EXPLANATORY MEMORANDUM TO

THE CHARITABLE INSTITUTIONS (FUND-RAISING) (AMENDMENT) REGULATIONS 2009

2009 No. 1060

1. This explanatory memorandum has been prepared by The Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Charitable Institutions (Fund-Raising) Regulations 1994 ("1994 Regulations") require certain persons who are not commercial participators or professional fund-raisers but who are fund-raising for charitable, benevolent or philanthropic purposes to make a statement satisfying specified criteria. These Regulations amend those criteria.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Regulation 7 of the 1994 Regulations regulates the raising of funds for charitable, benevolent or philanthropic ("charitable etc.") purposes otherwise than by professional fund-raisers or commercial participators. Fund-raising by professional fund-raisers and commercial participators is regulated by Part 2 of the Charities Act 1992 ("1992 Act").

4.2 If a person to whom regulation 7 applies makes a representation to the effect that charitable contributions are to be applied for charitable etc. purposes, that representation must generally be accompanied by a statement satisfying the criteria specified in regulation 7(2). These criteria reflected the corresponding requirements placed on commercial participators under section 60(3) of the 1992 Act, as originally enacted. The requirements placed on commercial participators have, however, been amended by the Charities Act 2006 (section 67).

4.3 The 1994 Regulations are being amended to ensure continued consistency in the requirements that apply to commercial participators and those that apply to persons to whom regulation 7 applies.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 2 of the 1992 Act and the 1994 Regulations control fund-raising by commercial participators, professional-fund-raisers and certain other persons in England and Wales. Section 58 of the 1992 defines "commercial participator" and "professional fund-raiser" for these purposes.

7.2 Amongst other things, Part 2 of the 1992 Act requires commercial participators to make a solicitation statement when raising funds for particular charitable institutions. Such a statement must be made each time it is represented by the commercial participator that charitable contributions will be applied for the benefit of a charitable institution or charitable institutions.

7.3 This statement is intended to ensure that potential purchasers of a commercial participator's goods or services are given, before they make a purchase, a fair indication of the extent to which the charitable institution or institutions will benefit from the transaction. Under the 1992 Act, as originally enacted, a commercial participator was, for this purpose, required to set out in general terms the method by which the amount to be given to or applied for the benefit of the relevant charitable institution or institutions was to be determined.

7.4 Under the 1994 Regulations, relevant fund-raisers were required, when representing that charitable contributions were to be applied for charitable etc. purposes, to provide a solicitation statement complying with requirements consistent with those originally placed on commercial participators. A relevant fund-raiser is a person who is not a professional fund-raiser or commercial participator but who, in the course of carrying on a business (other than a fund-raising business), engages in a promotional venture (as defined in the 1992 Act) in the course of which it is represented that charitable contributions (as defined in the 1992 Act) will be applied for charitable etc. purposes.

7.5 However, it was found (see Strategy Unit (SU) Report '*Private Action, Public benefit- A review of Charities and the Wider Not-For-Profit Sector*, September 2002) that the statements that were required to be made about the extent to which a particular cause would benefit from a promotion were not specific enough. The SU Report recommended that Part 2 of the 1992 Act be amended and the government accepted this recommendation.

7.6 Consequently, the Charities Act 2006 ("the 2006 Act") made some important changes to Part 2 of the 1992 Act including to the requirements relating to the solicitation statements that must be made by commercial participators. The changes were intended to ensure that the statements are sufficiently informative for the public to make informed decisions. These amendments came into force on 1 April 2008.

7.7 Commercial participators must now indicate the "notifiable amount" of whichever of the following sums is applicable in the circumstances:

- the sum representing so much of the consideration given for goods or services sold or supplied by them as is to be given to or applied for the benefit of the institution(s);
- the sum representing so much of any other proceeds of a promotional venture undertaken by them as is to be so applied or given; or
- the sum of the donations by them in connection with the sale or supply of any such goods or services which are to be so given or supplied.

7.8 The "notifiable amount" is the actual amount of the relevant sum, if it is known by the commercial participator at the time the solicitation statement is made, or otherwise, an estimate of that sum which has been calculated as accurately as is reasonably possible (section 60(3A) of the 1992 Act).

7.9 It is the government's policy intention to ensure there continues to be consistency between the solicitation statement requirements placed on commercial participators and those placed on relevant fund-raisers. To achieve this aim, regulation 7 of the 1994 Regulations needs to be amended and these Regulations make the necessary amendments. From 1st October 2009 relevant fund-raisers will be required to include information in their solicitation statements identical to that outlined in paragraphs 7.7 and 7.8 above.

8. Consultation outcome

8.1 The Minister for the Cabinet Office is required to consult such persons or bodies of persons as he considers appropriate before making any regulations under section 64 of the 1992 Act. The Minister carried out such a consultation prior to making these Regulations.

8.2 There was unanimous support amongst the persons consulted by the Minister in accordance with section 64 of the 1992 Act for the changes made by these Regulations. These persons were also unanimous in supporting the Cabinet Office's view that as the impact of the proposed changes would be minimal, it would not be necessary to also conduct a wider public consultation.

9. Guidance

9.1 Office of the Third Sector (OTS) has already published a guidance document to explain to charities, professional fund-raisers and commercial participators involved in fund-raising ventures, the operation of Part 2 of the 1992 Act and the changes which have been made to the requirements in it by the 2006 Act. This guidance can be accessed via the OTS website http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf

This guidance also alerted stakeholders to the fact that it was proposed to amend regulation 7 of the 1994 Regulations for the reasons given above.

9.2 We will update this guidance and a new version will be issued prior to these Regulations coming into force.

10. Impact

10.1 The impact of this instrument is minimal and it has no real impact on the public sector, or business. Therefore, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation has a minimal impact on small business.

11.2 The 1994 Regulations are being amended to ensure continued consistency in the requirements that apply to commercial participators and those that apply to relevant fund-raisers. This will make it easier for small businesses engaged in fundraising to comply with the legislation.

12. Monitoring & review

12.1 Section 73 of the 2006 Act requires the Minister to appoint a person to review the operation of the Act to within five years of enactment, and for the report of the review to be laid before Parliament. The review may include evaluating the impact of provisions of the Act that affect fundraising and charitable collections.

13. Contact

Mubin Jaigirdar at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6027 or email: Mubin.Jaigirdar@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.