

## EXEMPT CHARITIES

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### Introduction

There is a wide-spread belief that any charity which is "exempt" is free from all restrictions imposed by the Charities Acts 1960 and 1992 and does not fall at all within the jurisdiction of the Charity Commission. This is by no means the case. The wide-spread belief is, indeed, the product of misconception and the purpose of this article is to consider what charities are exempt, why they are exempt and from what they are exempt.

### Distinguished from Other Unregistered Charities

One of the requirements from which an exempt charity is exempt is the requirement to register. Exempt charities are not, however, the only charities which are absolved from this requirement and perhaps the first consideration should be to distinguish them from other categories of charities which equally are not required to register. To put the position into context, there are 170,000 charities on the Charity Commission register and the Charity Commission estimates that there are a further 100,000 which are not required to register. Indeed, there are no less than four categories of charity which are not required to register. These are set out in s.4(4) Charities Act 1960 ("the 1960 Act") as amended by the Charities Act 1992 ("the 1992 Act"). They are:

- (a) a charity comprised in the Second Schedule to the 1960 Act ("*exempt* charities");
- (b) a charity which is excepted by order or regulations ("*excepted* charities");
- (c) a charity which has neither permanent endowment nor the use or occupation of any land and which does not have a total income of more than £1,000 a year;
- (d) registered places of worship.

Exempt charities will be considered in detail hereafter.

### Excepted Charities

A list of excepted charities is set out in the Second Appendix to this article. Broadly speaking it includes Boy Scout and Girl Guide Units, certain charities connected with the Methodist, Baptist and Congregational Churches, Church of England charities where property is vested in a diocesan trust corporation and certain charities

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connected with the promotion of the efficiency of the armed forces. Excepted charities remain fully subject to the supervisory jurisdiction of the Charity Commission but are not required to register. Such charities may also be excepted from other provisions of the Acts, for example, the need to submit accounts or to obtain consent for the disposal of land. The provisions in respect of which the various categories of excepted charities are excepted are shown in the Second Appendix.

### **Definition of Exempt Charities**

Turning now to the more detailed consideration of exempt charities, the definition of exempt charities is to be found in s.45(1) of the 1960 Act. It simply refers to Schedule 2 of the 1960 Act where the various categories of exempt charities are set out. However, since the enactment of the Schedule many institutions have been added to those categories and the number of categories itself has in fact been extended. The First Appendix to this article attempts to set out a definitive list of charities currently exempt which includes many of the large museums and universities as well as registered Friendly Societies and institutions administered by the Church Commissioners.

It may nevertheless be considered helpful to summarise, in broad outline, the main categories before setting out comprehensive and somewhat dry lists. First come the older universities<sup>2</sup> and their constituent colleges with, in the case of two Oxbridge colleges, the ancient public schools founded at about the same time by the same founder<sup>3</sup> as the colleges with which they continue to have a traditional connection. Among these older universities are to be counted not only the Universities of Oxford, Cambridge, Durham (and colleges) and the University of Newcastle-upon-Tyne but also the universities excepted from the jurisdiction of the Charity Commissioners even before the enactment of the 1960 Act. Further universities and university colleges were added by Order in Council and these included nearly all the universities other than the University of Buckingham and those new universities, formerly higher education corporations, which were converted into universities under the Education Reform Act 1988. Many institutions connected with the University of London have been included as well as numerous medical and postgraduate medical institutes also connected with the University of London. Institutions connected with the University of Manchester and the University of Wales were also excepted. Numerous national institutions, museums<sup>4</sup>, galleries<sup>5</sup> and botanic gardens<sup>6</sup> were brought within the ambit

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<sup>2</sup> Oxford, Cambridge and Durham.

<sup>3</sup> Eton College, like King's College, Cambridge founded by Henry VI and Winchester College founded, like New College, Oxford by William of Wykeham.

<sup>4</sup> E.g., Victoria and Albert Museum, Science Museum.

<sup>5</sup> The National Gallery, the Tate Gallery, the National Portrait Gallery and the Wallace Collection.

<sup>6</sup> Royal Botanic Gardens, Kew: see National Heritage Act 1983, s 40(1).

of exemptions already enjoyed by the Imperial War Museum and the National Maritime Museum by the Museums and Galleries Act 1992 s.11. The Church Commissioners and any institution administered by them are exempt charities and so is any registered society or branch within the meaning of (i) the Industrial and Provident Societies Act 1965 and (ii) the Friendly Societies Act 1974. Returning again to the museum world, the Museum of London ranks as an exempt charity by virtue of the Museum of London Act 1965 and the British Library also qualifies by reason of the British Library Act 1972.

Further educational bodies were endowed with the privilege of exemption by the Education Reform Act 1988: grant-maintained schools and their related institutions, the various Curriculum and Assessment Councils, higher education corporations and further education corporations. The new universities have been exempted by virtue of that Act.

Lastly, it must be remembered that common investment funds holding funds only for exempt charities are themselves exempt charities.

### **Why are they Exempt?**

The rationale behind the exemption of charities is that Parliament itself is fully satisfied that the objects of the particular charity will be carried out and its property adequately safeguarded by existing arrangements involving supervision by some other body or authority, e.g., by the registrar of Friendly Societies, the Church Commissioners or by Parliament through the Universities and Colleges Estates Act 1925, or that the charity's constitution is such that supervision is unnecessary. Exempt charities are therefore not subject to the supervisory jurisdiction of the Charity Commission: it would indeed be superfluous to subject them to such supervision: see 221 H of L Official Report (1 March 1960) Lord Chancellor; H of C Report of Standing Committee A (5 July 1960) 384 385 (Mr David Renton as he then was).

### **What they are Exempt From**

*From the charity's point of view this means*

- (1) there is no requirement to register under s.4 of the 1960 Act.
- (2) there is no requirement to have the charity's accounts audited under s.21 of the 1992 Act.
- (3) there is no requirement to submit an Annual Report and Accounts to the Charity Commission under s.23 of the 1992 Act.
- (4) there is no requirement to submit an Annual Return to the Charity Commission under s.26 of the 1992 Act.
- (5) the restrictions on dispositions and mortgaging of charity land contained in s.32 and s.34 of the 1992 Act do not apply (just as the earlier provisions contained in s.29 of the 1960 Act did not apply).

- (6) there is no requirement to obtain the consent of the court or the Charity Commission for the use of charitable funds for preparing or promoting a Bill in Parliament under s.19(7) of the 1960 Act.
- (7) charity proceedings may be commenced in the courts without the authority of the Charity Commission under s.28 of the 1960 Act.

*From the Charity Commission's point of view this means*

- (1) there is no power to institute a general inquiry under s.6 of the 1960 Act.
- (2) there is no power to call for documents or search records under s.7 of the 1960 Act.
- (3) there is no power to initiate an application for a scheme under s.18(6) of the 1960 Act where they consider it necessary in the interests of the charity.
- (4) there is no power to act for the protection of a charity under s.20 of the 1960 Act as amended, for example, by removing a trustee.
- (5) there are no powers under s.18 of the 1992 Act in relation to dormant bank accounts held by exempt charities.
- (6) there is no power to require an exempt charity to change its name under s.4 of the 1992 Act.
- (7) there is no power under s.46 of the 1992 Act to require a trustee of an exempt charity to repay sums received by him from the charity during a period in which he acted as a trustee while disqualified under s.45.

### **Limit to Exemption**

Exempt charities remain, however, fully subject to the jurisdiction of the courts in relation to charities. The common law relating to charities is thus equally applicable to exempt charities. Exempt charities still fall within the definition of "charity" in the 1960 Act and the 1992 Act and so the general law of charity declared in those Acts also applies, for example, in relation to the application of property *cy-près*. One important result of this definition is that although not subject to the supervisory jurisdiction of the Charity Commission, exempt charities may still take advantage of the enabling powers of the Commissioners, inter alia:

- (1) the Commissioners' powers under s.23 of the 1960 Act to authorise dealings with charity property.
- (2) the Commissioners' powers under s.24 of the 1960 Act to advise trustees on request.
- (3) the Commissioners' powers under s.18 of the 1960 Act to

make schemes.

- (4) the Commissioners' powers to make common investment schemes under s.22 of the 1960 Act.
- (5) the Commissioners' powers to authorise the making of ex gratia payments under s.17 of the 1992 Act.

Such powers are, however, not often invoked in relation to exempt charities. This is surprising given the fact that the duties and responsibilities of trustees of exempt charities are just as high as for any other charity and the liabilities are just as real if anything goes wrong.

### **No Longer Power to Register Voluntarily**

There was one additional advantage for exempt charities under the 1960 Act which has been removed by the 1992 Act. The exemption from registration under s.4 of the 1960 Act has already been mentioned. Section 4(2) of that Act, however, allowed exempt charities to register voluntarily. At any time they could request to be entered on or removed from the register. The advantage of registration from the point of view of establishing the charity's credentials is obvious. While on the register a charity is conclusively presumed to be charitable and many institutions will only make grants to registered charities. While an exempt charity can still point to Schedule 2 and to its Inland Revenue reference number this is clearly less straightforward than simply quoting a registered number.

The 1992 Act, however, amends s.4 of the 1960 Act so that exempt charities may not now voluntarily register and any existing voluntary registrations are cancelled by the Act. This is in line with the policy which had developed of declining to register exempt charities, largely because of the difficulty experienced by the Charity Commissioners in compelling an exempt charity to submit to their jurisdiction. Exempt charities may therefore no longer take advantage of registered status.

### **Other Provisions Binding Exempt Charities**

Despite this distancing of the Charity Commission from exempt charities, the 1992 Act has served to increase public scrutiny of exempt charities. The following provisions of the 1992 Act apply equally to exempt as to registered charities and to their trustees:

- (1) s.32(1) and (2) of the 1960 Act require the trustees of an exempt charity to keep proper books of account and prepare a periodic statement of account. The books of account and statement of account must be preserved for seven years.
- (2) s.25(3) of the 1992 Act requires the trustees of an exempt charity to supply a copy of the charity's most recent accounts to any person who requests a copy in writing and pays a reasonable fee. It should be noted that the Home Office press release issued on 4th August 1992 was misleading in this regard.
- (3) Documents disposing of charity land or disposing of land to a charity must contain the appropriate statement and certificate under s.33 of the 1992 Act, which will state (*inter alia*) that the charity is exempt.
- (4) s.45 of the 1992 Act which provides that certain persons are disqualified from acting as charity trustees.
- (5) Part III of the 1992 Act relating to public charitable collections.

## APPENDIX I

### List of Exempt Charities<sup>1</sup>

#### Schedule 2 Charities Act 1960

- (a) Institutions which, if the Charities Act 1960 had not been passed, would be exempted from the powers and jurisdiction under the Charitable Trusts Acts 1853 to 1939 of the Commissioners (apart from any power of the Commissioners to apply those Acts in whole or in part to charities otherwise exempt) by the terms of any enactment not contained in those Acts other than s.9 of the Places of Worship Registration Act 1855.
- University of Birmingham  
University of Liverpool  
University of Manchester  
University of Leeds  
University of Sheffield  
University of Bristol  
University of Reading  
University of Nottingham  
University of Southampton  
Imperial War Museum  
National Maritime Museum  
Representative Body of the Welsh Church
- (b) University of Oxford and colleges  
University of Cambridge and colleges  
University of London  
University of Durham and colleges  
Winchester College  
Eton College  
University of Newcastle-upon-Tyne
- (c) Any university, university college or institution connected with a university or university college which Her Majesty declares by Order in Council to be an exempt charity.  
(Exempt Charities Orders 1962 (No 1343); 1965 (No 1715); 1966 (No 1460); 1967 (No 821); 1969 (No 1496); 1978 (No 453); 1982 (No 1661); 1983 (No 1516); 1984 (No 1976); 1987 (No 1823); 1987 (No 2394))

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<sup>1</sup> This list was prepared before the introduction of the Charities Bill 1993, which contains in Schedule 2 a consolidated list of exempt charities.

Universities and University Colleges

University of Keele  
University of Sussex  
University of Wales  
University College of Wales, Aberystwyth  
University College of North Wales  
University College of South Wales and Monmouthshire  
University College of Swansea  
University of East Anglia  
University of Essex  
University of Kent  
University of Lancaster  
University of Warwick  
University of York  
St David's College, Lampeter  
University of Surrey  
University of Aston in Birmingham  
University of Bradford  
Loughborough University of Technology  
Bath University of Technology  
Brunel University  
City University  
University of Salford  
Open University  
University College, London

**Institutions connected with the University of London**

*General*

The Chairman, Council and Governors of Bedford College for Women  
Birkbeck College  
Imperial College of Science and Technology  
The London School of Economics and Political Science  
The Principal and Governors of Queen Elizabeth College  
Queen Mary College  
The Royal Holloway College  
The Royal Veterinary College  
The School of Oriental and African Studies  
The School of Pharmacy, University of London  
The Principal and Governors of Westfield College, London  
The College of St Gregory and St Martin at Wye  
Chelsea College of Science and Technology  
Institute of Education, University of London  
Goldsmiths' College, University of London

*Medical*

Charing Cross Hospital Medical School  
The Council of Governors of Guy's Hospital Medical School  
King's College Hospital Medical School (University of London)  
The London Hospital Medical College  
The Middlesex Hospital Medical School  
The Royal Dental Hospital of London School of Dental Surgery  
Royal Free Hospital School of Medicine  
The Medical College of St Bartholomew's Hospital in the City of London  
St George's Hospital Medical School  
St Mary's Hospital Medical School  
St Thomas's Hospital Medical School  
University College Hospital Medical School  
United Medical Schools of Guy's and St Thomas's Hospitals  
United Medical and Dental Schools of Guy's and St Thomas's Hospitals  
Westminster Medical School

*Postgraduate Medical*

The British Postgraduate Medical Federation  
Postgraduate Medical School of London  
The Institute of Cancer Research: Royal Cancer Hospital  
The Institute of Cardiology  
The Institute of Child Health  
The Institute of Dental Surgery  
The Institute of Dermatology  
The Institute of Diseases of the Chest  
The Institute of Laryngology and Otology  
Institute of Neurology (Queen Square)  
The Institute of Obstetrics and Gynaecology  
The Institute of Ophthalmology  
The Institute of Orthopaedics  
The Institute of Psychiatry  
The Institute of Urology  
The London School of Hygiene and Tropical Medicine

**Institution connected with the University of Manchester**

University of Manchester Institute of Sciences and Technology

**Institution connected with the University of Wales**

University of Wales College of Medicine

**Sundry museums, galleries and botanic gardens**

- (ca) The Board of Trustees of the Victoria and Albert Museum
  - (cb) The Board of Trustees of the Science Museum
  - (cc) The Board of Trustees of the Armouries
  - (cd) The Board of Trustees of the Royal Botanic Gardens, Kew: National Heritage Act 1983 s.40(1) and Sch 5 para 4
  - (ce) The Board of Trustees of the National Museums and Galleries on Merseyside: Local Government Reorganisation (Miscellaneous Provisions) Order 1990, at 3(1)(ii)
  - (ce) The Board of Trustees of the National Gallery
  - (cf) The Board of Trustees of the Tate Gallery
  - (cg) The Board of Trustees of the National Portrait Gallery: Museums and Galleries Act 1992 s.11(2) and Sch 8 pt II para 10(1)
  - (ch) The Board of Trustees of the Wallace Collection
- (d) The British Museum - including the British Museum (Natural History): Museums and Galleries Act 1992 s.11(2) and Sch 8 pt I para 4.
- (e) Any institution which is administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of, or in connection with, the last mentioned institution, e.g., special endowments and trust funds.
- (f) The Church Commissioners and any institution administered by them.
- (g) Any registered society within the meaning of the Industrial and Provident Societies Act 1965.

Any registered society or branch within the meaning of the Friendly Societies Act 1974.

- (h) The Board of Governors of the Museum of London: Museum of London Act 1965 s.11.
- (i) The British Library Board: British Library Act 1972 s.4(2).

**Section 22(9) Charities Act 1960**

- Common Investment Funds holding funds only for exempt charities

**Paragraph 10 Part I Schedule 12 Education Reform Act 1988**

- A grant-maintained school

plus any institution which is administered by or on behalf of such a school and is established for the general purposes of, or for any special purpose of or in connection with, such a school.

**Paragraph 63 Part II Schedule 12 Education Reform Act 1988**

- The National Curriculum Council
- The Curriculum Council for Wales
- The School Examinations and Assessment Council

plus any institution which is administered by or on behalf of one of those institutions and is established for the general purposes of, or for any special purpose of or in connection with, the institution.

**Paragraph 64 Part II Schedule 12 Education Reform Act 1988**

- A higher education corporation
- A successor company to a higher education corporation (when any institution conducted by the company is designated under s.129 Education Reform Act 1988 (as amended) as an institution eligible to receive support from funds administered by a higher education funding Council)

plus any institution which is administered by or on behalf of such a corporation or company and is established for the general purposes of, or for any special purpose of or in connection with, such a corporation or company.

The "new universities" (i.e., the various polytechnics which have been converted into universities) are exempt charities as a result of this provision. So, for example, the University of Westminster (formerly Central London Polytechnic) and the University of East London (formerly the City of London Polytechnic) are exempt charities under this head.

**Section 93(1) Paragraphs 69(1) Part II Schedule 8 Further and Higher Education Act 1992**

- A further education corporation  
(very broadly the new Sixth Form Colleges and the old Colleges of Further Education) plus any institution which is conducted by a further education corporation and is established for the general purposes of, or for any special purpose of or in connection with, such a corporation.

## Appendix II

### List of Excepted Charities

(i) **Voluntary Schools (SI 1960 No 2366)**

Voluntary schools within the meaning of the Education Acts which are charities with no permanent endowment other than the premises of, or connected with, the school.

Excepted from registration under s.4(2) of the 1960 Act.

(ii) **Boy Scout and Girl Guide Charities (SI 1961 No 1044)**

Charities comprising funds, not being permanent endowment, belonging to Boy Scout or Girl Guide Units, which are being accumulated for the purposes of the unit and which produce an income of more than £15 a year.

Excepted from registration under s.4(2) of the 1960 Act.

(iii) **Parochial Church Councils, church trustees and other bodies established to provide for public worship (SI 1963 No 2074)**

Excepted from registration under s.4(2) of the 1960 Act in respect of any property (other than land) held and applicable for their general purposes where the income from that property amounts to less than £100 a year.

(iv) **Trusts conditional upon the upkeep of graves (SI 1963 No 2074)**

A charity for the advancement of religion where the application of its income in a particular manner is conditional upon a grave, tomb or personal monument being kept in good order provided the income is not more than £50 per year.

Excepted from registration under s.4(2) of the 1960 Act and from the need to submit accounts under s.8(1) of the 1960 Act.

Excepted charities (other than those with an income under £1,000) must comply with all the new accounting provisions of the 1992 Act other than the requirement to submit an Annual Report and Accounts to the Charity Commission under s.23; s.24, however, provides that they must do so if requested by the Charity Commission.

(v) **Methodist, Baptist, Congregational and other non-conformist religious charities (SI 1963 No 2074)**

Charities wholly or mainly for the advancement of religion which send annual accounts to the Methodist Conference or the Methodist Synod or of

which one of the bodies specified in the regulations is a trustee.

Exceptions (as for (iv) above) are conditional upon certain matters specified in the regulations being notified to the Charity Commission from time to time.

**(vi) Diocesan Charities (SI 1964 No 1825)**

Charities wholly or mainly for the advancement of religion where property is held by one of the Diocesan Trust Corporations specified in the regulations.

Exceptions (as for (iv) above) are conditional upon certain matters specified in the regulations being copied to the Charity Commission from time to time.

**(vii) Charities for the provision of efficiency of the Armed Forces of the Crown (SI 1965 No 1056)**

Exceptions as in (iv) above.

**(viii) Every University which is not an exempt charity (SI 1966 No 965)**

One such university is the University of Buckingham which has not been exempted by any Order in Council.

Excepted from registration under s.4(2) of the 1960 Act.

**(ix) National Health Service Charities (SI 1976 No 929)**

Charities administered by a Regional, District, Area or Special Health Authority or by Special Trustees or a prescribed Board within the meaning of the National Health Service Reorganisation Act 1973.

Excepted from the need to submit accounts under s.8(1) of the 1960 Act. See (iv) above.

**(x) Charities connected with the Roman Catholic or Church of Wales dioceses have been excepted individually.**

The following categories of charities were excepted from the provisions of s.29 of the 1960 Act but following the repeal of this section by the 1992 Act will not after 1st January 1993 be excepted from the new provisions relating to the disposition of land in the 1992 Act:

- (i) Baptist, Congregational, Unitarian and Presbyterian Church of England charities (SI 1961 No 1252)
- (ii) other charities for the advancement of religion as regards certain sales of land (SI 1962 No 1421)

- (iii) Quaker, Independent Evangelical and Welsh Presbyterian charities (SI 1962 No 1815)
- (iv) charities with property held by a Diocesan Trust Corporation (SI 1963 No 1062)
- (v) certain Methodist charities (SI 1978 No 1836).