



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Exempt charities



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1. Introduction

1.1 What is this guidance about?

This guidance explains what exempt charities are. It also explains what parts of charity law they must follow, how they are regulated and how the Charity Commission ('the Commission') can help them. It only applies to charities based in England and Wales.

You may find this guidance helpful if you are involved in running an exempt charity, or if you have concerns or questions about an exempt charity.

1.2 Introduction and summary

Some charities are exempt from registration and regulation by the Commission. They are called exempt charities. Until recently, exempt charities had no charity regulator. The Commission could not investigate suspected wrongdoing in an exempt charity. But exempt charities have always been able to ask the Commission for help or advice.

The Charities Act changes the way that exempt charities are regulated, to improve their compliance with charity law. When the Act is fully implemented, all exempt charities must either:

- have a 'principal regulator' to regulate them as charities or
- no longer be exempt and have the Commission as regulator

Principal regulators must promote exempt charities' compliance with charity law. They have no powers of enforcement, and so must work with the Commission.

The changes are being introduced in phases for different groups of exempt charities. You can see which groups of exempt charities already have principal regulators in Annex 1 of this guidance.

Exempt charities still have to comply with general principles of charity law, such as trustees' responsibilities, but different rules apply depending on whether an exempt charity has a principal regulator or not:

- some parts of the Charities Act don't apply to any exempt charities
- some parts of the Act only apply to exempt charities with a principal regulator
- some parts of the Act apply to all exempt charities

This guidance explains which parts of the Charities Act apply. It also explains how the Commission can help exempt charities.

1.3 Some terms used in this guidance

The **Charities Act** is the Charities Act 2011. The Charities Act brings together the Charities Act 1993, the Charities Act 2006, and some other laws relating to charities into a single Act.

The 2006 Act means the Charities Act 2006. The 2006 Act changed the regulation of exempt charities. These changes are being phased in. These provisions of the 2006 Act are now in the Charities Act 2011 ('the Charities Act').

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. (It doesn't include the release of a rentcharge or any disposal to secure a mortgage.)

The governing document is the legal document that sets out the charity's objects and, usually, how it is to be run. It is usually a trust deed, constitution, or articles of association. Otherwise it could be a will, conveyance, Royal Charter, scheme of the Commission, or some 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.

Trustee means a charity trustee. Charity trustees are the people who have overall responsibility for governing a charity. They decide its strategy and direct its management. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors, or something else. The Charities Act defines them as trustees because of their responsibility.

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

2. Regulating exempt charities

2.1 What is an exempt charity?

Legal requirement: an exempt charity is one that is not regulated by, and cannot register with, the Commission. A charity is exempt if it is:

- included in Schedule 3 to the Charities Act
- a common investment fund or a common deposit fund which permits only exempt charities to participate (see section 4), or
- made exempt by some other legislation

For more details see Annex 1 to this guidance.

2.2 Why are some charities exempt?

Some charities have been made exempt from direct regulation by the Commission because they are supervised by, or accountable to, another body or authority.

In the past, exempt charities have not always been effectively regulated as charities because these other regulators have not been responsible for charity law. The 2006 Act aimed to address this.

2.3 How are exempt charities regulated?

The 2006 Act improved the way exempt charities are regulated. Exempt charities must either:

- have a 'principal regulator' to regulate them as charities or
- no longer be exempt and has the Commission as regulator

These changes are being introduced for different groups of exempt charities at different times. This is explained in section 2.5.

2.4 What are principal regulators and what do they do?

Principal regulators have a duty to promote compliance with charity law by the charities they regulate. They are appointed by the Minister for the Cabinet Office. Usually, a principal regulator is already the charities' main regulator under another legal framework.

A principal regulator:

- must promote charity trustees' compliance with charity law
- will monitor charity law compliance
- can ask the Commission to open an inquiry, if necessary, but cannot investigate charities itself
- will work with the Commission to ensure that its exempt charities are accountable to the public

They should be able to carry out this role without really changing what they already do.

Principal regulators do not have any powers to enforce charity law. They work with the Commission to resolve any concerns about a charity. The Commission must consult the principal regulator before using any of its powers. The Commission can only open a statutory inquiry if the principal regulator asks it to.

2.5 Which exempt charities have principal regulators?

The rules are changing for different groups of exempt charities at different times. The first changes came into force on 1 June 2010, the second phase on 1 August 2011 and the third phase on 1 September 2013. The Commission will publish information about any future changes when it becomes available. Current principal regulators are listed in the annexes to this guidance.

2.6 Have any charities ceased to be exempt?

The following charities are no longer exempt, because there was no suitable body to act as principal regulator:

- universities and other Higher Education Institutions in Wales
- the colleges and halls of Cambridge, Durham and Oxford Universities
- student unions
- Eton and Winchester Colleges
- Museum of London
- Church Commissioners, and the Representative Body of the Church in Wales

All of these charities are now regulated directly by the Commission. Charities that cease to be exempt must register with the Commission if their income exceeds £100,000 a year.

2.7 Who should members of the public contact if they have questions or concerns about an exempt charity?

Members of the public with a question about an exempt charity should contact the charity's principal regulator in the first instance. See annexes 1 and 2 for details.

3. Exempt charities and the law

3.1 What responsibilities do the trustees of an exempt charity have?

Legal requirement: the trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities. For example, the trustees of an exempt charity:

- must act reasonably and responsibly in all matters relating to the charity
- must always act in the best interests of the charity and manage any conflicts of interest
- 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
- must take account of the Commission guidance on public benefit when appropriate
- should regularly review the effectiveness of the charity

You can find out more from the guidance **The essential trustee: what you need to know (CC3)**.

3.2 Which provisions of the Charities Act do not apply to any exempt charity?

Legal requirement: registration

An exempt charity cannot register with the Commission.

An exempt charity must not describe itself as registered and may not use a registered charity number (even if it had one previously).

Legal requirement: accounts, auditing and annual reports

All exempt charities are publicly accountable and must produce proper accounts, although the way in which they do this differs from charities that the Commission regulates.

Exempt charities do not have to comply with the Charities Act requirements to:

- file accounts or annual reports with the Commission
- have their accounts audited or independently examined
- produce a trustees' annual report

Many exempt charities must produce accounts under their own legal frameworks or regulators' requirements. Exempt charities that are companies must produce accounts that give a 'true and fair' view, and are expected to follow best practice (including the Statement of Recommended Practice - Accounting and Reporting by Charities). Otherwise, exempt charities must:

- keep proper accounting records
- prepare consecutive statements of account consisting of an income and expenditure account for a period of not more than 15 months and a balance sheet relating to the end of that period
- keep these records and statements for at least 6 years unless the charity ceases to exist and the Commission gives written consent to their disposal

An exempt charity must also provide a copy of its most recent accounts to anyone who makes a written request, within two months. It may charge a reasonable fee to cover the costs of doing this.

Legal requirement: dispositions and mortgaging of land

Trustees of exempt charities must fulfil their general duties (see section 3.1) when disposing of or mortgaging charity land. Unlike charities regulated by the Commission, the restrictions on disposals and mortgages in the Charities Act do not apply.

The Charities Act requires charities to include certain statements in the documentation relating to a disposal or mortgage. This applies to exempt charities. Trustees should seek legal advice on these matters.

Further information can be found in the Commission guidance **Sales, leases, transfers or mortgages: what trustees need to know about disposing of charity land (CC28)**.

3.3 Which provisions of the Charities Act apply to exempt charities that have a principal regulator?

After consulting the principal regulator, the Commission may if necessary:

- require an exempt charity to change its name
- open a statutory inquiry (only at the request of the principal regulator)
- order someone to give it information or documents in their possession
- use its protective powers to suspend or remove trustees, freeze bank accounts etc
- give directions concerning dormant bank accounts belonging to a charity or trustees that can no longer be traced
- make an order to direct a trustee who has acted while disqualified under the Charities Act to repay any sums received from the charity during the period of disqualification

Legal requirement: exempt charities with a principal regulator must:

- obtain the consent of the court or the Commission before incurring expenditure in preparing or promoting a bill in Parliament
- obtain consent before beginning charity proceedings in the courts

These powers and restrictions do not apply to exempt charities that do not yet have a principal regulator. The changes to the regulation of exempt charities (introduced by the 2006 Act) are not retrospective, so these powers and restrictions do not generally apply to actions or decisions of the trustees that took place before a principal regulator was appointed.

3.4 Do the rules on disqualification of trustees apply to exempt charities?

Legal requirement: yes. The provisions of the Charities Act relating to the disqualification of trustees apply to all charities, including an exempt charity. The Commission has power to grant a waiver from such a disqualification. Where a principal regulator has been appointed, the Commission can only use this power after it has consulted it.

3.5 Do the statutory controls regulating fundraising affect exempt charities?

Legal requirement: yes. The fundraising controls affect all charities, including exempt charities.

For further details of the controls themselves and general advice on fundraising, see the guidance **Charities and fundraising (CC20)**.

4. Help and advice for exempt charities

4.1 How can the Commission help exempt charities?

The Commission can help exempt charities in a number of ways. It can provide information and advice, and can exercise its powers to make schemes and orders upon the application of the trustees. Where a principal regulator has been appointed, the Commission can only use these powers after it has consulted that regulator.

Applying for a scheme

The trustees of an exempt charity may apply to the Commission for an order or a scheme. 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).

The Commission guidance **Changing your charity's governing document (CC36)** gives further information.

Official Custodian for charities

Exempt charities can ask the Commission to make an order to vest land in the Official Custodian for charities.

The advantages of vesting in the Official Custodian are described in the guidance **The Official Custodian for charities' land holding service (CC13)**.

Common investment and common deposit funds

The trustees of two or more exempt charities may apply to the Commission for a scheme to establish a common investment fund (CIF) or a common deposit fund (CDF). 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.

Giving trustees specific authority to do certain things

Legal requirement: the Commission can make an order to authorise trustees (including trustees of an exempt charity) to do something that would be of benefit to their charity, but which they do not have power to do. The action they want to take must not be specifically forbidden by law or by the governing document.

Ex gratia payments

Legal requirement: 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 and
- cannot justify as being in the interests of the charity

Trustees of an exempt charity who wish to make a voluntary payment in those circumstances must apply to the Commission 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 on ex-gratia payments is available in the guidance **Ex gratia payments by charities (CC7)**.

Formal advice to trustees

The Commission can give general advice to charities, but it also has power to give specific formal advice. The trustees of a charity, including an exempt charity, can write to the Commission for formal advice about whether they would, by taking a particular course of action, be acting properly as trustees.

Trustees who act on that advice are deemed to have acted properly, unless they know or have good reason 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

The trustees of an exempt charity can apply to the Commission for a certificate of incorporation of the trustees as a body corporate. The Commission will grant such a certificate unless it considers that incorporation would not be in the interests of the charity. Many types of exempt charities are, however, already incorporated and so would not benefit from this.

For further details on incorporating charity trustees see the guidance **Incorporation of charity trustees (CC43)**.

4.2 What financial benefits are exempt charities entitled to?

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
- relief from business or non-domestic rates

You can get further information about tax benefits from **HM Revenue and Customs**.

4.3 How can exempt charities prove that they are really charities?

The easiest way for exempt charities to prove that they are charities is by referring to this guidance, which lists all the different groups of exempt charities. Charities are only exempt if they are listed in Schedule 3 to the Charities Act, or made exempt by other legislation.

Exempt charities that claim tax relief can also use their HMRC reference number as evidence that they are a charity.

Exempt charities with a principal regulator could ask their principal regulator to confirm that they are charities.

4.4 Where can exempt charities get advice on charity law requirements?

The principal regulator should generally be the first organisation to contact with any query. They may refer any matter to the Commission for further advice.

If you need to contact the Commission, please include a full copy of (each of) the governing document(s) of the charity (unless the Commission already has a copy) and quote any reference number that it has used in previous correspondence.

Contacting the Commission online. How to contact the Commission online if your query cannot be dealt with by the online forms or guidance.

The Commission will let the trustees know if any other information is needed (eg the charity's accounts).

Annex 1: Exempt charities and their principal regulators

Some charities have been exempt since the Commission was founded in 1853. Other charities or groups of charities have been made exempt since then, by different pieces of legislation. Most exempt charities are now listed in Schedule 3 to the Charities Act. There are still a few exempt charities that are not listed in Schedule 3.

Exempt charities listed in Schedule 3 to the Charities Act

Organisations listed in Schedule 3 are only exempt in so far as they are charities. Schedule 3 does not make them into charities.

Schedule 3 reflects some changes that are planned but not yet in force.

Educational Charities

This category includes:

- most English universities and Higher Education Institutions
- Academy Trusts (England only)
- the governing bodies of foundation and voluntary schools
- sixth form college corporations (England only)
- Further Education Corporations

Charities in this group	Notes
Universities that were exempt before the Charities Act 1960	<p>HEFCE was appointed principal regulator for these charities on 1 June 2010.</p> <p>They are not named in Schedule 3, but they are the universities of Birmingham, Bristol, Exeter, Hull, Leeds, Leicester, Liverpool, Manchester, Nottingham, Reading, Sheffield and Southampton.</p>
<p>The universities of Oxford, Cambridge, London, Durham, Newcastle and Manchester.</p> <p>King's College London and Queen Mary and Westfield College in the University of London.</p> <p>Any other university, university college or connected institution in England that is made exempt by order in Council.</p> <p>English higher education corporations.</p> <p>A successor company to a higher education corporation which is funded by HEFCE.</p>	<p>HEFCE was appointed principal regulator for these charities on 1 June 2010.</p> <p>This group includes the Open University, but does not include:</p> <ul style="list-style-type: none"> • any college in the university of Oxford • any college or hall in the university of Cambridge or Durham • any students' union • HE Institutions in Wales <p>These ceased to be exempt on 1 June 2010.</p> <p>A few English HE Institutions have never been made exempt and are registered with the Commission.</p>
Further Education Corporations.	<p>In England the principal regulator is the Department for Business, Innovation and skills (BIS) appointed 1 September 2013</p> <p>In Wales the principal regulator is the Welsh government appointed 1 September 2013</p>
A qualifying Academy Proprietor (Academy Trust) as defined by the Academies Act 2010.	<p>These charities only exist in England. Includes Academies, Free Schools, University Technical Colleges and Studio Schools that are managed or controlled by Academies.</p> <p>Principal regulator is Department for Education (DfE) appointed 1 August 2011</p>
<p>The governing body of any foundation, voluntary (aided or controlled) or foundation special school.</p> <p>Any foundation body established under section 21 of the School Standards and Framework Act 1998.</p>	<p>In England the principal regulator is DfE appointed 1 August 2011</p> <p>In Wales the principal regulator is the Welsh government appointed 1 August 2011</p>
A sixth form college corporation (within the meaning of the Further and Higher Education Act 1992).	These charities only exist in England. Principal regulator is DfE appointed 1 August 2011

Museums and Galleries

Charities in this group	Notes
<p>The Boards/Trustees of:</p> <p>The Victoria and Albert Museum.</p> <p>The Science Museum.</p> <p>The Royal Armouries.</p> <p>The National Museums and Galleries on Merseyside.</p> <p>The British Museum.</p> <p>The Natural History Museum.</p> <p>The National Gallery.</p> <p>The Tate Gallery.</p> <p>The National Portrait Gallery.</p> <p>The Wallace Collection.</p> <p>The Imperial War Museum.</p> <p>The National Maritime Museum.</p> <p>The British Library.</p>	<p>Principal Regulator is the Department for Culture, Media and Sport (DCMS) appointed 1 June 2010. DCMS sponsors and funds these charities.</p>
<p>The Board of Trustees of the Royal Botanic Gardens, Kew.</p>	<p>Principal Regulator is the Department for the Environment, Food and Rural Affairs (DEFRA) appointed 1 June 2010. DEFRA sponsors and funds this charity.</p>

Industrial and Provident (Community Benefit) and Friendly Societies including social housing providers

This category includes any of the following types of organisations that have exclusively charitable purposes for the public benefit:

- registered friendly societies
- industrial and provident societies (community benefit societies)

These organisations are registered with the Financial Conduct Authority (FCA). Many of them are also social housing providers registered with, and regulated by, the housing regulator.

Schedule 3 anticipates certain changes that have not yet been made:

- legislation has been passed, but is not yet in force, that will rename the Industrial and Provident Societies Act 1965 as the Co-operative and Community Benefit Societies and Credit Unions Act 1965
- no firm decision has been made on the future regulation of community benefit societies and friendly societies as charities; one possibility is that those which are registered social housing providers may remain exempt whilst others may lose their exemption if no suitable principal regulator can be found

Charities in this group	Notes
Community Benefit Societies that are non-profit registered providers of social housing. Registered Friendly Societies and Community Benefit Societies that are Registered Social Landlords.	No principal regulator appointed yet.
Other charitable Registered Friendly Societies and Community Benefit Societies (not regulated social housing providers)	No principal regulator appointed yet.

Church of England and Methodist Church Investment Funds

Charities in this category include:

- (a) any Investment Fund or Deposit Fund within the meaning of the Church Funds Investment Measure 1958
- (b) any investment fund or deposit fund within the meaning of the Methodist Church Funds Act 1960

These charities were exempt before the Charities Act 1960. Schedule 3 contains provision to revoke their exemption, but this provision has not yet been implemented and no implementation date has been agreed. They have no principal regulator.

Exempt charities not listed in Schedule 3 to the Charities Act

The governing body of St David's Catholic College, a designated further education provider in Wales, was incorporated and made exempt by Statutory Instrument. Its principal regulator is the Welsh government, appointed 1 September 2013.

Common investment and common deposit funds that allow investment only by exempt charities are themselves exempt under provisions in the Charities Act 1993 that are still in force. (The Charities Act contains provisions to end this exemption, but no date has been set for this change.) These exempt charities have no principal regulator.

Annex 2: Contact details for principal regulators

Department for Business, Innovation and Skills (BIS)

2 St Paul's Place
125 Norfolk Street
Sheffield
S1 2FJ

Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

Website: www.gov.uk/government/organisations/department-for-business-innovation-skills

MOU between BIS and the Commission

Department for Culture, Media and Sport (DCMS)

2-4 Cockspur Street
London
SW1Y 5DH

Tel: 020 7211 6000

Email: enquiries@culture.gov.uk

Website: www.gov.uk/government/policies/maintaining-world-leading-national-museums-and-galleries-and-supporting-the-museum-sector/supporting-pages/providing-funding-for-national-museums-and-galleries

MoU between DCMS and the Commission

Department for Education (DfE)

Tel: 0370 000 2288

Contact webpage: www.education.gov.uk/help/contactus

Academies webpage: www.education.gov.uk/schools/leadership/typesofschools/academies

MoU between DfE and the Commission

Department for the Environment, Food and Rural Affairs (DEFRA)

Nobel House
17 Smith Square
London
SW1P 3JR

Tel: 08459 33 55 77

Email: defra.helpline@defra.gsi.gov.uk

Website: www.defra.gov.uk/

MoU between DEFRA and the Commission

Higher Education Funding Council for England (HEFCE)

Northavon House
Coldharbour Lane
Bristol
BS16 1QD

Tel: 0117 931 7317

Email: charityreg@hefce.ac.uk

Website: www.hefce.ac.uk/whatwedo/reg/charityreg

MoU between HEFCE and the Commission

Welsh Government

Department for Education and Skills
Cathays Park
Cardiff
CF10 3NQ

Tel: 0300 0603300

Email (schools): principalregulatorschools@wales.gsi.gov.uk

Email (FE): principalregulatorschools@wales.gsi.gov.uk

Website: <http://wales.gov.uk/topics/educationandskills>

MoU between the Welsh Government and the Commission

Annex 3 - Other useful guidance for exempt charities

- **Becoming a trustee (introduction)**
- **Good practice for charities (introduction)**
- **Making decisions (introduction)**
- **Conflicts of interest (introduction)**
- **Payments and expenses for trustees (introduction)**
- **Guidance for schools, colleges and universities**
- **Charities providing housing**
- **Charitable industrial and provident societies and payment of interest on shares**
- **Charitable purposes and public benefit**