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PART ONE: POLICY AND THE LAW

Chapter 1: The Voluntary Sector

Introduction

1.1 Voluntary effort has been of enormous importance in the history of this country, and it remains so today. It is easy to forget that most of the major services which we take for granted today, whether they be of health, education or social welfare, were built on foundations laid down over generations first by the Church and later by concerned individuals who gave of their time and resources, not because they were required to do so, but voluntarily for the good of their communities.

1.2 Today at least one in four adults in this country regularly engages in some form of voluntary activity, and the number of voluntary bodies is large and growing. Such bodies engage in an immense range of activities, from running the village hall to caring for the disadvantaged or protecting the global environment. They operate at all levels from the street to the international arena. They may be permanent or passing. Some survive virtually without resources: others are well endowed. Some are tiny; a small number are, in effect, multi-million pound international corporations.

1.3 The Government are committed to encouraging a healthy and growing voluntary sector. The impulse to help others in need or distress, or to join with them for some common purpose, is deeply rooted in human nature. Joining in voluntary activity helps to create a sense of belonging and of community, at home, in the workplace or at recreation. For many people, engaging in voluntary activity is a most important way for people to make a positive contribution to the community and have an influence on it.

1.4 The voluntary sector plays a crucial role in engaging and directing the efforts of individuals who wish to help those in need both at home and overseas. Individuals and groups can act more flexibly than central bureaucracies and can spot and fill gaps in provision more quickly. The service they offer can, in the nature of things, be better tailored to individual needs and be more personal. Often the pioneering efforts of the voluntary sector, working hand in hand with the mainstream services, provide the first means for dealing with problems which arise suddenly or rapidly escalate. AIDS is a good example of a new problem where the expertise and dedication of the voluntary sector has been of crucial help to the Government in catering for the needs of people with AIDS or HIV related illness and in developing sound policies for the future.

Government funding

1.5 In recent years the Government has established an increasingly close and productive partnership with the voluntary sector. Central Government grants directly to voluntary organisations amounted to almost £293 million in 1987/88—an increase of 91.6% in *real* terms since 1979/80. Taking

account of payments made directly to voluntary bodies under various employment and training programmes, of grants to housing associations and societies, and of grants from non departmental public bodies, Government funding amounts to over £2 billion. This figure takes no account of the tax benefits, estimated at over £500 million a year, which charities enjoy, or of rate relief or contributions from local authorities and health authorities.

1.6 The Government has a duty to ensure, on behalf of taxpayers, that these very considerable sums are properly and efficiently used and that the services provided are effective. Against this background an efficiency scrutiny of Government funding of the voluntary sector has been announced. Its aim is to ensure that the purposes for which grants are made are properly defined and have a beneficial purpose; and that funds are being effectively and efficiently deployed in a way which is of practical help and achieves the benefits intended. Meanwhile, Departments will continue to ensure that proper financial controls are applied to the grants which they give.

Partnership

1.7 Many direct grants are given for the provision of specific agreed services. The importance of the voluntary sector does not, however, lie just in its capacity to deliver services funded by Government; nor is it any part of the Government's policy to place on voluntary organisations the burden of delivering the essential services for which it is right that the Government should remain responsible. The Government seek a free, vigorous and creative partnership in which each partner is able to make its distinctive contribution. What the voluntary sector has essentially to offer is its practical grass roots experience, its ability to respond swiftly and flexibly to changing needs and circumstances, and perhaps above all its capacity to innovate. In this sense, enterprise and voluntary activity go hand in hand.

1.8 The Government are keen to encourage innovation and enterprise, and will continue to make selective grants to voluntary bodies. They believe that it would be wrong to seek to impose upon the voluntary sector any central direction. Indeed this would not be possible without damage to its spontaneity and diversity. The Government must, however, help to provide a framework within which voluntary bodies can flourish and their integrity be assured.

Charitable sector

1.9 Many voluntary bodies are established for purposes which over the years have come to be recognised as charitable in law. By definition money given for charity is for public, not private, benefit. Charity funds are not "public money" in the sense in which that phrase is normally used, but once donated they are clearly in the public domain. Because of this, a complex legal framework has been built up over the centuries to ensure that endowments are preserved for the benefit of the community, that trustees apply the highest standards of stewardship and that abuse is prevented.

1.10 The last major piece of charities legislation was in 1960. Since then the charity world has changed dramatically. There has been an enormous increase in the number and variety of charities and a substantial increase in the funds flowing through them: the annual turnover of the charitable sector is now some £13 billion, and charities are being registered by the Charity Commission at the rate of one every 30 minutes of the working day.

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interests. Many more charities are set up as companies. New fundraising methods are continually being invented, and there is the prospect of television advertising.

1.12 It is not surprising given these developments that the system of supervision under which charities operate should need some updating. This was the clear message of two recent reports: the report of the Public Accounts Committee (PAC), "Monitoring and Control of Charities" and the "Efficiency Scrutiny of the Supervision of Charities" carried out by Sir Philip Woodfield (the Woodfield Report). The PAC, reporting in February 1988, was gravely concerned that the deficiencies in the Register of Charities maintained by the Charity Commission, and its failure to obtain charity accounts, had undermined the effective monitoring of charities in England and Wales. The Committee believed that the risk of abuse under the present supervisory system was unacceptable, and it called for prompt and vigorous action to improve matters.

1.13 While the National Audit Office (NAO)—on whose examination of the Commission the PAC based its conclusions—was at work, the Home Secretary and the Economic Secretary to the Treasury jointly commissioned Sir Philip Woodfield to carry out an efficiency scrutiny of the supervision of charities. The Scrutiny team was asked to examine the full range of statutory requirements in England and Wales and to report on and make recommendations about the work of the Charity Commission.

1.14 A full list of the Woodfield Report's recommendations is at Annex A of this White Paper. The Report, which was published in July 1987, confirmed the broad picture presented by the NAO and underlined the need for change. Its central conclusion was that, while the essentials of the present framework were still necessary, they were in need of extensive reform. Trustees needed to be more aware of their duties and responsibilities; steps were needed to ensure that the information about charities held by the Charity Commission was accurate and up-to-date; above all, the Commission needed to focus more sharply on dealing with inefficiency and abuse. To achieve this new focus the Woodfield Report concluded that the Commission needed on the one hand new powers and on the other to be relieved of some of its present statutory duties.

1.15 In a statement to the House on 21 January 1988 the Home Secretary announced the Government's acceptance of the Woodfield Report and expressed the hope that legislation to implement it would be put forward in the lifetime of this Parliament. The Home Secretary later announced that the Government would issue a White Paper setting out their detailed proposals for legislation.

Content

1.15 This White Paper fulfils that undertaking. Its main aim is to translate the recommendations of the Woodfield Report into legislative proposals. The opportunity has been taken, however, to raise and seek views on basic issues of charity law about which concern has been expressed. These issues are discussed in Chapter 2.

1.16 A number of the Woodfield Report's recommendations were for further reviews. These have been carried out, where necessary in consultation with a wide range of interests, and proposals flowing from them have been incorporated in the White Paper. Two issues of particular importance

on which major consultation exercises have been carried out are the supervision of charities in Scotland, and the law governing charitable appeals. Proposals for Scotland will be put forward in due course, aimed at providing for the first time a degree of supervision for charities commensurate with that in England and Wales. Outline proposals for the future regulation of charitable appeals are contained in Chapter 10.

1.17 For reasons which are explained in the text the Government have at some points departed from the precise recommendations of the Woodfield Report. In proposing that in future the Commission should have direct access to the courts (paragraphs 5.27–5.30) the Government are also suggesting a major change not recommended by the Report.

Objectives

1.18 The Government's overall objective in approaching legislation for charities is to achieve a balance between on the one hand proper control by the Charity Commission and proper accountability by charities, and on the other the freedom and corresponding responsibilities of individual organisations to develop and do business. Their proposals are designed to produce a stronger and a more modern framework of supervision which will equip the Charity Commission for a more active role, narrow the scope for abuse, encourage trustees to shoulder their responsibilities, and ensure continuing public confidence in the sector.

Context

1.19 The new legislation proposed will make an essential contribution to the proper supervision of charities. But it will not be sufficient by itself. It will need to be matched by parallel improvements in the capacity of the charitable sector to regulate its own affairs. A start has already been made, and there are encouraging signs that self-regulation is gathering pace and becoming more effective. The Government strongly support these developments, which they believe are vital if confidence in the probity of charities is to be maintained. Nowhere is this more important than in the area of fundraising where some new methods would be extremely difficult to control through legislation.

1.20 Above all legislation will need to be complemented by a more active and efficient Charity Commission able to give a better service to charities and the public. Over the past 18 months the Commission has taken significant strides towards fitting itself actively to exercise its existing powers and the new powers envisaged for it.

1.21 All of the Woodfield Report's recommendations for improvements in the Commission's organisation and working methods have been implemented or are in hand. More resources have been devoted to dealing with malpractice. Systems are being developed designed to carry out the efficient monitoring of charity accounts and to target charities most likely to need further investigation. New systems of financial and management control are being introduced. Significant progress has been made towards the introduction of essential new technology. Two new part-time Commissioners have been appointed to bring positive outside influences to bear on the Commission's thinking and procedures.

1.22 The Government have provided, and will continue to provide, the resources necessary to carry forward the Commission's major programme of reform. They are confident that, together with the legislation proposed in this White Paper, and backed by the efforts of the voluntary sector and the vigilance of the public, the result will be a better service for charities and public alike.

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Chapter 2: Charitable Status

2.1 The Efficiency Scrutiny which preceded this White Paper examined the whole range of statutory requirements in England and Wales which govern the setting up, registration and supervision of charities. Sir Philip Woodfield was asked to conduct his review on the assumption that there was to be no change in the law relating to the definition of charitable status, or in the fiscal reliefs available to charities.

2.2 This White Paper does not deal at all with the question of fiscal relief for charities. That is not its purpose. The great majority of its proposals relate to the implementation of those recommendations of the Woodfield Report which require legislation. The Government have, however, thought it right to consider whether the law on charitable status should be clarified and simplified, and in particular whether the time has now come to put it on a statutory basis.

2.3 In considering the question of charitable status the Government have taken note of the deliberations of the Nathan and Goodman Committees, both of which went into the subject in some depth. They have also taken into account the views expressed more recently at seminars which have been held by the Home Secretary and the Charity Commission. These seminars were designed to test opinion in the legal and charitable worlds and were attended, amongst others, by Chancery judges.

2.4 The view of the legal experts and of others who were present on these occasions was not, as might be expected, unanimous on all points, but was quite clearly against any substantive change in the present law. The Government incline to agree with this view, which accords with the majority of opinions put to them by voluntary and other interested bodies. Nevertheless, the Government's mind is not entirely closed. They would welcome the views of others on the issues which follow.

2.5 The starting point for the modern law of England and Wales is found in the preamble to the Statute of Elizabeth I (the Charitable Uses Act, 1601). Guidance on what was to be considered charitable was found there in a list of objects which included:

> 'relief of aged impotent and poor people ..... the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, ... the repair of bridges, ports, havens, causeways, churches' ..... and others.

2.6 For all practical purposes the courts have, for many years, accepted the classification which was made by Lord Macnaghten in 1891 in what has now become well known as the 'Pemsel' case.[1] This classification (which does not constitute a definition) reads as follows:

[1] Income Tax Special Purposes Commissioners v Pemsel [1891] A C 531.

"Charity in its legal sense comprises four principal divisions— trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community, not falling under any of the previous heads."

Lord Macnaghten's classification has largely superseded the 1601 preamble, though in doubtful cases which arise under the head of "purposes beneficial to the community" the courts still refer to the preamble for guidance.

Development of the law

2.7 The loose framework, which was set by the 1601 preamble and clarified by Lord Macnaghten, has enabled the courts over the years to develop the law in a way which has been sensitive to changing needs whilst maintaining the fundamental principles on which the concept of charity rests. It has been argued that on the whole, given the increasing complexity of society, this development has been remarkably coherent and consistent. The scope of education, for example, has been gradually extended to cover not just free schooling but a whole range of objects of a broadly educational nature, such as research and information services, which are considered to be of public benefit.

2.8 The scope of charity, as it applies to organisations concerned with the advancement of religion, has been similarly widened in response to increasing religious toleration and to cultural diversity. Under the fourth head, in particular, the courts have admitted, under the umbrella of charity, a remarkable range of bodies which have been established by benefactors who have discerned new public needs and who have responded to them.

2.9 If the main lines of the law's development are clear, it is fair to say that its results in detail are not always tidy and can sometimes be confusing, even to experts. It is perhaps not surprising that, as the threads reaching back to 1601 get longer and as the analogies which the courts employ become more extended, so the rationale for decisions on charitable status should not always be immediately apparent. This has undoubtedly led to a degree of uncertainty about the interpretation of the law which can inhibit innovative bodies from seeking charitable status. Some critics, however, go further. The law, they say, is now so complex and tangled that it is bound to lead to some decisions which can only be described as illogical or capricious.

2.10 Against this background, it has been proposed from time to time, that a definition of charity should be formulated and given statutory effect. This might be achieved in one of the following ways:

i) by listing the purposes which are deemed to be charitable;

ii) by enacting a definition of charity based on Lord Macnaghten's classification; or

iii) by defining "charitable purposes" as "purposes beneficial to the community."

2.11 The Government consider that an attempt to define charity by any of these means would be fraught with difficulty, and might put at risk the flexibility of the present law which is both its greatest strength and its most valuable feature. In particular, they consider that there would be great dangers in attempting to specify in statute those objects which are to be regarded as charitable.

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2.12 Even if it was possible to draw up a list which could command a reasonable measure of agreement it might well lead to the exclusion of trusts which have long been treated as charitable, depriving them of any means of enforcement. A list might be inflexible and quickly outdated by changing public opinion. Listing the details in statute would not evade for long the problems which are inherent in any system of case law. Disputes would undoubtedly quickly arise on which the courts would be asked to adjudicate. There is no reason to believe that a new body of case law would be any less complex than the old.

2.13 In the Government's view, it would be scarcely less difficult to try to enact the whole of Lord Macnaghten's classification. As a classification, the formulation has proved of enduring use. As a definition, its advantages are much less compelling.

2.14 Unless it were proposed to preserve the present case law, the incorporation of Lord Macnaghten's classification into statute would throw the law into confusion and uncertainty by depriving the courts of recourse to previous decisions when they were asked to interpret the new statutory provisions. On the other hand, if some form of words were to be found which would successfully preserve the present valuable case law, it is hard to see what the new definition would achieve.

2.15 Defining "charitable purposes" as "purposes beneficial to the community" would have the merit of simplicity but this would also be open to major objections. Such a definition would allow the courts to admit to charitable status virtually any organisation which was not obviously for private benefit or profit. A definition on these simple lines, which was intended to supersede existing case law, would greatly expand the ambit of charity in ways which might be far from desirable. It would be notably subjective and would be likely to give rise to a great deal of litigation.

2.16 An attempt might be made to make clearer exactly what is meant by 'public benefit' by reference to existing case law and by incorporating the other heads of charity into the general formula. The more that detail becomes added in this way, however, the fewer appear the advantages of a new definition. Instead of being simplified the law would be ossified.

2.17 There would appear, therefore, to be few advantages in attempting a wholesale redefinition of charitable status—and many real dangers in doing so. Nevertheless, it might be desirable to make one or two minor adjustments to the present law. The Government have considered whether useful changes could be made in two areas—the advancement of religion and political activities.

Religion

2.18 Although, for historical reasons, it received only indirect mention in the preamble to the 1601 statute, the advancement of religion has always been a charitable object. Indeed, the very concept of charity is essentially religious in origin.

2.19 With the growth in religious toleration, and with the development of a multi-cultural society in the United Kingdom, the courts have progressively admitted to charitable status a variety of Christian and other religious faiths. Gifts to dissenting Protestant churches and for the advancement of the Jewish and Roman Catholic faiths have been upheld by the courts as being of charitable purpose. The Commissioners have also registered trusts for the advancement of the Hindu, Sikh, Islamic and Buddhist religions.

2.20 The present position is that any religious body is entitled to charitable status so long as its tenets are not morally subversive and so long as its purposes are directed to the benefit of the public. The modern attitude of the courts is summed up in the often quoted remark of Mr Justice Cross, later Lord Cross of Chelsea: "As between religions the law stands neutral, but it assumes that any religion is at least likely to be better than none."[1] More recently, in the Australian Scientology Case[2], Mason A.C.J and Brennan J. of the High Court of Australia held that: "There can be no acceptable discrimination between institutions which take their character from religions which the majority of the community recognises as religious and institutions which take their character from religions which lack that general recognition". These dicta are important in drawing attention to the understandable reluctance of the courts to judge the relative worth of different religions or the truth of competing religious doctrines, all of which may have a place in a tolerant and culturally diverse society.

2.21 The importance of religion as a fundamental spring of charity can scarcely be overestimated. It is part of the make up of Man to want to give. It is part of the ethics of most religions to encourage that.

2.22 Trusts for the advancement of religion have contributed much to the spiritual welfare of generations of individuals and to the sound development of our society. Nevertheless, the question has been raised from time to time as to whether trusts which are set up to further certain religious groups should be entitled to charitable status. Anxieties have been expressed, in particular, about a number of organisations whose influence over their followers, especially the young, is seen as destructive of family life and, in some cases, as tantamount to brainwashing.

2.23 The Government have considerable sympathies for these anxieties. They have considered whether it might be possible to amend the law in such a way as to exclude those religious organisations whose activities are deemed undesirable. Their conclusion is that there are great difficulties in the way of doing so, but they would welcome views as to how this might be achieved, and in particular on the suggestions which follow.

2.24 It has been suggested that the problem would be solved if charitable status were removed from all trusts which are established to advance religion—of whatever type and without exception. This proposal has, at least, the merit of simplicity. It would also avoid the need to make invidious comparisons between different religions. While the advancement of religion might cease to be a charitable object, religious organisations would still remain free to propagate their doctrines and, if they so wished, to promote and to administer trusts for such purposes as the relief of poverty which would remain charitable as before.

2.25 The Government finds the whole concept of removing charitable status from religious trusts unattractive and believes that it would be resisted vigorously, not just by the religious bodies who would be affected, but also by the great majority of the public. The removal of religion as a head of charity would leave many existing trusts, some of which are of considerable

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antiquity, in an impossible legal limbo. The legal difficulties of resolving the subsequent uncertainties would be immense and might well prove insuperable. It is true that these difficulties could largely be avoided if trusts which were already in existence were preserved, and loss of charitable status was confined to organisations which were established after legislation. Drawing a line under religion in this way would, though, be difficult to justify: there would be little justification for denying charitable status to new trusts for religious purposes of an existing denomination. Such a policy would, in any event, do nothing to deal with the problems presented by organisations which already exist and which have acquired charitable status.

2.26 Alternative suggestions for tightening the law concentrate on the criterion of 'public benefit'. A trust for the advancement of religion is presumed to be for the public benefit unless that presumption is rebutted by evidence to the contrary. This presumption reflects the reluctance of the courts to enter into questions of the comparative worth of different religions. Although the courts will not prefer one religion to another, they will decide in the light of evidence which is placed before them whether or not there is a benefit to the community from the religious activity in question.

2.27 For some critics the neutrality of the law is objectionable, and suggestions have been made from time to time that the presumption of public benefit should be removed and that it should be replaced with a positive test of worth. The Goodman Committee, for example, suggested that those who seek charitable status for the promotion of religious movements should be required to satisfy the Charity Commissioners or the court that their advancement was for the benefit of the community "according to certain basic concepts which should be established". In summing up, the Committee proposed that religions which were "considered detrimental to the community's moral welfare" should be excluded from charitable status. However, the Committee offered no guidance on the content of the "basic concepts" which it had in mind. The Government would not regard it as satisfactory, nor do they consider that it would be likely to be acceptable to Parliament, that these concepts should be undefined and that they should be left to the interpretation of the Charity Commissioners or to the courts.

2.28 The difficulties of principle which the Goodman Committee encountered, in considering what criteria might be applied to religions, are formidable. So also are the practical difficulties which vary with the nature of the particular movement in question. If its aims are clearly not for the public benefit, that is in itself sufficient reason for refusing to register as a charity any trust which is established in order to advance them.

2.29 In some cases the undesirability of a doctrine may be clear enough. Sometimes, however, the objectionable feature may be only one element in a complex body of doctrine. The question would then arise whether that one element alone should be enough to justify refusal to register, bearing in mind that, in religious matters, it is often a single doctrinal element which is the cause of controversy.

2.30 Furthermore, with religious movements of the kind about which public anxiety has been expressed, it is not usually a question of whether their *objects* are contrary to the public interest. The question is whether, if the actual *conduct* of the movement causes harm, a trust which is set up to advance its beliefs should be deprived of charitable status on the grounds that they are not of public benefit.

2.31 The Charity Commissioners already have powers of inquiry available to them under section 6 of the 1960 Act. Where it appears that the charity's conduct is not in accord with its objects, and there has, therefore, been a breach of trust, the Commissioners can refer the matter to the Attorney General or use their powers under section 20. Chapter 5 of this White Paper outlines the Government's proposals for strengthening these powers.

2.32 Where conduct is in breach of trust, or is marginal to the pursuit of an organisation's objects, action can generally be taken to restrain the trustees or their agents. Action of this kind does not affect an organisation's charitable status. But in exceptional cases where from a careful examination of *all the circumstances* the activities complained of appeared to them to be directly and essentially expressive of the objects and tenets of a particular movement, the Charity Commissioners might nevertheless conclude that the pursuit of those objects was not beneficial, and hence not therefore being directed to charitable purposes. Should they reach this conclusion the Commission could remove the organisation from the register of charities under section 4(3) of the 1960 Act on the grounds that it no longer appeared to them to be a charity. Under section 5(3) of the Act the Attorney General can appeal against any decision of the Commissioners to remove or not to remove an organisation from the register.

2.33 The trustees of any organisation which is removed from the register may themselves appeal against that decision to the High Court under section 5(3). The Commissioners cannot take action under section 4(3) unless there is evidence which shows that such as exceptional course is justified. This is a sensitive area. Some religious movements evidently demand uncritical adherence from their members. Evidence of sufficient weight and cogency to justify removal from the register can be difficult to obtain.

2.34 Frustration with the difficulty of obtaining evidence against undesirable religious movements has led some commentators to suggest a change in the law. But no acceptable or relevant change in the law on charitable status would remove the need for evidence. Indeed, evidence which would be sufficient to refuse registration as a charity would be more, not less, difficult to obtain at the pre-registration stage when for practical purposes the organisation might not yet have begun to operate. In the light of this, the Government doubt whether it would be wise to attempt to introduce any new principle into the law. Their view is that the existing law is adequate. What is needed now is the determined pursuit of evidence in order to justify the bold use by the Commissioners of their powers of investigation and remedy.

2.35 The Government acknowledge the concern which underlies much of the recent public comment on the position of cults. Calls to strengthen the law may, however, rest on a mistaken view of what the law allows. This may be a reflection not just of the undoubted complexity of charity law, especially where it concerns charitable status, but also of the present wording of section 4(3) of the 1960 Act.

2.36 It is important both for the Commissioners and for trustees that the law in this area should be fully understood. The Government will, therefore, be considering whether it would be possible, whilst preserving the underlying principles involved, to amend section 4(3) in order to make it explicit that the Commissioners have the power to remove a body from the register where there is evidence that it is acting in pursuit of its objects in ways which are not for the public benefit.

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Political activities by charities

2.37 There is a crucial difference between charities and non-charitable voluntary bodies. Any non-charitable voluntary organisation is entirely, and quite properly, free to support any cause which it wishes to support, and in any manner in which it wishes to do so, as long as it keeps within the law. In contrast, charities cannot have political objects. They are constrained by law to the reasonable advocacy of causes which directly further their non-political objects and which are ancillary to their achieving those. In this context, 'politics' does not mean only 'party politics' but political activity as it has been defined by the High Court in many cases which have been decided over the years. Charities may not, therefore, seek improperly to influence the policies of local or central Government either at home or abroad. Nor may they advocate changes in the existing law, or even its retention, in a way which would not be in furtherance of their purposes.

2.38 The precise extent to which a charity may properly seek to influence Government and public attitudes is a difficult question. It turns, in individual cases, on the trusts of the particular charity concerned and on the manner and the context in which it proposes to bring issues into public discussion. The courts have, however, laid down certain basic principles. These were set out in the Charity Commissioners' Annual Report for 1981 and they have since been issued in the form of a booklet "Political Activities by Charities" which is intended for the guidance of trustees.

2.39 The Charity Commission's guidance is, broadly, to the effect that:

— governing instruments should not include a power to exert political pressure except in a way which is ancillary to a charitable purpose;

— the powers and purposes of a charity should not include the power to bring pressure to bear on the Government to adopt, to alter, or to maintain a particular line of action, although charities may present reasoned argument and information to Government;

— where the objects of a charity include the advancement of education or the power to conduct research, care must be taken to ensure that both objectivity and balance is maintained and that propaganda is avoided.

2.40 It follows from this guidance that charities are precluded from direct or indirect financial or other support of, or opposition to, any political party or individual or group which seeks elective office or any organisation which has a political object. Charities must not allow the proportion of effort and resources which are devoted to persuasion to become greater than that which is devoted directly to meeting its objects. In other respects, the guidance at present allows considerable latitude. Charities can, for example, quite properly respond to invitations from Government to comment on proposed changes in the law. Where a Bill is being debated, they can legitimately supply members of either House with such relevant information and arguments as they believe will assist the attainment of their objects. Where this kind of action is in furtherance of their purposes, charities are free to present to government departments reasoned memoranda advocating changes in the law.

2.41 The Government believe that the safeguards which the law provides are indispensable to prevent what are essentially political factions or pressure groups from assuming the guise of charity. It is vital, in the long term interests of the public and charities alike, that political and charitable purposes should remain distinct. It would be wrong if taxpayers, through the

Government, were to find themselves unwittingly distorting the democratic process by subsidising bodies whose true purpose was to campaign not so much for their beneficiaries as for some political end. Nor do the Government believe that the public would for long continue to display their generosity if charities were to ally themselves to causes with which individual donors might well differ strongly on political grounds.

2.42 There is no reason to believe that the vast majority of charities experience any great difficulty in complying with the law. There are, however, some signs that the public is anxious that the behaviour of a few charities may, on occasions, stray beyond the bounds of what is permissible or desirable. The Government have accordingly considered whether the law could with advantage be tightened.

2.43 Ministers welcome the advice and the guidance which charities can offer to Members of Parliament, to central and local government, and to other public authorities on a wide range of social problems. Charities should feel free to take the initiative in offering advice and opinions and in proposing changes in the law and should not need to wait to be invited to do so. The Government firmly believe, however, that such activities must remain ancillary to a charity's primary purposes, which must be clearly charitable and nonpolitical. Such activities must be kept subordinate to the non-political work of the organisation. They must not be allowed to predominate.

2.44 The Government's view is that this approach commands general agreement. The guidance issued by the Charity Commission, which derives from the present law, provides an adequate framework for the future. There is bound to be difficulty, and room for dispute, over the application of general guidance to particular instances. But to alter the guidance by legislation could well have the disadvantage of laying down inflexible rules, instead of allowing the law to develop in the light of particular cases which may present features which cannot now be foreseen. Of course, there are at present some difficult borderline cases, but that would be so whatever general rules might be laid down.

2.45 The Government's view is, therefore, that a rigid approach would not be sensible. The decision on what is permissible in the way of political activity is best left to the good judgment of the trustees of individual charities, who know that, in cases where the restrictions appear to be breached, the Charity Commissioners will take vigorous action with the support of the Attorney General.

2.46 In cases of doubt, trustees can seek the guidance of the Charity Commission. Such guidance should be freely given, as it is at present. For trustees who unwisely insist on engaging in illegitimate political activity the powers of the Commissioners and the Attorney General are considerable. Trustees who stray too far can be held personally liable to repay to the charity any funds which have been spent on political activities. The Government's proposals to sharpen the Commissioners' powers of investigation, in order to enforce a remedy, will greatly strengthen their hand in imposing the proper degree of control. These proposals are set out in Chapter 5.

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PART TWO: IMPLEMENTING WOODFIELD

Chapter 3: The Register

The effectiveness of the Charity Commission post-Woodfield, and the proper accountability of trustees, depend in no small part on the maintenance of an accurate, up-to-date and accessible Register of charities.

Steps are being taken, in line with the Woodfield Report's recommendation, to computerise the existing Register. Other measures are proposed to ensure its systematic updating, and to encourage compliance with the requirements of registration.

The Government do not, at present, have any proposals with regard to charities which are excepted from the registration or other requirements of the 1960 Act ('excepted charities'), or altogether exempt from the jurisdiction of the Charity Commission ('exempt charities'). They will, however, be looking closely at the present arrangements for exemptions and exceptions, bearing in mind the need to have a proper system of supervision and public accountability across the sector as a whole, and would welcome views.

Introduction

3.1 The Charities Act 1960 established a central register, open to the public, on which were to be held details of all charities obliged to apply for registration. Under the Act, the trustees of such charities must provide the Commissioners with certain information. Once registered, charities must notify the Commission of any changes in their trusts or in the details entered on the Register.

3.2 The number of charities on the Register—including some which are not required to register but which have done so voluntarily—is now approaching 165,000, and the Register is growing at a rate of almost 4,000 entries each year. In recent years the Commission has received roughly 30,000 enquiries a year from members of the public relating to information on the Register.

The purposes of the Register

3.3 Contrary to popular understanding, registration does not confer charitable status: this is inherent in an organisation's purposes and trust instrument. Registration does, however, provide conclusive evidence—subject only to correction by the High Court—that an organisation is charitable in law. This confirmation assists charities when raising funds; it can be a prerequisite for receiving grants from many trusts; and it makes it easier for charities to obtain, and for the Inland Revenue and local authorities to handle claims for, tax and rating relief.

3.4 The Register provides potential donors and other interested members of the public with access to basic information on the existence of registered

charities, their purposes and their administrative structure. As such it plays an important part in ensuring trustees' accountability and in encouraging the full and effective use of charitable resources. Finally, and increasingly, the Register is an important tool in the Charity Commission's monitoring and supervision of charities.

3.5 Given its importance to the work of the Commission, the Government are concerned at the situation described in the NAO, PAC and Woodfield Reports, and agree that the arrangements for the Register's management and upkeep are seriously defective. Trustees often fail to notify the Commission of relevant changes to the information registered; and the Commission lacks the means to ensure that the information on the Register is comprehensive and up-to-date.

A computerised Register

3.6 The Woodfield Report recommended that the Register should be computerised, and an examination of the scope of the computerised database and the mechanics of its creation is underway. The precise scope of the database will depend on the outcome of this study, but at a minimum the system will need to have sufficient capacity to:

— fulfil the present public uses of the Register;

— meet the Commissioners' requirements for monitoring and supervision; and

— accommodate the large increase in accounting information in particular which will flow from the Government's proposals in Chapter 4.

Consideration is also being given to ways of identifying on the Register those charities which have not fulfilled their statutory responsibilities.

The annual return

3.7 It is envisaged that the database will include the information on the existing Register, and that all registered charities will be asked to confirm that the details of the charity entered on the Register are correct. Thereafter a charity's entry in the Register will be updated by means of an annual return. The return will include information such as changes in a charity's trusts and the address of the charity's correspondent. It will incorporate some of the legal and administrative details recommended in the Accounting Standards Committee's Statement of Recommended Practice (SORP) for charity accounts (see paragraph 4.15). It will also include details which the Commissioners will need to carry out their monitoring and investigative functions.

Keeping the Register up-to-date

3.8 Computerisation will create a systematic, accurate and regularly updated source of information about charities in England and Wales, for the Commissioners in their day to day work, members of the public, other Government departments and others who use the Register. It will also have the potential to enhance the Commission's monitoring capability, for example, by enabling it to identify significant trends in the types of charity being set up and the amount of income flowing into charities of particular types. The effectiveness of the Register will, however, depend on its continued accuracy. The Government have therefore been considering what sanctions should apply for failure to register or to submit an annual return.

Sanctions for failure to register

3.9 Under the 1960 Act failure to apply for registration can result in an order of the Commissioners requiring compliance, enforceable if necessary by contempt proceedings. This sanction will remain. The contempt procedure is, however, somewhat unwieldy, and the Government have

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considered what further sanctions might be imposed. The Woodfield Report concluded that financial penalties which would attack the funds of charities would not be appropriate. The Government agree. Nor, since failure to register is often the result of negligence rather than a deliberate attempt to flout the law, do they believe it would be right for defaulting trustees to be liable to financial penalties.

3.10 On the face of it an obvious sanction would be to make tax and rate reliefs for registrable charities conditional on their being registered. Making fiscal reliefs conditional on registration would, however, be complex to administer and would penalise beneficiaries for the defaults of trustees. Since a sizeable number of charities is not required to be registered, the sanction would be inequitable in its impact. Furthermore, it would be effective only against charities which claimed tax or rate reliefs: there are probably many small charities which claim neither.

3.11 Inactive charities which are unregistered may, of course, go unnoticed for a considerable time. Being inactive, these bodies may be considered to do little positive harm. As the Woodfield Report noted, they typically come to notice when they approach the Commission for advice, or perhaps for consent to sell land. The Report recommended that in these circumstances the Commission should insist on registration before dealing with any business from the body in question. The Government agree with the spirit behind this recommendation: as the Woodfield Report recognised, it is already generally the Commission's policy and will continue to be so. There are, however, circumstances where refusing to do business before registration is clearly counterproductive. Improving defective or otherwise inadequate trust deeds before registration may, for example, save the Commission time, trouble and expense later. The Government believe it should remain open to the Commission to respond flexibly in cases of this kind.

Failure to submit an annual return

3.12 Appropriate measures can, of course, much more easily be taken once a body is registered; and under the Government's proposals failure to submit an annual return would trigger the same sanctions as will be applied for the non-submission of accounts. These are described in more detail in Chapter 4. Briefly, they involve marking the charity's entry on the Register as an indication that the charity has failed to fulfil a basic requirement of public accountability. Marking the Register would be a possible prelude to investigation by the Charity Commission and, if necessary, the use of its protective and remedial powers. Giving appropriate publicity to the marking would be an important element of the sanction.

Exemptions and exceptions

3.13 Under the 1960 Act some charities (specified in Schedule 2) are exempt from certain provisions of the Act although they may voluntarily submit to the Charity Commissioners' jurisdiction. Among the exemptions are most universities and polytechnics, the Church Commissioners (and any institution administered by them), and the British Museum. The grounds for their exemption are that their constitution and arrangements, approved in the past by Parliament, already contain satisfactory measures for ensuring that the objects of their trusts are carried out and that their property is safeguarded, rendering Charity Commission involvement superfluous.

3.14 Other charities, or groups of charities, are excepted by regulation or by an order of the Commission from certain requirements of the 1960 Act

whilst remaining subject to the Commissioners' powers. Charities may be excepted from one or more of the following:

— the requirement to register under section 4;

— the duty to submit accounts to the Commissioners under section 8;

— the obligation to obtain the Commissioners' consent to land transactions under section 29.

Exceptions may be permanent or temporary and may be subject to certain conditions. A key ground for many exceptions is the existence of other supervisory arrangements which take the place of some, if not all, of the Charity Commission's functions.

3.15 Two other classes of charity not required to register are:

— charities without permanent endowment whose income from property is not more than £15 per year and which do not use or occupy land, many of which Parliament viewed in 1960 as "insignificant or ephemeral"; and

— charities in respect of registered places of worship. Under the places of Worship Registration Act 1855 the Registrar General already had to register all places of worship certified to him, and the Act required that Register to be open for public inspection.

The combined effect of these provisions is to exclude a whole raft of charities—estimated in the region of 100,000—from registration.

3.16 The Woodfield Report did not advocate the removal of the exempt and excepted categories merely for the sake of completeness. Nor do the Government. There would appear to be little point in the Commission supervising exempt bodies for which satisfactory arrangements already exist; and the inclusion of these and the numerous excepted charities would threaten the Commission's efficiency, adding enormously to its bureaucratic load, without a commensurate return in the safeguarding of funds or the curbing of abuse. It seems right, however, to take the opportunity provided by legislation to look closely at the rationale for existing exceptions and exemptions and to consider in particular whether the arrangements for their supervision and public accountability remain adequate and appropriate. More consultation will be required. In the meantime the Government would welcome views, in particular on the accounting requirements to which exempt and excepted charities might be subject and on the desirability of a provision requiring copies of the accounts of all charities to be made available to members of the public on request. (See paragraph 4.33.)

Section 4(4)(c)

3.17 One change which the Woodfield Report did recommend was the repeal of section 4(4)(c) of the 1960 Act, which excepts from registration charities without permanent endowment, whose income from property is not more than £15 per year, and which neither use nor occupy any land. This provision was designed to exclude insignificant and short-term charities and was formulated at a time when charities were traditionally based on endowment. The aim, in proposing repeal, was to bring under supervision charities with a small investment income but a large turnover from other sources.

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3.18 The Government endorse this intention. As the Report recognised, simply to repeal this exception would bring other small or short-term charities needlessly within the Commission's ambit. The Government therefore propose to amend section 4(4)(c) to require the registration of any charity with an income of over £1,000 a year from whatever source. The requirement for permanently endowed charities and those using or occupying land would be unaffected by this change. Powers would need to be taken to increase the monetary limit in line with inflation.

Chapter 4: Charity Accounts

The regular provision of good quality financial information by charities is an essential element in their public accountability and an important means for their supervision. This chapter outlines the Government's proposals to remedy defects in the present arrangements regarding charity accounts. The main changes proposed are:

- **a requirement that, in future, all registered charities should submit statements of account to the Commission annually;**
- **the introduction of graduated requirements governing the content and auditing of accounts; and**
- **a requirement for trustees to make copies of their charity's statements of account available to the public on request.**

Views are sought on the possible extension of some of these requirements to charities which are excepted or exempt.

Introduction

4.1 The NAO, PAC and Woodfield Reports all highlighted charity accounts as a key area of weakness. These Reports found that, in spite of the importance of good financial information for supervision and accountability, the requirements for submitting annual accounts to the Charity Commission was being "widely ignored"; only a limited number of accounts was examined each year; and only a small proportion of accounts was professionally audited.

4.2 The Government and the Commissioners fully accept that the arrangements for submitting and examining accounts need to be considerably improved. The charity database now being developed will be essential in ensuring the regular submission of better and more detailed financial information, and its more systematic and thoroughgoing inspection; but further reforms will be needed.

4.3 The Woodfield Report made a number of recommendations relating to charity accounts, adding that these should be examined to see if legislation was required. Since then the Charity Commission has issued a consultation paper seeking views on the statutory regulation of accounts. The proposals below reflect responses to that paper, and build on or refine ideas which the Woodfield Report put forward. The key issues covered are the keeping of accounts; the submission of statements of account to the Charity Commission; the content of those statements; audit requirements; and requirements for public disclosure. The aim throughout has been to set minimum standards without adding unnecessarily to the burdens being placed on trustees.

Chapter 4: Charity Accounts

The regular provision of good quality financial information by charities is an essential element in their public accountability and an important means for their supervision. This chapter outlines the Government's proposals to remedy defects in the present arrangements regarding charity accounts. The main changes proposed are:

- **a requirement that, in future, all registered charities should submit statements of account to the Commission annually;**
- **the introduction of graduated requirements governing the content and auditing of accounts; and**
- **a requirement for trustees to make copies of their charity's statements of account available to the public on request.**

Views are sought on the possible extension of some of these requirements to charities which are excepted or exempt.

Introduction

4.1 The NAO, PAC and Woodfield Reports all highlighted charity accounts as a key area of weakness. These Reports found that, in spite of the importance of good financial information for supervision and accountability, the requirements for submitting annual accounts to the Charity Commission was being "widely ignored"; only a limited number of accounts was examined each year; and only a small proportion of accounts was professionally audited.

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The Keeping of Accounts

4.4 Section 32 of the Charities Act 1960 requires the trustees of all charities:

- to keep proper books of account;
- to prepare consecutive statements of account consisting of an income and expenditure account relating to a period of not more than 15 months, and a balance sheet relating to the end of that period, unless required to do otherwise by any other Statute; and
- to preserve books and statements of account for at least 7 years.

The Government propose to retain these provisions with one amendment. Consistent with the proposals explained in paragraphs 4.12–4.14 for graduated accounting requirements, small charities will be given the option of preparing their statements of account in the form of a receipts and payments account together with a statement of assets and liabilities.

The Submission of Accounts

4.5 Under section 8 of the 1960 Act permanently endowed charities which have not been excepted by order or regulations are required to submit statements of account annually and automatically to the Charity Commission. Section 8 also gives the Commission power to require other charities to submit statements of account. The Charities (Statements of Account) Regulations 1960 (SI 1960/2425) prescribe the information to be transmitted to the Commissioners. In recent years the Commission has exercised the power to require the submission of accounts widely, and in practice most registered charities are now obliged to return accounts. In the light of this, and of the increasing number of substantial charities without any permanent endowment, the Government propose that, in future, all registered charities should be automatically required to submit an annual statement of account to the Commission. Charities such as charitable companies, which are required by other Statutes to submit statements of account to other supervisory bodies, will continue to be permitted to return copies of these to the Commission. They will not be required to produce a different statement for the Commissioners.

4.6 Under the Government's proposals registered charities would be obliged to submit their accounts to the Charity Commission within ten months from the end of the accounting period. This is the period allowed under section 242 of the Companies Act 1985 for private companies, including charitable companies, to lay and deliver their accounts. The Commissioners would have power to allow extra time in exceptional circumstances.

Arrangements for small charities

4.7 The Woodfield Report suggested that, while all registered charities should be required to submit financial information annually, small local charities should not be burdened with the need to submit accounts of the same level of detail each year. It therefore recommended that charities below a certain size should be required to return an annual income and expenditure

statement and balance sheet each year, submitting full accounts once every five years.

4.8 The Government agree that small charities (as defined in paragraph 4.14) should be able to submit their accounts in a simpler form, but do not believe that trustees would be helped by the Woodfield proposal, which would require them to prepare, once every five years, unusually detailed information in a format to which they were unaccustomed. Responses to the Commission's consultation paper confirmed this view. The Government propose instead that small charities should be given an option as to the form in which their annual accounts are submitted. (See paragraph 4.17 below.)

Sanctions for non-submission

4.9 As with failure to register, failure to submit accounts can lead, under the 1960 Act, to an order from the Commissioners requiring compliance. Failure to comply with the order can be treated as contempt of court. This sanction will remain. As was noted in the chapter on registration, however, it is cumbersome to use. If the requirement to submit accounts is to be generally complied with, a means of enforcement will be needed which can be more readily applied. Sanctions considered in the Woodfield Report (for accounts as for non-registration) included criminal penalties against trustees and financial penalties against charity funds. The Government believe that the Report was right to reject these. However, they also have reservations about the sanction which it did recommend, that is, a provision enabling the Commissioners to deregister charities which failed, after reminders, to submit accounts.

4.10 Registration does not itself confer charitable status: it simply confirms that an organisation is established for exclusively charitable purposes and that its property is subject to charitable trusts in law. It follows that an organisation can only properly be removed from the Register if it ceases to be a charity, ceases to exist, or stops operating. For reasons which are fully explained in their Annual Report for 1987, the Charity Commissioners take the view that deregistration should continue to be confined to the loss of charitable status in law. The Government accept this conclusion and do not consider that it would be right to go half-way by taking away a charity's registration number, without actually removing it from the Register.

4.11 The Government propose instead to meet the spirit of the Woodfield recommendation by providing for a charity's entry in the Register to be marked where trustees have failed to submit accounts. Appropriate publicity would be given to these default markings. The marking, and its attendant publicity, would make clear that trustees had not complied with their statutory obligations and should both alert those with an interest in the proper conduct of the charity and warn potential donors. Persistent failure to provide accounts, despite reminders and without adequate explanation, would be taken to indicate serious mismanagement, possibly amounting to breach of trust, and as justifying the Commission in using its section 6 or 20 powers. In particular, further fundraising might be prohibited. Proposals for strengthening the Commission's powers under sections 6 and 20 are made in Chapter 5. Taken together these measures should provide effective sanctions.

A graduated system

4.12 At present all charities required to submit statements of account to the Charity Commission have to conform to standard requirements as set out in

statement and balance sheet each year, submitting full accounts once every five years.

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the Charities (Statements of Account) Regulations 1960. The Woodfield Report recommended that the content of statements returned to the Commission should be linked to a charity's size as determined by its income and assets. Under such a graduated system charities with an income of less than £1,000 and assets of less than £10,000 would have less rigorous demands placed upon them than charities with income between £1,000 and £10,000 and assets between £10,000 and £50,000, and those in turn would have less rigorous demands placed on them than charities with an income over £10,000 and assets over £50,000.

4.13 The Government agree that accounting requirements should be related as far as possible to a charity's size, but are not convinced that the grades or bands in such a structure should be governed by assets as well as income. Taking both income and assets into account might well lead to confusion as to which category certain charities belonged. Assets would also need to be professionally valued at regular intervals, involving charities in considerable expense. It is certainly important to establish whether charities with valuable assets are using them to best advantage. It should, however, be possible to establish whether or not this is the case by a careful examination of the information contained in accounts. The Government are therefore inclined to propose that the bands should be determined by reference to income (or receipts) alone, as recorded in the charity's statement of account.

4.14 The income levels set will need to be kept under review, and the legislation will need to empower the Secretary of State to alter the levels from time to time. Initially, bearing in mind the sort of expertise which will be needed in order to fulfil the different requirements, the Government propose the following bands:

— charities with an income (or receipts) of less than £5,000 (small charities);

— charities with an income of between £5,000 and £25,000 (intermediate charities); and

— charities with an income of over £25,000 (large charities).

The Government will be looking to introduce a formula, or formulae, which will allow charities to predict in any accounting year the banding into which they will fall, and which will cater for the needs of charities hovering around the margins between bands.

Accounting Standards

4.15 At the time that the Woodfield Report was being prepared the Accounting Standards Committee was working on a Statement of Recommended Practice (SORP) for charity accounts. This Statement has now been published. It recommends that, in addition to the statement of account itself, charities should produce a trustees' report or equivalent statement, setting out the charity's objectives and activities; and that they should give legal or administrative details such as the names of trustees, the principal officers and so on. The Woodfield Report suggested that charities should be expected to follow the SORP, attaching particular importance to the inclusion of a trustees' report and of legal and administrative details.

4.16 Like Woodfield the Government welcome the SORP. Given charities' great diversity they do not think it would be practicable to require all charities to follow the SORP in all respects. However, with the exception of charitable companies, large charities (ie charities with an annual income of more than £25,000) will be required to indicate reasons for any departure from the accounts recommendations of the SORP in their statements of account. Charities of all sizes will be required to supplement their statement of account with a trustees' report modelled on the SORP. They will also be required to provide legal and administrative details of the kind required by the SORP in their annual return. (See paragraph 3.7.) The precise requirements in each of these areas will be prescribed in regulations.

Statements of account

4.17 The Government propose that the regulations should in general require accounts to consist of an income and expenditure account and a balance sheet. However, trustees of small charities often find it easier to draw up accounts on the basis of cash received and paid. The Government therefore propose to give them the option of conforming with the standard requirements *or* of producing a receipts and payments account together with a statement of assets and liabilities.

4.18 The regulations will need to prescribe the content of statements of account as well as the form in which they are presented. Information will be required, either in the accounts themselves or in notes to the accounts, sufficient to give the Commission and others a clear picture of a charity's sources of income and its expenditure for different purposes. Examples of the type of information that will be required are: a breakdown of administrative payments, differentiating between expenditure on property, office expenses, salaries and other remuneration; and details of the gross and net receipts from fundraising efforts.

4.19 Finally, the Government believe that the regulations should require all statements of account to give details of grants made by charities out of their income and property. In particular, they should disclose the names of institutional beneficiaries, together with the amount of grant paid. Some of the resulting accounts will be lengthy. Nevertheless the Government believe this requirement to be justified in the interests of greater openness.

Model forms of account

4.20 The Charity Commission intends to produce a number of different model forms of account which will be recommended to charities, but it is not considered practicable, given the wide variety of charities, to seek to impose a common format or formats.

Trustees' reports

4.21 The trustees' report will be based on paragraph 22 of the SORP. It will need to:

- set out the means employed to promote the charity's objects, noting any significant changes since the last report;
- review the charity's activities and achievements during the reporting period;
- review the transactions and financial position of the charity; and
- explain salient features of the financial report.

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Audit Arrangements

4.22 There is no statutory obligation under the Charities Acts 1960 and 1985 for the accounts of a charity to be audited, though in some cases the trust instrument of a charity may require this to be done. If the Commission considers it to be necessary, it may, at its own expense, order an audit of a charity's accounts. In addition, many charities, such as housing associations and those incorporated under companies legislation, are subject to audit requirements imposed by other statutory authorities.

4.23 The Woodfield Report concluded that this position was unsatisfactory. Basing its proposals on the graduated structure for accounts it recommended that large charities should in future be required to submit professionally audited accounts, and that the accounts of intermediate charities should be independently examined. Only for small charities would an examination of some kind be recommended but not obligatory.

4.24 The Government agree that in view of the potential cost it would be unreasonable to insist that the accounts of all charities, however small, should be professionally audited. However, there is no reason why charities with modest incomes should not have their accounts independently examined, and why charities with sizeable incomes should not present properly audited accounts. The question is where the thresholds should lie above which an independent examination or a professional audit should be required.

4.25 The tidiest administrative solution, and in many ways the most convenient for trustees, would be to link auditing requirements to the same 'banding' arrangements proposed for the submission of accounts. If this solution were adopted small charities would be advised but not required to have their accounts independently examined by a volunteer such as a bank manager or some other person whom the trustees reasonably considered had sufficient expertise for the task. Detailed guidelines on independent examination would need to be prepared, but in short an examiner would be expected to check the charity's statement of account and examine and report on its books and its systems for recording income and expenditure. Intermediate charities would be required to submit their accounts to such an independent examination; and large charities would be required to have their accounts professionally audited. The cost of an audit might, however, be difficult to justify in relation to an income which might amount to little more than £25,000 a year.

4.26 It may be, therefore, that the threshold between independent examination and professional audit should be set at £50,000 despite the complexity that this would introduce into the banding arrangements. Were such a system adopted it would remain open to the Commissioners to require the professional audit of any charity's account, as they can at present under section 8 (3) of the 1960 Act. Where such an audit was required during investigation, or because the trustees had failed to fulfil their statutory duties in respect of the audit or examination of their accounts, the Commissioners would in future be empowered, although not obliged, to charge the charity in question. Where the need for an audit arose from a breach of trust its cost might, of course, fall to trustees personally.

4.27 The Commissioners would also have a power to make regulations allowing exceptions to the audit requirements where they were satisfied that adequate audit arrangements already existed. An exception could be made, for example, where there were corporate trustees such as the trust companies of the major banks, which have their own internal inspection and audit arrangements, or where one of the trustees was a local authority and the accounts were audited by an auditor appointed by the Audit Commission.

The Availability of Accounts

4.28 The Woodfield Report's remaining recommendations in the area of charity accounts concerned their availability to the public.

4.29 Under the Charities Acts 1960 and 1985 local charities for the relief of poverty are required to forward their accounts to the "appropriate local authority"; to give public notice of the place where accounts can be inspected; and to make available to the public copies of accounts not yet forwarded to the authority concerned. Section 32 of the 1960 Act (as amended) requires accounts of parochial charities (defined in section 45(1) of the 1960 Act) to be sent to the parish council or its equivalent.

4.30 Woodfield believed that accountability would be enhanced if any person could apply to a charity for a copy of its accounts on payment of a reasonable fee to cover copying costs. The Report also recommended that the provisions relating to local charities for the relief of poverty should be extended to cover all local charities.

4.31 The Government agree that trustees would be more accountable if all charities, other than those exempt from the Commissioners' jurisdiction, were required to provide any person with copies of their accounts in return for an appropriate fee to cover costs. They intend to provide for this in the forthcoming legislation.

4.32 The Government do not intend to adopt the Woodfield recommendation on the submission of accounts to the relevant local authority, however. They believe that this would serve no useful purpose for local authorities and that, since accounts will be obtainable direct from charities, it would not significantly increase trustees' accountability to the public. Consistent with these proposals the Government believe that those provisions of the Charities Acts 1960 and 1985 which require the submission of the accounts of certain charities to local authorities should be repealed.

Exempt and excepted charities

4.33 The Government believe that the proposals outlined in this chapter will do much to promote trustees' accountability and will provide a firm basis for the supervision of registered charities. They will be looking to see that the accounting arrangements for exempt and excepted charities are sufficient to achieve a commensurate degree of supervision and public accountability. The Government would welcome views. They regard it as particularly important that sufficient financial and other information should be available to the public. One possible change might be to require exempt charities to provide members of the public with copies of their accounts on request.

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Chapter 5: Powers to Deal With Abuse

Action on a number of fronts will be important in shifting the balance of the Charity Commission's activities towards dealing more effectively with abuse and inefficiency. Better management information will be needed; improved staff training will be required; and the arrangements for registration and for calling in accounts will have to be tightened up.

As explained in Chapter 1, the Charity Commission is already taking, and will continue to take, such steps as are possible before legislation. The fruitful co-operation between the Commission and the Inland Revenue, made possible by the Finance Act 1986, has been and will continue to be important in detecting the misappropriation of charity funds, and the Government will be considering whether similar arrangements are needed to facilitate the exchange of information between the Commission and other Government departments and statutory bodies. At the same time the Woodfield Report recognised that, to achieve maximum impact against abuse, the Commission will need additional powers, both to prevent malpractice and to intervene after the event.

Steps proposed in the Report which the Government accept include:

- **the exclusion from trusteeship of persons convicted of offences involving fraud or dishonesty;**
- **a provision giving the Commissioners discretion to require a charity to have at least three trustees; and**
- **powers, in certain circumstances, for the Commissioners to appoint receivers and managers, to exercise scheme-making powers without an application of the trustees, and to transfer a charity's assets to another charity.**

Legislation is also proposed giving the Charity Commission the power, subject to the consent of the Attorney General in each case, to go direct to court to recover charity property or to enforce obligations owed to charities. This power, at present exercised solely by the Attorney General, will complement the Commission's strengthened monitoring and investigative powers.

The Commissioners' existing powers

5.1 Under sections 6 and 7 of the 1960 Act the Commissioners have powers to institute inquiries and to call for documents and search records. Where they are satisfied, as a result of a section 6 inquiry:

- that there has been misconduct or mismanagement in a charity's administration; and
- that it is necessary or desirable to act to protect charity property or secure its proper application,

they may take steps, under section 20 of the 1960 Act, to protect a charity's assets. Measures open to the Commissioners in these circumstances include the removal or suspension from office of trustees or other persons associated with the charity who are deemed responsible for, or privy to, the misconduct or mismanagement; and the freezing of bank accounts and transactions. Section 20 also lays down circumstances in which the Commissioners may remove or appoint charity trustees without first conducting a section 6 inquiry.

5.2 The Woodfield Report noted that the Charity Commission's existing powers under sections 6 and 20 of the 1960 Act were extensive. Experience had shown them to be "in some respects inadequate or doubtful", however, and for the most part they had rarely been used. Nor were they of any use in prevention.

Preventive Measures

Restrictions on acting as a trustee

5.3 To remedy the Commission's lack of preventive powers the Report proposed, first, that no-one who had been convicted of any offence "involving fraud or other dishonesty," or who had previously been removed from trusteeship by the Commissioners, should be able to be a charity trustee without the Commissioners' permission in writing.

5.4 The Government endorse this recommendation, and recognise the value of its discretionary element in allowing for exceptions, such as charities for ex offenders, where it might be appropriate for convicted persons to be appointed as trustees. They propose, under the new legislation, to disqualify from the trusteeship of any charity persons convicted of certain offences, or removed from office by the Commissioners, who have not obtained a written waiver from the Commission. Acting as a trustee whilst knowingly disqualified would be a criminal offence. These provisions would not apply to appointees whose convictions were spent under the Rehabilitation of Offenders Act 1974, and disqualifying offences would be confined to indictable offences involving theft, fraud, forgery or financial misappropriation. The legislation would allow a period of grace to enable existing trustees, who may have been convicted of a relevant offence or removed from trusteeship in the past, and who wished to continue in office, to apply to the Commissioners for a waiver.

5.5 Following on from this proposal:

— the Commissioners would be given power to require any trustee who acted whilst knowingly disqualified to refund any remuneration or expenses received from the charity during that period; and

— a provision would be needed (similar to section 285 of the Companies Act 1985) to protect the interests of the charity, and those doing business with it, by ensuring that no act of a disqualified person was invalid on account of their disqualification.

Trustees of charitable companies will continue to be subject, in addition, to the requirements of company law.

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Trustees of charitable companies will continue to be subject, in addition, to the requirements of company law.

5.6 The Government can see no reason why these provisions should not extend to charities which are exempt from the Charity Commission's jurisdiction. There may, however, be problems of enforcement. The Government would welcome views.

Discretion to require three trustees

5.7 There are cases where it is inappropriate for a charity to have three or more trustees. Generally, however, three is regarded as the minimum consistent with sound administration and decision-making. The Woodfield Report therefore recommended, as a second preventive measure, that the Commissioners be given discretion to require that a charity have at least three trustees.

5.8 The Government intend to adopt this recommendation for existing charities:

- by empowering trustees to bring their number up to three regardless of the provisions in the charity's trust instrument; and
- by conferring on the Charity Commissioners a complementary and discretionary power to make orders requiring trustees to increase their number to three.

Where such orders were not complied with the Commissioners would have power to appoint the necessary additional trustees, the cost of remedial action normally being borne by the defaulting trustees. Defaulting trustees would also be liable to contempt proceedings under section 41 of the Charities Act 1960.

5.9 Since funds given or collected for charitable purposes are bound to form a charity it will not be possible to preclude the formation of new charities with fewer than three trustees. Nor would it be consistent, or productive, to make charities with fewer than three trustees ineligible for registration. The Commissioners will promote the appointment of at least three trustees wherever possible and desirable, however, in advice and through model governing instruments. Once a charity has been established the Commission should be able to insist on the appointment of three trustees using the powers which have been outlined above.

Powers of Intervention

5.10 The Woodfield Report made a number of recommendations designed to strengthen the Commissioners' powers of intervention in specific areas. It also recommended a further examination of section 20 to see where and how it might be clarified.

Changes in the application of section 20 powers

5.11 In the light of this further examination the Government are proposing a substantive change in the application of section 20 powers. At present the Commissioners' powers under sections 20(1) and (2) of the 1960 Act are exercisable only where they are satisfied, after an inquiry under section 6, that there has been misconduct or mismanagement in a charity's administration *and* that it is necessary or desirable to act to protect charity property or secure its proper application. The Woodfield Report concluded that the requirement to be satisfied that there had been mismanagement or

misconduct *and* that it was "necessary or desirable" to act to protect charity property seriously restricted the Commissioners' ability to act where abuse was suspected. It recommended instead that the Commissioners should be empowered to act where one or other of these conditions was satisfied.

5.12 The Government agree that the current arrangements are unduly restrictive where it is desirable to protect charity property temporarily in circumstances where no breach of trust has yet been established. Some of the Commission's section 20 powers are remedial and permanent in their effect, however. The Government believe that these considerable powers should be exercised only with due warning, after an inquiry has revealed all the facts, and where there is both evidence of serious mismanagement and a clear need to act.

5.13 The Government therefore propose to draw a distinction in the new legislation, between powers which are essentially protective and temporary, and powers the effects of which are remedial and permanent.

Temporary and protective powers

5.14 Powers which would be regarded as temporary and protective are:

— those conferred by section 20(1)(ii) to (iv) of the 1960 Act, namely vesting property in the name of the Official Custodian and freezing bank accounts and transactions;

— the power to suspend trustees or employees (20(8));

and a new power, recommended in the Woodfield Report

— to appoint a receiver or manager.

These powers would be exercisable without a section 6 inquiry, either where the Commissioners were satisfied that there had been mismanagement or misconduct *or* where they considered it "necessary or desirable" in order to protect charity property or secure its proper application.

5.15 Sections 20(9) and 21(3)–(5) require the Commissioners to give notice to trustees, and in some cases to publicise these notices, before exercising their section 20 powers. Woodfield believed that the requirements to give notice hampered the Commission by alerting trustees to the fact that they were under investigation. The Report therefore recommended that those requirements should be repealed. This recommendation would be entirely appropriate in relation to temporary and protective powers.

Permanent and remedial powers

5.16 Powers which would be regarded as permanent and remedial are:

— that conferred by section 20(1)(i) to remove trustees or charity employees;

and new powers recommended in the Woodfield Report

— to allow the Commissioners to exercise their scheme-making powers without an application of the trustees; and

— enabling the Commissioners to transfer a charity's property to another charity.

These powers would continue to depend on the Commissioners being satisfied, as a result of section 6 inquiry, that there had been misconduct or mismanagement *and* that it was necessary or desirable to act to protect charity property or secure its proper application. It would also be right, when

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exercising powers of a permanent or remedial nature, to give sufficient notice to persons affected by the proposed orders.

Appointment of trustees

5.17 In setting a charity's affairs on a proper footing the Charity Commission seeks, and will continue to seek, to work with the existing trustees. Sometimes a charity breaks down completely, however, and there is no prospect of its proper administration. In these circumstances the Commission's first step may well be to reconstitute or strengthen the trustee body. At present the number of trustees can be increased by order under section 20 only in certain circumstances, for example where an existing trustee cannot be found, does not act, or is outside England and Wales. The Government propose that in future, as the Woodfield Report recommended, the Commissioners should have the power to appoint trustees over and above those required in a charity's trust instruments and in addition to the minimum number of three envisaged in paragraph 5.8. The sole grounds for such appointments would be that, in the Commissioners' opinion, more trustees were necessary for a charity's proper administration.

Appointing a receiver and manager

5.18 It is sometimes necessary, as an interim measure, to appoint a receiver and manager. At present this usually involves an application to the court by the Attorney General. The Government agree with the Woodfield Report's conclusion that the Commissioners should be able to make such appointments themselves where this is necessary to protect charity property. Powers will be needed to make regulations governing such matters as the appointment, remuneration and discharging of receivers. Provision will also need to be made for serious problems arising from the appointment of a receiver which raise questions of law or of fact, including questions of personal liability, to be referred to the court.

Scheme-making and property transfer

5.19 The Woodfield Report recommended that, as a last resort, the Commissioners should have powers:

— to exercise their scheme-making powers without an application from the trustees; and

— to transfer a charity's assets to another charity.

The Government recognise that these are drastic sanctions, but agree that there will be cases where they are needed. The scheme-making powers, for example, would typically be used where no trustees could be found who were competent and willing to act under the existing scheme in the charity's best interests. The powers to transfer a charity's assets would be used only where a section 6 inquiry had established that there had been misconduct or mismanagement and that it was necessary or desirable to act to protect charity property or secure its proper application; where it was not practicable and in the best interests of the charity to retain its existing administrative structure and trustee body; and where, in the Commissioners' opinion, the charity's purpose would better be achieved by its amalgamation with another charity. The trustees of the receiving charity would need to confirm in writing their willingness to accept the transfer of the property subject to any outstanding liabilities. Once transferred, the property would be subject to the same restrictions on expenditure as before. The Commissioners would also be obliged to give adequate warning of their intention by means of formal notices.

5.20 The Government propose to make two lesser changes to section 20 in addition to those recommended in the Woodfield Report.

Suspending trustees — Section 20(8) gives the Commissioners power, in certain circumstances, to suspend trustees or other servants of a charity pending consideration of their removal. It is proposed to extend the maximum suspension period from three to twelve months.

Penalties for breaching Commissioners' orders — Section 20(10) lays down penalties for breaches of orders made under section 20(1)(iii), freezing banking and similar accounts. It is proposed to extend these to breaches of orders made under section 20(1)(iv), freezing transactions. Trustees would continue to be liable for the civil consequences of any breach of a Commissioners' order.

Charitable Companies

5.21 Charitable companies, of which there are an increasing number, are regulated by the companies legislation the provisions of which were naturally framed with commercial companies primarily in mind. The legal framework for commercial companies is not wholly appropriate for charitable companies, however. For example, a commercial company owes its primary duty to its shareholders, and holds its property for their benefit, whereas a charitable company also holds its property so as to apply it for particular charitable purposes. And the regulatory framework provided by companies legislation does not permit the Attorney General and the Charity Commissioners to exercise their full supervisory role in relation to charitable bodies.

5.22 In the Companies Bill currently going through Parliament the Government have proposed modifications to certain company law provisions which take account of these differences and are designed to enable the Charity Commission and the Attorney General to exercise their specialist supervisory role more effectively. The Government will be considering whether any further changes are needed to company law as it applies to charitable companies, which might suitably be made in charities legislation. Alternative approaches might be:

- to create a new charity structure, fully under the Commissioners' jurisdiction but involving some form of incorporation coupled with limited liability, and tied to model governing instruments; or
- to provide for the trustee body to be incorporated, and have limited liability, with the charity itself remaining as a charitable trust.

Clearly both these options have many ramifications. The Government will be exploring these carefully with a view to including any proposals in the forthcoming legislation.

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The Acquisition of Information

5.23 The Charity Commission's effectiveness in performing its functions depends on its having access to adequate information. Sections 6 and 7 of the 1960 Act give the Commissioners powers to obtain information in the course of an inquiry or for other purposes. These sections will need to be considerably recast to take account of changes in the Charity Commission's section 20 powers. The Government intend to take the opportunity provided by the forthcoming legislation to iron out the anomalies between sections 6 and 7 as regards the grounds for obtaining information and the uses to which it can be put.

5.24 They are also proposing:

— to extend the Commissioners' powers under section 7(1), as the Woodfield Report recommended, enabling them not only to call for documents and search records but to require trustees to produce any other relevant information. This power will be particularly useful where an inquiry is not being conducted but where the use of protective and temporary section 20 powers is being considered; and

— to replace sections 6(6) and 7(4). These sections provide that no-one claiming to hold any property "adversely to a charity" (eg disputing with the charity the ownership of that property) or freed or discharged from any charitable trust or charge should be required to furnish the Commissioners with any information or produce documents relevant to their inquiries. It is the Commissioners' experience that these provisions can be used to frustrate their legitimate inquiries. The Government intend to replace them with provisions entitling the Commissioners to information and copies of documents relating to any charity, its administration or property. The Commissioners' entitlement would cover information or documents to establish the existence of a charitable trust, whether property was held on charitable trust, or the extent to which loss had been occasioned to a charity through breach of trust. It would not give them powers to determine title in relation to any property claim against the charity.

The Exchange of Information

5.25 In 1986 the Government introduced a measure (now subsection 3 of section 9 of the 1960 Act) allowing the Inland Revenue to pass information to the Charity Commission where a charity appeared to be carrying on non-charitable activities or using its funds for non-charitable purposes. As the Charity Commissioners noted in their Report for 1987 the arrangements are working well. Well over 100 cases are now in hand.

5.26 The Government believe that similar co-operation between the Commissioners and other Government departments and statutory bodies, such as the Department of Trade and Industry and the Serious Fraud Office, could be equally fruitful. They will, therefore, be considering whether there is a case for clarifying in the forthcoming legislation:

— the extent to which, in law, these bodies may pass to the Commissioners evidence which comes into their possession indicating maladministration or the misapplication of charitable funds; and
— the extent of the Commissioners' power to provide information to other Government departments or statutory bodies.

Access to the Courts

5.27 At present, where the Charity Commissioners consider that it is desirable for legal proceedings with reference to a charity to be taken by the Attorney General they are required, under section 28(7) of the 1960 Act, to inform him sending him "such statements and particulars as they think necessary to explain the matter". The decision whether or not to act on the Commissioners' information, and the conduct of any proceedings, is entirely a matter for the Attorney.

5.28 This division of responsibility reflects the Attorney General's constitutional duty to represent the Crown in protecting charitable trusts and has reinforced the Commissioners' traditional concern with the protective, as distinct from the restitutionary, aspects of charity investigation. The distinction between these roles is not always well understood, however, and the present position has drawbacks. The message conveyed to those being investigated is that the Commission lacks teeth. The lack of any direct forensic threat also inhibits negotiations between the Commissioners and defaulting trustees. During investigations the Commissioners can and do negotiate with defaulters with a view to making good any losses a charity has suffered, and section 23 of the 1960 Act enables them to approve out of court settlements. All too often, however, defaulters, or their advisers, use these negotiations simply as a delaying tactic, in the knowledge that the Commissioners cannot themselves take legal action.

5.29 Against this background, and consistent with the new emphasis being given to the Commission's role in dealing actively with abuse, the Government propose in the forthcoming legislation to give the Commissioners powers, corresponding to and concurrent with those possessed by the Attorney General, to go direct to the courts for the enforcement of obligations against defaulting trustees and others.

5.30 Under the Government's proposal the Charity Commissioners will have the leading role in enforcement litigation, but will be required to seek the Attorney General's consent before commencing proceedings. The aim will be to give the Commissioners a more central and active role, consistent with the Attorney General's constitutional position.

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Chapter 6: Local Reviews, The Charities Act 1985 and Scheme-making

The Woodfield Report made a number of recommendations covering the Charity Commission's scheme-making powers, local charity reviews, and the operation of the Charities Act 1985. Taken together these were intended to clarify and simplify scheme-making, to relieve Commission staff of inessential work, and to increase the powers of trustees of small local charities to manage their own affairs.

The Report's recommendations for legislation were:

— **to amend section 11 of the 1960 Act to allow the Commissioners, as well as local authorities, to appoint persons to review local charities;**
— **to apply the Charities Act 1985 more extensively by increasing the monetary limits and simplifying the procedures laid down;**
— **to abandon the second publication of notices of schemes (as required under section 21 of the 1960 Act); and**
— **to extend the Charity Commissioners' scheme-making powers to cover charities without properly constituted trustee bodies.**

This chapter sets out how the Government propose to take these recommendations forward. It also reports on the outcome of discussions, recommended by the Woodfield Report, on whether the ancient legal doctrine of cy-pres needs redefining or applying more widely; and on the Commission's role in approving almshouse maintenance contributions.

Local Reviews

6.1 Section 11 of the 1960 Act stipulates that, with certain provisos,

> "The council of a county or of a district or London borough may ... initiate, and carry out in cooperation with the charity trustees, a review of the working of any group of local charities with the same or similar purposes in the council's area."

These local reviews are aimed at raising standards of administration. Having completed their enquiries, local authorities are empowered to make recommendations to the Commissioners. These might include suggestions for new schemes to modernise the objects and administrative machinery of charities, or to merge them.

6.2 The Woodfield Report confirmed the benefits of locally based reviews but concluded that the larger local authorities in particular were not always

in the best position to undertake them and that the role, in reviews, of locally based, voluntary, co-ordinating bodies—Councils for Voluntary Service and the like—could usefully be enhanced. With this in mind, and to maintain momentum, the Report recommended that the Commissioners be given powers, parallel to those possessed by local authorities, to appoint agents to carry out reviews on their behalf. The Government agree with this proposal, and intend to provide for it in the forthcoming legislation. As the Report suggested, the Commissioners' power would operate only where no local authority review was in progress. Nor would it be possible for a local authority to launch a review where one was already being conducted on the Commissioners' behalf.

The Charities Act 1985

6.3 In its report, published in 1984, the House of Lords Select Committee on the Parochial and Small Charities Bills found serious shortcomings in the administration and effectiveness of small charities and local charities for the relief of poverty. Trustees were not sufficiently accountable; in many cases the purposes for which charities for the relief of poverty had been set up were no longer useful or practicable; and many charities were simply too small to be effective. The Charities Act 1985 aimed to remedy these deficiencies. It established new and simpler mechanisms to enable the objects of certain local charities for the poor to be modified, and to facilitate the amalgamation of registered charities with an income of £200 or less. The Act also, for the first time, enabled the trustees of very small permanently endowed— but non-land owning—charities to spend their capital as income.

6.4 As the Woodfield Report noted, the Act has an important role to play in improving the effectiveness of small charities. The Government agree that it would be improved by simplifying certain of its provisions, and by extending its application to all small charities. Full scheme-making procedures, subject to appeal to the court, will continue to be appropriate for charities with substantial resources.

6.5 Suggested amendments to section 1 of the Act are covered in Chapter 4. The following changes are proposed to other sections.

The scope of sections 2 and 3

6.6 Section 2 of the 1985 Act currently allows trustees of local charities for the relief of poverty which are at least 50 years old to modify their objects. Section 3 enables trustees of registered charities or charities which are not required to be registered, with a gross annual income of £200 or less, to transfer the whole of the charity's property, including land, to another charity. Section 5(1)(b) gives the Secretary of State power to increase this sum "if he thinks it expedient, with a view to increasing the number of charities which may take advantage of this provision". The Government propose to standardise the application of sections 2 and 3. In future both these sections will apply to all charities with an income of less than £1,000 a year (including ecclesiastical charities) without distinction of age, locality or purpose. The sole exception will be those holding land for the purposes of the charity.

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The requirements of sections 2 and 3

6.7 Under the new legislation, trustees wishing to modify their objects or amalgamate with another charity would need to be satisfied:

- that the original purposes had, since they were laid down, ceased to provide a suitable and effective method of using the property; and
- that the new objects specified, or the objects of the charity to which property was being transferred, were as similar as practicable to the charity's original objects having regard to the spirit of the gift.

6.8 Trustees would continue to be required to act by unanimous resolution and with the Commissioners' concurrence, and to give reasonable public notice of their intentions. They would not, however, be required to send copies of their resolutions to the appropriate local authority: in many cases this merely duplicates information provided to local authorities by the Commissioners themselves.

6.9 Transfers of property under section 3 will, of course, continue to require the consent of the trustees of receiving charities and, as now, the property transferred will remain subject to the same restrictions on expenditure as applied before the transfer. The Government do not intend, however, that it should any longer be necessary for a charity proposing to transfer its property to another charity to be registered. This requirement is unnecessary as a spur to registration, a hindrance to transfers, and causes nugatory work for trustees and Commissioners alike.

Section 4

6.10 Section 4 of the 1985 Act empowers trustees of very small permanently endowed—but non land-owning—charities to spend capital as income. The present income limit of £5 a year could not be raised to £1,000 to bring this section in line with preceding sections without breaching substantially the sanctity in charity trust law of the concept of permanent endowment. It is proposed to raise the income limit by a lesser amount, however, enabling charities with an annual income of £250 a year or less to resolve to spend capital as income. As now, it will be for trustees to judge that the property of the charity is too small in relation to its objects for any useful purpose to be achieved by the expenditure of income alone. However, as a safeguard the Commissioners will in future be required to concur. Charities will also be required to give reasonable public notice of their intentions.

Powers to alter administrative trusts

6.11 The Government consider that trustees who have the power to alter objects and transfer property should also be given powers to resolve to change the administrative provisions of their trusts where these have proved deficient in some way, for example in relation to the appointment of trustees, the conduct of meetings, or investment powers. In such cases the Commissioners would need to be satisfied that the proposed changes were reasonable and practicable.

The Second Publication of Notices of Schemes

6.12 Section 21 of the Charities Act 1960 requires public notice to be given both of the intention to make a scheme and of the fact that a scheme has been made. The Woodfield Report concluded that there would be no purpose in giving notice that a scheme had been made and recommended that the second notice be abandoned to save time.

6.13 Having considered this matter carefully, however, the Government intend to retain the second publication since to repeal it has implications for the appeals procedure. The second notice not only informs interested parties that a scheme has been established; it announces that the three month time limit for bringing an appeal to the High Court, as provided for by section 18(11) of the 1960 Act, has come into effect. Appeals under section 18(11) are rare but not unknown, and the right of appeal is the normal concomitant of what is, at root, a judicial process. Various alternative arrangements have been considered, such as abandoning the time limit for appeals or reducing the number of notices published. None of these alternatives is without difficulty however, and all would involve an element of judgement. Nor would they be appreciably quicker than the existing arrangement, which has the advantage of being simple and applicable to all cases.

The Commissioners' Scheme-making Powers

6.14 Section 18 of the 1960 Act sets out the Commissioners' scheme-making powers but does not enable them to make a scheme of their own volition where there is no properly constituted body of trustees able to apply formally for a scheme. In such cases the Commissioners must first appoint trustees willing, subsequently, to apply for a scheme. In the case of small charities they may rely on "interested persons" to apply for a scheme. With small local charities, applications from two or more local inhabitants suffice.

6.15 The Woodfield Report rightly noted that, where a neglected charity needed to be reconstituted, this two stage procedure was unduly cumbersome. It recommended—and the Government accept—that powers should be conferred on the Commissioners to establish a scheme where a charity does not have properly constituted trustees.

6.16 One element of legislation not touched on by Woodfield was section 18(6) of the 1960 Act under which the Commissioners can apply to the Secretary of State to refer to them cases where the trustees have unreasonably refused or neglected to make a scheme. This provision has never been invoked and, in most cases, neglect or default should be covered by the Commissioners' powers under section 20. There may, nevertheless, be occasions where there is no maladministration in a charity so as to occasion an inquiry and the application of section 20 powers. The Government intend to provide for this possibility by according the Commissioners a reserve power to establish a scheme should trustees neglect or unreasonably refuse to apply for one, without the need to refer the case to the Secretary of State.

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Cy-pres 6.17 Section 18 of the 1960 Act gives the Commissioners the powers of the court to make schemes to alter the trusts of a charity on the application of trustees where, for example, the trusts' original purposes are out of date. In accordance with the doctrine of cy-pres, however, the charity's new objects must approximate as closely as possible to the old.

6.18 Woodfield reported that the practical application of cy-pres often gave rise to confusion amongst trustees, and that apparent inconsistencies in the Commission's interpretation of the doctrine, together with undue reliance on precedent, were seen as stifling new initiatives and inhibiting desirable changes to the objects, especially of parochial charities. The Report therefore recommended that the Commission should consider possible ways of relaxing the cy-pres doctrine and whether other changes might be desirable.

6.19 Having looked at this question closely and consulted widely the Charity Commissioners take the view, and the Government accept, that legislation would not be appropriate. The problem lies not so much with the doctrine, which has an inbuilt flexibility, nor in the scope of the 1960 charities legislation, as in the doctrine's application. Moreover, the flexibility of cy-pres is such that, as with the definition of charity, legislation would be positively undesirable, inhibiting its evolution and narrowing its scope. Such flexibility does of course bring with it the risk of confusion and inconsistencies in practice. The Charity Commission will, therefore, be reviewing its precedent systems and the guidance which is given to staff. Its aim will be to promote, across the board, a flexible and imaginative approach, consistent with due regard for the donor's wishes.

Almshouse Maintenance Contributions

6.20 As the Woodfield Report noted, schemes for the administration of almshouses normally require increases in the level of residents' weekly maintenance contributions to be approved by the Commissioners. This requirement gives rise to a large amount of mostly unnecessary routine work. In line with the Report's recommendation, the Commissioners have been considering, with interested parties, how far they should continue to be involved in approving maintenance contributions, and a formula is being adopted which will limit their direct intervention to cases where close supervision is necessary. The Government are firmly of the view, however, that with the implementation of the Woodfield proposals in respect of the Register and accounts, and the adoption by the Commission of systematic procedures to deal with abuse, including undue accumulations, special controls for almshouses will no longer be necessary. Steps will therefore be taken, in the forthcoming legislation, to enable the Commissioners to withdraw from approving the level of contributions which may be charged. These proposals will not affect the Housing Corporation's powers to monitor and supervise almshouse charities which are also registered as housing associations. The Government will also seek to ensure that there is no basic alteration to the concept of an almshouse charity, the freedom of the trustees to manage, and the status of the residents.

Chapter 7: Consent to Land Transactions

Section 29 of the 1960 Act places an obligation on trustees to obtain the Charity Commission's consent before selling or otherwise disposing of certain charity property. The provision is designed to ensure that it is proper for the transaction to go ahead and that the best price has been obtained.

As the Woodfield Report observed, the additional steps which the Commission ask for are mostly things which, in view of their legal obligation to act in the charity's best interests, the trustees should have done automatically. Consistent with the aim of fostering among trustees a greater sense of their own responsibilities the Government propose to replace section 29 with a provision enabling trustees to dispose of charity property without consent, provided they follow certain statutory procedures.

Present consent requirements

7.1 Under section 29 of the 1960 Act the trustees of many charities[1] require the Commissioners' consent:

— to mortgage or otherwise charge any part of the charity's permanent endowment; or

— to sell, lease for more than 22 years, or otherwise dispose of land (including buildings) which forms part of the permanent endowment; or which has at any time been occupied for the charity's purposes.

7.2 The provisions of this section are designed to safeguard charity property and the parties concerned in its transfer. In consenting to sales of charity property the Commission ensures, for example, that the trustees are entitled to enter into such a transaction; that the sale is in the charity's best interests; that trustees have sought and followed professional advice; and that the terms are the best that can reasonably be obtained. A useful side-effect has been to draw the Commission's attention to charities whose purposes may need to be widened, so that their income can be effectively applied.

7.3 There are drawbacks to the consent requirements, however—in delays which may be costly or threaten the success of a charity's transactions; and in the spending of Commission time and resources on precautions which trustees should have taken themselves. In the light of these arguments the Report recommended that trustees should be given a general power to sell land without Commission consent provided they complied with certain statutory requirements. In making this recommendation the Report drew on (though went rather beyond) views which the Charity Commissioners had themselves expressed in their 1986 Annual Report.

[1] See paragraph 7.19 for exemptions and exceptions.

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7.4 The Government accept this recommendation. In considering what might take the place of section 29 they have been concerned to provide continuing protection for charity property against mismanagement and abuse, and to focus the Commissioners' efforts on the sorts of financial transaction for which closer supervision and control remain necessary. They have also been concerned to do as much as possible to assist purchasers in obtaining good title to charity land.

New statutory requirements

7.5 Having consulted interested parties, the Government propose that trustees should be allowed to sell, lease or otherwise dispose of land currently covered by section 29 without the Commissioners' consent provided that:

- they obtain and consider the advice in writing of a suitably qualified and experienced surveyor instructed by them and acting solely on the charity's behalf. The Government will be consulting interested bodies with a view to specifying in the legislation precisely what is meant by "suitably qualified";
- they advertise the land for such period and in such manner as the surveyor has advised, unless the surveyor has advised them that it would not be in the best interests of the charity for the proposed transaction to be advertised on the open market;
- they are satisfied, having considered their surveyor's advice, that the terms of the proposed transaction are the best that can reasonably be obtained in the interest of the charity; and
- they have agreed the terms of the proposed transaction at a duly constituted meeting of their body (except where there is a sole corporate trustee).

The surveyor's report

7.6 Under this arrangement surveyors will have a contractual relationship with trustees and will act on trustees' instructions. The Government recognise that there may be a danger that some trustees will seek to impose inappropriate conditions upon surveyors—for example demanding a quick sale where this is neither necessary nor desirable in the interests of the charity. They will therefore be considering, in consultation with the professional bodies concerned, whether the Home Secretary should be given the power to make regulations setting out the matters to be included in the surveyor's report.

7.7 Where, exceptionally, it was not possible to comply with the statutory requirements, for example where the sale proposed was from one charity to another at less than the best terms obtainable on the open market, trustees would still be obliged to obtain the Commissioners' consent. Consent would also be required where the transaction was between a charity and one of its trustees, a relative of a trustee, an agent or employee of the charity, or any organisation in which such a person had an interest.

Ensuring good title

7.8 Under existing law, transactions entered into without the Commission's consent are void if the land involved is permanent endowment, unless the charity is exempt or otherwise excepted from the requirements of section 29. It is for the purchaser to ascertain whether consent is needed and if it has been obtained.

7.9 The Government believe that in future, so far as is possible, the obligation of ensuring that the law has been complied with should not rest with the purchasers of charity land. Instead, they propose that trustees

should be obliged to certify to purchasers that they have power to sell or deal with the land and that they have fulfilled their statutory obligations. So long as the trustees had provided a certificate or, where required, had obtained an order from the Commissioners, purchasers would receive good title.

A flagging procedure

7.10 The Government also intend to incorporate a flagging procedure into the new legislation to alert those engaging in transactions to the fact that the trustees with whom they are dealing are subject to a special regime. The procedure proposed would extend and refine that already provided by section 29 of the Settled Land Act 1925. Under the new arrangements any contract for the disposal of charity land, any conveyance, transfer, lease or assignment giving effect to such contract, and any conveyance, transfer, lease or assignment under which a charity acquired land, would be obliged in all cases to state:

— that the purchaser/grantor/transferor was or is a charity; and if so whether the charity was or is exempt; and

— if the charity is not exempt, that the land being disposed of or acquired came under a special regime imposed by the Charities Act.

If the land being acquired by a charity is registered land, or is required to be registered under the Land Registration Acts 1925 to 1986, it would also need to contain an application for the appropriate restriction to reflect the new controls. Where registered land became subject to a charitable trust (without a change in ownership) the proprietors would be obliged to apply within a reasonable time for the appropriate restriction to reflect their newly charitable status.

7.11 These obligations (though not the statutory requirements outlined in paragraph 7.5 above) will extend to all charities whether registered or not, including charitable housing associations which come within the ambit of the Housing Corporation. They will indicate to purchasers the need either to obtain a certificate or (if consent is still needed) an order of the Commissioners. The day-to-day housing association business of letting rented accommodation to tenants will not be affected.

Leasing, mortgages and charges

7.12 The Woodfield recommendation applied only to consent for land sales, not to leasing, mortgages and charges.

7.13 At present trustees are required to obtain a scheme or order from the Commissioners where their proposals for leasing charity land do not fall strictly within the powers conferred by section 41 of the Settled Land Act 1925 or within powers conferred under the charity's trusts. The Government intend to include, in the new legislation, a general power for charity trustees to lease their land.

7.14 The Government also propose in the new legislation to give trustees a general power to borrow money on the security of a mortgage without the Commissioners' consent. Before creating any mortgage or charge, trustees would be obliged to obtain and consider 'proper' advice (as defined in section 6(4) of the Trustee Investments Act 1961) on:

— whether the terms of the proposed borrowing are reasonable having regard to the charity's circumstances;

— the charity's ability to repay the sum borrowed on the terms proposed; and

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— whether the terms of the proposed borrowing are reasonable having regard to the charity's circumstances;

— the charity's ability to repay the sum borrowed on the terms proposed; and

— whether the borrowing is properly needed for the purposes of the charity.

7.15 The Commission would be able to give trustees formal or informal advice on this last point under section 24 of the 1960 Act.

Governing instruments

7.16 If the Commissioners are to disengage effectively from consents work the legislation will need to ensure that provisions requiring the Commissioners' consent in charities' governing instruments cease to have effect. A similar measure will need to be taken with regard to Orders under section 2 of the Education Act 1973 and section 86 of the Education Act 1944 which require the approval of the Charity Commissioners, or the Secretary of State for Education and Science or Wales, to the sale price of property authorised to be sold under those Orders.

Trustee Investments Act 1961

7.17 The Woodfield Report recommended that the Trustee Investments Act 1961 should be amended to allow trustees to purchase land for investment purposes without the need for an order of the Commissioners under section 23 of the 1960 Act. The Government agree with this recommendation in principle, and are aware that the obligation to obtain consent can be burdensome, especially where for example the purchase is to be made at auction or the transaction has to be dealt with urgently. They do not believe that the necessary amendments should be made in the charity legislation, however. Wider proposals for reforming the Trustee Investments Act 1961 are under consideration. The Law Commission have also prepared a report setting out a proposed new system of trusts of land, which, should it result in legislation, could alter radically the existing provisions in the Settled Land Act and the Law of Property Act 1925. It would be precipitate to amend the law as it relates to charities before decisions have been reached on these wider issues. The Commissioners will, however, achieve the desired object by using their existing powers under section 23(2) of the 1960 Act to confer on the trustees of certain charities a general authority to apply capital for the purchase of land without obtaining separate orders for each transaction.

Voluntary redemption of rentcharges

7.18 It would be inconsistent to require the Commissioners' consent (by order under section 23 of the 1960 Act) for the voluntary redemption of rentcharges. The Government propose instead to empower trustees to redeem rentcharges at the price arrived at by applying the formula contained in section 10 of the Rentcharges Act 1977.

Exempt charities and charities excepted from the consents requirements

7.19 Section 29 does not apply to exempt charities, to charities which are excepted from the consents requirements by order or regulations, or where authority for the sale is contained in an Act of Parliament, a statutory instrument or a scheme of the court or the Commissioners. At present charities are generally excepted from the requirements of section 29 only on the understanding that the trustees follow the steps outlined in paragraph 7.5. There will, therefore, be little justification for preserving the special status of excepted charities under the new regime. The new procedures will not, however, cover transactions at present excepted under section 29(3)(a) for which there is statutory authority; and the arguments for maintaining the position of exempt charities will remain.

Chapter 8: Divesting the Official Custodian For Charities

The Woodfield Report made a number of recommendations designed to place the responsibility for managing charities' affairs more squarely on the shoulders of trustees. In particular it concluded that charities should in future have responsibility for the investments at present held on their behalf by the Official Custodian for Charities. The Government announced in November 1988 their intention to abolish the Official Custodian's investment function. The following paragraphs set out how they believe divestment can best be achieved.

The role of the Official Custodian

8.1 The Official Custodian was established by section 3 of the Charities Act 1960, although an office with much the same functions had existed since 1853. Broadly, the Official Custodian's function is to hold land and investments in trust for charities so as to ensure their safe keeping. Under section 16 of the 1960 Act property may be vested in the Official Custodian by the court or the Commissioners, or on application by the trustees. Under section 20(1)(ii) the Commissioners may also require property to be transferred to the Official Custodian following an inquiry under section 6 of the 1960 Act.

8.2 As the title of the office implies, the role of the Official Custodian is custodial not managerial. The Official Custodian informs charity trustees when investments held on their behalf become due for redemption or when other decisions are needed, but responsibility for managing the property and for making investment decisions rests with the trustees themselves. Besides safeguarding property the Official Custodian also serves charities by removing the need for land titles and investments to be transferred on the appointment of new trustees and by distributing income to them inclusive of any tax relief due.

8.3 The Woodfield Report looked at the functions of the Official Custodian and concluded that the land holding role should be retained. Since this role involved very little work there was nothing to be gained by abolition, and to return titles to trustees would in any case be a complex operation. The Report questioned, however, whether the Official Custodian's investment services were an appropriate use of Commission resources, arguing that the larger charities were well able to make their own arrangements, and that trustees of small charities could be tempted to rely unduly on the Official Custodian, neglecting their own duties in consequence. As an immediate step, the Report recommended that the Charity Commission should cease to encourage charities to use the Official Custodian. In the longer term, while recognising the difficulties involved in totally disengaging the Official Custodian from investment work, it recommended that outside consultants should be commissioned to work out a scheme and programme for divestment.

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8.4 The Government accept this conclusion and have looked closely, with the Charity Commission, at the options identified by the consultants who were appointed, bearing in mind the continuing need to protect charity property and the value, particularly to small charities, of the Official Custodian's services. Their conclusion is that, in line with the Woodfield Report's emphasis on the need for trustees to take greater responsibility, and consistent with the redirection of Commission resources towards monitoring and investigative tasks, the Official Custodian's investment function can and should be brought to an end in the forthcoming legislation. The Official Custodian's land holding function would be maintained, as would the function of safeguarding charity assets. (See paragraph 5.14.)

Legislating for divestment

8.5 Divesting the Official Custodian of his investment responsibilities will take some time, involving almost 40,000 charities and holdings worth about £1.25 billion in all. The range of these holdings is wide. For example, the Official Custodian holds 2,270 different commercial investments on behalf of just over 3,000 of the larger charities. In the light of this divestment will need to be carefully planned and executed. The legislation will need to reflect this planning, providing for divestment in such a manner and at such time as the Commissioners direct. Within this general framework legislation will be needed to:

- abrogate any provisions contained in any form of charity governing instrument, court or Commissioners' order (other than those made under section 20(1) following an inquiry) or other instrument, which require any personal property belonging to a charity to be held by the Official Custodian;
- enable the Official Custodian to return such property to charity trustees, or to deal with it as directed by trustees, without having to obtain an order from the Commissioners or a discharge from the court;
- confer on the trustees of any charity holding investments in the Official Custodian's name power, if necessary, to appoint a commercial nominee in his place; and
- prohibit, from an appointed date, any acquisition of investments in the Official Custodian's name without his express agreement. This prohibition would not apply to bonuses, rights issues and other transactions arising from holdings already vested with the Official Custodian.

8.6 Turning to the process of divestment, consultations with charities and with financial institutions suggest that, taking account of the proper freedoms and responsibilities of trustees and the cost of the divestment programme to public funds, the mechanism outlined below would be the swiftest and most effective means of divesting the Official Custodian.

Stock by stock transfers

8.7 Commercial stocks and shares which are generally held by the larger charities, and other assets held by charities who use their own stockbrokers, would be returned stock by stock rather than to each charity in turn. Holdings in Common Investment Funds would also be returned in this way. The Government recognise that this approach has drawbacks for large charities which possess a range of stocks, since for all or part of the divestment period their portfolios would be split between investments transferred back and those still held by the Official Custodian. Against this, however, must be offset:

— the speed with which divestment could be accomplished. (It is estimated that divestment by this means would take about three years, considerably less than the time needed if investments were to be returned charity by charity);

— the ease with, and extent to which, the process could be automated; and

— the savings which would arise from reducing, one by one, the stocks with which the Official Custodian has to deal.

Taken together, these advantages would lead to estimated savings to public funds of the order of £0.9 million compared with the charity by charity approach.

Transfers in cash or in kind

8.8 The Government take the view that holdings of equities or in Common Investment Funds must be returned in kind. The advantages of directly transferring fixed interest securities, particularly those which are undated, are, however, less clear-cut.

Undated fixed interest securities

8.9 13,526 charities, or about one third of the Official Custodian's clients, hold only undated fixed interest securities. Often the amounts held are small, and most are of long-standing. The average cash value of undated holdings is around £250 and there are many thousands of holdings worth less than £100. While such investments are valuable if actively managed they are not generally regarded as suitable for charities' permanent capital funds. The cost of transferring them in kind (a complex and time-consuming operation) would, in most cases, be out of all proportion to the holdings' value. Nor would it be economic, bearing in mind the commission that would need to be paid, for most trustees to sell their stock. In the light of these drawbacks the Government believe it would be preferable if the Official Custodian were to sell these holdings in bulk and remit the proceeds to each charity's bank account via the Bankers Automated Clearing Service (BACS).

8.10 The Government acknowledge that the above proposals will involve a temporary curtailment of the freedom of some trustees, who might wish to retain this type of holding. They believe, however, that it is consistent with the Charity Commission's duty to encourage the efficient and effective management of charity funds that the opportunity of divestment should be positively grasped in such a way as to encourage small charities to consider their investment policy more closely. There are, in addition, powerful resource arguments for the approach proposed. Returning undated fixed interest securities by this means would remove, at a stroke, one third of the Official Custodian's clientele, and would lend itself to automation. It is estimated that savings of over £1 million would result, and that one to two years would be cut from the divestment programme.

8.11 To ensure that they were primed to make the best use of their opportunity trustees of charities holding undated securities would be informed in advance about what was proposed and provided with a leaflet containing investment advice. Since many of the charities involved in this phase of divestment are, on the face of it, candidates for modernisation or amalgamation, trustees' attention would also be drawn to the provisions of the Charities Act 1985 as extended and simplified. At the same time local review organisers would be notified of relevant endowed charities whose trustees had received a capital sum and who might benefit from advice on investment, modernisation or amalgamation.

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Dated fixed interest securities

8.12 Given its advantages the Government have considered whether the same approach might be appropriate for the 10,000 or so charities holding other fixed interest investments—mainly dated securities. Since this sort of security can be suitable for charities they do not believe that the blanket approach proposed above would be justified. They therefore propose that trustees should be asked, in writing, whether they wish their investments to be transferred in kind (in which case they will need to provide details of the transferee) or whether the Official Custodian should sell them and remit the proceeds. Where trustees failed to reply, a second approach would be made, this time by recorded delivery. If, after two attempts, no reply had been received giving the details needed to transfer the stock directly the Official Custodian would sell it, remitting the proceeds to the charity's bank account via BACS.

Dealing with untraceable charities

8.13 In order to transfer stock directly or as a capital sum the Official Custodian will need details of charity correspondents, and every effort will be made, before and immediately after legislation, to trace the trustees of the maximum possible number of charities. Even so, some charities will not be contactable. Some will have a bank account but no known correspondent, others will lack even a bank account. It many such cases the charity is likely to be effectively moribund and without properly appointed trustees. In those circumstances there will be no person competent to permit the Official Custodian to dispose of stock or to receive the proceeds of sales. The question therefore arises of what to do with assets belonging to these charities. Having considered the various options the Government believe that the simplest and most satisfactory method of disposing of them would be to give the Charity Commissioners power to provide for them to be applied cy-pres after such consultation with local and other interests as seems to them to be desirable.

Chapter 9: Charging by the Charity Commission

The Charity Commission's services are, and have traditionally been, provided free to charities. The Government believe that there is no reason of principle why this should continue to be the case, and that it would now be right to ask charities and those who use the Register to make a small contribution to the costs of the Commission.

This chapter proposes the introduction of a flat rate registration fee and modest graduated charges in a number of areas. The revenue from these charges is intended to contribute to, but not cover, the costs of the Commission, the great bulk of which will continue to be borne by the Exchequer. Small charities with limited means will continue to receive the Commission's services free.

Introduction

9.1 Government support for charities, excluding fiscal reliefs, is estimated now at some £2.2 billion a year. Set against this sum, and the size of the charitable sector as a whole, the cost of the Charity Commission to the taxpayer may appear relatively modest. The expense of providing the advice and other services of the Commission is not, however, negligible.

9.2 The Commission now costs over £7,000,000 a year to run. If the Commission is to press ahead with the introduction of essential new technology and fulfil the more active supervisory role envisaged for it, it is likely that in the short term the resources devoted to it will need to be further increased.

9.3 The Government have considered against this background whether it would be practicable to offset some or perhaps all of the cost of the Commission by imposing charges on charities and members of the public who use the Commission's services. As the Woodfield Report noted, the notion of charges for the services of the Commission is not new. Section 16 of the Charitable Trusts Act 1869 authorised the making of a scale of fees for any business done by the Commissioners. In the event no general scale was established, though charges were imposed for recording deeds under section 29(4) of the Settled Land Act 1925 and under other Acts. In 1951 receipts from these charges amounted to some £2,900 or approaching four per cent of the estimated cost in the same year of the Board of Charity Commissioners. To put the matter in perspective, charges calculated to raise a similar percentage of the cost of the Commission in this financial year would need to raise nearly £300,000.

9.4 Historical precedent aside, there is nevertheless a widespread view that the Commission should provide its services free. This view derives support from the deliberations of the Geddes (1921) and Nathan (1952) Committees, both of which came down against charging, and is reflected in the 1960

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9.4 Historical precedent aside, there is nevertheless a widespread view that the Commission should provide its services free. This view derives support from the deliberations of the Geddes (1921) and Nathan (1952) Committees, both of which came down against charging, and is reflected in the 1960 Act, under which the Commission has no power to levy charges except for copies of documents.

9.5 In returning to the matter afresh, the Woodfield Report found that there was no evidence to suggest that a policy decision had ever been taken to provide a free service; and that while there might be policy arguments that services to the charitable sector by the state should be provided free, they were not sufficient to establish that charges would be wrong in principle. The Report added, however, that there might well be grounds for concluding that charges would be grossly inequitable in their impact, uneconomic to collect, or have serious consequences for the good administration of charities. Having considered the Commission's services in this light the Report formally recommended that the Commissioners should be enabled to introduce charges for new registrations, for the services of the Official Custodian if he were retained, and for residual work on property transactions.

9.6 The Government accept the Report's conclusion that there are no fundamental reasons of principle why charges should not be made for the Commission's services. Nor do they believe that there are any general reasons of policy for concluding that the Commission should, in all cases and as a matter of course, continue to provide its services free.

9.7 As the Woodfield Report observed, "benefactors endowing charities or organisations appealing to the public for funds are not entitled to assume—nor do they assume—that they can be administered without cost." It added that while many people give their time voluntarily, "others are paid, and properly paid, to give professional advice, to manage funds and the like." The Government can see no compelling reason for distinguishing between the services provided by charities' officers or agents and the services rendered by the Commission which may equally be of value either in helping particular charities to attain their objects or, more generally, in ensuring that the climate in which charities operate is healthy. Nor do the Government believe that most charities would seek to make such a distinction. On the contrary, it is clear that many charities would be more than willing to contribute in a tangible way to the work of the Commission, which they rightly acknowledge as valuable and indeed essential to their success.

9.8 In the Government's view charging would also have other positive advantages—in providing a salutary reminder to trustees who might otherwise needlessly approach the Commission for help that might have been obtained from professional advisers, and in bringing to bear on the Commission a degree of consumer pressure in the absence of which its priorities might be more difficult to determine.

9.9 The Government therefore propose that the legislation should give the Secretary of State the power to make regulations by statutory instrument requiring the payment of fees to the Charity Commissioners in respect of their performance of specified functions and for access to documents or other material held by them.

9.10 The Government wish to reaffirm the principle that the cost of Government services should in general be met by fees. They are not, however, suggesting that charging should be introduced across the board for all the Commission's services, or, with the exception of an initial registration

fee, for all charities regardless of their ability to pay. Nor is it suggested that receipts from charging should cover all the Commission's costs.

9.11 The charges proposed below are designed to produce a modest but useful income; to be simple and cheap to collect; to be fair in their impact; and to pose no long term dangers for the good administration of charities. Account has been taken of the position of very small charities which could not afford to pay but which it is important not to deter from using the Commission's services. As explained below, it is proposed that for these charities all the Commission's services apart from initial registration should continue to be provided free.

A registration fee

9.12 It is proposed, for initial registration, to levy a flat-rate £25 fee. This is the amount suggested by the Woodfield Report. It should be easily affordable, and it seems reasonable that promoters of new charities should be required to indicate their seriousness of purpose in this way.

Fees for the submission of accounts

9.13 Once an organisation is registered it will be obliged to return accounts annually to the Charity Commission. Filing the large number of accounts that will be required under the new legislation will be a considerable burden on the Commission, and it is for consideration whether it would be right to offset the cost of this work by charging charities an annual filing fee. The Government would welcome views. Their own view is that modest charges, graduated to take account of ability to pay, would be justified as a contribution towards an effective supervisory system, from which all registered charities can be expected to benefit. The Government's suggestion is that charges should be introduced in line with the income bands proposed for the submission of accounts. Under this system 'small' charities (those with an income of under £5,000) would not be charged; 'intermediate' charities (those with an income between £5,000 and £25,000) would be charged £5; and 'large' charities (those with an income of over £25,000) would be charged £10. These suggested charges are calculated to contribute to, but not cover, the cost of filing accounts and should be easily affordable.

Schemes and orders

9.14 The Government also propose that contributory charges should be levied for schemes made by the Commissioners to alter the trusts of charities, and for orders made by them sanctioning administrative action expedient in the interests of charities. Again, the intention will not be to recover the whole of the cost of making schemes and orders but rather to require a contribution from charities in acknowledgement of the considerable benefits which they receive.

9.15 Under the 1985 Act many very small charities are already able to vary their own trusts with minimal recourse to the Commissioners. The Government's proposal to extend and simplify the provisions in that Act will greatly increase the number of charities with these powers, all of which will be unaffected by the introduction of charging in this area.

9.16 The Government propose to safeguard further the position of small charities by introducing the same graduated system as for filing fees. Thus it is not proposed to charge 'small' charities at all. The fees suggested for 'intermediate' charities are £40 for a scheme and £20 for an order; and for 'large' charities £80 for a scheme and £40 for an order. For 'intermediate' charities these charges would amount to some five per cent and 10 per cent

fee, for all charities regardless of their ability to pay. Nor is it suggested that receipts from charging should cover all the Commission's costs.

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respectively, and for large charities some 10 per cent and 20 per cent of the present average cost of the work involved.

Charges for consents work

9.17 The Woodfield Report recommended that where, for whatever reason, trustees did not or could not follow new statutory procedures in disposing of, or otherwise dealing in, charity land, they should pay a fee in return for the Commissioners' consent to the transaction. Proposals for new statutory procedures are set out in Chapter 7. As the Report recognised, where consent is still sought or required special and identifiable work will be needed. The Report recommended that this work should be charged for in accordance with scales laid down by professional bodies for similar work. The Government agree with the spirit of this recommendation and will be considering how best to implement it. The aim will be to recover the full cost of the work undertaken by the Commission; but allowances will need to be made for small charities and for sales where the value of the land is below a minimum amount.

Public enquiries

9.18 Once the Register of charities is computerised and the information on it is both more extensive and more accurate the number of public enquiries, which at about 30,000 a year is already considerable, may be expected to increase. The Government would not wish to propose any measure that would reduce public access to the Register, which is an important element in the accountability of charities, but nevertheless consider, in the light of the work involved in answering public requests for information, that there is a case for imposing a small charge for searches of the Register.

9.19 With computerisation it will also be possible to charge organisations for access to the Register. Payroll giving agencies and major grant-making trusts, many of which can only grant aid to charities, might well be interested in this facility.

Charity Commission leaflets

9.20 The Charity Commission have, for many years, produced a range of free leaflets designed to acquaint trustees with their responsibilities or advise them on the law, or to inform members of the public wishing to establish new charities. As the Woodfield Report recommended, the Commission has been reviewing these leaflets with a view to improving their presentation and extending the range of topics covered.

9.21 The Government accept that there may be occasions on which the provision of a free leaflet may be the most efficient means of giving advice but can see no reason why leaflets should continue to be provided free in all circumstances. They therefore propose that the Commissioners should be enabled to charge for them at a rate which covers the cost of production.

Estimated income from charging

9.22 At a very rough estimate the above proposals could be expected to produce an annual income in the region of £0.75 million—that is, about 10 per cent of the Commission's present costs. The remaining 90 per cent of the Commission's costs would continue to be met direct from the Exchequer.

Chapter 10: Charitable Appeals

Charity fundraising is controlled by three main Acts: the House to House Collections Act 1939; the Police, Factories etc (Miscellaneous Provisions) Act 1916, section 5 of which governs street collections; and the War Charities Act 1940, which was extended to charities for disabled persons by the National Assistance Act 1948.

The Woodfield Report suggested that the legislation should be reviewed and revised along the lines of section 119 of the Civic Government (Scotland) Act 1982 which brought house to house and street collections in Scotland under a common and improved regime. It also recommended a number of measures designed to curb the activities of unscrupulous professional fundraisers, and that the War Charities Act should be repealed.

The Government have reviewed the legislation as the Report recommended. They do not believe that it would be appropriate at this stage to introduce wide-ranging legislation to control all types of fundraising. They have concluded, however, that in view of the scope for abuse the regulation of street and house to house collections continues to be necessary, and that the present law, which is out of date and complex in operation, needs to be clarified and simplified. They will also be looking for effective self-regulation of the newer forms of fundraising. As at present, public vigilance will be vital in detecting and controlling abuse. The Government will be watching developments closely, and propose to take power in the forthcoming legislation to make regulations governing other forms of charitable appeal should this become necessary in future.

Introduction

10.1 In recent years there has been a marked growth in the number of fundraising charities as compared with more traditional charities based on endowment. With this change has come a growth in the number of professional fundraisers and fundraising consultants—individuals or companies whose sole purpose is to assist charities in raising funds or to raise funds on their behalf; a range of new fundraising techniques such as direct mail, television appeals and charity events; and growing concern about dubious or fraudulent fundraising activities and about the scope for abuse.

10.2 Against this background, and following on from the Woodfield Report, the Home Office issued a consultation paper, 'The Regulation of Charitable Appeals in England and Wales,' in September 1988 seeking views:

— on the need for and adequacy of the existing legislation; and

— on the case for extending controls to cover fundraisers and the newer forms of fundraising.

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The proposals which follow take account of the responses to the consultation paper. The Government's concern in formulating them has been to provide some protection for donors against dishonest appeals whilst keeping the law and its application as simple and streamlined as possible. The aim is to curb abuse without placing undue constraints on legitimate fundraising activities, or stifling innovation. The Government have considered the overall impact of the proposals on demands on local authorities for resources and are satisfied that they would not be significant.

War Charities Act

10.3 The public collections legislation is designed, above all, to prevent bogus or fraudulent collectors from taking advantage of the public's generosity. Since war charities were held to have a peculiar emotional appeal they were subjected to a particularly rigorous regime, first under the War Charities Act 1916 and later under the War Charities Act 1940. This latter Act was extended in 1948 to cover charities for disabled persons.

10.4 The Woodfield Report concluded that the Act was a dead letter and that a special regime for these types of charity was no longer appropriate, especially given the improvements proposed for the supervision of charities generally. The great majority of respondents to the Home Office consultation paper agreed with this view, as do the Government. They therefore propose to take that the opportunity to repeal the Act in the forthcoming legislation.

Street and House to House Collections

10.5 Street and house to house collections are currently controlled by Section 5 of the Police, Factories Etc. (Miscellaneous Provisions) Act 1916 and the House to House Collections Act 1939 respectively (both as amended by the Local Government Act 1972). Both Acts involve the issue of licences, or permits, by district councils, the Metropolitan Police, or the Common Council of the City of London. Both have associated with them detailed regulations[1] covering the conduct of collections, the submission of accounts and so on. There are, however, many minor and certain significant differences between the two pieces of legislation and the associated regulations.

[1] The Regulations in force are the House to House Collections Regulations 1947 as amended by the House to House Collections Regulations 1963. Licensing authorities are empowered but not required to make street collections regulations. Where they do wish to make regulations governing street collections, licensing authorities can adopt the model regulations set out in the schedule to the Charitable Collections (Transitional Provisions) Order 1974. All street collections regulations, whether or not identical to the model, require the Home Secretary's confirmation before they can come into force. Regulations in respect of street collections in the metropolitan police district (MPD) are made by the police authority for the MPD—ie the Home Secretary. The current regulations are set out in the Street Collections (Metropolitan Police District) Regulations 1979 (SI 1979/1230), as amended by the Street Collections (Metropolitan Police District) (Amendment) Regulations 1986 (SI 1986/1696).

10.6 Woodfield saw no reason why the two sorts of collection should be regulated differently. Nor, indeed, did the many respondents to the Home Office consultation paper. Further consultation will be needed, especially with the local authorities and the police, both of whom have a key role in administering the legislation day-to-day. Subject to these discussions, however, the Government propose to combine the provisions in a single piece of legislation, accompanied by standard regulations, to apply throughout England and Wales.

Scope of the legislation

10.7 The Government propose to follow the House to House Collections Act 1939 and section 119 of the Civic Government (Scotland) Act 1982 in applying the new legislation to collections for charitable, benevolent or philanthropic purposes, whether or not these are charitable in law. This formulation has the merit of encompassing collections which are not strictly charitable in law but which, nevertheless, make a direct emotional appeal to members of the public. Other collections will, of course, continue to be covered by the general requirements of the law.

10.8 It is proposed, in a number of other respects, to follow the Civic Government (Scotland) Act 1982. This builds on the provisions of the 1916 and 1939 Acts, incorporating the best and more enduring features of each, whilst discarding elements which are outdated or otherwise unnecessary.

Key features of the new legislation: elements in common with Scotland

10.9 Key features of the new, as of the Scottish, legislation will be:

— a provision making it an offence to organise (or promote) a public charitable collection without the permission of the local authority for the area in which the collection is to be held;

— a requirement to obtain a licence for collections on private property to which the public has unrestricted access. (This requirement will not infringe the rights of owners or tenants to decide whether a collection should take place or to impose conditions on the timing or conduct of collections on their property);

— a requirement of one month's notice from applicants for a collections licence (with the licensing authorities retaining their discretion to consider late applications);

— the setting out, in legislation, of specific grounds on which a licence application may be refused or revoked. Further discussions will be needed as to what those grounds should be, but it is envisaged that local authorities will be entitled to refuse licences on the grounds that the date, time, frequency or area of the collection would cause undue public inconvenience; that another collection is due to take place on the same 'or a proximate' day; or that the amount likely to be applied for charitable purposes is inadequate in relation to the likely proceeds;

— a requirement that licensing authorities notify applicants in writing of the ground(s) on which a licence has been refused or revoked; and

— a provision entitling the licensing authority, subject to any general regulations, to impose its own local conditions, for example on the timing, location and conduct of collections and on the forms of container to be used.

Exemption Orders

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10.10 The Government also propose to follow the Scottish legislation in the arrangements for Exemption Order holders (charities which collect over a wide area and which are exempted by the Home Secretary from applying for a collections licence from each licensing authority). At present these orders are granted only for certain house to house collections conducted on a national scale. The Government appreciate the burdens caused for charities organising national flag days, for example, of having to negotiate separately with a large number of licensing authorities, and think it right that exemptions should extend to street collections. At the same time, it will be important to ensure that the privileges conferred by exemption are not exercised to the detriment of smaller, local charities. Responses to the consultation paper suggest that, particularly as the number of charities and of Exemption Order holders grows, the present voluntary arrangements for securing co-operation between Exemption Order holders, other charities and licensing authorities are falling down. The Government therefore propose, as in Scotland:

— to require Exemption Order holders to give licensing authorities three months notice of their proposed collection dates; and

— to enable conditions to be attached to Exemption Orders.

In England and Wales, as in Scotland, collection organisers will be obliged to consult the licensing authorities to which they have given notice of a collection and have regard to any representations they may make. Exemption Order holders will be expected to reach amicable agreements with licensing authorities. Failure to do so, or to abide by agreements, would be a ground for revoking their Order.

Departures from the Scottish model

10.11 The Government do not believe that it would be right to follow the Scottish legislation in all respects: differences will be required to take account of conditions south of the border where fundraising tends to be more frequent, active and widespread. Subject to further consideration of the detailed provisions, the Government have in mind to propose the following:

— the use of a prescribed application form;

— applying the legislation to the collection of goods as well as money; and

— including, as a ground for refusing a licence application, failure to obtain the written authority of the charity on whose behalf the collection is to be made.

Appeals

10.12 The system of appeals against licensing authority decisions will also need to be different, since in Scotland appeals are to the sheriff. There are advantages in having a localised appeals system of the kind which operates in Scotland, however, and the Government will be exploring this as an alternative to the present arrangements whereby appeals lie to the Secretary of State. They believe, also, that applicants should have the right to appeal not only against the refusal of a licence but against any conditions attached to the licence by the licensing authority.

The regulations

10.13 In framing the general regulations under the new legislation the Government propose to follow the Scottish provisions[1]:

— in allowing promoters to appoint agents to carry out certain functions on their behalf;

[1] As laid down in the Public Charitable Collections (Scotland) Regulations 1984, SI No 565 (563) and The Public Charitable Collections (Scotland) Amendment Regulations 1988 SI No 1323 (S126).

— in requiring collectors to be at least 14 years old for street collections and 16 years old for house to house collections;

— in removing the legal requirement for collecting boxes to be counted and listed separately when counting takes place in a bank (charities will, of course, be able to ask for separate counting if they wish);

— in requiring holders of Exemption Orders to appoint qualified accountants as auditors and giving charities without Exemption Orders discretion to appoint, instead, an 'independent responsible person';

— in the particulars required to be disclosed in accounts and in the time limits set for their submission (generally one month from the expiry of the licence);

— in requiring vouchers, receipts and other papers connected with a collection to be kept for at least two years after the accounts have been submitted, and to be available to the licensing authority on request; and

— in the arrangements adopted for envelope collections. These include a requirement for collection organisers or their agents to record the number of envelopes issued to and returned by each collector.

10.14 As in the primary legislation it is proposed that the regulations in England and Wales should differ from those in Scotland in a number of respects.

— Under the Scottish regulations collectors are obliged to possess a certificate of authority and display a badge showing the fund(s) or organisation(s) for which the collection is being made. The Government propose to combine and standardise these two items.

— The Government do not propose to prohibit the payment of collectors. This is a matter for the charities themselves and, it may well be, for a code of practice. Where persons *are* paid to collect however, or where payment in connection with the collection is to be made to a third party, collecting boxes and/or badges should be required to say so. This requirement, together with the retention, as grounds for refusing a licence, of section 2(3)(a) of the House to House Collections Act 1939, that is, that the amount likely to be applied for charitable purposes is inadequate in proportion to the value of the proceeds likely to be received, should provide donors with adequate safeguards.

— Finally, the Government will be discussing with the licensing authorities ways of achieving a degree of local accountability other than by requiring summary accounts for each collection to be published in the local press. The evidence is that the current requirement to publish summary accounts of street collections is ineffective and generates little public interest.

10.15 The Government have examined—and sought views on—the case for extending the legislation to the static collection boxes often found in shops or public houses. They have also considered the case for prescribing the proportion of a collection's proceeds which may be appropriated for expenses; for specifying the precise form accounts should take; and for laying down precisely what is meant (in the regulations concerned with accounts) by 'independent responsible person'. On balance, they believe that it would not be desirable or appropriate to introduce statutory requirements in these areas. However, they propose, following legislation, to discuss with licensing

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— in requiring holders of Exemption Orders to appoint qualified accountants as auditors and giving charities without Exemption Orders discretion to appoint, instead, an 'independent responsible person';

— in the particulars required to be disclosed in accounts and in the time limits set for their submission (generally one month from the expiry of the licence);

— in requiring vouchers, receipts and other papers connected with a collection to be kept for at least two years after the accounts have been submitted, and to be available to the licensing authority on request; and

— in the arrangements adopted for envelope collections. These include a requirement for collection organisers or their agents to record the number of envelopes issued to and returned by each collector.

10.14 As in the primary legislation it is proposed that the regulations in England and Wales should differ from those in Scotland in a number of respects.

— Under the Scottish regulations collectors are obliged to possess a certificate of authority and display a badge showing the fund(s) or organisation(s) for which the collection is being made. The Government propose to combine and standardise these two items.

— The Government do not propose to prohibit the payment of collectors. This is a matter for the charities themselves and, it may well be, for a code of practice. Where persons *are* paid to collect however, or where payment in connection with the collection is to be made to a third party, collecting boxes and/or badges should be required to say so. This requirement, together with the retention, as grounds for refusing a licence, of section 2(3)(a) of the House to House Collections Act 1939, that is, that the amount likely to be applied for charitable purposes is inadequate in proportion to the value of the proceeds likely to be received, should provide donors with adequate safeguards.

— Finally, the Government will be discussing with the licensing authorities ways of achieving a degree of local accountability other than by requiring summary accounts for each collection to be published in the local press. The evidence is that the current requirement to publish summary accounts of street collections is ineffective and generates little public interest.

10.15 The Government have examined—and sought views on—the case for extending the legislation to the static collection boxes often found in shops or public houses. They have also considered the case for prescribing the proportion of a collection's proceeds which may be appropriated for expenses; for specifying the precise form accounts should take; and for laying down precisely what is meant (in the regulations concerned with accounts) by 'independent responsible person'. On balance, they believe that it would not be desirable or appropriate to introduce statutory requirements in these areas. However, they propose, following legislation, to discuss with licensing

authorities the need for guidance on acceptable expense levels, on the form of accounts, and on the appointment of suitable examiners. A number of other items lend themselves to codes of practice rather than statutory controls. For example, a code on static collecting boxes might cover the kinds of container to be used, the appointment of an individual as responsible for each container, and the identification to be carried by authorised collectors of static boxes. The Government will be looking to appropriate specialist organisations in the field to produce voluntary codes of this kind.

Fundraising Practices

10.16 Prompted by concern about malpractice in fundraising the National Council for Voluntary Organisations (NCVO) appointed a working party in 1985, to review the means currently available for protecting charities from dubious fundraising practices and to make recommendations. In its report, which Woodfield regarded as "a persuasive analysis of problems which exist and remedies which might be applied", the working party identified eight principal grounds for concern, many of them centring on the activities of unscrupulous fundraising practitioners. Particular abuses remarked on included:

— the excessive sums retained by some fundraising practitioners;

— claims that part of the proceeds from the sale of goods or services will go to charity when, in fact, the share given to charity is much smaller than donors might suppose; and

— dubious fundraising practices, carried on in a charity's name but without its knowledge or approval.

The remedies recommended included increased public watchfulness; greater self-regulation, for example through the issue and enforcement of codes of professional conduct; and the closer supervision by charities themselves of their own volunteers and local branches. The report also recommended a number of legislative changes. Many of these were supported by the Woodfield Report and were incorporated directly into its recommendations.

10.17 The Woodfield recommendations, based on the NCVO report and directed at the three particular abuses outlined above, were:

— that it should be an offence for fundraising practitioners to deduct their remuneration (however calculated) from donations received before paying them to the charity unless they could prove that their intention to do so was made clear to every donor. If such an offence was committed it would be open to the courts, in addition to imposing penalties, to determine that the sums deducted be paid to a charity or charities of their choice;

— that whenever goods or services were advertised or offered for sale with an indication that some part of the proceeds was to be devoted to charity, there should be specified (i) the charity or charities that were to benefit (and, if more than one, in what proportion), and (ii) the manner in which the sums they were to receive would be calculated; and

— that a charity should be able, in certain circumstances, to obtain an injunction against the use of its name by a named person or organisation.

The consultation paper sought views on these recommendations.

Deduction of remuneration by fundraising practitioners

10.18 Most of those commenting on the first of the Woodfield recommendations strongly supported its objective of putting charity trustees in full control of funds raised on their behalf, but doubted whether the proposal was practical as framed, not least because of the unreasonable burden of proof which it placed on fundraising practitioners who had conscientiously complied with the law. The Government agree that this is both an insuperable difficulty and an unnecessary complication. They propose, instead, to introduce a requirement that all those who receive funds raised for or on behalf of a charity should remit the full amount to the charity without deducting fees or expenses. Further consideration will need to be given to precisely how this requirement will operate and what sanctions should apply. The Government would welcome views.

Sale or advertisement of goods or services

10.19 The second Woodfield recommendation was designed to discourage organisations from selling goods or services on the understanding that the proceeds would go largely to charity, when the real intention was to retain the major portion as profit. Again, those responding to the consultation paper welcomed the underlying aim, but there were some doubts about the proposal's practicability, not least because of the range of circumstances to which it would apply.

10.20 Clearly any provision must be simple and easy to administer. Nor can the law be expected to take the place of full and proper arrangements between charities and those who join with them in trading ventures. Nevertheless, the public, when being encouraged to make a purchase on the grounds that it will benefit charity, have a right to certain basic information, which should not be difficult to provide. Absolute amounts will not be required. In most if not all cases these would be impossible to predict. Basic details of the agreement reached between charity and 'co-venturer', should be provided, however, with some latitude being allowed as to the form of expression chosen. Under the kind of provision envisaged charity catalogues, for example, would be required to incorporate a simple, single, statement to the effect that x per cent of net profits, gross profits or receipts would go to the named charity or charities. Some formulae may be more complex. Even so, it should be possible to give some indication of their effect, by reference, for example, to the minimum proportion going to charity.

Misuse of the name of a charity

10.21 The only question raised on Woodfield's third recommendation by those responding to the consultation paper was whether it went far enough given that the onus of detection, and liability for legal costs, would fall on the charity itself or, (in the case of detection) would depend on public vigilance. The Government have considered, in the light of these views, whether the provision might be strengthened, but can see no alternative other than a blanket and inhibiting requirement (rejected by the NCVO working party) that all those engaged in fundraising on a charity's behalf should obtain the charity's written permission. Even this requirement would not relieve charities entirely of the need to detect breaches of the law, whilst it might well prove costly in discouraging sound fundraising initiatives. Under the kind of formulation the Government have in mind legal action (with its

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associated expense) would, in any case, be a last resort. What is envisaged is a provision enabling a charity to take legal action by way of an action for damages or injunction to prevent the use of its name as an inducement to give money or property, or to buy goods or services. This provision would have effect only after a written request from the charity to the person concerned to cease or abstain from using its name had been ignored. Coupled with this would be a power enabling the Charity Commissioners to decline to register a charity under a particular name if that name was identical to, or in their view too similar to, that of an existing charity.

New Fundraising Methods

10.22 Charities have turned increasingly, in recent years, to new forms of fundraising, some of them highly sophisticated. Charity concerts attract mass audiences; greater use is made of business methods such as direct mail and telephone campaigns; telethons and other television appeals have developed into national institutions. Inevitably this diversification has not been entirely trouble free, and concern has been voiced at campaigns which are too emotive, over-aggressive, poorly controlled or badly managed, and which give charity as a whole a bad name.

10.23 The Government are not inclined to seek, at this stage, to impose specific legislative controls on these sorts of fundraising activity. Legislation in this area would be difficult to enforce and quickly outdated, and would risk hindering genuine fundraising efforts and discouraging innovation. Nor does the current evidence of abuse seem sufficient to justify wholesale intervention. The Government will initially be looking, instead, to voluntary codes of practice as a more flexible and sensitive means of ensuring high standards and a proper degree of accountability. There are some improvements which the Government regard as particularly desirable. For example, all campaigning 'events' on television should have an identifiable promoter to whom queries from the public could be addressed. Accounts for these events and other fundraising undertakings should be published as a matter of routine. The directness of contact with the public that is a feature of telephone campaigns demands that they be handled with particular care; and it may become desirable at some point to introduce a 'cooling off' period for television and telephone donors, particularly those who give by credit card, along the lines of the consumer credit legislation.

10.24 The Government will be watching developments closely and, to enable action to be taken should that become necessary, propose that the forthcoming legislation should give the Secretary of State the power to make regulations governing the conduct and accountability of other types of charitable appeal.

Chapter 11: Scotland and Northern Ireland

There are a number of important differences between charity law in Scotland and Northern Ireland and that in England and Wales. Neither Scotland nor Northern Ireland has a statutory body equivalent to the Charity Commission. Nor is there a statutory requirement in either place to maintain a central register of charities.

The Government has accepted, with Woodfield, that there is an important role for the State to play in the supervision of charities in Scotland.

Northern Ireland fell outside Woodfield's terms of reference. The Government will, however, be considering to what extent the changes proposed in this White Paper should be extended to Northern Ireland.

Scotland

11.1 Scotland has no statutory body comparable to the Charity Commission, and there is no general Scottish register of charities. Moreover under Scots law there is no precise definition of "charity" but at common law "charity" is usually interpreted as meaning the relief of poverty. Although the Scottish courts have recognised that a wider interpretation may often be necessary in connection with trust deeds, they do not normally follow the broad legal meaning of "charity" used by the English courts.

11.2 United Kingdom tax laws provide that for tax purposes the English definition of charity applies in Scotland. Scottish charities wishing to claim tax relief are required to establish their charitable status with the Inland Revenue. Indeed the only organisation exercising any supervisory function in Scotland is the Inland Revenue. This supervision is, of course, limited to preventing and detecting tax abuse: the Revenue has no responsibility in relation to non tax abuse matters.

11.3 In recent years various bodies, including many in the voluntary sector, have argued that there should be improved arrangements for supervising charities in Scotland. The Woodfield Report suggested that it would be unsafe to leave matters in Scotland as they stood.

11.4 In July 1988 the Secretary of State for Scotland issued a consultative memorandum, "The Supervision of Charities in Scotland" in which he sought views on a variety of proposals aimed at improving the system in

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11.4 In July 1988 the Secretary of State for Scotland issued a consultative memorandum, "The Supervision of Charities in Scotland" in which he sought views on a variety of proposals aimed at improving the system in Scotland. Among the major issues addressed was the question of establishing a register of charities in Scotland, the investigation of abuse among charities and whether new arrangements were necessary to ease the reorganisation of small ineffective charities. Views were obtained from a wide range of interests, and the Secretary of State for Scotland will make an announcement about his conclusion on these and other matters raised in his consultative memorandum in the near future.

Northern Ireland

11.5 The Woodfield Report noted the position in Northern Ireland as something of a half-way house between that in England and Wales and that in Scotland. The Charities Act 1960 does not extend to Northern Ireland and the legislation in force in the Province—The Charities Act (NI) 1964—is generally less extensive in its provisions. For example, the 1964 Act does not provide for the maintenance of a register of charities in Northern Ireland. Nor is there any direct equivalent of the Charity Commission. Rather the administration of charity law is the responsibility of a Northern Ireland Government Department, the Department of Finance and Personnel (DFP). The DFP is, amongst other things, responsible for:

- giving charity trustees powers to dispose of property;
- making schemes to incorporate trustees;
- appointing new trustees where the appointment cannot conveniently be made otherwise; and
- making cy-pres schemes to change the trusts of certain moribund charities so that they can operate effectively.

The Department's Charities Branch offers advice on matters for which it has responsibility, and on questions such as the acquisition of charitable status; the preparation of trust deeds; and the duties of trustees. The DFP also produces an Annual Report.

11.6 Since there is no statutory requirement for charities to be registered, the DFP has no formal role in relation to the setting up of new charities. The Inland Revenue decides what does or does not constitute a charity for tax purposes.

11.7 The DFP is not primarily a policing authority and does not have general powers to enquire into the affairs of charities. However, if the Department has reason to believe that a charity is not being properly administered, it can, with the consent of the Attorney General, call for documents and search the records of a charity and bring the matter to the attention of the Attorney General who may institute such proceedings as he thinks proper. In practice the investigation of charities is largely dealt with by the Royal Ulster Constabulary, which has a general responsibility to enquire into any case involving alleged fraud or other criminal activity.

Directory of charities

11.8 In March 1987 the DFP made an extra-statutory grant of £15,500 to the Northern Ireland Council for Voluntary Action (NICVA), a large umbrella organisation with many contacts in the charity field, to enable it to

produce a voluntary charities "directory" for Northern Ireland. The NICVA's proposal to produce a voluntary directory followed the DFP's rejection of a recommendation in the Northern Ireland Assembly's 1985 Report on the Modernisation of Charity Law in Northern Ireland that a statutory register should be established. At the time it was decided that the limited practical benefits of a register would not justify the substantial cost to public funds—then estimated to be more than £200,000 a year. The DFP took the view that grant-aiding NICVA would be a more sensible and worthwhile way to contribute towards improved public information about charities.

11.9 The NICVA published its "Directory of Charitable Organisations in Northern Ireland 1988-89" in June 1988. The Directory lists approximately 500 bodies either specifically recognised as charities by the Inland Revenue or believed to be established for charitable purposes. Since there are estimated to be at least 5,000 charities operating in Northern Ireland, and possibly even double that figure, it is clear that only a small proportion of eligible charities have so far taken the opportunity to register with the Directory. It is hoped, however, that as the usefulness of the Directory becomes recognised the number of entries will grow.

11.10 Charity law would fall to a Northern Ireland legislature should devolved government return to the Province at some time in the future. For this reason it was considered inappropriate for Woodfield to be asked to make UK-wide recommendations. Nevertheless, the Government will now consider to what extent the changes proposed in this White Paper should be extended to Northern Ireland, particularly in those areas where charity law and administration have traditionally reflected the position in the rest of the United Kingdom.

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RECOMMENDATIONS OF THE WOODFIELD REPORT, 'EFFICIENCY SCRUTINY OF THE SUPERVISION OF CHARITIES'

1. The Chief Charity Commissioner should appoint a project officer, to report directly to him, to co-ordinate Commission work on matters arising out of this report (Summary).

The Charity Commission and other departments

2. The Home Office and the Charity Commission should review and clarify the division of responsibilities between them; the direct accountability of the Chief Commissioner to the Home Secretary should be preserved (paragraphs 16–20).

Organisation and management of the Charity Commission

3. Two additional part time Commissioners should be appointed by March 1988 (paragraph 27).

4. The Commission should set up a top management board (paragraph 28).

5. The Commission should, in conjunction with the Treasury, consider urgently the findings of the forthcoming information technology strategy study, according particular priority to the introduction of a management information system (paragraph 32).

6. There should be more secondments of staff between the Commission and other departments; and the Commission should examine the possibility of exchanges with charitable organisations (paragraph 36).

The Register and accounts

7. Section 4(4)(c) of the 1960 Act should be repealed, thus bringing under supervision charities with a small investment income but a large turnover of money (PL)* (paragraph 50).

8. A graded system should be introduced, if possible under existing legislative powers, for the submission of annual accounts and returns to the Commission; returns should include a narrative report and particulars of the charity trustees and correspondent (paragraphs 54-56).

9. All local charities should be required to send a copy of their accounts to the relevant local authority (PL) (paragraph 57).

10. Charities should be obliged to furnish copies of their accounts to members of the public on payment of an appropriate fee (PL) (paragraph 58).

11. The Commission should arrange suitable training for those staff who are engaged in examining annual accounts (paragraph 60).

12. The Commissioners should be enabled to deregister charities for failure to submit accounts (PL) (paragraph 63).

13. The Commission should require registration as a pre-condition for dealing with any business from a registrable charity (paragraph 64).

14. The Commission's Register of charities should be computerised (paragraph 65).

Monitoring and investigation

15. Provision should be made that no person may without the permission in writing of the Commissioners act as the trustee of a charity if (i) he has been convicted of any offence involving fraud or

* (PL)—Recommendations requiring primary legislation.

other dishonesty, or (ii) he has previously been removed by the Commissioners from trusteeship of a charity (PL) (paragraph 74).

16. The Commissioners should be given discretion to require that a charity has a minimum of three trustees (PL) (paragraph 75).

17. Section 20(1) of the 1960 Act should be amended to enable the Commissioners to act under (a) or (b) instead of both being required (PL) (paragraph 76).

18. The various requirements on the Commissioners to give notice to trustees, and publicity to such notices, before exercising their powers under section 20 of the 1960 Act, should be repealed (PL) (paragraph 76).

19.** The Commissioners should be able to appoint trustees additional to the number required by a charity's trust instrument (PL) (paragraph 76).

20.** The Commissioners should be able to appoint a receiver and manager (PL) (paragraph 76).

21.** The Commissioners should be able to exercise their scheme-making powers without an application of the trustees (PL) (paragraph 76).

22.** The Commissioners should be able to wind up a charity and transfer its property to another charity (PL) (paragraph 76).

23. The powers of the Commissioners in section 7(1) of the 1960 Act to call for documents and search records should be extended to allow the Commissioners to require explanations (PL) (paragraph 76).

24. The Commission should examine the scope for further clarification of section 20 of the 1960 Act and make recommendations to the Home Secretary for any necessary changes (paragraph 77).

** These recommendations are for new sanctions under section 20 of the 1960 Act, ie they would be available where an inquiry had revealed mismanagement or misconduct or the need to act to protect charity property.

Advice, scheme-making, local reviews and the Charities Act 1985

25. The Commission should continue to review the presentation and content of their leaflets, drawing up a programme to this end (paragraph 81).

26. The objectives and working methods of the Commission's Charities Division should be reviewed (paragraph 82).

27. The Commission should consult widely on possible ways of relaxing the cy-pres doctrine and advise the Home Secretary whether legislation would be desirable (paragraph 85).

28. Section 11 of the 1960 Act should be amended to allow the Commissioners to appoint persons to review local charities (PL) (paragraph 91).

29. The Commission should as soon as practicable establish a local charity liaison section to promote and assist future local review work (paragraph 92).

30. The Charities Act 1985 should be amended to increase its use by extending its application, increasing its monetary limits and simplifying its procedures (PL) (paragraphs 93-94).

31. The second publication of notices of schemes made by the Commissioners should no longer be required (PL) (paragraph 95).

32. Where a charity does not have a properly constituted trustee body the Commissioners should be able to make a scheme of their own volition (PL) (paragraph 95).

33. The Commission should advise the Home Secretary of the outcome of discussion with interested parties on the regulation of maintenance contributions in almshouses (paragraph 95).

34. The Commission should prepare model governing instruments for wide general use by founders of new charities (paragraph 95).

Consent to land transactions

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35. Section 29 of the 1960 Act should be repealed and replaced by provisions requiring trustees to follow statutory procedures before selling land (PL) (paragraph 98).

36. The Trustee Investments Act 1961 should be amended to allow trustees to purchase land for investment purposes without the need for an order of the Commissioners under section 23 of the 1960 Act (PL) (paragraph 99).

37. The Commission should make every effort to reduce staff resources currently deployed on consents work (paragraph 100).

Official Custodian for Charities

38. The Commission should cease to encourage charities to use the services of the Official Custodian (paragraph 110).

39. The Commission should employ consultants to work out a scheme and programme for returning investments held by the Official Custodian to trustees; the specification should be drawn to make it possible for key decisions to be taken by the end of 1987. Giving effect to any changes would mean amending the 1960 Act (PL) (paragraph 110).

Charging by the Charity Commission

40. The Commissioners should be enabled to introduce charges for new registrations, the services of the Official Custodian if he is retained and for residual work on consents to property transactions (PL) (paragraph 112).

Malpractice in fundraising

41. It should be an offence for a fundraising practitioner to deduct his remuneration (however calculated) from donations received before paying them to the charity unless he can prove that his intention to do so was made clear to every donor; if such an offence is committed it should be open to the court, in addition to imposing penalties, to determine that the sums deducted be paid to such charity as the court my determine (PL) (paragraph 129).

42. Provision should be made that, whenever goods or services are advertised or offered for sale with an indication that some part of the proceeds is to be devoted to charity, there shall be specified (i) the charity or charities that are to benefit (and if more than one in what proportion), and (ii) the manner in which the sums they are to receive are to be calculated (PL) (paragraph 129).

43. A charity should be able in certain circumstances to obtain an injunction against the use of its name by a named person or organisation (PL) (paragraph 129).

44. The Home Office and the Charity Commission should review the legislation relating to public collections in consultation with representatives of the local authorities and make recommendations to the Home Secretary (paragraph 132).

45. The War Charities Act 1940 as extended should be repealed (PL) (paragraph 133).

Scotland and Northern Ireland

46. The Scottish Home and Health Department, in consultation with other interests, should advise the Secretary of State for Scotland on which provisions applying in England and Wales now or in the future should be extended to Scotland (paragraph 144).

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