and spiritual welfare, under the final “catch-all” head.

References in any enactment or document to “charitable purposes” or “institutions with charitable purposes” shall be construed in accordance with section 1, unless the context dictates otherwise.

4 The advancement of health or the saving of lives, which includes the prevention, or relief of sickness, disease or human suffering

(see section 2(3)(b)). The “saving of lives” was not initially included in the draft Bill published for consultation, but was added by the time the Bill was first introduced into Parliament in December 2004.

5 The advancement of citizenship or community development.

This encompasses the promotion of urban and rural regeneration, civic responsibility, volunteering, the voluntary sector and the effectiveness and efficiency of charities (see section 2(3)(c)).

6 The advancement of arts,

culture, heritage or science.

When the Strategy Unit published “Private Action, Public Benefit”, it recommended that this head should encompass arts, culture and heritage. By the time the draft Bill was published “science” had been added but “culture” had been dropped. “Culture” was re-introduced after consultation on the draft Bill.

7 The advancement of amateur sport, i.e. any sport or games which promote health by involving physical or mental skill or exertion

(see section 2(3)(d)). The words underlined were added at the eleventh hour by the House of Commons to significantly widen the definition of “sport”. On the day the Bill was enacted, the House of Lords commented that the definition was so broad that it could encompass sudoku! Although sudoku and by analogy chess and scrabble may fall within the definition of “sport” it

remains to be seen how many such clubs are recognised as charities under this head as they have to overcome the additional hurdle of showing that they are established and work

for the benefit of a sufficient section of the public.

8 The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity.

The references to “religious or racial harmony... equality or diversity” did not appear in the draft Bill but were included by the time the Bill was introduced into Parliament.

9 The advancement of environmental protection or improvement.

10 The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage, including

by the provision of accommodation or care (see section 2(3)(e)).

11 The advancement of animal welfare. This heading was not included in the list originally proposed in the Strategy Unit report, but was included in the draft Bill as a result of the consultation process.

12 The promotion of the efficiency of the armed forces or of the efficiency of the police, fire and rescue services or ambulance services.

Promotion of the efficiency of the armed forces was introduced at the Third Reading of the Bill in the House of Lords. The House of Commons expanded upon this heading to include the police, fire, rescue and ambulance services. Fire and rescue services means those services within the ambit of Part 2 of the Fire and Rescue Services Act 2004 (see section 2(3)(f)).

13 Any other purposes that:

- are not listed but are accepted as charitable under existing charity law, including those within the ambit of the Recreational Charities Act 1958;
- are analogous to, or within the spirit of, any section 2(2) purpose or an existing accepted charitable purpose;
- are analogous to, or within the spirit of, any purpose that may come to be accepted as charitable.

The phrase “within the spirit of” and the reference to the Recreational Charities Act were not included in the draft Bill but had been included by the time the Bill was introduced into Parliament.

Except for those terms specifically referred to in section 2(3)(a) to (f) respectively, all terms currently defined under existing case law will continue to be interpreted in the same way. However, references in any enactment or document to “charitable purposes” or “institutions with charitable purposes” shall be construed in accordance with section 1, unless the context dictates otherwise: see sections 2(6) and (7).

Public Benefit

Under existing law, the first three heads i.e. “the relief of poverty”, “the advancement of education” and “the advancement of religion” benefit from a presumption that they are purposes for the public benefit. In relation to all other purposes there is no such presumption so public benefit must be demonstrated. Section 3(2) abolishes the presumption in favour of the first three heads, creating a level playing field for charities as they will all have to demonstrate that their purposes are for the public benefit.

Unlike its Scottish equivalent, the English Charities Act does not include a statutory definition of “public benefit”. The term is to have the same meaning it currently has under charity law (see section 3(3)). Therefore it will be necessary to look back at existing case law to determine in any given case what “public benefit” is. This has been one of the most contentious issues, which threatened to scupper the Act, with many people lobbying right up until the end for the Act to include a definition of “public benefit”.

Section 7 of the Act introduces a fifth objective for the Charity Commission, namely to promote awareness and understanding of the operation of the public benefit requirement (“the public benefit objective”). In furtherance of this objective the Commission is required to issue guidance about the public benefit requirement, having first consulted on this issue (see section 4). The Charity Commission has published a programme of how it will approach its Public Benefit objective, which will include a consultation prior to issuing revised guidance: see “Indicative Programme: Taking Forward Public Benefit” - www.charity-commission.gov.uk.

Under the timetable given in the programme the Charity Commission will launch a three month consultation on the principles of public benefit, the ways in which charities might demonstrate their public benefit and how this should be assessed. The Commission will then analyse the responses to the consultation and begin discussions with charity sub-sectors on how the principles will be applied. The Commission aims to publish guidance on public benefit in June 2007. In September 2007 the Commission plans to start a pilot programme to assess public benefit and

Unlike its Scottish equivalent, the English Charities Act does not include a statutory definition of “public benefit”, the term is to have the same meaning it currently has under charity law (see section 3(3)). Therefore it will be necessary to look back at existing case law to determine in any given case what “public benefit” is.

in conjunction with this will produce detailed guidance for specific types of charity. By April 2008 the Commission hopes it will be able to publish the results of its pilot programme and conduct a formal assessment which will be the basis upon which it reports back to Parliament.

Recreational and Sports Clubs

Section 5 includes special provisions for recreational and sports clubs. Such clubs will only be charitable if they meet the basic conditions set out in section 5(2A), which allows men only clubs as well as women’s and mixed clubs. Certain miners’ welfare trusts which do not meet the basic conditions and/or cannot show that they fall within one of the other section 2(2) “heads” will lose their charitable status. Furthermore section 5(4) confirms that a registered community amateur sports club cannot also be a charity.

PART 2: REGULATION

Reforming the Charity Commission

The Charity Commission is to become a

statutory corporation with a Chairman and between four and eight other members appointed by the Minister for the Cabinet Office (“the Minister”). The details about the structure, role and accountability of the Charity Commission are set out in Part 2 Chapter 1, schedules 1 and 2.

At least two members of the Commission’s Board must be legally qualified and one member must know about conditions in Wales and be appointed in consultation with the Welsh Assembly. Section 1(4) of schedule 1 sets out the experience that the Board of Commissioners must collectively have. A Commissioner will be appointed for a three year term and can be re-appointed, but cannot hold office for more than ten years in total. The Charity Commission should have a Chief Executive and other staff appointed by it.

The Charity Commission continues to be a non-ministerial Government department, enjoying a significant amount of independence from Ministers and other government departments (see section 6: 1A (4) and (5)).

The Act defines the “regulatory objectives” of the Charity Commission, together with its “general functions” and “general duties”.

Regulatory Objectives

The Charity Commission’s five “regulatory objectives” are:

- The public confidence objective, i.e. to increase public trust and confidence in charities (see section 7: 1B(2)1 and 1B(3)1).
- The public benefit objective, i.e. to promote awareness and understanding of the operation of the public benefit requirement (see section 7: 1B(2)2 and 1B(3)2).
- The compliance objective, i.e. to promote compliance by charity trustees with their legal obligations (see section 7: 1B(2)3 and 1B(3)3).

- The charitable resources objective i.e. to promote the effective use of charitable resources (see [section 7: 1B\(2\)4](#) and [1B\(3\)4](#)).
- The accountability objective i.e. to enhance the accountability of charities to donors, beneficiaries and the general public (see [section 7: 1B\(2\)5](#) and [1B\(3\)5](#)).

The draft Bill only included four regulatory objectives. The public benefit objective was added prior to the Bill being introduced into Parliament.

General Functions

The Charity Commission’s six “general functions” are

- To determine charitable status (see [section 7: 1C\(2\)1](#)).
- To promote the better administration of charities (see [section 7: 1C\(2\)2](#)).
- To investigate misconduct and take remedial or protective action (see [section 7: 1C\(2\)3](#)).
- To determine whether public collection certificates should be issued (see [section 7: 1C\(2\)4](#)).
- To disseminate information to the public (see [section 7: 1C\(2\)5](#)).
- To give information and advice to government (see [section 7: 1C\(2\)6](#)).

There were only five “general functions” in the draft Bill. By the time the Bill came before Parliament the Commission was given the additional task of issuing public collection certificates.

General Duties

The Charity Commission’s six general duties are to perform its functions:

- In accordance with its objectives (see [section 7: 1D\(2\)1](#)).
- In accordance with good corporate governance (see [section 7: 1D\(2\)6](#)).
- So as to encourage charitable giving and voluntary participation in the sector (see [section 7: 1D\(2\)2](#)).

- Efficiently and economically (see [section 7: 1D\(2\)3](#)).
- In accordance with the principles of best regulatory practice (see [section 7: 1D\(2\)4](#)).
- With regards to the desirability of facilitating innovation by or on behalf of charities, where appropriate (see [section 7: 1D\(2\)5](#)).

Originally only three duties were to be imposed upon the Commission. By the time the Bill was introduced into Parliament the duty to encourage charitable giving and volunteering was included. During the passage of the Bill, Parliament added two further duties namely, to act in accordance with principles of best regulatory practice, and with regards to the desirability of facilitating innovation by the sector.

Accountability

There are measures in [schedule 1](#) to ensure greater accountability on the part of the Commission, including a statutory requirement to publish a report on the discharge of its functions, the extent to which all its objectives have been met, the performance of its general duties and the management of its affairs. This report must be laid before Parliament. In addition the Commission must hold an annual

The Act introduces an independent Charity Tribunal, which is intended to provide an affordable means to appeal against all formal decisions, directions or orders of the Charity Commission and/or for a review of certain ‘reviewable matters’.

public meeting to discuss and answer any questions about the report, a measure that it has pre-emptively implemented, having held its first public AGM in September 2005. The Commission must take steps to ensure notice of the public annual meeting is given to every registered charity and bring it to the attention of the public, which it does by publishing details of its AGM and other open Board meetings at www.charity-commission.gov.uk.

Charity Tribunal

At Part 2 Chapter 2, the Act introduces an independent Charity Tribunal, which is intended to provide an affordable means to appeal against all formal decisions, directions or orders of the Charity Commission, and/or for a review of certain “reviewable matters” (see [schedule 4: 1C 3 & 4](#)). The Tribunal will be able to consider afresh the decision, direction or order being appealed and can look at evidence that was not available to the Commission. The powers of the Tribunal range from upholding, quashing, varying or substituting decisions, directions or orders to remitting certain matters to the Commission (see [schedule 4](#)).

In addition the Charity Commission and/or Attorney General may refer to the Tribunal questions regarding the operation of charity law in any respect or its application to a particular state of affairs. However the Charity Commission can only refer questions which arise in connection with the exercise of its functions and then only with the Attorney General’s consent (see [schedule 4: 1D](#)).

The Tribunal will comprise a President, legally qualified members and lay members, all to be appointed by the Lord Chancellor. Panels usually comprising three members

including the President and/or one legally qualified member (see [schedule 3](#)) will carry out the functions of the Tribunal. There is provision to enable the President or one legal member to either sit alone or with just one other member. Section 9 of [schedule 3](#) specifies who has the casting vote, which depends on how the panel is constituted.

The draft Bill specified certain limited decisions, directions and orders that could be appealed. The scope of what

can be appealed has been significantly widened and certain additional actions of the Charity Commission will be open to review (see schedule 4).

The Charity Commission will be the respondent to any appeal or review brought before the Tribunal. The Tribunal will be able to award costs against any party to proceedings who has acted vexatiously, frivolously or unreasonably. In addition the Tribunal can award costs against the Charity Commission if the decision, direction or order being appealed was unreasonable. The call for there to be a “suits fund” to assist charities with the costs of appealing to the Tribunal reached the ears of their Lordships in the House of Lords, but sadly did not make it onto the statute book. Therefore, for most charities, appealing to the Tribunal may be somewhat of a David and Goliath experience.

A party to proceedings before the Tribunal may appeal against its decision to the High Court, but only on a point of law. Where the appellant is the Charity Commission or the Attorney General, the High Court shall consider the question referred to the Tribunal afresh and may take into account fresh evidence.

Registration

Part 2 Chapter 3 of the Act deals with the changes that are to be made to the system of registering charities with the Charity Commission.

Currently all charities with an income of £1,000 or more, permanent endowment and/or use and occupation of land must register unless they are excepted or exempt charities.

The Act increases the compulsory income registration threshold to £5,000 (see [section 10](#)). The requirement for charities with permanent endowment or use or occupation of land to register is abolished.

Excepted Charities

The system of excepting charities from registration is being phased out. Therefore excepted charities will in due course have to register, but for a transitional period only those with an income of more than £100,000 will have to register. Within five years the Minister must prepare a report on how the Act is operating, including its effect on excepted charities and he cannot exercise his powers to change the £100,000 exception threshold unless this report has been laid before Parliament (see section 9: 3A(8) and section 73).

Exempt Charities

Exempt charities with a principal regulator will continue to be exempt from registration. However the principal regulator will be under a duty to ensure that the charity trustees of any exempt charities it regulates comply with charity law. Moreover the Charity Commission will be able to investigate an exempt charity at the request of its principal regulator (see section 12 and schedule 5 section 2). The Charity Commission must consult with the principal regulator before exercising any powers in relation to an exempt charity (see section 14 and schedule 5).

Exempt charities that do not have a principal regulator will be subject to regulation by the Charity Commission. The Minister has the power to exempt or remove from exemption certain institutions or classes of institutions (see sections 11).

Voluntary Registration

Charities below the relevant thresholds will be able to register voluntarily. Any registered charities whose income falls below the new thresholds will remain on the register unless they ask to be removed.

Scottish Registration

English and Welsh charities with significant operations in Scotland need

to register with the Office of the Scottish Charity Regulator, the Scottish equivalent of the Charity Commission.

Mike Procter, UK200 Charities Group member, highlights in Cross-Border Charities on page 19 of this report, the issues which English and Welsh charities with significant operations in Scotland need to be aware of.

Applying Property Cy-près

Part 2 Chapter 4 of the Act includes a range of measures to modernise the rules that determine when and how charities can apply property cy-près, for example where an appeal fails or, conversely, is so successful that it generates surplus monies. When deciding whether to change the purposes for which charity property is to be applied, the Charity Commission will be able to consider not only the spirit of the gift but also, in some cases, the prevailing social and economic circumstances at the time of the proposed change (see section 15).

When determining how the charitable purposes ought to be changed, the Charity Commission (and the Court) will have to consider not only the desirability of choosing new purposes which are close to the original purposes, but also the “spirit of the gift” and the need to ensure that the charity’s purposes remain suitable and effective in light of current social and economic circumstances (see section 18).

Until now, only the Court has had the power to decide whether property is to be treated as belonging to donors who cannot be identified. This power will be extended to the Charity Commission, by virtue of Section 16.

The Act also creates a new system in relation to appeals under which a donor can declare that if the appeal fails, his donation should be returned rather than applied cy-près. There is a prescribed procedure the charity trustees must

follow where such a declaration has been made. However, if a donor does not make a declaration, or having made a declaration cannot be found, the donation can be applied cy-près without any involvement of the Commission or Court (see section 17).

Supervising Charities

The Act bolsters the Charity Commission's regulatory powers. Where the Charity Commission makes an order to remove or suspend a trustee, employee or agent from office or employment, the Commission will also be able to suspend or terminate that individual's membership of the charity (see section 19). This is designed to stop individuals being able to vote or re-appoint themselves back into positions from which they have been removed or suspended.

The Act confers upon the Charity Commission the power to make an order directing the charity, its trustees or employees to take specific action to protect the charity's property, where during the course of a statutory inquiry it finds misconduct or mismanagement in the administration of a charity. The Commission will also be able to make an order directing how particular property of the charity should be applied. Anything done in pursuance of such an order is deemed to be properly done, but does not affect the contractual or other rights of third parties (see section 20: 19A and section 21: 19B).

The Act also gives the Charity Commission the power to enter premises to take possession of documents or information under a warrant, subject to certain safeguards and procedures (see section 26: 31A). The term of imprisonment for the new offence of obstructing a person exercising rights under the warrant has been extended to 51 weeks (see section 26: 31A (11)).

Schemes

Section 22 relaxes the current statutory obligations which require all Charity Commission schemes to be published. The Charity Commission is given greater discretion to determine the extent of publicity required in the case of any given scheme. The purpose of these changes is to speed up the process for getting Schemes and Orders and consequently reduce the attendant costs to charities.

Advising Charities

The Charity Commission's power to give advice and guidance is slightly extended so that advice may be sought and given on any matter relating to the proper administration of the charity as well as a trustee's performance of his duties (see section 24: 29). Only a charity trustee can seek such advice. In the draft Bill it was proposed that employees and officers should be able to seek section 29 advice, but this extension was dropped before the Bill was introduced into Parliament.

A trustee acting in accordance with advice given by the Charity Commission is deemed to have acted properly unless he knows or suspects that the advice was given in ignorance of material facts, or a decision of the Court or Charity Tribunal has been obtained or is pending on the matter in question. The reference to the "Charity Tribunal" was included by the House of Commons, at the Second Reading of the Bill.

The Charity Commission will also have a more general power to give advice and guidance that may be used in relation to an individual charity, certain classes of charity or indeed all charities.

Determining Membership

Section 25: 29A confers upon the Charity Commission a new power to determine who the members of a charity are, in two instances. First, where the charity

applies. Second, in the course of or following a statutory inquiry.

Mortgages of Charity Land

The statutory restrictions on mortgaging charity land are to be significantly relaxed (see section 27: 38 (2), (3), (3A-D) and (4)). Currently, charity trustees have to obtain an Order from the Charity Commission for any mortgage except one to secure repayment of a loan and then only if they have obtained and considered proper written advice. In future, provided they obtain and consider the necessary written advice, charity trustees will be able to mortgage charity land, without a Charity Commission order, to secure repayment of a loan, "grant" or "any other proposed obligation" and they will be able to "tack-on" new loans to a pre-existing all monies charge.

Audit and Examination of Accounts

Charities are currently subject to different levels of scrutiny based upon their legal form and income and expenditure levels in the current and preceding two years. The provisions in Part 2 Chapters 6 and 7 of the Act are aimed at simplifying the current, somewhat complex, rules.

The new accounting and reporting regime that will apply to English and Welsh charities, once Chapters 6, 7 and schedule 6 of the Act are brought into force, are explained further by Andy Malpass UK200 Charities Group member on page 16 of this report.

Charitable Companies

The provisions of Part 2 Chapter 7 of the Act relax the rules which currently require charitable companies to obtain the prior written consent of the Charity Commission to certain changes to their memorandum and articles of association. Moving forward Charity Commission consent will only be

required in respect of “regulated alterations”. Regulated alterations are any alterations to the objects, dissolution provisions or any provisions authorising benefits to directors, members or persons connected to them (see [section 31](#)).

Charitable Incorporated Organisation

Chapter 8, section 34 and schedule 7 introduce a new type of company just for charities – the Charitable Incorporated Organisation (CIO). New charities can be created as CIOs and existing charitable companies limited by guarantee or registered industrial and provident societies can be converted into a CIO. All CIOs will have to register with the Charity Commission, whatever their income. The substantive provisions relating to CIOs are set out in schedule 7, which contains more detail than was initially proposed in the draft Bill, particularly in relation to process for existing charities to convert into a CIO and the Charity Commission’s powers to refuse applications to convert into or amalgamate CIOs. Further technical provisions will be contained in secondary legislation. The exposure draft of the proposed secondary legislation in relation to CIO’s is on the Office for the Third Sector’s website: www.cabinetoffice.gov.uk/third_sector/documents/charities_dummy_reg.pdf.

The Office for the Third Sector is expected to begin consultation in early 2007 on this proposed secondary legislation. The Act gives the Minister the power to make regulations to allow community interest companies to convert into CIOs and thereafter register as charities (see schedule 7: Part 8A 69J).

It is anticipated that the Government will be reviewing the need for other forms of charitable company five years after the introduction of the CIO.

Waiver of Disqualification

Chapter 9, [section 35](#) introduces a new

section 72(4A) into the Charities Act 1993. This new provision requires the Charity Commission to grant an application, by a person who has been disqualified for more than five years from acting as a charity trustee under section 72(1)(d) or (e) i.e. where they have been removed from office on the grounds of mismanagement or misconduct, to waive that disqualification, unless there are special circumstances for not granting such a waiver.

Trustee Remuneration

Part 2 Chapter 9 of the Act includes a new statutory power that will allow an individual trustee to be paid remuneration for goods and services provided to the charity, subject to certain safeguards to prevent the power being misused (see section 36: 73A)). Remuneration includes cash and benefits in kind, and the new statutory power applies to payments to a person “connected to a trustee”, the definition of which extends to civil partners and business partners (see section 36: 73B). The reference to “civil partners” was not included in the draft Bill but had wended its way in by the time the Bill was introduced into Parliament. The reference to “business partners” was introduced by Parliament, during the passage of the Bill.

The safeguards are that:

- The trustees must consult any Charity Commission guidance before deciding whether it is in the charity’s best interests for the goods or services to be provided by the trustee or connected person for the amount in question (see section 36: 73A(4) & 73(B)(1)).
- There must be a written agreement

between the charity/its trustees and the individual trustee or connected person recording the amount of remuneration (see section 36: 73A(3)(a)).

- The maximum amount of remuneration must not exceed what is reasonable for the service being provided (see section 36: 73A(3)(b)).
- The trustees cannot proceed if, as a result, more than a minority of their number (or persons connected to more than a minority of their number) will be receiving remuneration from the charity (see section 36: 73A(5)).
- The relevant charity trustee who is being paid or who is “connected” to a person being paid must not take part in any decision or other matter connected to the agreement (see section 37: 73C(2)).
- There must be no express provision in the governing instrument of the charity prohibiting trustee remuneration (see section 36: 73A(6)). This particular safe-guard is likely to result in a number of charities being unable to rely on the statutory power to remunerate one of their number as it is common for charities to have a provision in their governing instrument prohibiting trustees from benefiting.

Relief from Personal Liability

Part 2 Chapter 9 of the Act gives the Charity Commission a statutory power to relieve trustees, auditors, independent examiners or anyone else appointed to examine or report on a charity’s accounts from personal liability for breach of duty or trust, provided they have acted honestly, reasonably and ought to be excused for the breach (see [section 38: 73D](#)). The court’s power under section 727 of the Companies Act 1985 to grant

relief is extended to the charity trustees of CIOs and all auditors, examiners and other reporters (see [section 38: 73E](#)). It is made expressly clear that this extension covers those auditors, examiners and reporters who would not normally come within [section 727](#) i.e. because the charity concerned is not a company.

Trustee Indemnity Insurance

Part 2 Chapter 9 of the Act provides trustees with a new statutory power to purchase trustee indemnity insurance and pay for the premiums out of the charity's monies, subject to certain safeguards (see [section 39: 73F](#)).

Unincorporated Charities

Part 2 Chapter 10 of the Act extends the powers of the charity trustees of small unincorporated charities to modify objects and administrative provisions and to transfer all the charity's property to another charity (see [sections 40 – 42](#)).

Any unincorporated charity with an income of less than £10,000 that does not hold "designated land" will be able to rely on the statutory powers to transfer property and amend objects. In this context "designated land" means land held on trusts which stipulate that it is to be used for the purposes or any particular purposes of the charity. The trustees must be satisfied that it is expedient in the interests of the charity to exercise these statutory powers and must pass a resolution by two-thirds majority or more. A copy of the resolution must be sent to the Commission, together with a statement of their reasons for passing it. The Charity Commission's response will determine whether the resolution will take effect and, if so, the date from which it is effective (see [section 40: 74](#)).

There are special provisions with which a small unincorporated charity with permanent endowment will have to comply, if it wants to rely on the statutory power to transfer property (see

[section 40: 74\(15\) and 74B](#)).

Spending Capital

Part 2 Chapter 11 of the Act gives charities greater flexibility in relation to permanent endowment funds. The trustees of smaller unincorporated charities with available endowment funds can resolve to spend the permanent endowment without the Commission's involvement and without having to publicly advertise their intention to do so (see [section 43: 75](#)). The draft Bill included financial constraints restricting the use of the power to spend the capital to smaller charities. These financial conditions have been dropped, so the new wider powers under [section 75](#) can be used by any unincorporated charity in relation to any permanent endowment that it holds, including land held on trusts that require it to be used for the charity's purposes unless it is an endowment to which [section 75A](#) applies.

[Section 75A](#) applies where the gross income of the charity concerned is more than £1,000 and the market value of the endowment fund in question exceeds £10,000. It confers upon the trustees of bigger unincorporated charities, with larger endowment funds given by an individual or institution or for a particular purpose, greater flexibility to spend the capital or a portion of it, subject to certain safeguards, including the requirement to go through a concurrence procedure with the Charity Commission (see [section 43: 75A](#)).

[Section 43: 75B](#) includes corresponding powers to allow the charity trustees of a permanent endowment fund which under [section 96\(5\)](#) of the Charities Act 1993 has been directed to be treated as a separate charity, to spend the capital or a portion of it, subject to similar safeguards as in the proposed [section 75A](#). On the face of it, this power extends to incorporated charities that hold permanent endowment on special trust, including charitable companies

appointed as sole corporate trustee of such endowment funds.

In all cases the trustees must be satisfied that the charity's purposes would be carried out more effectively if the capital can be spent as well as the income.

Permanent endowment land was originally excluded from the definition of "available endowment fund" for the purposes of [section 43: 75, 75A and 75B](#), but this exclusion was dropped. Therefore the scope of the new wider powers under what will be [sections 75, 75A and 75B](#) of the Charities Act 1993, allowing the expenditure of permanent endowment capital appears to extend to permanent endowment land.

Mergers

[Section 44: 75C](#) of the Act includes a range of measures to facilitate mergers, reorganisations and the evolution of charities. The Charity Commission will be required to maintain a register of charity mergers. Mergers that have already taken place can be registered. However mergers may only be registered once the transfer of all property from the transferor charity or charities to the transferee charity has been completed (see [section 44: 75C\(6\)](#)). If a transferor charity has both permanent endowment and other unrestricted property, special provisions apply (see [section 44: 75C\(5\), 75E\(6\) and 75F\(3\)](#)).

[Section 44: 75E](#) provides a mechanism for transferring most property that would need to be transferred as a result of a merger, by means of a vesting declaration. However certain property cannot be transferred using this mechanism. For example, land held by a transferor charity under a lease which contains a covenant prohibiting assignment without the landlord's consent cannot be transferred unless the necessary consent has been obtained (see [section 44: 75E\(3\)](#)). Where a vesting declaration is used, the charity

trustees of the transferee charity must notify the Charity Commission of the merger (see [section 44: 75C\(7\)&\(8\)](#)).

The main advantage of registering mergers is that most gifts to the original charities involved, which take effect after those charities have ceased to exist, will be treated as a gift to the merged charity (see [section 44: 75F](#)). This will apply in relation to gifts that take effect on or after the date of the registration of the merger, even those gifts that were actually made before that date.

PART 3: FUNDRAISING & FUNDING

Regulation of Public Charitable Collections

The provisions in the Act relating to the regulation of fundraising are far more detailed than those included in the draft Bill. This is because Part 3 Chapter 1 sections 45 to 66 of the Act will replace Part 3 of the Charities Act 1992 (which was never brought into effect) rather than simply amend it. The Act introduces a unified system to regulate public charitable collections in England and Wales. The term public charitable collections includes appeals for charitable, benevolent and philanthropic purposes, hence non-charities will be caught by the controls. The controls apply to all collections in a public place and door to door collections, including the collection of goods, but excluding certain exempt collections.

The unified system will require all promoters of public charitable collections (whether it be a collection in a public place or door to door) to hold a valid Public Collection Certificate ("PCC"). PCCs will be issued by the Charity Commission, sections 51 to 57 set out the framework for applying for PCCs, determining such applications, withdrawing, varying and

transferring PCCs and appealing Charity Commission decisions regarding PCCs.

In the draft Bill it was proposed that the certificates be issued by local authorities. By the time the Bill was introduced into Parliament, it was recognised that the Charity Commission would be the most appropriate central body to check and determine whether charities, other organisations or individuals are fit and proper to undertake public charitable collections. The Charity Commission has stated that it will issue PCCs valid for up to five years. However, it recognises the enormity of the new role it is being given and has indicated that it wants to develop the right regulations and guidance and that it needs additional resources before it can carry out this function. Consequently the Commission does not envisage taking on the role of issuing PCCs for a few years.

In the case of a collection in a public place, in addition to obtaining a PCC, the promoter(s) will also have to apply to the relevant local authority or authorities for a permit. Sections 58 to 63 sets out the procedure for applying for such permits, which largely follows the PCC framework. There are two major differences. Firstly, the grounds upon which a local authority can refuse a permit are much narrower than the grounds upon which the Charity Commission can refuse a PCC (see [section 53 cf. section 60](#)). Secondly, an appeal against a Charity Commission decision regarding an application for a PCC will be to the Charity Tribunal (see [section 57](#)), whereas an appeal against a local authority's decision regarding an application for a permit will be to the magistrates' court (see [section 62](#)).

In the case of door to door collections, the promoters must notify the relevant local authority of certain matters, including when and

where the collection will be held and the purpose for which the proceeds will be applied. They must also send the local authority a copy of the PCC. A permit is not required (see [section 49](#)).

Local, short-term collections are exempted from the above requirements for PCCs and/or permits, but the promoters must notify the local authority and provide certain information about the proposed collection (see [section 50](#)).

Certain new criminal offences are created for carrying out collections without the necessary PCCs or permits (see [sections 48\(3\), 49\(4\), 49\(5\), 50\(6\), 64 and 65](#)).

In light of the Charity Commission's comments, it may be some time before this part of the 2006 Act is implemented.

Fundraising Statements

The statements which professional fundraisers and commercial participators make when soliciting charitable donations about the amount of remuneration they will receive or the amount they will be donating in connection with the appeal or venture can be very ambiguous, but still comply with the current legislation. Part 3 Chapter 2 of the Act will require much clearer statements to be made. Professional fund-raisers will be required to state not only the method by which their remuneration in connection with the appeal is to be calculated but also the amount or a reasonable estimate of the amount they will be paid. Commercial participators will have to state either the amount or an estimate of the amount they will be donating, where applicable, by reference to the price paid for the goods or services they are supplying or the amount of the proceeds of the promotional venture in question (see [section 67](#)).

In addition any paid employee, officer or trustee of a charity or connected company, who acts as a collector must

The main advantage of registering mergers is that most gifts to the original charities involved, which take effect after those charities have ceased to exist, will be treated as a gift to the merged charity.

make a statement indicating, amongst other things, which institution(s) they are collecting for, the position they hold and that they are being remunerated for collecting (see [section 68](#)). Lower-paid collectors are not required to make any such statement.

Reserve Power to Control Fundraising

Reserve powers have been included in [section 69](#) to allow the Secretary of State or Minister for the Cabinet Office to introduce legislation to control fundraising by charities, benevolent and philanthropic organisations if the current framework for self-regulation is not sufficiently successful in creating good practice standards that are adhered to. It is therefore in the interests of the voluntary sector as a whole to ensure that self-regulation works, if only to avoid having, perhaps more draconian, statutory regulation imposed on the sector.

Financial Assistance

[Section 70](#) confers powers on the Secretary of State or Minister for the Cabinet Office to give financial assistance to charitable, benevolent or philanthropic institutions.

[Section 71](#) confers corresponding powers on the National Assembly for Wales.

PART 4: MISCELLANEOUS

The Act anticipates the advent of a new charity regulator for Northern Ireland akin to the Charity Commission. A new section, [section 72](#), has been included in the Act which provides for the disclosure of information between public authorities and Northern Ireland charity regulator, if and when such a regulator is established.

[Section 73](#) requires the Minister for the Cabinet Office to prepare a report for Parliament upon how the Act is operating, within five years of its enactment.

A further new section, [section 77](#), confers upon the Minister for the Cabinet powers to make amendments to the Charities Act 1993 or 2006 Act that may be necessitated by changes in company law legislation in so far as it relates to the accounts, reports or audits of charitable companies. The section also gives the Minister the power to apply the Group accounts provisions to related charitable companies that are not required to prepare such accounts under company law.

The Act conferred various powers on the Secretary of State, e.g. to make secondary and/or amend existing legislation. At the Second Reading of the Act in the House of Commons the Act was amended to devolve these powers to the Minister for the Cabinet.

Please note that in this report in a reference such as “(see [section 24: 29](#))” the citation before the colon is to the section in the 2006 Act, i.e. in this example [section 24](#). The citation after the colon is to the section in the Charities Act 1993 which is being amended (or inserted as the case may be), in this example [section 29](#).

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Charities Act 2006 Report produced by
Clarís D’cruz and Alison McKenna.

Wilson's' Charities team can advise on:

Regulatory

- Charity Commission Inquiries
- Charity Commission Review Visits
- Charity Disputes

Constitutional

- Establishing/Dissolving Charities
- Governance Reviews
- Charity Mergers
- Schemes and Orders

Legacies

- Legacy Management – helping maximise benefit from legacy donations
- Legacy Disputes – last minute changes, probate fraud, statutory wills etc.

General

- Property – compliance with legal requirements
- Intellectual Property Rights
- Employment – covering paid and volunteer staff
- Corporate Structuring – including incorporation
- Fundraising, Trading and Investments
- Charity Trustee Training

Schools

- Compliance – meeting the “public benefit” test
- Managing/Rationalising Prize Funds
- Fundraising Options
- Employment Disputes
- Debt Management

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Listed in the 2007 edition of Chambers as a leading individual in her field Alison is considered by clients to be “an extraordinary lawyer with a wonderful clear perspective”. Amongst other skills, she is commended for her constitutional and restructuring expertise and noted for her experience of working with the Charity Commission.

Alison is a regular writer and speaker on charity-related issues and delivers courses on charity law for legal and other professionals. She is a member of the Charity Law Association, the Charities Property Association, the ILM and is secretary to the Land Trusts Association. Alison also sits part-time as President of the Mental Health Review Tribunal. (DD: 01722 427680, email: am@wilsonslaw.com)

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Claris is a member of the Charity Law Association. She regularly speaks and chairs conferences about charity law and practice issues for the voluntary sector, lawyers and other professionals. She often appears in the voluntary sector press. Based in Newcastle, Claris provides a service to charities in the north of the country on behalf of the Wilson's' charities team. (DD: 01722 427679, email: cdc@wilsonslaw.com)

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Charity accounting and reporting requirements applicable to England and Wales are primarily dictated by The Statement of Recommended Practice: Accounting and Reporting by Charities ("SORP 2005"); Charities (Accounts and Reports) Regulations issued in 2005 and the Charities Act 1993 together with the changes contained in the 2006 Act. This part of the report summarises the main accounting and reporting requirements for charities. It is intended to be of a general nature only and no liability will be accepted by the UK200Group or Whittingham Riddell LLP for any action taken or omitted to be taken in reliance upon it.

Accounting Records

All charities must comply with the following requirements in respect of the preparation and maintenance of accounting records:

- Prepare and maintain accounting records. These records (cash books, invoices, receipts etc) must be retained for at least six years (at least three years in the case of charitable companies);
- Prepare accounts; and
- Make the accounts available to the public on request. This is a vital underpinning to the principle of public accountability, and must be complied with in all cases. It is considered good practice that a copy of the Trustee's Annual Report should, wherever possible, be sent with the accounts.

Annual Statutory Accounts

All charities with income and expenditure of £10,000 or more must send a copy of their annual statutory accounts to the Charity Commission within 10 months of the year end. All charities which are also companies must

file their annual statutory accounts together with director's report with Companies House within 10 months of the year end.

Basis of preparation of Accounts

There are two bases on which charity accounts may be prepared: the receipts and payments basis and the accruals basis. Charities with income and expenditure of less than £10,000 should not send the Charity Commission a copy of their annual report and accounts unless requested to do so.

Receipts and Payments Accounts

Charities with a gross income of less than £100,000 in a financial year, **may** prepare accounts on the receipts and payments basis (i.e. cash basis) with the following key components:

- Receipts and payments account (summary of all money received and paid out by the charity); and
- Statement of assets and liabilities at the year end.

If the charity trustees, the constitution of the charity or any other enactment requires that the accounts be prepared on an accruals basis, then the accounts must follow the disclosure requirements of the Accruals basis of preparation.

Accruals Accounts

Charities with a gross income of £100,000 or more in a financial year and all charitable companies **must** prepare accounts based upon the Accruals concept with the following key components:

- Statement of Financial Activity ("SOFA")
- Income and Expenditure Account (if appropriate);
- Balance Sheet;
- Cash flow statement (where appropriate);
- Notes to the accounts; and
- An annual report.

All charities must make the accounts available to the public on request. This is a vital underpinning to the principle of public accountability, and must be complied with in all cases.

Such accounts for charities are normally required, in accountancy terms, to show a "true and fair view" and are

required to apply the methods and principles of SORP 2005 (unless a more specialist SORP applies) and the Regulations when preparing their accounts.

Excepted charities

If the trustees have chosen to register they will have to fulfil the same accounting and reporting requirements as any other registered charity. If they do not register they must still produce annual accounts in the same way as a registered charity of the same type (company or non-company). They must provide copies of their accounts to members of the public on request, but should not send them to the Charity Commission unless they ask for them.

Exempt charities

Exempt charities have to keep proper accounting records and prepare accounts. Where they are required to prepare accounts giving a true and fair view, they should follow SORP 2005 in the preparation of those accounts, unless a more specialised SORP applies. They must provide copies of their accounts to

members of the public on request.

Group Accounts

It is currently good practice for charities which have subsidiary entities to prepare group accounts to consolidate the accounts of the charity and any subsidiaries. However, whilst the parent charity is legally required to prepare its own entity accounts there is no legal basis for preparing group accounts. The 2006 Act provides that a parent charity must prepare consolidated group accounts which include its subsidiaries. The threshold level at which group accounts must be prepared by law as opposed to good practice has yet to be determined.

Annual Return

An Annual Return must be completed and submitted to the Charity Commission by Trustees of Registered Charities with a gross income for the previous year of over £10,000. Small charities (income under £10,000) only need to complete an Annual Information Update Form.

The Annual Return comes in two parts with an additional Summary Information Return ("SIR") requirement for certain charities. The size of a charity dictates which elements of the Annual Return it must complete. Those with an income of between £10,000 and £250,000 are required to complete part A of the Annual Return. Charities with an income of over £250,000 are also required to complete part B of the form. The additional requirement to complete the SIR exists for those charities with an income of over £1m.

External Scrutiny

The Charities Act 2006 simplifies the rules regarding the requirement for professional audit and introduces similar thresholds for charities which

are companies and those which are not.

Non-company charities

A non-company charity accounts will have to be professionally audited if it has:

- A gross annual income over £500,000; or
- An aggregate value of assets over £2.8 million and gross annual income over £100,000.

Below this threshold, for non-company charities, an independent examiner can be used instead of an auditor. An independent examination is not required, however, if the charity's income is below £10,000. If the income is above £250,000 the independent examiner must have an appropriate accountancy qualification.

Charitable companies

Charitable companies with an income between £90,000 and £500,000 and assets of £2.8 million or less are not required to have their accounts audited if they provide an accountant's report. For a charitable company with income of £90,000 or less neither a professional audit or an accountant's report is required unless its assets are over £2.8 million.

Information to be sent to the Charity Commission

The information required to be sent to the Charity Commission depends upon the size of the charity in respect of income and expenditure in the relevant financial year:

Income of up to £10,000

Charities with an income of up to £10,000 in their financial year receive an Annual Information Update form, which includes information forming part of the

charity's entry on the Register, including trustee details. Although not legally obliged to complete an Annual Return, small charities are asked to complete the Annual Information Update as a good way of meeting their obligation to update their Register details. Charities with income or expenditure of less than £10,000 should not send the Charity Commission a copy of their Annual report and accounts unless requested to do so.

Income over £10,000 but no more than £1million

Charities with an income between £10,000 and £1 million are legally required to complete and send to the Charity Commission the parts of the Annual Return appropriate to their size. The charity's Annual Report and accounts must also be sent to the Charity Commission within 10 months of the end of the charity's financial year if either income or expenditure exceeds £10,000.

Income over £1million

Charities with an income exceeding £1 million must meet all the requirements set out in the previous band. In addition, charities in this band are legally required to complete the new Summary Information Return (SIR) that forms the third part of the Annual Return.

Protecting Whistleblowers

The 2006 Act ensures that Auditors and Independent Examiners of charity accounts will be protected from the risk of action for breach of confidence or defamation when they pass on relevant information to the Charity Commission in respect of abuses or significant breaches of trust identified during the audit/examination process.

SORP 2005

The aim of SORP 2005 is to establish

and improve the standard of reporting and accounting by charities; greater transparency of reporting being a fundamental aim. The 2005 revisions to the SORP build on its previous versions and move the focus of charity reporting much more to explaining:

- The aims and objectives of charities;
- How they have sought to achieve their aims and objectives; and
- What they have actually achieved.

This approach allows the charity to focus on matching financial information with the activities and outcomes in their annual report.

Report produced by:

Andy Malpass BA FCA partner with Whittingham Riddell LLP, Chartered Accountants, Shrewsbury. Andy is a member of UK200 Charities Committee and UK200 Charities Group of quality assured accountants and lawyers. He is head of the Whittingham Riddell Charities Service Group and has experience of a broad range of charities including social welfare, educational and grant making. He has extensive experience in audit and the provision of internal audit services and provides advice on areas such as risk management, financial governance, internal control, strategy and financial planning. He has been extensively involved in assisting clients understand and implement the requirements of SORP 2005. Andy is a regular speaker on charity accounting and related issues and contributes to a number of journals. amalpass@whittinghamriddell.co.uk



Whittingham Riddell

chartered accountants

Prior to the Charities and Trustee Investment (Scotland) Act 2005, which received Royal Assent in July 2005, a charity registered in England & Wales was under no obligation to apply to be recognised as a charity in Scotland.

Under the provisions of the above Act, English and Welsh Charities with significant operations in Scotland or those which own or occupy land or premises in Scotland will have to register as a charity with the Office of the Scottish Charity Regulator (OSCR). On 1 April 2006 all existing Scottish charities, i.e. those charities that had registered in Scotland with the Inland Revenue, were automatically entered onto the Scottish Charity Register by OSCR. Any English or Welsh charity that had not previously registered in Scotland, will not, therefore, be automatically entered onto the Register and will be required to apply to OSCR for registration as a Scottish charity.

The Charities and Trustee Investment (Scotland) Act 2005 does contain transitional provisions that allow English and Welsh Charities that operate in Scotland until February 2007 to complete their registration and OSCR is in the process of contacting all these charities asking them to apply if they meet the necessary criteria.

In contrast, there are no requirements in the Charities Act 2006 for Scottish charities that operate in England & Wales to register with the Charity Commission.

Northern Ireland has its own unique situation regarding charity regulation. Charities must register with HM Revenue and Customs and new legislation is currently under review for Northern Ireland.

As a result of the requirements of the

Scottish Charities Act, many 'Cross-Border Charities' will now be subject to dual regulation, by OSCR in Scotland and the Charity Commission in England and Wales. Both Regulators realised at an early stage that this could cause unnecessary administrative

burdens for charities and have been working together to ensure the effects of dual regulation are minimised as far as possible.

Joint Guidance

In December 2005 OSCR and the Charity Commission issued Joint Guidance for Cross-Border Charities which can be obtained from either organisations' website (www.oscr.org.uk), (www.charitycommission.gov.uk). This guidance makes it clear that charity law in Scotland is different from that in England and Wales; however it does seek to reassure charities, which in future will be answerable to both Regulators and clarify the regulations in areas where the regimes in the two jurisdictions appear to be contradictory.

English and Welsh charities seeking to register with OSCR should be aware that although there are broad similarities, the 'charity test' under the Scottish Act is not identical to the definition of charity in the Charities Act 2006. The Scottish Act also includes a partial definition of 'Public Benefit', guidance on which will not be given by the Charity Commission for charities in England and Wales before 2008.

Under the Charities Act 2006, certain charities in England and Wales are exempt from the requirement to register with the Charity Commission by virtue of their size. The Scottish Act contains no such exemptions so it is possible that an English charity owning or occupying property in Scotland would be required

to register with OSCR even though it were exempt from registering with the Charity Commission.

In further recognition of the burdens of dual registration the Charity Commission and OSCR issued a Joint Statement in December 2006 announcing that OSCR's formal monitoring procedures of these Cross-Border Charities will be deferred for at least twelve months to allow the Regulators to work together to align their monitoring programmes.

Accounting Regulations & Reporting Requirements

English and Welsh charities must prepare accounts in accordance with the Statement of Recommended Practice – Accounting & Reporting by Charities (SORP) issued in March 2005.

OSCR have confirmed they will not insist on separate Scottish Accounts for Cross-Border Charities with dual registration and will accept accounts that consolidate activities north and south of the border. However they will expect charities operating in Scotland to include narrative on their Scottish activities in the Trustees Annual Report.

All charities registered with OSCR will be required to submit annual accounts together with a basic Annual Return within nine months of their year-end. In addition charities with income in excess of £25,000 per annum will complete an annual monitoring form. These requirements are additional to any existing reporting responsibilities in England and Wales.

Other considerations

As explained above, an English and Welsh charity will be required to register with OSCR if it has significant operations in Scotland or if it occupies land or premises in Scotland; however if an English and Welsh charity has a Scottish branch which is autonomous then that

Scottish branch will be required to register individually with OSCR.

The Scottish Act contains provisions covering what an organisation operating in Scotland may call itself. Only charities which are established under Scottish law or are managed from Scotland are permitted to use the terms Scottish Charity or registered Scottish Charity.

The Scottish Act includes provisions covering circumstances under which a charity must obtain consent from OSCR in advance of a particular action. These include changing the charity's name or its charitable purposes but, as a whole, the regime is more limited than that already in force in England and Wales.

Under the Charities Act 2006, the Charity Commission has the power to give advice and guidance on any matter relating to the administration of the charity as well as a trustee's performance of his/her duties. Provided that the Charity Commission has been given all the facts and that advice has been followed, the trustees are deemed to have acted properly. In Scotland, OSCR will not generally give advice to trustees on specific decisions although they will give general guidance.

Report produced by:

Mike Procter, Partner in FW Stephens Accountants & Business Advisors, London and head of their specialist charity team and is a member of the UK200 Charities Committee and UK200 Charities Group of quality assured accountants and lawyers. Mike joined FW Stephens in 1991 and oversees services to a wide range of clients in the 'Not for Profit' sector, giving advice on charity formation, corporate governance and trustee responsibilities, risk management and various taxation issues. mike.procter@fwstephens.co.uk

At Clydesdale Bank we understand that the needs of individual charities vary. That is why our charity customers enjoy the personal attention of a dedicated relationship manager who works to ensure that charities have the most appropriate financial solutions to meet existing and future needs.

Through our experience of dealing with charities over a number of years, we have also developed three products that charity customers can benefit from. This means that whatever your financial requirements, we have a solution for you.

Our Comprehensive Range of Accounts

Every charity needs a simple, straightforward and reliable basis for managing its day-to-day banking. To offer the best flexibility possible, Clydesdale Bank has two different styles of current account specifically designed for charities.

Business Choice Charities Account is a flexible, fully functional and user friendly account for all registered charities who maintain credit balances. The account offers highly competitive interest rates combined with the efficient processing of payments and receipts with cheque book, paying in book and regular statements – making things as simple as possible for you to manage your funds.

Basic Charities Account is designed for charities who do not usually maintain credit balances. This account again offers full functionality of a current account however, no transactional charges are applied. This allows you to process payments and receipts efficiently without incurring any cost – helping you to maximise the monies you receive.

In addition to our current accounts we are also conscious that charities often have surplus monies that they wish to invest. Whilst we have a number of

solutions for investments, since its' launch in December 2005, our Base Rate Tracker Plus account has been very popular.

Base Rate Tracker Plus Account is an account designed to maximise any significant surplus funds you hold. With a market-leading interest rate, this savings product will offer you excellent returns on the monies you hold.

For all our accounts we have made our account opening procedures as easy as possible. In addition, your dedicated Business Partner will be on hand to answer any questions you may have.

Business Choice Charities Account – earn competitive interest on your everyday banking

Benefits

- **Personal attention** – dedicated proactive relationship management from someone who understands your charity and what you are looking to achieve
- **Easy to use** - fully functional, day-to-day operative account
- **Flexibility** – day-to-day cash flow flexibility – offering instant access with no penalty
- **Competitive** - pays credit interest at a rate of 1% below base rate

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Transparent fees & charging schedule
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

Interest rate

- Available on request from your Business Partner

Interest type

- Credit interest applied to amounts in credit

How is interest calculated?

- Calculated daily and applied monthly

Minimum/Maximum balance

- Accounts must be maintained in credit – balances are unlimited

Withdrawals

- Unlimited - subject to available funds

What it costs

- Refer to the relevant business tariff guide for details on fees and charges – available from your Business Partner

Terms and conditions

- These accounts are specifically for registered charities and are not available to personal customers
- All terms and conditions are available on request

Where do I go from here?

- Talk to your local Business Partner
- Visit www.CBonline.co.uk

Basic Charities Account – no transactional fees on your everyday banking

Benefits

- **Personal attention** – dedicated pro-active relationship management from someone who understands your charity and what you are looking to achieve
- **Easy to use** - fully functional, day-to-day operative account
- **Flexibility** – day-to-day cash flow flexibility – offering instant access with no penalty

- **No Transactional Charges**** – allows you to efficiently manage your money with no fees applied

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Fee-free transactional banking**
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

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Withdrawals

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- All terms and conditions are available on request

Where do I go from here?

- Talk to your local Business Partner
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**Charges for ancillary services may be applied.

Base Rate Tracker Plus – get a market-leading rate and a better return on your funds

Benefits

- **Tiered Interest Rates** – our tiered interest rates mean the more you invest, the better the return
- **Flexibility** – the account has no long-term tie-in. You'll have flexible access to your funds, which can be withdrawn with only seven-days' notice
- **No Transactional Charges** – you don't pay extra for accessing your own money so your deposits are working harder for you
- **Market-Leading Rate** – if you have deposits in excess of £1m, Base Rate Tracker Plus offers a market-leading rate – helping you with your planning and cashflow
- **CHAPs Withdrawals** – giving you fast and easy access to your money
- **Personal attention** – dedicated proactive relationship management from someone who understands your charity and what you are looking to achieve

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

Interest rate

- Available on request from your Business Partner

Interest type

- Credit interest applied to amounts in credit

How is interest calculated?

- Calculated daily and applied quarterly

Minimum/Maximum balance

- Minimum opening balance is £1m.

- Accounts must be maintained in credit – balances are unlimited

Withdrawals

- Unlimited - subject to available funds

What it costs

- Refer to the relevant business tariff guide for details on fees and charges – available from your Business Partner

Terms and conditions

- This account is not available to personal customers
- All terms and conditions are available on request

Where do I go from here?

- Talk to your local Business Partner
- Visit www.CBonline.co.uk

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Much has changed since the introduction of the Trustee Act 2000. The removal of the narrower and wider ranges of investment together with the advances in alternative investments such as property, hedge funds and commodities has given charity trustees more financial choice than ever before. This comes at a period of low inflation and interest rates with the result that in order to achieve higher returns from investment charities have to accept higher risk.

In the 1980s and 1990s, how a charity arrived at its objective did not really matter, since most assets moved together and most assets moved up, as can be seen in **GRAPH A**.

There were very few negative years and provided trustees chose a good fund manager, allocating between assets did not matter. This period is unusual as for most of the last century, bonds and equities did not move together, see **GRAPH B**.

If the final decades of the 20th century were the abnormal years, as inflation has been taken out of the system and by supply side reforms, markets are returning to the longer term pattern where bonds and equities move more often than not in different directions. Thus, asset allocation is a vital part of constructing an appropriate investment portfolio for charities. Furthermore, the returns gained during this period are

likely to have been higher than what we expect from these assets in the next 10 years.

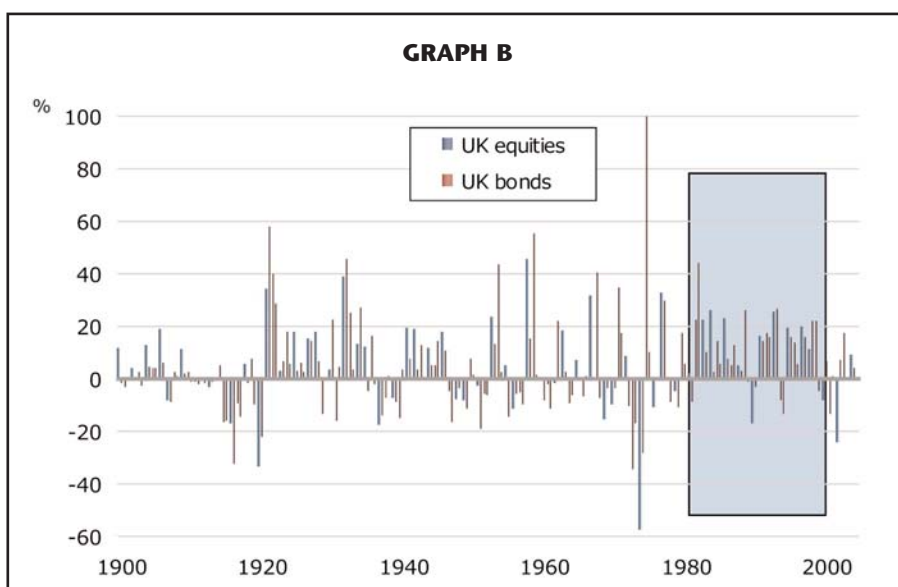
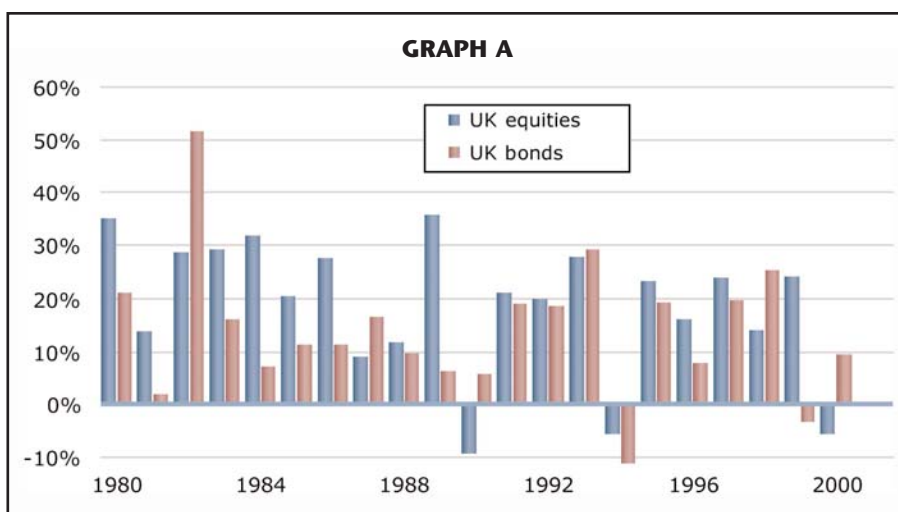
The Trustee Act 2000 gives outline to how investment assets should be managed and the Charity Commission offers further guidance on investment of charitable funds in its paper CC14. As a result, under the general power of investment, charity trustees had the opportunity to start with a clean sheet when it came to investment and stipulate an, if appropriate, ethical agenda.

Ethical Investment

Ethical investment is popular amongst those with a social conscience. This will include many who support charities, either as donors or trustees, as well as those who work for them. But, while working to improve the planet, do trustees at the same time have to invest their assets in a way that may have an adverse impact? Trustees of charities have to consider what is in the best interests of their charity and exercise their powers accordingly which can cause a fundamental problem.

However, the law recognises that whilst they are normally duty bound to invest for the best financial return consistent with prudence, there are some situations in which trustees of charities can properly allow other considerations to override immediate financial return. For example, it is accepted that they should not make investments which would conflict with the aims of their charity, or which might cause recipients of aid to refuse it or cause donors to withhold funding as a result of their dislike for those investments. To do any of these things would be likely to undermine the work of the charity in a way which would outweigh any financial benefit.

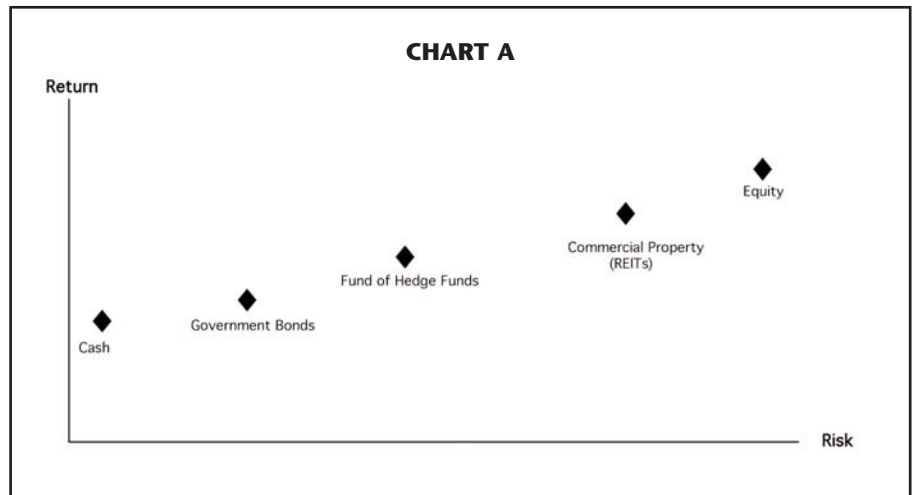
In considering these issues, the charity does of course need to have regard to its own objects, not just general "charitable



sentiment". The Church Commissioners, for example, believe that investing in shares in newspaper publishers is wrong given the purpose for which the commissioners are established. This merely reflects the fact that trustees must consider "socially responsible investment" as they must consider any other issue affecting their powers: in the light of the purpose for which they hold the trust fund.

If the charity cannot identify a particular area which conflicts with its objectives, ultimately, the only real justifications for avoiding investments are likely to be either that to do so would have no financial impact on the investment performance, or that it would be financially better in the long term to avoid it - for example because a company's poor ethical performance might lead to its financial ruin in the long run.

Bringing the debate full circle, charities wanting to build a rounded investment portfolio need to exploit the benefits offered by the essential building blocks of any core portfolio – cash, bonds, and equities. A suitably diversified portfolio can then be enhanced by property, private equity, and hedge funds investments. **CHART A** illustrates where each of the asset classes sits on the risk/reward scale. As previously mentioned, the past 20 years has rewarded equity investors notwithstanding the brief corrections in 1989, 1994 and 2002. The chart highlights that by putting the bulk of the charity investment portfolio in this asset class increases overall risk, which may not be appropriate given the trustees' circumstances. Having the correct mix of assets will diminish the volatility or risk of return. Trustees are trying to select assets that have different characteristics in certain market conditions, i.e. they are un-correlated. However, while there has been a general trend to remove risk from investment portfolios, the natural conclusion is that



you also remove return. This is an outcome most charity trustees cannot afford to take to sustain their charity's objectives in the long term

Conclusion

While these different asset classes, potentially including hedge funds, offer the ingredients for a successful portfolio, creating the right mix remains a major and difficult undertaking for charity trustees especially if an ethical investment policy is incorporated. By working in partnership with consultants, fund managers, accountants, lawyers and other concerned parties, trustees can ensure they devise a strategy suited to their charity's specific needs.

Report produced by:

Guy Davies responsible for leading the Charities and Philanthropy businesses of Gerrard. He joined from Baring Asset Management where he was a director, responsible for developing the Charity and Private Client businesses and overall client service. Guy previously worked at Lazard Asset Management where he managed discretionary portfolios and relationships for charities, UK and offshore high net worth individuals and smaller institutions. Prior to this he spent 7 years at BZW Portfolio Management and Barclays Private Bank, where he was assistant director of portfolio management. Guy is a Fellow of the Securities Institute and a trustee of the Army Benevolent Fund. guy.davies@gerrard.com



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