

Charities : the new law : a trustees guide to the Charities Act 1992 / Charity Commission.

Contributors

Great Britain. Charity Commission

Publication/Creation

[London] : Charity Commission, 1992.

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CHARITIES

A Trustees'
Guide to the
Charities Act
1992

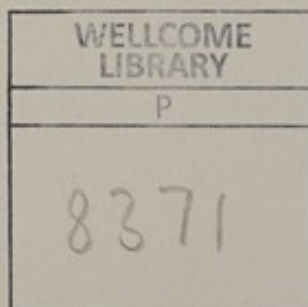
EXPLANATORY LEAFLETS

Leaflets are available from the Charity Commission covering a wide range of topics of interest to charity trustees. They are listed below.

- CC1* The Charity Commission: Origin and Functions
- CC2* The Charity Commissioners: How they can help charity trustees
- CC3* Responsibilities of Charity Trustees
- CC3a* Responsibilities for Charity Trustees - A Summary
- CC4* Charities for the Relief of the Poor
- CC6* Charities for the Relief of Sickness
- CC7* Ex Gratia Payments by Charities
- CC9* Political Activities by Charities
- CC13* Official Custodian for Charities Charity Land
- CC14* Official Custodian for Charities Investment Management by Charity Trustees
- CC14a* Investing Charity Cash
- CC15* Official Custodian for Charities Common Investment Funds
- CC16* The Relief of the Unemployed
- CC17* The Promotion of Racial Harmony
- CC18* Use of Church Halls for Other Charitable Purposes
- CC20* Fundraising and Charities
- CC21* Starting a Charity
- CC25* Charities Acts 1960 and 1985 Charity Accounts
- CC27* Provision of Alcohol on Charity Premises
- CC28* Selling Charity Land
- CC29* Charities and Local Authorities
- CC31* Educational Charities
- CC33* Acquiring Land
- CC34* Official Custodian for Charities Sales and Purchases
- CC36* Making a Scheme
- CC38* Capital Expenditure by Charity Trustees
- CC39* Extraordinary Repair Funds
- CC40* Disaster Appeals - Attorney General's Guidelines
- CC41* Payment of Charity Trustees
- CC44* Small Charities: Alteration of Trusts, Transfer of Property, Expenditure of Capital

Copies of these leaflets are available from any of the Commission's offices.

Requests for leaflets should be accompanied by an SAE no smaller than 10 inches by 7 inches.



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1 Who should read this booklet?

This booklet is for trustees of all charities. It contains information about changes to the law relating to charities. This information will be essential to you if you are to run your charity effectively in the future in accordance with the legal requirements which are now being introduced.

You are a charity trustee if you are a member of the body of people responsible for controlling and managing your charity, whether you are actually called "trustee" or not. If you are:

- a trustee of a charitable trust; or
- a member of the management or executive committee of a charitable association; or
- a director of a charitable company;

then you are a charity trustee. If you are in doubt about whether or not you are a charity trustee, the Commissioners will be able to advise you.

It is important that all the charity trustees of your charity read this booklet, because you are all responsible together for the proper running of the charity. The changes to the law described in this booklet affect you all equally.

Registered charities means charities registered with the Charity Commissioners. Exempt charities and excepted charities are those which do not have to register with the Commissioners. If you are the trustee of an exempt charity or an excepted charity please refer first to the following three paragraphs, from which you will be able to work out which portions of this booklet apply to you.

EXEMPT AND EXCEPTED CHARITIES

Exempt charities are those identified in the second schedule to the Charities Act 1960. They do not have to register with the Commissioners, and indeed are largely outside the Commissioners' jurisdiction. Although under the current law exempt charities have been allowed voluntarily to register with the Commissioners, the 1992 Act will in future prevent this. From 1 September 1992

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exempt charities will no longer be permitted to register with the Commissioners, and the registration of any exempt charity already on the register at that date will cease to have effect. From *1 September 1992*, therefore, no exempt charity will be allowed to describe itself as a registered charity or to quote a registered charity number.

Exempt charities are excluded from many of the provisions of the 1992 Act. However, if you are the trustee of an exempt charity you should read the following paragraphs of this booklet, which describe provisions of the 1992 Act that do apply to exempt charities:

- Paragraph 1.15 (Provision of accounts to the public);
- Paragraphs 3.1 to 3.4 (Disqualification of trustees);
- Paragraphs 6.1 to 6.5 (Public collections);
- Paragraphs 14.1 to 14.9 (Regulation of professional fundraisers);
- Paragraphs 16.1 and 16.2 (Ex-gratia payments).

Excepted charities are charities which do not have to register with the Commissioners but in other respects are fully within their jurisdiction. If you are the trustee of an excepted charity you should assume that all of the provisions described in this booklet apply to your charity in exactly the same way as they apply to registered charities. Where a particular requirement is different for excepted charities, this is made clear in the text.

2 What is this booklet about?

This booklet describes the effects of the Charities Act 1992. The 1992 Act alters the law relating to charities by amending sections of the Charities Act 1960 and by introducing some completely new provisions.

The 1992 Act was passed by Parliament in March 1992, and is being brought into force by the Home Secretary in several stages and on several different dates. It will affect every charity, and the purpose of this booklet is to allow you to identify the ways

in which it will affect you and your charity in particular. The booklet also tells you the dates on which the various changes are intended to take effect, as far as these dates are known at present.

Copies of the 1992 Act itself, or of the 1960 Act, can be obtained only from Her Majesty's Stationery Office (HMSO) and not from the Commissioners. The address of HMSO is given on page 31.

3 How to use this booklet

This booklet is divided into three Parts. Its aim is to indicate, briefly, how the 1992 Act affects charity trustees and the way you manage your charities.

Part 1 of this booklet (pages 5 to 14) deals with provisions of the 1992 Act which apply to the trustees of all or most charities and which contain penalties for failure to take certain actions required of you.

Part 2 of this booklet (pages 15 to 24) covers provisions which apply to some but not all charities, depending on the size or the type of the individual charity or whether it undertakes certain activities. You will need to read those paragraphs within Part 2 which apply to your charity or are likely to apply to it in the near future. Part 2 of the booklet covers:

- Charities which own or rent land or buildings;
- Charities which have investments with the Official Custodian for Charities;
- Charities with an annual income of £5,000 or less;
- Charities with an annual income of £1,000 or less;
- Charities which own or run almshouses;
- Charities established as companies;
- Charities which use outside fundraisers.

Part 3 of the booklet (pages 25 to 30) describes the

areas in which the 1992 Act has given new powers to the Commissioners to make them better able to assist individual charities with specific problems, and to deal with misuse of charitable funds and property.

After each subject heading in Parts 1, 2 and 3 of the booklet, a number or numbers is given in brackets (for instance, on page 6 you will see: Charity Accounts (19 - 25; 27)). These are the numbers of the relevant sections of the 1992 Act.

FURTHER INFORMATION

This booklet is intended to point out to you the areas in which the legal requirements are changing, not to make you an expert in charity law. You will probably want more information on particular topics which apply to your charity. The Commissioners publish a wide range of leaflets for trustees about various aspects of charity law and administration. These are available free of charge from any of the Commission's offices (see inside back cover). For a complete list of Charity Commission publications please refer to the inside front cover.

There are also a number of telephone helplines set up by the Commissioners to give advice in specific areas where the law is changing, and the telephone numbers are given in the relevant part of the text.

On page 31 there is a list of other organisations which can give practical help and advice to charity trustees.

Remember that the Commissioners are always willing to give advice and information to charity trustees on any matter affecting your charity. You can contact the Commissioners by letter, by telephone or by visiting one of their offices (preferably with an appointment). Please refer to the inside back cover to see which of the Commissioners' three offices - London, Liverpool or Taunton - you should contact about your particular charity. If you write or telephone it will save time if you can give the registered number of your charity and any reference number quoted on correspondence from the Commissioners in the past.

Finally, it must be emphasised that this booklet is a guide to the law and not an authoritative statement of it. You should continue to seek independent legal advice where necessary.

1

Part

*Paragraphs 1.1 to 7.1 below affect all or most registered and excepted charities and should be read by **all** charity trustees. The Act introduces a number of new offences, to which you may be exposed if you do not take the trouble to learn what will be required of you.*

1 Charity accounts (19 - 25; 27)

It is estimated that the charity sector as a whole has an annual income of around £17,000,000,000. This comes from a variety of sources: from the investments of charities themselves; from central and local government by grant, under contract, or through tax and rating reliefs; from business through grant or sponsorship; and from the public at large by donation, legacy, or payment for charitable services. The income of the charity sector can continue to grow only if there is general confidence in the way that charity trustees are managing and applying charitable resources.

It is therefore vital that charities should provide full and accurate financial information in their published accounts, and the new requirements described below are intended to achieve this. They are one of the most important features of the new Act. The major changes are as follows.

*[Note: If your charity is established as a company many of the following provisions do not apply to you. Please refer first to the paragraphs headed **Charitable companies** in **Part 2** of this booklet.]*

- 1.1 You will be required to keep accounting records which show and explain all your charity's transactions. Your records will have to contain:
 - day to day entries for all sums of money received or spent, showing what the money was received for or spent on;
 - a record of the charity's assets and liabilities.
- 1.2 The accounting records will have to be able to show, with reasonable accuracy, the charity's financial position on any particular date in the past; and they will have to be sufficiently detailed to enable you to prepare accounts in the form required under paragraph 1.5 or 1.6 below.
- 1.3 You will have to preserve these records for at least six years after the end of the financial year to which they relate.
- 1.4 You or your financial advisers will have to prepare accounts for each financial year. The form in which you

1 Charity accounts (19 - 25; 27) (continued)

prepare your accounts will depend on the amount of your charity's income:

- 1.5 If your charity has an income over £25,000 in any year, you will have to prepare an income and expenditure account and balance sheet for that year in accordance with regulations which will be made by the Home Secretary following consultation with charity accounting experts. These regulations will be published in good time for you to prepare to follow them.
- 1.6 If your charity has an income of £25,000 or less you will have the choice either to prepare your accounts in accordance with the regulations mentioned in paragraph 1.5 above, or to prepare a receipts and payment account instead. The receipts and payment account is a simple type of account appropriate for smaller charities, and if you choose to prepare this it will have to be accompanied by a statement of assets and liabilities. The Commissioners will be producing printed account forms for the trustees of smaller charities to use if you wish. If you fill in the form by following the instructions with it, you will be complying with the law automatically.
- 1.7 Only a few charities must at present have their accounts audited or examined annually by a person appointed by the trustees for that purpose. In future the accounts of all charities must either be audited or examined, according to the following rules:
- 1.8 If your charity's income or expenditure in a particular financial year, or in either of the two financial years before it, is over £100,000, you will have to have the accounts for that financial year audited by a professional auditor.
- 1.9 If paragraph 1.8 does not apply, then you may choose either to have the accounts audited by a professional auditor or to have them examined by an independent examiner.
- 1.10 A professional auditor is a person who is qualified under company law to audit company accounts, or a person who is a member of certain professional bodies. These bodies will be listed in regulations which the Home Secretary will make.

1 Charity accounts (19 - 25; 27) (continued)

- 1.11** An independent examiner is a person who has ability and experience in accountancy matters and who is independent of the trustees. The Commissioners will be producing guidance for trustees on how to select and appoint an independent examiner.
- 1.12** You will have to prepare an annual report in addition to your accounts. The annual report will need to describe your activities for the past year, and give some other basic information about the charity and those who administer it. The exact contents of the annual report will be set out in regulations to be made by the Home Secretary.
- 1.13** You will then have to send the annual report and your accounts together to the Commissioners within ten months of the end of your financial year. You will have to do this automatically, without being asked by the Commissioners; if you do not, you will receive reminders. If you have still not sent in your annual report and accounts after these reminders, and you do not have a good reason for failing to send them in, you may be prosecuted.

***Excepted charities:** Paragraphs 1.12 and 1.13 above do not apply to the trustees of excepted charities which are not registered. You will have to prepare and submit an annual report only if the Commissioners specifically ask you to, and not otherwise. Neither will you have to send your accounts to the Commissioners unless requested to do so. In addition, if your charity is excepted and unregistered because it has an income of £1,000 or less, then paragraphs 1.5 to 1.13 inclusive do not apply to you.]*

- 1.14** Once they have received the annual reports and accounts, the Commissioners have to make them available for public inspection.
- 1.15** The 1992 Act will also give members of the public the right to obtain accounts direct from you. If you receive a written request for a copy of your latest accounts you will have to provide the accounts within two months of the date of the request. You will be entitled to charge the person a reasonable fee to cover your costs in meeting the request. If the person has paid your costs and you fail to send the accounts, without a proper excuse for not doing so, you will again be at risk of prosecution.

1.16 The new rules described in paragraphs 1.1 to 1.15 above are likely to apply after *September 1993*. The Home Secretary's regulations mentioned in paragraphs 1.5, 1.10 and 1.12 will apply from the same date. You will be given ample notice of exactly when the new rules start to apply so that you are not forced to change your accounting procedures suddenly.

1.17 The Commissioners' helpline for questions on the new accounting requirements is 051-227 3191 ext. 2270.

2 Statements to appear on charity documents (3)

If your charity's annual income was £5,000 or more in its last financial year, please read paragraphs 2.1 to 2.7. If your charity's income last year was below £5,000 but is likely to rise to £5,000 in future you should also read these paragraphs.

2.1 Every registered charity with an income of £5,000 or more in its last complete financial year will have to state on some of its official documents (listed below) the fact that the charity is a registered charity. This will apply from *1 January 1993*. The purpose of this is to let people know that they are dealing with a registered charity and not with a private individual or a commercial company.

2.2 The documents on which the statement must appear are:

- any written or printed notice, advertisement or document which is intended to persuade the reader to give money or property to your charity (even where the reader will receive something in return);
- cheques, invoices, receipts, bills and orders for goods;
- promissory notes, letters of credit and money orders.

2.3 The statement may be printed on the document, applied with a rubber stamp, handwritten, or put on in some other way. However it appears, it must be clear, easy to read and in English. It can appear in other languages as well as, but not instead of, English.

2.4 Any of the following statements would satisfy the requirement:

- "A Registered Charity";
- "Registered Charity No." followed by your number;
- "Registered as a Charity";
- "Registered with the Charity Commissioners".

2.5 You will not have to give the registered number as part of the statement, but you may do so if you wish.

2.6 If you issue, or authorise someone else to issue, one of these documents after *1 January 1993* without the required statement (even if the document was written before that date), you and the other person could each be committing an offence.

2.7 The Commissioners have set up a telephone helpline to answer any questions you may have on this subject. The number is 0823-345103.

[Excepted charities: Paragraphs 2.1 to 2.7 above apply to excepted charities which are voluntarily registered with the Commissioners, but do not apply to excepted charities which are not registered.]

3 Persons not allowed to act as trustees (45 & 46)

This new provision will affect only a few people, but it could have serious consequences for those who are affected and who do not comply with it. You should consider whether it applies to you or to one of your fellow trustees. If you are in any doubt, you should either seek your own legal advice or contact the Commissioners.

3.1 From *1 January 1993* certain people will be disqualified - that is, forbidden - from continuing as a trustee, or from becoming a trustee. These are people who:

- have been convicted at any time of any offence involving deception or dishonesty, unless the conviction is legally regarded as

3 Persons not allowed to act as trustees (45 & 46)

(continued)

spent; or

- are undischarged bankrupts; or
- have made compositions with their creditors and have not been discharged; or
- have at any time been removed by the Commissioners or by the court in England, Wales or Scotland from being a trustee because of misconduct; or
- are disqualified from being company directors; or
- have failed to make payments under county court administration orders.

3.2 Such people can at any time (even before *1 January 1993*) apply to the Commissioners for a waiver which, if granted, will allow them to continue or to begin as trustees after that date. However, the Commissioners will not grant a waiver lightly, since the purpose of the new provision is to prevent people who have shown financial incompetence or dishonesty in the past from being in control of charitable resources.

3.3 Disqualified people do not have to take steps to resign or be removed from their trusteeship, because their trusteeship will have been ended automatically by law. They should immediately cease to take any further part in the affairs of the charity. If they continue to act as trustees they will be committing an offence, for which they could be prosecuted. They could also be forced to pay back to the charity the value of any benefits they may have received from the charity whilst disqualified.

3.4 Where a person has been disqualified, a new trustee should be appointed in his or her place, in the same way that new trustees are appointed to your charity when others resign or retire. If you are not sure how this should be done, please write to the Commissioners.

4 Giving false information to the Commissioners (54)

- 4.1** The Commissioners rely upon information given to them by trustees and employees of charities, and by members of the public. It is extremely important that, where the Commissioners are given information which they will use when making a decision about a charity, this information should be accurate.
- 4.2** It will therefore be an offence, from *September 1992*, for any person (not just trustees) to give the Commissioners information which is false or misleading:
- if the person knows the information to be false or misleading;
 - if the person does not care whether it is false or misleading and does not check it;
- 4.3** This applies whether or not the Commissioners have specifically asked for the information. The Commissioners will be putting reminders on some of their most important forms about the need to supply correct information.
- 4.4** From the same date it will also be an offence to alter, conceal or destroy charity documents which may be required by the Commissioners.
- 4.5** This new provision is intended mainly to deal with the small number of cases where people deliberately try to cover up their own neglect or wrongdoing. It will also cover cases where a person's careless failure to provide correct information to the Commissioners causes loss to the funds of a charity or has other serious consequences. No-one will be penalised for genuine mistakes or for trivial errors of fact which have no harmful effects.

5 Sending an annual return to the Commissioners (26, 27)

- 5.1** You will be required, from *September 1993*, to send to the Commissioners an annual return, containing whatever information may be specified by the Commissioners. In practice, the annual return will be a form sent to the charity's correspondent each year by the Commissioners. It will be similar to the form you may have received during the past two years as part of the charity census. The annual return will have to be completed and returned within ten months of the end of your financial year.

5.2 The information in the annual return from each charity will be used by the Commissioners for two main purposes:

- to keep the Register of charities up to date; and
- to identify individual charities which may need advice or assistance from the Commissioners, or which may be at risk of maladministration or abuse.

5.3 As with your accounts, you will receive reminders if you do not send in your annual return by the due date. If you still do not submit your annual return, and do not have a good reason for failing to submit it, you may risk prosecution.

[Excepted charities: Paragraphs 5.1 to 5.3 above apply to excepted charities which are voluntarily registered with the Commissioners, but do not apply to excepted charities which are not registered.]

5.4 The Commissioners have set up a helpline to answer questions on the annual return. The number is 051-227 4646.

6 Public collections (65-74)

Paragraphs 6.1 to 6.5 below will apply to you if your charity appeals for money or property by collecting in public. The existing rules governing street and house-to-house collections will be replaced by the arrangements described below.

6.1 From *September 1993* you will not be allowed to conduct a public charitable collection unless you have either:

- a permit from the local authority (ie the district council or, in London, the borough council) in whose area you will be collecting. If you will be collecting in more than one local authority area, you will have to have a permit from each local authority; or
- an exemption order from the Commissioners. The Commissioners can grant you an exemption order only if your collection is to take place over the whole of, or over a large part of, England and Wales.

6.2 The promoter of any public charitable collection conducted without either the required permit(s) or an exemption order could be prosecuted.

6.3 Collections in the following places do not need permits:

- inside buildings (unless the collection is being taken in a public concourse inside, for example, a railway or bus station, an airport or a shopping centre, when you will need a permit);
- places of worship and churchyards;
- places which members of the public have to pay to enter;
- places where members of the public are let in solely for purposes connected with the collection being conducted there.

6.4 Collecting boxes left unattended in public houses, shops, restaurants and similar places do not need permits.

6.5 A collection taken during the course of a public meeting does not need a permit.

7 Fees payable to the Commissioners (51)

7.1 At present, the Commissioners do not charge for any of their services other than the supply of extracts from the register of charities and photocopies of charity documents. The 1992 Act permits the Home Secretary to lay regulations before Parliament allowing the Commissioners to charge for some of their services. You will be given advance notice of any charges agreed by Parliament. Charges are unlikely to be introduced before the last quarter of 1993.

Part

2

Please refer to each heading and read the paragraphs below it if it applies to your charity or if it might apply in the future.

8 Charities which own or rent land or buildings (32-36)

8.1 At present you must in many cases obtain the Commissioners' consent to the sale or lease of charity land and buildings, and to mortgages which are given by charities over their property as security for loans. From *1 January 1993* you will be able to sell, lease, mortgage, or otherwise dispose of your land and buildings without the Commissioners' consent, provided you can meet certain requirements. The requirements are very similar to those which you are currently asked to follow by the Commissioners before they will give consent. The requirements will apply even to sales which do not before *1 January 1993* need the Commissioners' consent. But the new provisions do not give trustees a legal power to sell land where they do not already have it.

8.2 There are three different sets of requirements:

- one for mortgages given as security for money borrowed (see paragraph 8.3 below);
- one for leases of seven years or less (see paragraph 8.4 below); and
- one for all other transactions including sales, leases for more than seven years, exchanges of land, granting of easements and rights, and so on (see paragraph 8.6 below).

8.3 MORTGAGES

If you wish to grant a mortgage over your charity's property as security for a loan, you will not need the Commissioners' consent as long as you can meet these requirements:

- you must obtain and consider the advice of someone with ability and experience in financial matters who has no financial interest in the loan being made to the charity. The advice must be in writing and must cover at least the following matters:
- whether the loan is necessary for the charity; and
- whether the terms of the loan are reasonable from the charity's point of view; and

8 Charities which own or rent land or buildings (32-36)

(continued)

- whether the charity will be able to repay the loan on the terms agreed with the lender.

8.4 SHORT LEASES

If you can meet all of the following requirements you will not need the Commissioners' consent when you grant a lease for seven years or less of any of your land and buildings. The requirements are:

- you must secure the advice of an estate agent or a surveyor; and
- you must be satisfied that the rent you are obtaining for the property is the highest that can be obtained; and
- your tenant or lessee must be someone who is not a "connected person".

8.5 A "connected person" includes a trustee, employee or officer of the charity or a relative of any such person, or a company controlled by a trustee of the charity.

8.6 ALL OTHER TRANSACTIONS

You will be able to sell land, lease it for more than seven years or otherwise dispose of it without the Commissioners' consent if you can meet the following requirements:

- you must obtain a written report on the transaction from a qualified surveyor; and
- you must advertise the property exactly as the surveyor recommends in his report; and
- you must be satisfied, in the light of the surveyor's advice, that the price or rent you are obtaining for the property is the highest that can be obtained; and
- your purchaser, tenant or lessee must not be a "connected person" (see paragraph 8.5).

- 8.6** If in any transaction you cannot meet all of the relevant requirements together, then you will need the Commissioners' consent to the transaction.
- 8.7** Where you can meet the requirements and therefore do not need the Commissioners' consent, you will have to certify in the legal deed or document giving effect to the transaction that you have met the requirements and that you have power to sell or lease the land.
- 8.8** If you are selling or leasing land which the charity's trusts require you to use for specific purposes, you will need also to give public notice of your intention to sell or lease it and you will have to consider any representations made to you. The requirement to give public notice does not, however, apply if:
- you are leasing the land for two years or less; or
 - you are acquiring other land as a direct replacement for the land you are selling or leasing.
- 8.9** The paragraphs above give only a brief summary of the new arrangements for disposing of land. If you have specific questions you can telephone one of the Commissioners' helplines on 071-210 4488 (London); 051-227 3191 ext. 2426 (Liverpool); or 0823-345041/7 (Taunton).

9 Charities which have investments with the Official Custodian (29-31)

- 9.1** The Official Custodian for Charities is an officer of the Commissioners' staff. She holds investments and property in her name on behalf of many charity trustees. She is only allowed to buy or sell investments or property on behalf of a charity if the trustees instruct her to do so. She has no power to manage investments for any charity.
- 9.2** The Official Custodian for Charities will be required under the 1992 Act to return most of the investments (except for land) to the trustees on whose behalf she has been holding them. This process is known as divestment, and it will take about five years starting from January 1993.

- 9.3** If you are among the trustees affected by divestment, you will receive, direct from the Official Custodian, some information and instructions about divestment. If you have any specific questions about divestment, you can telephone the Official Custodian's helpline on 071-210 4646 (London) or 051-227 3191 ext. 2469 (Liverpool).

10 Small charities (annual income £5,000 or less)

(43,44)

- 10.1** Nowadays many small charities have purposes which cannot be met properly because they are out of date, or income which is too small to be of much help to the charity's beneficiaries. The result is that the assets of such charities are not as effectively used as they might be, through no fault of the trustees. The Charities Act 1985 went some way towards providing a solution, but only the very smallest charities were able to use the 1985 Act.
- 10.2** The 1992 Act contains provisions designed to extend the principles of the 1985 Act. The new arrangements described in paragraphs 10.3 to 11.3 below will help more small charities, and apply from *1 September 1992*.
- 10.3** Under the new provisions there are two courses of action open to you if your charity had an income, in its last financial year, of any amount up to £5,000 and does not own property (such as an almshouse) which is subject to a restriction that it must be used for the purposes of your charity. These two courses of action are entirely optional: you need not follow either if it is not in the interests of your beneficiaries to do so.
- 10.4** If you are satisfied that the existing purposes of your charity, set out in its trust deed, no longer allow you to use the charity's resources effectively, you can either:

- decide to transfer all your charity's property to another charity or to more than one other charity. If you do this, the charity or charities you choose to receive your property must have purposes as similar as possible to the purposes of your own charity. This will mean that your charity's property, after it has been transferred, will continue to be used for much the same purposes as you would have used it; or you can

- decide to modify the purposes, powers or administrative provisions of your charity's trust deed so as to bring them up to date. If you decide to modify your charity's purposes, the modified purposes must be similar to the existing ones.

10.5 Once you have decided to pursue a particular course of action, you will need to hold a trustees' meeting to pass a formal resolution to give effect to your decision. A resolution can be passed if two-thirds of the trustees who vote on it are in favour of it. When you have passed the resolution you will have to:

- give public notice, in whatever way you think fit, of your resolution; and
- send a copy of the resolution to the Commissioners.

10.6 The Commissioners must then consider your resolution to see whether or not to approve it; and they may ask you for more information. They can also take into account any comments made to them by local people. Within three months of receiving the resolution from you the Commissioners will tell you in writing whether or not they have approved it.

10.7 If the Commissioners tell you that they have approved your resolution then the action you resolved to take can proceed. If the Commissioners tell you that they have not approved your resolution then you may not proceed any further.

10.8 You can telephone one of the Commissioners' helplines for questions on this subject. The numbers are 071-210 4525 (London); 051-227 3191 ext.2490 (Liverpool); or 0823-345041/7 (Taunton).

11 Very small charities (income £1,000 or less)

(43,44; 2)

11.1 For the very smallest charities there is a third course of action available, in addition to the two already described in paragraphs 10.3 to 10.7. This third option is designed for charities where the income available to you to spend is so small that it is difficult to achieve any useful purpose by spending it. You can take this third course of action only if:

11 Very small charities (income £1,000 or less)

(43,44; 2)

(continued)

- your charity had an income in your last financial year of £1,000 or less; and
- your charity has a permanent endowment; and
- your charity's permanent endowment does not include any land or buildings.

11.2 A permanent endowment is a capital asset which the trustees are not allowed to spend, and which they must keep invested to produce an income for spending.

11.3 If your charity does meet the three conditions in paragraph 11.1, and you are satisfied that your charity's income is too small to be useful, you can decide to spend the capital of your charity as well as its income. Once you have decided to do this, you will have to follow the procedure described in paragraphs 10.5 to 10.7 above.

11.4 The 1992 Act also introduces new rules applying from *1 September 1992* to the registration of very small charities. Some charities which are currently registered with the Commissioners no longer have to be registered. A charity does not have to be registered if:

- it has no permanent endowment; and
- it does not use or occupy any land or buildings; and
- its annual income from all sources is £1,000 or less.

11.5 If all three conditions in paragraph 11.4 apply to your charity at the same time, the charity need not be registered with the Commissioners. You have the choice whether to register or not. You should bear in mind that if your income is below £1,000 now but rises above £1,000 in the future you will have to register again.

12 Charities which own or run almshouses (50)

12.1 Most almshouse charities charge the residents of their almshouses a weekly contribution which goes towards the maintenance of the almshouses and the cost of providing some services. In many cases the weekly amount you may charge almshouse residents must be approved

by the Commissioners. If this is so, you will have been accustomed in the past to write to the Commissioners for approval every time you wanted to change the amount of the contribution to be paid by the residents.

- 12.2** From *1 September 1992* you no longer have to seek the Commissioners' approval to the level of the contributions you charge to almshouse residents. Indeed, you do not have to contact the Commissioners at all: it will be up to you to fix the contributions at a level which you feel is proper, taking into account the financial position of the residents and the total amount of money you need to raise to maintain the almshouses and provide services in them.

13 Charities established as companies (40-42)

- 13.1** An increasing number of charities are being set up as companies limited by guarantee. Because they are at the same time charities and companies they are subject in most respects to both charity law and company law. But there are some areas in which the 1992 Act makes special provision for charitable companies in view of their dual character. These special provisions are set out in paragraphs 13.2 to 13.5 below.

- 13.2** Charitable companies are subject to the accounting requirements of the Companies Acts and must prepare and file accounts in accordance with company law. For this reason, charitable companies are released from many of the new accounting requirements of charity law, described in earlier paragraphs of this booklet. Of those paragraphs, 1.1 to 1.11 do not apply to charitable companies but 1.12 to 1.16 do apply to charitable companies.

- 13.3** The new provisions for small and very small charities described in paragraphs 10.1 to 11.3 above do not apply to charitable companies at all.

- 13.4** From *1 January 1993* any charitable company wishing to alter:

- its objects; or
- any provision in its Memorandum or Articles of Association relating to the way in which the company's assets and property may be applied ;

must first obtain the written consent of the Commissioners to the alteration. Any such alteration made without the Commissioners' consent will not be valid.

- 13.5** From *1 January 1993* all charitable companies will have to put their company name on all business correspondence, on all official publications and on cheques, receipts, invoices and several other financial documents.

14 Charities which use outside fundraisers (58-64)

- 14.1** There is at present no law regulating the activities of professional fundraisers who make appeals to the public on behalf of charities. In the past there has been concern that only a small proportion of the money raised by some fundraisers has gone to the charity for which it was intended. The 1992 Act will introduce, from *April 1993*, rules governing the activities of professional fundraisers and their relationships with the charities on whose behalf they act.
- 14.2** The new rules apply to businesses or people, other than the salaried employees of charities, who are paid to raise money for charities; professional fundraisers, in other words. The rules do not apply to volunteers who receive no payment or who receive only a token amount.
- 14.3** In future no professional fundraiser will be allowed to appeal for money on behalf of a particular charity unless he has a written contract with that charity. The contract will have to deal with certain specific matters which the Home Secretary will lay down in regulations.
- 14.4** When making an appeal to members of the public the professional fundraiser will have to give out certain information about the charity for which he is raising funds and about the way in which he is being paid by the charity. The purpose of this is to prevent any fundraiser appealing for money for a particular charity without that charity's knowledge, and to make sure that the fundraiser gives members of the public enough information to allow them to make a proper choice about whether or not to contribute to the appeal.
- 14.5** There are similar rules governing the way in which commercial firms may advertise when they promote themselves, their products or their services by promising

14 Charities which use outside fundraisers (58-64)

(continued)

to contribute to a charity when a consumer buys a particular product or service.

- 14.6** Under the new rules a professional fundraiser will only be able to raise money for your charity with your consent. It will be possible for you to stop someone fundraising in the name of your charity if the fundraiser is acting in a way which will harm your charity's reputation, or if you do not want your charity to be associated with that particular fundraiser and his methods of working. If the person does not cease his activities when you tell him to stop you will be able to go to court to force him to stop.
- 14.7** If a person appeals to the public for funds on behalf of an organisation which he says is a registered charity when it is not, he could be at risk of prosecution.
- 14.8** If you intend to employ a professional fundraiser you and he will need to work in accordance with these new rules. The same applies if you have an arrangement with any commercial firm which promotes itself or its products or services to the public by promising to make contributions to your charity.

Part

This part describes the Commissioners' new powers. You should read it to find out how the Commissioners may be able to help you with a specific problem, and how they will be able to investigate and deal with misuse of charity funds and property.

15 Misleading charity names (4,5)

- 15.1** The Commissioners have, from *1 September 1992*, power to direct a registered charity to change its name within a year of registration if the name is the same as, or too similar to, the name of another registered charity. The purpose of this is to avoid duplication of charity names on the Register and to prevent a new charity from exploiting the good name and reputation of an existing charity by pretending to be that charity.

[Excepted charities: Paragraph 15.1 above applies to excepted charities which are voluntarily registered with the Commissioners, but does not apply to excepted charities which are not registered.]

- 15.2** The Commissioners can also direct a charity to change its name if the name is likely to mislead the public about the purposes or activities of the charity. This is intended to prevent a charity raising funds from the public by using a name which gives a false impression of the of work done by the charity.

16 Ex-gratia payments by charities (17)

- 16.1** At present only the Attorney General has the power to authorise you to make an ex-gratia payment; that is, to pay funds or use property of your charity to settle what you regard as a moral obligation, where you have no legal obligation and no power to apply the funds in that way. If you were to do this without the Attorney General's permission you would be acting improperly.
- 16.2** From *1 September 1992* the Commissioners are able to authorise you to make an ex-gratia payment in the same circumstances as the Attorney General can. The rules about ex-gratia payments are not being relaxed; it is simply that the Commissioners are able to give you permission to make an ex-gratia payment where they could not before. The Commissioners will not give this permission unless you satisfy them that you have a genuine and compelling moral obligation. Charity money spent making an ex-gratia payment is money which will not then be available to apply for the charity's purposes.

17 Returning unspent appeal money (15)

17.1 If your charity has made a public appeal by asking for money for a specific project (for example, the purchase of a particular piece of medical equipment), you may find that you cannot spend all the money on that specific project. This may happen if you raise so much money that you have some left over after finishing the project, or if you raise so little that you decide not to go ahead with the project at all.

17.2 If your appeal did not specify what would happen to any unused money, it is your duty to try to return the money to the people who gave it. However, you may not be able to return some of the money, because it is impossible to tell who gave it. This applies, for example, to money collected in collecting boxes in the street. The 1992 Act introduces, from *1 January 1993*, new procedures to be followed when you are trying to find donors to give them their money back.

17.3 Where you can find a donor and the donor does not want his money returned to him he will have to sign a disclaimer in a form laid down by the Commissioners. Where you cannot find or identify a donor you will have to advertise, again in a form laid down by the Commissioners, to see if the donor comes forward.

17.4 If there is money left over after you have advertised to find the donors, the Commissioners will - as now - have to make a scheme to enable it to be used for other charitable purposes in the future. These purposes will be similar to the purposes for which the money was raised in the first place.

18 Applying for a scheme (13)

18.1 A scheme is a legal document by which the Commissioners may alter the purposes of a charity or the way it is to be administered. Often this becomes necessary when the trustees of a charity find it difficult to apply all the charity's income effectively and in accordance with the purposes of the charity.

18.2 It is the duty of you and all your fellow trustees to apply to the Commissioners for a scheme when one is needed. Before now the Commissioners could not normally make a scheme unless the trustees unanimously resolved, at a properly constituted meeting, to apply for one. The 1992

Act introduces, from *1 September 1992*, arrangements making it easier for the Commissioners to make a scheme for a charity which cannot resolve to apply for one because it does not have a full complement of trustees or because one or more of the trustees is absent or incapable of fulfilling his duty as a trustee.

19 Incorporation of trustees (48)

19.1 If your charity is a trust or an unincorporated association, you and your fellow trustees are treated by the law as separate individuals. This means, for example, that if your charity owns property or shares the title deeds to the property, or the share certificates, will show the names of each of you individually.

19.2 Where a body is incorporated, different arrangements apply. The body is itself treated by the law as a single person and not as a collection of different individuals. From *1 January 1993*, the 1992 Act will make it easier for the trustees of charities to apply to the Commissioners to become incorporated under the Charitable Trustees Incorporation Act 1872. The particular advantage of incorporation is that your property can be held in the name of the incorporated body, making it unnecessary for your title deeds or share certificates to be changed when one trustee resigns or retires and is replaced by someone else. Your investments and bank accounts can also be held in this way.

19.3 This form of incorporation makes the trustees of a charity, and not the charity itself, into a corporate body. Incorporation of the trustees does not affect their existing powers or rights, nor does it limit any liability which you would otherwise have as a trustee.

20 Investigation of charities and protection of property (6-11)

20.1 The Commissioners are allowed under the present law to make investigations into charities for whatever purpose they wish. If, as a result of their investigation, the Commissioners believe that property belonging to the charity is at risk of misuse or fraud, they can nevertheless not take any action to protect the property unless they have also uncovered misconduct or maladministration on someone's part.

20.2 The 1992 Act changes the law, from *1 November 1992*, so that the Commissioners will be able to take action protecting charity property without having first to establish that misconduct or maladministration has already occurred. In order to protect charity property from possible misuse or fraud, the Commissioners will be able, among other things, to suspend any trustee(s) or employee(s) of the charity, to freeze the charity's bank accounts and property, and to transfer the charity's property for safekeeping to the Official Custodian for Charities. They will also be able to appoint a receiver/manager to run the charity's affairs for a period.

20.3 If the Commissioners find as well that misconduct has already occurred in the charity's affairs, they may remove the responsible trustee(s) or employee(s) permanently. They will also be able to make a scheme to reorganise the charity, whether or not the trustees wish to co-operate by applying for a scheme.

20.4 The Commissioners are able, from *1 September 1992*, to require any person to give them particular information or documents, not just in the course of an investigation, but for use in connection with any of the Commissioners' functions.

21 Supervision by the Commissioners of some Scottish charities (12)

21.1 From *1 November 1992* the Commissioners will be able to investigate any Scottish charity which is largely controlled from England or Wales and to take most of the protective measures described in paragraph 20.2 above. There is a similar provision in Scottish law allowing the authorities there to investigate English or Welsh charities controlled mainly from Scotland. These provisions are designed to deal with the case where a charity could take advantage of any doubts as to which jurisdiction - Scottish or English/Welsh - it fell within.

21.2 The Commissioners' helpline on this subject is 051-227 3191 ext. 2264.

22 Legal proceedings by the Commissioners (28)

22.1 The Commissioners are not, under the present law, empowered to take legal proceedings with respect to charities. That is the province of the Attorney General, one of the law officers of the Crown.

22.2 From *1 January 1993* the Commissioners will have the same power as the Attorney General to take legal proceedings, though they must first obtain the Attorney's consent. This power could be used, for example, to force defaulting trustees to fulfill their obligations as trustees, to pursue trustees who have committed breaches of trust, and to recover charity property or seek damages.

23 Use of money in dormant bank accounts (18)

23.1 From *1 January 1993* a bank or building society will be allowed to inform the Commissioners if it holds a charity account which has not been used for five years or more.

23.2 The Commissioners will then attempt to contact the charity or any of its trustees. If the Commissioners cannot trace the charity or the trustees, they will be able to direct the bank or building society to pay the money in the account to another charity. The receiving charity must have similar purposes to the inactive one, so that the money can once more be applied for the purposes for which it was originally given.

24 Possible changes to charity investment rules (38, 39)

24.1 Many charity trustees are subject to restrictions governing how they may invest funds belonging to their charity. For some charities these restrictions are set out in the charity's trusts and the trustees of such charities can invest their funds only in the ways permitted by their trusts. Other charities must invest their funds in accordance with the Trustee Investments Act 1961.

24.2 The 1992 Act allows the Home Secretary, with the consent of the Treasury, to make amendments to the Trustee Investments Act 1961. The effect of these amendments would be to change the investment rules for charities which are subject to the 1961 Act. The rules would be relaxed rather than tightened, so trustees would be able to keep their existing investments if these investments still provided a good return or had potential to do so.

24.3 No date has yet been fixed for the Home Secretary's amendments to be made. For the time being, the law will remain exactly as it stands at present.

OTHER ORGANISATIONS

ACTION WITH COMMUNITIES IN RURAL ENGLAND
SOMERFORD COURT SOMERFORD ROAD CIRENCESTER
GLOUCESTERSHIRE GL7 1TW

ACRE and its 38 member Rural Community Councils campaign for action with rural communities to give village people a greater say in their future.

THE ALMSHOUSE ASSOCIATION
BILLINGBEAR LODGE WOKINGHAM BERKSHIRE RG11 5RU

The Association gives its member charities advice on any matter concerning almshouses and the welfare of the elderly, promotes improvements in almshouses and encourages the provision of almshouses.

CHARITIES AID FOUNDATION
48 PEMBURY ROAD TONBRIDGE KENT TN9 2JD

CAF actively promotes tax-effective giving, provides a range of sophisticated services to charities and produces research and statistics on the voluntary sector.

COMMUNITY MATTERS
(NATIONAL FEDERATION OF COMMUNITY ORGANISATIONS)
8-9 UPPER STREET ISLINGTON LONDON N1 0PQ

NFCO provides information, advice, training, support and national representation for local organisations with a general concern for their community in education, recreation, social welfare, and community building management.

DIRECTORY OF SOCIAL CHANGE
RADIUS WORKS BACK LANE LONDON NW3 1HL

DSC is a national charity providing information and assistance to voluntary organisations. It runs regular programmes of short training courses in fundraising and other topics.

HER MAJESTY'S STATIONERY OFFICE
PUBLICATIONS CENTRE PO BOX 276 LONDON SW8 5DT

Copies of the Charities Act 1992, regulations made under the Act, other legislation, and HMSO publications can be ordered from this address. This address is not a bookshop.

OTHER ORGANISATIONS (continued)

INSTITUTE OF CHARITY FUNDRAISING MANAGERS

MARKET TOWERS 1 NINE ELMS LANE LONDON SW85NQ

ICFM is a professional institute which aims to improve standards of performance and ethical practice in charity fundraising. The ICFM Trust offers education and training courses in charity fundraising.

NATIONAL COUNCIL FOR VOLUNTARY ORGANISATIONS

REGENT'S WHARF 8 ALL SAINTS STREET LONDON N1 9RL

NCVO, the representative body for the voluntary sector, has 600 national voluntary organisations in membership. NCVO's legal team advises on charity law. NCVO publishes a guide to the Charities Act 1992.

WALES COUNCIL FOR VOLUNTARY ACTION

LLYS IFOR CRESCENT ROAD CAERFFILI MID GLAMORGAN CF8 1XL

TEL: 0222-869224

WCVA is the national organisation which represents and promotes the voluntary sector in Wales. It provides a comprehensive range of information, consultancy funding and management training services.

CHARITY COMMISSION OFFICES

Please quote your charity's registered number, or any Charity Commission reference from previous correspondence, when you telephone or write to the Commission.

If you want to call in person to discuss your charity, please make an appointment beforehand.

LONDON OFFICE

Dealing with national charities, overseas charities, local charities in all London boroughs, and local charities in list A below:

ST. ALBAN'S HOUSE, 57-60 HAYMARKET, LONDON SW1Y 4QX.

TEL: 071-210 4477. FAX: 071-930 9173.

LIVERPOOL OFFICE

Dealing with local charities in all Welsh counties and English counties in list B below:

GRAEME HOUSE, DERBY SQUARE, LIVERPOOL L2 7SB.

TEL: 051-227 3191. FAX: 051-255 0971.

TAUNTON OFFICE

Dealing with all charities connected with the armed services and with local charities in list C below:

WOODFIELD HOUSE, TANGIER, TAUNTON, SOMERSET TA1 4BL.

TEL: 0823-345000. FAX: 0823-345003.

List A

Cambs.
Essex
Kent
Norfolk
Northants.
Suffolk
Surrey

List B

Cheshire
Cleveland
Cumbria
Derbys.
Durham
Gtr M'chester
H'ford & Worcs.
Humberside
Lancs.
Leics.
Lincs.
Merseyside
Northumberland
North Yorks.
Notts.
Salop.
South Yorks.
Staffs.
Tyne & Wear
Warks.
West Midlands
West Yorks.

List C

Avon
Beds.
Berks.
Bucks.
Cornwall
Devon
Dorset
Glos.
Hants.
Herts.
Isle of Wight
Oxon.
Somerset
Sussex
Wilts.

