EXPLANATORY MEMORANDUM TO

THE CHARITIES (INCORPORATED CHURCH BUILDING SOCIETY) (ENGLAND AND WALES) ORDER 2013

2013 No. 641

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order is made under section 73 of the Charities Act 2011 ("the 2011 Act") to give effect to the provisions contained in the Scheme settled by the Charity Commission ("the Scheme") for the administration of the Unincorporated Society for Promoting the Enlargement, Building and Repairing of Churches and Chapels (the "Charity").

2.2 The purpose of the Scheme is to amend the existing trusts of the Charity and to simplify its administrative provisions.

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

3.1 None.

4. Legislative Context

4.1 The charity is regulated by the Church Building Society Act 1828 (9 Geo IV Cap 42) ("the 1828 Act"). The Scheme makes new provision for the administration of the charity and dis-applies provisions made by the 1828 Act which are inconsistent with or rendered otiose by the provisions of the Scheme. As the 1828 Act is a public general Act the Scheme could not be made without the draft Order first being approved by a resolution of each House of Parliament in accordance with section 73(4) of the 2011 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 This instrument applies to the Charity, which is a body registered with the Charity Commission for England and Wales and which has purposes for the maintenance and repair of Church of England places of worship situated in England and Wales.

6. European Convention on Human Rights

Nick Hurd MP, Parliamentary Secretary, Cabinet Office, has made the following statement regarding Human Rights:

In my view the provisions of the Charities (Incorporated Church Building Society) (England and Wales) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Charity was formed in 1818 and was subsequently incorporated by the 1828 Act. The purpose of the Charity is to provide for the better collection and application of voluntary contributions for the purpose of enlarging, building and repairing Church of England churches and chapels situated in England and Wales. The Charity was registered with the Charity Commission as a charity in the name of the Incorporated Church Building Society in 1962[1].

7.2 By the early 1980's the Charity's activities had shrunk considerably and the then trustees were concerned that the administrative costs of maintaining it as a separate charity, though modest, were absorbing an unjustifiable proportion of its income.

7.3 Accordingly, in 1982 the Charity came to an arrangement with the Historic Churches Preservation Trust (the "HCPT")[2], whereby the HCPT assumed practical responsibility for the day-to-day management of the Charity's affairs. This arrangement did not however amend or affect the governance arrangements of the Charity as provided for by the 1828 Act.

7.4 This Order gives effect to the Scheme, which is an appendix to the Order. The Scheme repeals all but the pre-amble and four sections of the 1828 Act and provides for administration of the Charity.

7.5 The Scheme sets out the objects of the Charity and replaces the existing trustees with The National Churches Trust which will be the sole corporate trustee of the Charity. The objects in the scheme are similar to but not identical to the original objects. In the 1828 Act the purposes are defined as "enlarging, building, rebuilding and repairing Churches and Chapels in England and Wales" whereas the proposed objects specifically state that it is churches and chapels of the Church of England. This narrowing of the objects reflects its close links with the Church of England and the reality of the way the charity has been operating.

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1 Registered charity number 212752.

2 A separate charity registered with the Charity Commission under registered charity number 207402. On 21 January 2008, the Commission made a direction under section 96 of the 1993 Act providing that the HCPT should be treated as forming part of a third charity (the National Churches Trust) for the purposes of Part II (Registration) and Part IV (Accounting) of the 1993 Act. The National Churches Trust is registered with the Commission under registered charity number 1119845.

7.6 The 1828 Act specifies that the trustees of the charity are the management committee which is to comprise the Archbishop of Canterbury as President, the Archbishop of York, the bishops of York and Canterbury and 36 elected members as Vice Presidents, a Treasurer and 25 lay members of the charity. Members of the charity are anybody who makes a donation of 10 guineas or an annual donation of one guinea. The trustee body is too large and it is difficult to know who is currently a member of the charity.

7.7 The proposed scheme, which is being made at the request of the charity's current trustees, sets out the powers of the new corporate trustee. The1828 Act does not set out the powers so explicitly but the powers in the scheme are standard powers most of which are found in the model governing documents on the Charity Commission's website. A significant motivation behind the trustees applying for this scheme was to modernise the governance and governing document of the charity. The scheme provides the charity trustee with the powers it needs to operate effectively in the modern world.

7.8 Together with the pre-amble, the four remaining sections of the 1828 Act that apply to the Charity are:-

- section 2, which incorporates the Charity;
- section 10, regarding Royal letters to the Archbishops of Canterbury and York authorising voluntary collections for the charity's purposes;
- section 11, which requires accounts of the Charity to be laid before Parliament annually; and
- section 16, which provides that the 1828 Act is a Public Act.

8. Consultation outcome

8.1 The scheme has been published in the Church Times and on the Charity Commission's website and no representations were received.

9. Guidance

9.1 Guidance is not required as this is an Order to give effect to the provisions a scheme of settled by the Charity Commission for the administration of a charity governed by an Act of Parliament which will amend its existing trusts and simplify its administrative provisions.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities (other than the Charity) or voluntary bodies.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring and review are not required as this Order simply gives effect to a scheme settled by the Charity Commission at the trustees request for the administration of a charity governed by an Act of Parliament.

13. Contact

Helen Morgan at the Cabinet Office Tel: 0207 271 6298 or email: helen.morgan@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.