EXPLANATORY MEMORANDUM TO

THE CHARITIES (PRE-CONSOLIDATION AMENDMENTS) ORDER 2011
2011 No. [XXXX]

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 This Order makes minor amendments to the Charities Act 1993 ("the 1993 Act") and other legislation prior to the consolidation of that Act and other charity legislation.

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

3.1 None.

4. Legislative Context

4.1 This Order is made under section 76 of the Charities Act 2006 ("the 2006 Act"). That provision enables the Minister for the Cabinet Office to make, by order, amendments to legislation relating to charities which in the Minister's opinion will facilitate or are otherwise desirable in connection with the consolidation of that legislation. A Charities Bill, to consolidate the Recreational Charities Act 1958, the 1993 Act and certain provisions of the 2006 Act, was introduced in the House of Lords at the same time as this Order. In accordance with section 76 the Order will not come into force unless the Bill is passed (and if it is passed, the Order will come into force immediately before the Bill comes into force).

5. Territorial Extent and Application

5.1 This Order generally extends to England and Wales. However, the amendments made by paragraph 1 of the Schedule to the Order extend, for certain purposes, to Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary, Cabinet Office, Nick Hurd has made the following statement regarding Human Rights in respect of the Order:

In my view the provisions of the Order are compatible with the Convention rights.

7. Policy background

7.1 The 1993 Act is the main piece of legislation applying to charities in England and Wales. It was itself a consolidation and has since its enactment been substantially amended by, amongst other legislation, the 2006 Act. During the passage of the Bill which became the 2006 Act, a commitment was given that the then government would seek a consolidation, subject to support from the Law Commission (Official Report, 21 March 2005: GC54). This commitment was given in response to the requests of several peers and also the Joint Committee on the Draft Charities Bill. These requests were made because of the number of amendments that had been made to the 1993 Act (including those made by the 2006 Act) which were considered to make the 1993 Act difficult for the lay reader to follow.

7.2 This Order makes minor amendments to the 1993 Act and other legislation applying to charities prior to the consolidation of that legislation. Generally the amendments can be categorised as:

correcting minor mistakes in existing legislation or remedying missed consequential amendments;

removing inconsistencies in existing legislation;

modernising the language of existing legislation;

repealing provisions in the existing legislation which are now considered obsolete;

clarifying the effect of existing legislation; and

consequential provisions relating to other provisions of this Order.

7.3 The Annex to this Memorandum sets out in more detail the effect of the provisions of the Order.

7.4 The Charities Bill itself does no more than consolidate the law whereas this Order will make changes to the law prior to the law being consolidated. The amendments made by the Order are, however, not considered to make substantive changes to the law or to introduce new policy.

8. Consultation outcome

8.1 The Cabinet Office informed key stakeholders of the process of consolidation by carrying out a public consultation in 2009 on the draft Bill. The Order (and explanatory notes) was made available to stakeholders as part of the consultation package. The Bill as published for the purposes of consultation assumed that the Order had been made.

8.2 Most respondents commented on the draft Bill itself. Only two respondents raised specific points about the draft Order. Other respondents asked the Cabinet Office to consider including further amendments in the Order.

8.3 The Cabinet Office considered the consultation responses on the Order and has decided to retain the power in section 89(3) of the 1993 Act which it originally proposed to repeal. Minor drafting errors raised by respondents have also been corrected.

8.4 It has, however, not been possible to include the more substantive provisions which some respondents requested be included in the Order. These were amendments to the auditing requirements for local authorities, amendments to the charity merger provisions and amendments to the group accounts provisions. These amendments are considered to be outside the scope of the power in section 76 of the 2006 Act.

8.5 Overall, respondents were positive about the proposed consolidation.

9. Guidance

9.1 With the exception of the explanatory notes in the Annex, no specific guidance will be provided on this Order. It is considered unnecessary to provide further guidance as the Order is intended to facilitate the process of consolidation, rather than to make substantive policy changes.

9.2 The Office for Civil Society and the Charity Commission would update the guidance they produce for charities to reflect the passing of the consolidation Bill.

10. Impact

10.1 An impact assessment has not been carried out as this Order does not introduce new policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Charity law is reviewed periodically to take account of policy developments and changes in attitudes and trends in the charity sector. There is also a specific requirement under section 73 of the 2006 Act for the Minister to appoint a person to review the operation of the Act within five years of enactment, and for the report of the review to be laid before Parliament. That review will take place later this year.

13. Contact

Ben Harrison at the Office for Civil Society, Cabinet Office, Tel: 020 7276 6029 or email: ben.harrison@cabinet-office.x.gsi.gov.uk can answer any queries regarding this instrument.

ANNEX

EXPLANATORY NOTES TO THE SCHEDULE TO THE CHARITIES (PRE-CONSOLIDATION AMENDMENTS) ORDER 2011

In these notes:

(a) references to "the Consolidation Act" are to the Act which the Charities Bill will become if passed by Parliament;

(b) references to "the 1958 Act" are to the Recreational Charities Act 1958;

(b) references to "the 1993 Act" are to the Charities Act 1993;

(c) references to "the 2006 Act" are to the Charities Act 2006.

Amendments of the 1958 Act

Paragraph 1 of the Schedule

1. Under section 1 of the 1958 Act provision of certain facilities for recreation or other leisure-time occupation is a charitable purpose. This provision does not derogate from "*the principle that a trust or institution to be charitable must be for the public benefit*" (section 1(1) of the 1958 Act).

2. The "principle" referred to was originally a principle established by case law. It has now been codified in sections 2(1)(b) and 3 of the 2006 Act, as part of the statutory definition of "charitable purpose".

3. Section 1 is amended to ensure it reflects the codification of the case law principle in the 2006 Act.

Paragraph 2 of the Schedule

4. Section 3(1) of the 1958 Act provided: "*Nothing in this Act shall be taken to restrict the purposes which are to be regarded as charitable independently of this Act*."

5. Part 1 of the Consolidation Act will incorporate not only the surviving provisions of the 1958 Act but also Part 1 of the 2006 Act (which includes section 2 of that Act). Section 2 of the 2006 Act provides a statutory definition of "charitable purposes".

6. Consequently, section 3(1) is repealed as it does not need to be reproduced on consolidation.

Paragraph 3 of the Schedule

7. Section 5 of the 1958 Act provided: "*This Act, and (except in so far as any contrary intention appears) any enactment of the Parliament of Northern Ireland passed for purposes similar to section one of this Act, shall bind the Crown*."

8. The 1958 Act was passed following the decision of the House of Lords in the case of *IRC v Baddeley* ([1955] A.C. 572, HL) which called into question the status of a large number of trusts which had previously been considered charitable. Section 5 was included to ensure that the 1958 Act extinguished any claims that the Crown would have had (if the Act had not been passed) to bona vacantia in respect of failed charitable trusts.

9. As the repeal of the 1958 Act in the consolidation will not revive anything extinguished in 1958[1], it is unnecessary for the provisions in the Consolidation Act deriving from the 1958 Act to be expressed to bind the Crown.

10. It is also unnecessary for the Consolidation Act to reproduce section 5 of the 1958 Act in so far as it relates to whether an enactment of the Parliament of Northern Ireland passed for purposes similar to section 1 of the 1958 Act would bind the Crown. The Recreational Charities Act (Northern Ireland) 1958 (c.16) was passed on 25 November 1958 and section 3 of that Act provided expressly for that Act to bind the Crown.

Amendments of the 1993 Act

Paragraph 4 of the Schedule

11. Section 1A(4) of the 1993 Act provided "*In the exercise of its functions the Commission is not subject to the direction or control of any Minister of the Crown or other government department*". The use of the words "or other" in the original text of section 1A suggested that a Minister of the Crown is a government department. However, whilst the typical Minister of the Crown is in charge of a government department, the Minister himself or herself is not a government department.

12. The amendment of section 1A avoids any suggestion that a Minister is a government department whilst retaining the allusion to the fact that the Charity Commission is itself a government department.

Paragraph 5 of the Schedule

13. Section 2(1) of the 1993 Act provided for the official custodian to be a corporation sole having perpetual succession and using an official seal. The amendment brings section 2(1) into line with various modern provisions relating to corporations sole.

Paragraph 6 of the Schedule

14. The amendment of section 3A(4)(c) brings its wording into line with that in section 3A(2)(c). Section 3A(2)(c) provides that various charities are not required to be registered, including any charity which "is, or is of a description" excepted by regulations. In contrast, section 3A(4)(c) contains a provision preventing regulations

[1] See section 16 of the Interpretation Act 1978.

being made under section 3A(2)(c) to except on or after the appointed day "any description of charities" not excepted immediately before that day. The effect of section 3A(4)(c) as enacted appears to be that regulations under section 3A(2)(c) cannot be made to except on or after the appointed day a charity (as opposed to a "description of charities") that was not excepted before that day. This effect is anomalous and was not intended when section 3A was inserted in the 1993 Act (see paragraphs 51 and 52 of the Explanatory Notes for section 9 of the 2006 Act). So this amendment corrects this anomaly.

15. Section 3A(11) of the 1993 Act enabled section 3A(2)(b) and (c) of that Act and certain provisions which are dependent on section 3A(2)(b) and (c) to be repealed by subordinate legislation at a future date. However, there were other provisions of section 3A which were dependent on section 3A(2)(b) and (c) and fell outside the scope of this power. The amendment enables these additional provisions to be repealed using the power in section 3A(11).

Paragraph 7 of the Schedule

16. This paragraph contains a number of amendments which modernise the language of the 1993 Act by changing references to the furnishing of documents into references to the provision of documents. It also addresses the same point in relation to existing subordinate legislation which refers to the furnishing of documents.

Paragraph 8 of the Schedule

17. These amendments clarify the meaning of references to "any such claim" in section 14(5)(c) of the 1993 Act and to "any such claims" in section 14(6)(a) and (b). These amendments are meant to make the legislative intention clearer.

Paragraph 9 of the Schedule

18. Section 14B makes provision concerning the power of the court or the Commission to make schemes for the application of property cy-près. In making such a scheme, the court or the Commission must have regard to specific matters including "the original purposes" for which a gift was given.

19. The phrase "the original purposes" is also used in section 13 of the 1993 Act and in that section its meaning is modified for certain situations. Where the application of the property given has already been altered or regulated by a scheme or otherwise, section 13(3) requires references to the "original purposes" of the gift to be read as referring to the purposes for which the property is for the time being applicable.

20. Section 13(3) does not apply for the purposes of section 14B(3)(b) and (4) and no other specific provision is made regarding the interpretation of "the original purposes" in that section. However it is possible that the original purposes of the relevant gift will already have been altered or regulated. This amendment fills this gap.

Paragraph 10 of the Schedule

21. Previously, orders of the Minister for the Cabinet Office to give effect to a scheme under section 17 were subject to the negative procedure under section 6 of the Statutory Instruments Act 1946 (unless the scheme is one to which section 17(3)

22. The Second Report of the Joint Committee on Delegated Legislation (the "Brooke Committee") for the Session 1972-73 (HL 204, HC 468) recommended that the procedure provided by section 6 of the 1946 Act should be avoided in the future (paras.27, 28 and 75). The Brooke Committee also recommended that consideration should be given to amending the terms of reference of the Joint Committee on Consolidation Bills to enable statutory instrument procedure to be rationalised in the way that the Committee proposed as part of the process of consolidation (para.16).

23. The terms of reference of the Joint Committee were not amended as proposed by the Committee. However, it is now considered desirable to act on the Committee's recommendation.

24. The amendment of section 17 means that in future orders which are not subject to section 17(3) can be made by the Minister without having first been laid before Parliament. Such orders will still be laid before Parliament (and can still be prayed against) but this will be done after they are made.

Paragraph 11 of the Schedule

25. These amendments facilitate the splitting of section 18 of the 1993 Act into a number of separate sections in the Consolidation Act. Section 18 is very long and splitting it up should make the legislative text easier to follow. But if section 18 is split up, appropriate changes have to be made to the cross-references to section 18. These amendments clarify the general legislative intention in the existing cross-references to section 18.

26. Section 22(3) of the 1993 Act referred to a case where land is vested in the official custodian in trust for a charity by virtue of an order under "section 18". The provision of section 18 which expressly enables an order to be made vesting land in the official custodian is section 18(1)(iii). Paragraph 11(2) substitutes the more specific cross reference.

Paragraph 12 of the Schedule

27. Paragraph 12 contains two amendments which are designed to deal with two gaps in the 1993 Act as regards communities in Wales that have no community council.

28. Sections 20 and 79(2) of the 1993 Act derive from provisions of the Charities Act 1960 which catered for communities in Wales having a community council, but not for communities without a community council. This was in stark contrast to the provisions from which section 79(3), (4) and (5) of the 1993 Act derived, where communities not having a community council were catered for (see section 79(7)(b) and (c)). There was no power to make pre-consolidation amendments at the time of the consolidation in 1993 and this anomaly was not removed at that time. Since the 1993 Act was enacted, section 20 has been replaced by a new section 20 which followed the previous version of section 20 as regards communities in Wales.

29. These amendments correct the anomaly in sections 20 and 79(2).

Paragraph 13 of the Schedule

30. This amendment supplies some additional words which will make the sense of section 22(1) of the 1993 Act flow better, particularly when the subsection is paragraphed in the Consolidation Act.

Paragraph 14 of the Schedule

31. These amendments modernise the language of section 26(3) and clarify the intended effect of the words "thereby" and "therewith". The amendments reflect the Cabinet Office's view that "thereby authorised" in section 26(3) meant "authorised by an order made under section 26" and that "in connection therewith" meant "in connection with the authority given by an order made under section 26".

Paragraph 15 of the Schedule

32. This amendment omits a reference in section 36(4)(a) of the 1993 Act to the Incorporated Society of Valuers and Auctioneers. The Society merged with the Royal Institution of Chartered Surveyors on 1 January 2000.

Paragraph 16 of the Schedule

33. This amendment rectifies a missed consequential amendment from the Land Registration 2002.

Paragraph 17 of the Schedule

34. This paragraph contains two amendments.

35. Sub-paragraph (1) amends the definition of the accounts threshold in section 43(1) of the 1993 Act. The relevant part of section 43(1) provided that "*The accounts threshold" means £100,000 or such other sum as is for the time being specified in section 42(3)*". As a result of an amendment, the sum referred to in section 42(3) is now £250,000 (before that amendment it was £100,000). The underlying intention was that the accounts threshold should be whatever sum was specified in section 42(3) and so the reference to an alternative meaning of £100,000 is at best unhelpful. Paragraph 17 amends section 43(1) so that the accounts threshold is defined solely by reference to the sum specified in section 43(2).

36. Sub-paragraph (2) amends section 43(9) of the 1993 Act, so that it refers to a "charity which is a company" rather than simply to a "charity". The amendment is designed to bring the legal wording of section 43(9) into line with how it is understood to work in practice at present, and with how it was intended to work when section 43(9) was substituted in 2008.

Paragraph 18 of the Schedule

37. This amendment amends section 43A(5) of the 1993 Act so that it refers to "the Charity Commission" specifically rather than to "the Commission". This is to avoid potential confusion as the section contains references to both the Charity Commission and the Audit Commission.

Paragraph 19 of the Schedule

38. The amendment of section 57(1) follows the wording in section 45(6) of the 1993 Act in allowing the Commission to dispose of documents which no longer need to be retained. The substitution of section 57(2) aligns the wording of the right to inspect with the terminology of various other provisions in the 1993 Act (by removing the reference to the documents being inspected "under the direction of the Commission" and providing for documents being "open to public inspection at all reasonable times").

39. These amendments are linked with the amendments of section 84 (see the notes relating to paragraph 27 of the Schedule).

Paragraph 20 of the Schedule

40. The amendment of section 69I(3) changes the reference to the register of friendly societies to a reference to the mutual societies register.

41. Section 69I(3) needs to refer to the register in which industrial and provident societies are registered. Before the coming into force of the Financial Services and Markets Act 2000, industrial and provident societies were registered in a register maintained by the Chief and Assistant Registrars of Friendly Societies. However, as a result of changes made by and under the 2000 Act, the reference in section 69I(3) to the register of friendly societies is inappropriate. Section 335 of the 2000 Act enabled the Treasury to provide by order for any functions of the Chief Registrar of Friendly Societies, or of an Assistant Registrar of Friendly Societies for the central registration area, to be transferred to the Financial Services Authority. Responsibility was transferred to the Authority by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 (S.I. 2001/2617). Industrial and provident societies are now registered in a register known as the mutual societies register.

Paragraph 21 of the Schedule

42. This amendment makes clear that section 69M(5) of the 1993 Act is about when the resolution of the transferor CIO takes effect (rather than when the resolution of the transferee CIO takes effect).

Paragraph 22 of the Schedule

43. Section 73D(1)(c) referred to reporting accountants to ensure that the Commission could exercise its power in that section in respect of such accountants appointed under section 249D(3) of the Companies Act 1985 (see para.161 of the Explanatory Notes to the Charities Act 2006). The 1993 Act has since been amended to remove other references to such accountants from the Act following the removal of the company law reporting accountant regime (see section 1175 of and Schedule 9 to the Companies Act 2006). In order for the drafting of the Consolidation Act to be consistent, the words "reporting accountant" need to be removed from section 73D(1)(c).

44. There are other statutory provisions (not contained in the 1993 Act) under which a person can be appointed who is called a "reporting accountant". Sections 46(2A) and 73D(1)(c) refer to persons appointed to report on the accounts of a charity. These references are intended to capture persons called "reporting accountants" under these other statutory provisions. The application of sections 46(2A) and 73D to such persons is unaffected by the amendment of section 73D(1)(c).

45. Section 73D enables the Commission to relieve auditors and examiners and certain other persons from personal liability for breaches of trust or duty if there are certain exonerating circumstances. Section 73D(5) enables the Commission to use this power in relation to the Auditor General for Wales when acting under section 43B (which includes section 43B as applied by paragraph 7 of Schedule 5A). But it does not enable the Commission to do this when the Auditor General for Wales is acting under paragraph 6 of Schedule 5A. This amendment of section 73D(5) plugs this gap.

Paragraph 23 of the Schedule

46. Section 74B(11) of the 1993 Act currently provides that for the purposes of sections 74 and 74A of that Act, any reference to any obligation imposed on the charity trustees by or under section 74 includes a reference to any obligation imposed on them by virtue of any of subsections (6) to (8) of section 74B. In fact the only references to any obligation imposed on the charity trustees by or under section 74 that appear to exist are in sections 74(8)(b) and 74A(2). The amendment clarifies the effect of the provision by substituting explicit references to sections 74(8)(b) and 74A(2).

Paragraph 24 of the Schedule

47. This amendment removes a reference to ratepayers from section 79(2) of the 1993 Act which is no longer considered to serve its original purpose.

48. Section 79(2) enabled parish councils or parish meetings, in certain circumstances, to appoint trustees for a parochial charity where the trustees do not include persons "*elected by the local government electors, **ratepayers** or inhabitants of the parish or appointed by the parish council or parish meeting*" (emphasis added). (Section 79(2) applies with modifications in relation to Wales.)

49. Section 79(2) derives from section 37(2) of the Charities Act 1960, which in turn was based on section 14(3) of the Local Government Act 1894. In 1894 the meaning of "ratepayers" was different from the current meaning. Domestic rates were abolished in 1988 (by the Local Government Finance Act 1988) and replaced by the community charge; subsequently, the community charge was replaced by council tax. Rates now survive only in connection with non-domestic rates. In theory a charity could have been established which conferred power to appoint trustees on business rate payers, but this was not the object of the provision in 1894 or 1960 (which was to give a power to parishes to appoint trustees for local charities which lacked adequate local representation). It was not possible to address this point in the 1993 consolidation, as that was a pure consolidation. However, it is considered appropriate to address it now.

50. The Cabinet Office has decided not to substitute a reference to council tax payers in place of the reference to ratepayers. Section 79(2) applies to parochial charities only if they are more than 40 years old and so whether trustees have been elected by council tax payers could not be relevant until 2050. Liability for council tax currently turns mainly on residence. Assuming that this remains the case in 2050 and that provisions corresponding to section 79 are still needed at that time, substituting a reference to council tax payers for the reference to ratepayers would be unlikely to add much to the existing reference to inhabitants of the parish.

Paragraph 25 of the Schedule

51. This amendment ensures that where the Commission has seized any document or device from a body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales and concludes that it is no longer necessary to retain it, the Commission has the option of returning the document or device to the persons having the general control and management of the administration of the body.

Paragraph 26 of the Schedule

52. This amendment removes a discrepancy between the wording in section 60(4) to (6) of the 1993 Act and the wording in section 82 of the 1993 Act.

53. Section 60(4) to (6) ensures that where charity trustees have been incorporated, they may confer authority on two or more of their number to execute "documents" for giving effect to transactions to which the incorporated body of trustees is a party. Section 82, however, enabled charity trustees who have not been incorporated to confer authority on two or more of their number to execute "assurances or other deeds or instruments" for giving effect to transactions to which the charity trustees are a party. It is considered that there is no longer any reason to maintain this difference between sections 60 and 82. Section 82 is therefore amended so that it refers to "documents", rather than "assurances or other deeds or instruments". Any widening of the scope of section 82 is considered to be minor and consistent with the modern approach to the fact that documents are now created and stored electronically.

Paragraph 27 of the Schedule

54. This amendment needs to be read with the substitution of section 57(2) (see the notes relating to paragraph 19 of the Schedule).

55. Section 84 of the 1993 Act imposed a duty on the Commission to supply (on request) copies or extracts of certain documents open to inspection. This duty applied in relation to documents *open to inspection under Parts 2 to 6 and section 75D of the 1993 Act*. Documents are in terms required to be "open to inspection" by provisions of Part 2 (see section 3(8) and (10)) and Part 6 (see section 47(1) and paragraph 13 of Schedule 5A), and as a result of this Order will be required to be "open to inspection" under one provision of Part 7 (see the amendment of section 57(2) discussed above). Documents are required to be "available for inspection" (rather than "open to inspection") under provisions of Part 4 (see section 20(6)) and Part 9 (see section 72(7)).

56. This amendment applies the duty to supply copies or extracts of documents to any document *open to or available for inspection under any provision of the 1993 Act*. The practical effect is to extend the duty to documents which can be inspected under section 57(2) or section 72(7) and to put beyond doubt that it extends to documents which can be inspected under section 20(6).

Paragraph 28 of the Schedule

57. This amendment aligns section 86(3) of the 1993 Act with section 74(2) of the 2006 Act, enabling the provisions to be consolidated into a single provision. Section 74(2) of the 2006 Act, unlike section 86(3) of the 1993 Act, explicitly enables the Minister to include in regulations or orders under the Act: (i) different provision for different descriptions of case or different purposes or areas; and (ii) transitory

Paragraph 29 of the Schedule

58. The first amendment repeals the words "(*without prejudice to the requirements of this Act where the order is subject to appeal*)". The words are repealed because they refer to requirements which were set out in section 20(5) of the 1993 Act before the replacement of section 20 by the 2006 Act.

59. The second amendment extends the order-making power of the Commission under section 89(5) so that the order made under that provision can include transitional provisions or savings.

Paragraph 30 of the Schedule

60. Section 97(1) of the 1993 Act defines "financial year" for the purposes of that Act. The definition did not alert readers of the Act to the possibility that different provision may have been made, for the purposes of the preparation etc. of group accounts under Schedule 5A to the Act, for determining the financial years of the subsidiary undertakings of a parent charity. Such provision can be included in regulations made under paragraph 3(5) of that Schedule (the current provision for determining the financial years of subsidiary undertakings is in regulation 10 of the Charities (Accounts and Reports) Regulations 2008 (S.I. 2008/629)).

61. This amendment replaces words in the definition of "financial year" in section 97(1) which are spent with words alerting readers to the fact that, in relation to group accounts, the definition is subject to any specific provision in regulations made under paragraph 3(5) of Schedule 5A.

Paragraph 31 of the Schedule

62. This paragraph makes various amendments to the Table in Schedule 1C to the 1993 Act. The Table sets out the decisions, orders and directions against which an appeal can be made to the First-tier or Upper Tribunal. The amendments made by paragraphs (a) to (c) correct minor drafting errors and those made by paragraphs (e) and (f) ensure linguistic consistency between the Schedule and other provisions of the 1993 Act.

63. The amendment made by paragraph (d) is intended to ensure consistency between the rights of appeal in connection with an order made (or decision not to make an order) under section 69(4) of the 1993 Act and the corresponding orders and decisions made under section 44(2) of that Act.

64. Paragraph (g) makes further amendments to the Table:

> 64.1 Under section 43(4) of the 1993 Act the Commission may require certain charities to have their accounts audited. There is a right of appeal to the Tribunal in connection with any such order of the Commission. Paragraph 6(5) of Schedule 5A to the 1993 Act also enables the Commission to require the audit of group accounts of larger groups, but unlike section 43(4) there is no right of appeal. The Table is amended to remove this inconsistency;

64.2 Paragraph 7 of Schedule 5A to the 1993 Act applies section 43(3) to (7) of that Act in relation to group accounts which are not subject to the audit requirements for larger groups. Under section 43(4), as applied by paragraph 7, the Commission may make an order requiring the group accounts for a particular financial year to be audited. The Table is amended to make explicit that where such an order is made a right of appeal to the Tribunal exists; and

64.3 Paragraph 8 of Schedule 5A to the 1993 Act applies section 44 of that Act in relation to group accounts. Under section 44(2), as applied by paragraph 8, the Commission may make an order for the purpose of securing that certain information is provided to an auditor, independent examiner or examiner. The Table is amended to make explicit that where such an order is made a right of appeal to the Tribunal exists.

Paragraph 32 of the Schedule

65. These amendments change references in paragraphs 1, 2, 3, 3A, 4 and 4A of Schedule 3 to the 1993 Act to certain local areas "comprising" another local area to references to the local areas concerned "including" the other local areas. The purpose is to avoid using a word which is generally regarded as not being "plain English" and to avoid any doubt about the meaning of the provisions.

66. The amendments of paragraphs 5 and 6 of Schedule 3 make clear that "comprising or adjacent to" qualify "parish or parishes" (in paragraph 5, column 2) and "community or communities" (in paragraph 6, column 2), rather than "any area".

Paragraph 33 of the Schedule

67. This paragraph amends various paragraphs of Schedule 5A to the 1993 Act.

68. The amendment of paragraph 6(7) of Schedule 5A contains provision corresponding to the provision made by section 43B(5) of the 1993 Act. The purpose of section 43B(5) was to ensure that sections 44, 44A and 45(4) applied in relation to the Auditor General for Wales when acting under section 43B (which includes section 43B as applied by paragraph 7 of Schedule 5A). This amendment ensures that the equivalent effect is achieved when the Auditor General for Wales is acting under paragraph 6 of Schedule 5A.

69. The amendment of paragraph 8(2)(e) of Schedule 5A clarifies that the power in section 44(1)(f) of the 1993 Act, as applied by paragraph 8, can be exercised so as to disapply only the requirement in section 43(3) as it applies by virtue of paragraph 7 of that Schedule.

70. The amendment of paragraph 8(4) of Schedule 5A clarifies how the reference to "the charity trustees for the time being of the charity concerned" in section 44(2) is to be construed when that section is applied in relation to group accounts.

71. The amendment of paragraph 9(1) of Schedule 5A repeals the cross-reference to section 44A(7). It is unnecessary given what is said in paragraph 9(2) of that Schedule.

Paragraph 34 of the Schedule

72. This paragraph is intended to clarify the existing legal position in relation to the purported repeal of section 10 of the Universities of Durham and Newcastle-upon-Tyne Act 1963. Schedule 7 to the 1993 Act purports to repeal section 10 of the Universities of Durham and Newcastle-upon-Tyne Act 1963 when it should have repealed section 18.

73. Section 18 of the 1963 Act (as enacted) provided that "*The University of Newcastle shall be deemed to be included among the universities mentioned in paragraph (b) of the Second Schedule to the Charities Act 1960*". Paragraph (b) of Schedule 2 to the 1993 Act refers expressly to the University of Newcastle and the table of derivations for the 1993 Act gives section 18 of the 1963 Act as one of the derivations for that paragraph. Section 10 of the 1963 Act, however, contains provision concerning the constitution and governance of the University of Durham and in particular, confers a power on the University to make statutes.

74. The inclusion of the reference to section 18 in the table of derivations gives rise to the expectation that that provision, rather than section 10 of the 1963 Act, should have been repealed by Schedule 7 to the 1993 Act. Moreover, the 1993 Act, as a "pure" consolidation (i.e. without any amendments), would have had no business repealing section 10 of the 1963 Act. Given the presumption that a consolidation does not change the law, there is a clear argument that the reference to section 10 of the 1963 Act should be read as a reference to section 18 of that Act and thus the correct legal position is that section 10 was not repealed. The purpose of this amendment is to put the point beyond doubt.

Amendments of the 2006 Act

Paragraph 35 of the Schedule

75. This paragraph amends section 74(4)(a) and (6) of the 2006 Act so as to enable an order under section 11 of that Act to be made under the negative resolution procedure if the only purpose of the order is to remove from Schedule 2 to the 1993 Act a reference to an institution which has ceased to exist. This will mean that such an order could be made by the Minister for the Cabinet Office without prior parliamentary approval. The wording in existing section 74(5) will mean that provision removing a defunct institution from Schedule 2 could still be included in an instrument subject to the affirmative procedure.

76. The amendment of section 74(6) follows from the amendment of section 74(4)(a): the hybrid instrument procedure does not apply to instruments subject to the negative procedure.

Amendments relating to the meaning of charity

Paragraphs 36 to 48 of the Schedule

77. Part 1 of the 2006 Act made general provision about the meaning of charity. The 1993 Act also contains its own, slightly different, provision about the meaning of charity in that Act. The main meaning of "charity" in the 1993 Act is the same as in the 2006 Act. However, the 1993 Act adds a qualification to that meaning in section 96(2).

78. Section 96(2) provides that in the 1993 Act, the expression “charity” is not applicable: (a) to an ecclesiastical corporation in respect of its corporate property (unless it is a corporation aggregate, in which case “charity” can apply to the corporation in respect of any of its property held for non-ecclesiastical purposes); (b) to any Diocesan Board of Finance or any subsidiary of it in respect of diocesan glebe land; or (c) to any trust of property for purposes for which the property has been consecrated. The general underlying purpose of section 96(2) is thought to be to preserve the traditional jurisdiction of the ecclesiastical courts over ecclesiastical matters affecting charities.

79. The general effect of section 96(2) is that an institution is not a charity in certain contexts. Where an institution owns property within section 96(2)(a), (b) or (c), provisions of the 1993 Act which are about property do not apply in relation to that property. But those same provisions could apply to other property of the institution which is not within section 96(2)(a), (b) or (c); and other provisions of the 1993 Act which are not about property may apply without any restriction. For example, there are various Diocesan Boards of Finance which are registered charities. The provisions of the 1993 Act which regulate dealing in land would not apply to their dealings in their glebe land (land within section 96(2)(b)) but would apply to any dealings in other land not within section 96(2). Similarly, there are charities which are subject to the 1993 Act in the sense that they need to produce accounts under the 1993 Act; but the accounting requirements do not apply in respect of property within section 96(2) (e.g., consecrated property, which is excluded by section 96(2)(c)).

80. Various Acts (“outlying Acts”) currently contain provisions referring to the 1993 Act meaning of charity. The Consolidation Act will contain both the 2006 Act’s meaning of charity and the more restricted meaning from the 1993 Act. In many cases, if the Consolidation Act were to amend these outlying Acts to refer to provisions in the Consolidation Act corresponding to the 1993 Act meaning, it would suggest more strongly than at present that the qualifications in section 96(2) are relevant in the context of the outlying Act. If the qualifications in section 96(2) are not in fact relevant, such an amendment would be misleading.

81. The amendments in these final paragraphs of the Schedule are designed to remove references to the 1993 Act meaning of charity in cases where the qualifications in section 96(2) are not regarded as relevant. Or to make explicit that the qualifications do apply where they are regarded as relevant.