

Status: Point in time view as at 01/10/2009.

Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), SCHEDULE 5B. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 5B

Section 69P

FURTHER PROVISION ABOUT CHARITABLE INCORPORATED ORGANISATIONS

Textual Amendments

- F1** Sch. 5B inserted (27.2.2007 for the insertion of Sch. 5B paras. 10(2)(3), 13 for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 7 para. 2**; S.I. 2007/309, art. 2, Sch.

Powers

- 1 (1) Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- (2) The CIO's charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO.

Constitutional requirements

- 2 A CIO shall use and apply its property in furtherance of its purposes and in accordance with its constitution.
- 3 If the CIO is one whose members are liable to contribute to its assets if it is wound up, its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract—
- (a) to which the CIO and each of its members was a party, and
 - (b) which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution.
- 4 Money payable by a member to the CIO under the constitution is a debt due from him to the CIO, and is of the nature of [^{F2}an ordinary contract debt].

Textual Amendments

- F2** Words in Sch. 5B para. 4 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 139(11)** (with art. 10)

Third parties

- 5 (1) Sub-paragraphs (2) and (3) are subject to sub-paragraph (4).
- (2) The validity of an act done (or purportedly done) by a CIO shall not be called into question on the ground that it lacked constitutional capacity.

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- (3) The power of the charity trustees of a CIO to act so as to bind the CIO (or authorise others to do so) shall not be called into question on the ground of any constitutional limitations on their powers.
- (4) But sub-paragraphs (2) and (3) apply only in favour of a person who gives full consideration in money or money's worth in relation to the act in question, and does not know—
- (a) in a sub-paragraph (2) case, that the act is beyond the CIO's constitutional capacity, or
 - (b) in a sub-paragraph (3) case, that the act is beyond the constitutional powers of its charity trustees,
- and (in addition) sub-paragraph (3) applies only if the person dealt with the CIO in good faith (which he shall be presumed to have done unless the contrary is proved).
- (5) A party to an arrangement or transaction with a CIO is not bound to inquire—
- (a) whether it is within the CIO's constitutional capacity, or
 - (b) as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so.
- (6) If a CIO purports to transfer or grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the CIO's act.
- (7) In any proceedings arising out of sub-paragraphs (2) to (4), the burden of proving that a person knew that an act—
- (a) was beyond the CIO's constitutional capacity, or
 - (b) was beyond the constitutional powers of its charity trustees,
- lies on the person making that allegation.
- (8) In this paragraph and paragraphs 6 to 8—
- (a) references to a CIO's lack of “constitutional capacity” are to lack of capacity because of anything in its constitution, and
 - (b) references to “constitutional limitations” on the powers of a CIO's charity trustees are to limitations on their powers under its constitution, including limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO's members, and “constitutional powers” is to be construed accordingly.
- 6 (1) Nothing in paragraph 5 prevents a person from bringing proceedings to restrain the doing of an act which would be—
- (a) beyond the CIO's constitutional capacity, or
 - (b) beyond the constitutional powers of the CIO's charity trustees.
- (2) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CIO.
- (3) Sub-paragraph (2) does not prevent the Commission from exercising any of its powers.
- 7 Nothing in paragraph 5(3) affects any liability incurred by the CIO's charity trustees (or any one of them) for acting beyond his or their constitutional powers.

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- 8 Nothing in paragraph 5 absolves the CIO's charity trustees from their duty to act within the CIO's constitution and in accordance with any constitutional limitations on their powers.

Duties

- 9 It is the duty of—
- (a) each member of a CIO, and
 - (b) each charity trustee of a CIO,
- to exercise his powers, and (in the case of a charity trustee) to perform his functions, in his capacity as such, in the way he decides, in good faith, would be most likely to further the purposes of the CIO.
- 10 (1) Subject to any provision of a CIO's constitution permitted by virtue of regulations made under sub-paragraph (2), each charity trustee of a CIO shall in the performance of his functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular—
- (a) to any special knowledge or experience that he has or holds himself out as having, and
 - (b) if he acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (2) The Minister may make regulations permitting a CIO's constitution to provide that the duty in sub-paragraph (1) does not apply, or does not apply in so far as is specified in the constitution.
- (3) Regulations under sub-paragraph (2) may provide for limits on the extent to which, or the cases in which, a CIO's constitution may disapply the duty in sub-paragraph (1).

Personal benefit and payments

- 11 (1) A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, he did not disclose to all the charity trustees of the CIO any material interest of his in it or in any other person or body party to it (whether that interest is direct or indirect).
- (2) Nothing in sub-paragraph (1) confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO.
- 12 A charity trustee of a CIO—
- (a) is entitled to be reimbursed by the CIO, or
 - (b) may pay out of the CIO's funds,
- expenses properly incurred by him in the performance of his functions as such.

Procedure

- 13 (1) The Minister may by regulations make provision about the procedure of CIOs.
- (2) Subject to—
- (a) any such regulations,

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- (b) any other requirement imposed by or by virtue of this Act or any other enactment, and
 - (c) anything in the CIO's constitution,
- a CIO may regulate its own procedure.
- (3) But a CIO's procedure shall include provision for the holding of a general meeting of its members, and the regulations referred to in sub-paragraph (1) may in particular make provision about such meetings.

Amendment of constitution

- 14 (1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must be passed—
- (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the CIO's members, otherwise than at a general meeting.
- (3) The date of passing of such a resolution is—
- (a) the date of the general meeting at which it was passed, or
 - (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).
- (4) The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO's ceasing to be a charity.
- (5) Subject to paragraph 15(5) below, a resolution containing an amendment which would make any regulated alteration is to that extent ineffective unless the prior written consent of the Commission has been obtained to the making of the amendment.
- (6) The following are regulated alterations—
- (a) any alteration of the CIO's purposes,
 - (b) any alteration of any provision of the CIO's constitution directing the application of property of the CIO on its dissolution,
 - (c) any alteration of any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.
- (7) For the purposes of sub-paragraph (6)(c)—
- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A of this Act) whose receipt may be authorised under that section, and
 - (b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 73B(5) and (6) of this Act, for determining whether a person is connected with a charity trustee for the purposes of section 73A.

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Registration and coming into effect of amendments

- 15 (1) A CIO shall send to the Commission a copy of a resolution containing an amendment to its constitution, together with—
- (a) a copy of the constitution as amended, and
 - (b) such other documents and information as the Commission may require,
- by the end of the period of 15 days beginning with the date of passing of the resolution (see paragraph 14(3)).
- (2) An amendment to a CIO's constitution does not take effect until it has been registered.
- (3) The Commission shall refuse to register an amendment if—
- (a) in the opinion of the Commission the CIO had no power to make it (for example, because the effect of making it would be that the CIO ceased to be a charity, or that the CIO or its constitution did not comply with any requirement imposed by or by virtue of this Act or any other enactment), or
 - (b) the amendment would change the name of the CIO, and the Commission could have refused an application under section 69E of this Act for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in subsection (4) of that section.
- (4) The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the consent referred to in paragraph 14(5) had not been obtained.
- (5) But if the Commission does register such an amendment, paragraph 14(5) does not apply.]

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