



# Charities Act 2006

## 2006 CHAPTER 50

### PART 1

#### MEANING OF “CHARITY” AND “CHARITABLE PURPOSE”

##### **1 Meaning of “charity”**

- (1) For the purposes of the law of England and Wales, “charity” means an institution which—
  - (a) is established for charitable purposes only, and
  - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.
- (2) The definition of “charity” in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment.
- (3) A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601 (c. 4) or the preamble to it is to be construed as a reference to a charity as defined by subsection (1).

##### **2 Meaning of “charitable purpose”**

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which—
  - (a) falls within subsection (2), and
  - (b) is for the public benefit (see section 3).
- (2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—
  - (a) the prevention or relief of poverty;
  - (b) the advancement of education;
  - (c) the advancement of religion;
  - (d) the advancement of health or the saving of lives;

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- (e) the advancement of citizenship or community development;
  - (f) the advancement of the arts, culture, heritage or science;
  - (g) the advancement of amateur sport;
  - (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
  - (i) the advancement of environmental protection or improvement;
  - (j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
  - (k) the advancement of animal welfare;
  - (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
  - (m) any other purposes within subsection (4).
- (3) In subsection (2)—
- (a) in paragraph (c) “religion” includes—
    - (i) a religion which involves belief in more than one god, and
    - (ii) a religion which does not involve belief in a god;
  - (b) in paragraph (d) “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
  - (c) paragraph (e) includes—
    - (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
  - (d) in paragraph (g) “sport” means sports or games which promote health by involving physical or mental skill or exertion;
  - (e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph; and
  - (f) in paragraph (l) “fire and rescue services” means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004 (c. 21).
- (4) The purposes within this subsection (see subsection (2)(m)) are—
- (a) any purposes not within paragraphs (a) to (l) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act 1958 (c. 17);
  - (b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and
  - (c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.
- (5) Where any of the terms used in any of paragraphs (a) to (l) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.
- (6) Any reference in any enactment or document (in whatever terms)—
- (a) to charitable purposes, or
  - (b) to institutions having purposes that are charitable under charity law,
- is to be construed in accordance with subsection (1).

- (7) Subsection (6)—
- (a) applies whether the enactment or document was passed or made before or after the passing of this Act, but
  - (b) does not apply where the context otherwise requires.
- (8) In this section—
- “charity law” means the law relating to charities in England and Wales; and
  - “existing charity law” means charity law as in force immediately before the day on which this section comes into force.

### **3 The “public benefit” test**

- (1) This section applies in connection with the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In this Part any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.
- (4) Subsection (3) applies subject to subsection (2).

### **4 Guidance as to operation of public benefit requirement**

- (1) The Charity Commission for England and Wales (see section 6 of this Act) must issue guidance in pursuance of its public benefit objective.
- (2) That objective is to promote awareness and understanding of the operation of the requirement mentioned in section 3(1) (see section 1B(3) and (4) of the Charities Act 1993 (c. 10), as inserted by section 7 of this Act).
- (3) The Commission may from time to time revise any guidance issued under this section.
- (4) The Commission must carry out such public and other consultation as it considers appropriate—
  - (a) before issuing any guidance under this section, or
  - (b) (unless it considers that it is unnecessary to do so) before revising any such guidance.
- (5) The Commission must publish any guidance issued or revised under this section in such manner as it considers appropriate.
- (6) The charity trustees of a charity must have regard to any such guidance when exercising any powers or duties to which the guidance is relevant.

### **5 Special provisions about recreational charities, sports clubs etc.**

- (1) The Recreational Charities Act 1958 (c. 17) is amended in accordance with subsections (2) and (3).

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- (2) In section 1 (certain recreational and similar purposes deemed to be charitable) for subsection (2) substitute—
- “(2) The requirement in subsection (1) that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.
- (2A) The basic conditions are—
- (a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
- (b) that either—
- (i) those persons have need of the facilities by reason of their youth, age, infirmity or disability, poverty, or social and economic circumstances, or
- (ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.”
- (3) Section 2 (miners' welfare trusts) is omitted.
- (4) A registered sports club established for charitable purposes is to be treated as not being so established, and accordingly cannot be a charity.
- (5) In subsection (4) a “registered sports club” means a club for the time being registered under Schedule 18 to the Finance Act 2002 (c. 23) (relief for community amateur sports club).

## PART 2

### REGULATION OF CHARITIES

#### CHAPTER 1

##### THE CHARITY COMMISSION

###### *Establishment of Charity Commission*

## 6 The Charity Commission

- (1) After section 1 of the 1993 Act insert—

### **“1A The Charity Commission**

- (1) There shall be a body corporate to be known as the Charity Commission for England and Wales (in this Act referred to as “the Commission”).
- (2) In Welsh the Commission shall be known as “Comisiwn Elusennau Cymru a Lloegr”.
- (3) The functions of the Commission shall be performed on behalf of the Crown.

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- (4) In the exercise of its functions the Commission shall not be subject to the direction or control of any Minister of the Crown or other government department.
  - (5) But subsection (4) above does not affect—
    - (a) any provision made by or under any enactment;
    - (b) any administrative controls exercised over the Commission's expenditure by the Treasury.
  - (6) The provisions of Schedule 1A to this Act shall have effect with respect to the Commission.”
- (2) Schedule 1 (which inserts the new Schedule 1A into the 1993 Act) has effect.
  - (3) The office of Charity Commissioner for England and Wales is abolished.
  - (4) The functions of the Charity Commissioners for England and Wales and their property, rights and liabilities are by virtue of this subsection transferred to the Charity Commission for England and Wales.
  - (5) Any enactment or document has effect, so far as necessary for the purposes of or in consequence of the transfer effected by subsection (4), as if any reference to the Charity Commissioners for England and Wales or to any Charity Commissioner for England and Wales were a reference to the Charity Commission for England and Wales.
  - (6) Section 1 of, and Schedule 1 to, the 1993 Act cease to have effect.
  - (7) Schedule 2 (which contains supplementary provision relating to the establishment of the Charity Commission for England and Wales) has effect.

*Commission's objectives, general functions etc.*

## **7 The Commission's objectives, general functions and duties**

After section 1A of the 1993 Act (inserted by section 6 above) insert—

### **“1B The Commission's objectives**

- (1) The Commission has the objectives set out in subsection (2).
- (2) The objectives are—
  - (1) The public confidence objective.
  - (2) The public benefit objective.
  - (3) The compliance objective.
  - (4) The charitable resources objective.
  - (5) The accountability objective.
- (3) Those objectives are defined as follows—
  - (1) The public confidence objective is to increase public trust and confidence in charities.
  - (2) The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

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- (3) The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
  - (4) The charitable resources objective is to promote the effective use of charitable resources.
  - (5) The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.
- (4) In this section “the public benefit requirement” means the requirement in section 2(1)(b) of the Charities Act 2006 that a purpose falling within section 2(2) of that Act must be for the public benefit if it is to be a charitable purpose.

### **1C The Commission’s general functions**

- (1) The Commission has the general functions set out in subsection (2).
- (2) The general functions are—
  - (1) Determining whether institutions are or are not charities.
  - (2) Encouraging and facilitating the better administration of charities.
  - (3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.
  - (4) Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.
  - (5) Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its objectives.
  - (6) Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission’s functions or meeting any of its objectives.
- (3) The Commission’s fifth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under section 3 below.
- (4) The Commission’s sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions.
- (5) In this section “public charitable collection” and “public collections certificate” have the same meanings as in Chapter 1 of Part 3 of the Charities Act 2006.

### **1D The Commission’s general duties**

- (1) The Commission has the general duties set out in subsection (2).
- (2) The general duties are—
  - (1) So far as is reasonably practicable the Commission must, in performing its functions, act in a way—
    - (a) which is compatible with its objectives, and

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- (b) which it considers most appropriate for the purpose of meeting those objectives.
- (2) So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—
  - (a) all forms of charitable giving, and
  - (b) voluntary participation in charity work.
- (3) In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.
- (4) In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).
- (5) In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.
- (6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

### **1E The Commission’s incidental powers**

- (1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.
- (2) However, nothing in this Act authorises the Commission—
  - (a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or
  - (b) otherwise to be directly involved in the administration of a charity.
- (3) Subsection (2) does not affect the operation of section 19A or 19B below (power of Commission to give directions as to action to be taken or as to application of charity property).”

## **CHAPTER 2**

### **THE CHARITY TRIBUNAL**

#### **8 The Charity Tribunal**

- (1) After section 2 of the 1993 Act insert—

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## **“PART 1A**

### THE CHARITY TRIBUNAL

#### **2A The Charity Tribunal**

- (1) There shall be a tribunal to be known as the Charity Tribunal (in this Act referred to as “the Tribunal”).
- (2) In Welsh the Tribunal shall be known as “Tribiwnlys Elusennau”.
- (3) The provisions of Schedule 1B to this Act shall have effect with respect to the constitution of the Tribunal and other matters relating to it.
- (4) The Tribunal shall have jurisdiction to hear and determine—
  - (a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission, and
  - (b) such matters as may be referred to the Tribunal in accordance with Schedule 1D to this Act by the Commission or the Attorney General.
- (5) Such appeals, applications and matters shall be heard and determined by the Tribunal in accordance with those Schedules, or any such enactment, taken with section 2B below and rules made under that section.

#### **2B Practice and procedure**

- (1) The Lord Chancellor may make rules—
  - (a) regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it;
  - (b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.
- (2) Rules under subsection (1)(a) above may, in particular, make provision—
  - (a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);
  - (b) specifying the period following the Commission’s final decision, direction or order within which such appeals or applications may be made;
  - (c) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission;
  - (d) specifying the manner in which appeals, applications or references to the Tribunal are to be made.
- (3) Rules under subsection (1)(b) above may, in particular, make provision—
  - (a) for the President or a legal member of the Tribunal (see paragraph 1(2)(b) of Schedule 1B to this Act) to determine preliminary, interlocutory or ancillary matters;



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- (b) for matters to be determined without an oral hearing in specified circumstances;
  - (c) for the Tribunal to deal with urgent cases expeditiously;
  - (d) about the disclosure of documents;
  - (e) about evidence;
  - (f) about the admission of members of the public to proceedings;
  - (g) about the representation of parties to proceedings;
  - (h) about the withdrawal of appeals, applications or references;
  - (i) about the recording and promulgation of decisions;
  - (j) about the award of costs.
- (4) Rules under subsection (1)(a) or (b) above may confer a discretion on—
- (a) the Tribunal,
  - (b) a member of the Tribunal, or
  - (c) any other person.
- (5) The Tribunal may award costs only in accordance with subsections (6) and (7) below.
- (6) If the Tribunal considers that any party to proceedings before it has acted vexatiously, frivolously or unreasonably, the Tribunal may order that party to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.
- (7) If the Tribunal considers that a decision, direction or order of the Commission which is the subject of proceedings before it was unreasonable, the Tribunal may order the Commission to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.
- (8) Rules of the Lord Chancellor under this section—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Section 86(3) below applies in relation to rules of the Lord Chancellor under this section as it applies in relation to regulations and orders of the Minister under this Act.

## **2C Appeal from Tribunal**

- (1) A party to proceedings before the Tribunal may appeal to the High Court against a decision of the Tribunal.
- (2) Subject to subsection (3) below, an appeal may be brought under this section against a decision of the Tribunal only on a point of law.
- (3) In the case of an appeal under this section against a decision of the Tribunal which determines a question referred to it by the Commission or the Attorney General, the High Court—
- (a) shall consider afresh the question referred to the Tribunal, and
  - (b) may take into account evidence which was not available to the Tribunal.

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- (4) An appeal under this section may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the High Court.
- (5) For the purposes of subsection (1) above—
  - (a) the Commission and the Attorney General are to be treated as parties to all proceedings before the Tribunal, and
  - (b) rules under section 2B(1) above may include provision as to who else is to be treated as being (or not being) a party to proceedings before the Tribunal.

### **2D Intervention by Attorney General**

- (1) This section applies to any proceedings—
    - (a) before the Tribunal, or
    - (b) on an appeal from the Tribunal,
 to which the Attorney General is not a party.
  - (2) The Tribunal or, in the case of an appeal from the Tribunal, the court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General.
  - (3) A direction under subsection (2) may be made by the Tribunal or court—
    - (a) of its own motion, or
    - (b) on the application of any party to the proceedings.
  - (4) The Attorney General may—
    - (a) intervene in the proceedings in such manner as he thinks necessary or expedient, and
    - (b) argue before the Tribunal or court any question in relation to the proceedings which the Tribunal or court considers it necessary to have fully argued.
  - (5) Subsection (4) applies whether or not the Tribunal or court has given a direction under subsection (2).”
- (2) Schedule 3 (which inserts the new Schedule 1B into the 1993 Act) has effect.
  - (3) Schedule 4 (which inserts the new Schedules 1C and 1D into the 1993 Act) has effect.

## **CHAPTER 3**

### REGISTRATION OF CHARITIES

#### *General*

## **9 Registration of charities**

For section 3 of the 1993 Act substitute—

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### **“3 Register of charities**

- (1) There shall continue to be a register of charities, which shall be kept by the Commission.
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain—
  - (a) the name of every charity registered in accordance with section 3A below (registration), and
  - (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.
- (4) The Commission shall remove from the register—
  - (a) any institution which it no longer considers is a charity, and
  - (b) any charity which has ceased to exist or does not operate.
- (5) If the removal of an institution under subsection (4)(a) above is due to any change in its trusts, the removal shall take effect from the date of that change.
- (6) A charity which is for the time being registered under section 3A(6) below (voluntary registration) shall be removed from the register if it so requests.
- (7) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times.
- (8) Where any information contained in the register is not in documentary form, subsection (7) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (9) If the Commission so determines, subsection (7) shall not apply to any particular information contained in the register that is specified in the determination.
- (10) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 3B below (applications for registration etc.) shall, so long as the charity remains on the register—
  - (a) be kept by the Commission, and
  - (b) be open to public inspection at all reasonable times.

### **3A Registration of charities**

- (1) Every charity must be registered in the register of charities unless subsection (2) below applies to it.
- (2) The following are not required to be registered—
  - (a) any exempt charity (see Schedule 2 to this Act);
  - (b) any charity which for the time being—
    - (i) is permanently or temporarily excepted by order of the Commission, and
    - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000;
  - (c) any charity which for the time being—

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- (i) is, or is of a description, permanently or temporarily excepted by regulations made by the Secretary of State, and
    - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000; and
  - (d) any charity whose gross income does not exceed £5,000.
- (3) For the purposes of subsection (2)(b) above—
- (a) any order made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day has effect as from that day as if made under subsection (2)(b) (and may be varied or revoked accordingly); and
  - (b) no order may be made under subsection (2)(b) so as to except on or after the appointed day any charity that was not excepted immediately before that day.
- (4) For the purposes of subsection (2)(c) above—
- (a) any regulations made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day have effect as from that day as if made under subsection (2)(c) (and may be varied or revoked accordingly);
  - (b) such regulations shall be made under subsection (2)(c) as are necessary to secure that all of the formerly specified institutions are excepted under that provision (subject to compliance with any conditions of the exception and the financial limit mentioned in that provision); but
  - (c) otherwise no regulations may be made under subsection (2)(c) so as to except on or after the appointed day any description of charities that was not excepted immediately before that day.
- (5) In subsection (4)(b) above “formerly specified institutions” means—
- (a) any institution falling within section 3(5B)(a) or (b) of this Act as in force immediately before the appointed day (certain educational institutions); or
  - (b) any institution ceasing to be an exempt charity by virtue of section 11 of the Charities Act 2006 or any order made under that section.
- (6) A charity within—
- (a) subsection (2)(b) or (c) above, or
  - (b) subsection (2)(d) above,
- must, if it so requests, be registered in the register of charities.
- (7) The Minister may by order amend—
- (a) subsection (2)(b) and (c) above, or
  - (b) subsection (2)(d) above,
- by substituting a different sum for the sum for the time being specified there.
- (8) The Minister may only make an order under subsection (7) above—
- (a) so far as it amends subsection (2)(b) and (c), if he considers it expedient to so with a view to reducing the scope of the exception provided by those provisions;

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- (b) so far as it amends subsection (2)(d), if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception provided by that provision, and no order may be made by him under subsection (7)(a) unless a copy of a report under section 73 of the Charities Act 2006 (report on operation of that Act) has been laid before Parliament in accordance with that section.
- (9) In this section “the appointed day” means the day on which subsections (1) to (5) above come into force by virtue of an order under section 79 of the Charities Act 2006 relating to section 9 of that Act (registration of charities).
- (10) In this section any reference to a charity’s “gross income” shall be construed, in relation to a particular time—
- (a) as a reference to the charity’s gross income in its financial year immediately preceding that time, or
  - (b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity’s gross income in such financial year of the charity as is specified in the determination.
- (11) The following provisions of this section—
- (a) subsection (2)(b) and (c),
  - (b) subsections (3) to (5), and
  - (c) subsections (6)(a), (7)(a), (8)(a) and (9),
- shall cease to have effect on such day as the Minister may by order appoint for the purposes of this subsection.

### **3B Duties of trustees in connection with registration**

- (1) Where a charity required to be registered by virtue of section 3A(1) above is not registered, it is the duty of the charity trustees—
- (a) to apply to the Commission for the charity to be registered, and
  - (b) to supply the Commission with the required documents and information.
- (2) The “required documents and information” are—
- (a) copies of the charity’s trusts or (if they are not set out in any extant document) particulars of them,
  - (b) such other documents or information as may be prescribed by regulations made by the Minister, and
  - (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees)—
- (a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and
  - (b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts.
- (4) Nothing in subsection (3) above requires a person—

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- (a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court,
- (b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or
- (c) if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document.

- (5) Where a copy of a document relating to a registered charity—
- (a) is not required to be supplied to the Commission as the result of subsection (4) above, but
  - (b) is in the possession of the Commission,
- a copy of the document shall be open to inspection under section 3(10) above as if supplied to the Commission under this section.”

## **10 Interim changes in threshold for registration of small charities**

- (1) At any time before the appointed day, the Minister may by order amend section 3 of the 1993 Act (the register of charities) so as to—
  - (a) replace section 3(5)(c) (threshold for registration of small charities) with a provision referring to a charity whose gross income does not exceed such sum as is prescribed in the order, and
  - (b) define “gross income” for the purposes of that provision.
- (2) Subsection (1) does not affect the existing power under section 3(12) of that Act to increase the financial limit specified in section 3(5)(c).
- (3) This section ceases to have effect on the appointed day.
- (4) In this section “the appointed day” means the day on which section 3A(1) to (5) of the 1993 Act (as substituted by section 9 of this Act) come into force by virtue of an order under section 79 of this Act.

*Exempt charities: registration and regulation*

## **11 Changes in exempt charities**

- (1) Schedule 2 to the 1993 Act (exempt charities) is amended as follows.
- (2) In paragraph (a) (general exemption by reference to law existing prior to Charities Act 1960 (c. 58)) after “1855” insert “(but see Note 1)”.
- (3) In paragraph (b) (certain specified universities, colleges and schools)—
  - (a) before “Queen Mary and Westfield College” insert “and”; and
  - (b) omit “and the colleges of Winchester and Eton”.
- (4) Before paragraph (i) insert—
  - “(h) a higher education corporation;”.
- (5) After paragraph (i) insert—
  - “(j) a further education corporation;”.

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- (6) In paragraph (w) (exemption for institutions administered by or on behalf of institutions exempted under preceding provisions) after “last-mentioned institution” insert “(but see Note 2)”.
- (7) Omit paragraph (x) (Church Commissioners and institutions administered by them).
- (8) In paragraph (y) (industrial and provident societies etc.) for the words from “and any” onwards substitute “and which is also registered in the register of social landlords under Part 1 of the Housing Act 1996;”.
- (9) At the end insert—

“Notes

- 1 Paragraph (a) above does not include—
  - (a) any Investment Fund or Deposit Fund within the meaning of the Church Funds Investment Measure 1958,
  - (b) any investment fund or deposit fund within the meaning of the Methodist Church Funds Act 1960, or
  - (c) the representative body of the Welsh Church or property administered by it.
- 2 Paragraph (w) above does not include any students' union.”
- (10) In section 24 of the 1993 Act (schemes to establish common investment funds), in subsection (8) (fund is to be a charity and, if the scheme admits only exempt charities, an exempt charity) omit the words from “; and if the scheme” onwards.
- (11) The Minister may by order make such further amendments of Schedule 2 to the 1993 Act as he considers appropriate for securing—
  - (a) that (so far as they are charities) institutions of a particular description become or (as the case may be) cease to be exempt charities, or
  - (b) that (so far as it is a charity) a particular institution becomes or (as the case may be) ceases to be an exempt charity,or for removing from that Schedule an institution that has ceased to exist.
- (12) An order under subsection (11) may only be made for the purpose mentioned in paragraph (a) or (b) of that subsection if the Minister is satisfied that the order is desirable in the interests of ensuring appropriate or effective regulation of the charities or charity concerned in connection with compliance by the charity trustees of the charities or charity with their legal obligations in exercising control and management of the administration of the charities or charity.
- (13) The Minister may by order make such amendments or other modifications of any enactment as he considers appropriate in connection with—
  - (a) charities of a particular description becoming, or ceasing to be, exempt charities, or
  - (b) a particular charity becoming, or ceasing to be, an exempt charity,by virtue of any provision made by or under this section.
- (14) In this section “exempt charity” has the same meaning as in the 1993 Act.

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*Status: This is the original version (as it was originally enacted).*

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## **12 Increased regulation of exempt charities under 1993 Act**

The 1993 Act is amended in accordance with Schedule 5 (which has effect for increasing the extent to which exempt charities are subject to regulation under that Act).

## **13 General duty of principal regulator in relation to exempt charity**

- (1) This section applies to any body or Minister of the Crown who is the principal regulator in relation to an exempt charity.
- (2) The body or Minister must do all that it or he reasonably can to meet the compliance objective in relation to the charity.
- (3) The compliance objective is to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity.
- (4) In this section—
  - (a) “exempt charity” has the same meaning as in the 1993 Act; and
  - (b) “principal regulator”, in relation to an exempt charity, means such body or Minister of the Crown as is prescribed as its principal regulator by regulations made by the Minister.
- (5) Regulations under subsection (4)(b) may make such amendments or other modifications of any enactment as the Minister considers appropriate for the purpose of facilitating, or otherwise in connection with, the discharge by a principal regulator of the duty under subsection (2).

## **14 Commission to consult principal regulator before exercising powers in relation to exempt charity**

After section 86 of the 1993 Act insert—

### **“86A Consultation by Commission before exercising powers in relation to exempt charity**

Before exercising in relation to an exempt charity any specific power exercisable by it in relation to the charity, the Commission must consult the charity’s principal regulator.”

## **CHAPTER 4**

### APPLICATION OF PROPERTY CY-PRÈS

#### *Cy-près occasions*

## **15 Application cy-près by reference to current circumstances**

- (1) Section 13 of the 1993 Act (occasions for applying property cy-près) is amended as follows.



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(2) In subsection (1)(c), (d) and (e)(iii), for “the spirit of the gift” substitute “the appropriate considerations”.

(3) After subsection (1) insert—

“(1A) In subsection (1) above “the appropriate considerations” means—

- (a) (on the one hand) the spirit of the gift concerned, and
- (b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.”

## **16 Application cy-près of gifts by donors unknown or disclaiming**

(1) Section 14 of the 1993 Act (application cy-près of gifts of donors unknown or disclaiming) is amended as follows.

(2) In subsection (4) (power of court to direct that property is to be treated as belonging to donors who cannot be identified) after “court”, in both places, insert “or the Commission”.

## **17 Application cy-près of gifts made in response to certain solicitations**

After section 14 of the 1993 Act insert—

### **“14A Application cy-près of gifts made in response to certain solicitations**

(1) This section applies to property given—

- (a) for specific charitable purposes, and
- (b) in response to a solicitation within subsection (2) below.

(2) A solicitation is within this subsection if—

- (a) it is made for specific charitable purposes, and
- (b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift.

(3) A “relevant declaration” is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, he wishes the trustees holding the property to give him the opportunity to request the return of the property in question (or a sum equal to its value at the time of the making of the gift).

(4) Subsections (5) and (6) below apply if—

- (a) a person has given property as mentioned in subsection (1) above,
- (b) the specific charitable purposes fail, and
- (c) the donor has made a relevant declaration.

(5) The trustees holding the property must take the prescribed steps for the purpose of—

- (a) informing the donor of the failure of the purposes,
- (b) enquiring whether he wishes to request the return of the property (or a sum equal to its value), and

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- (c) if within the prescribed period he makes such a request, returning the property (or such a sum) to him.
- (6) If those trustees have taken all appropriate prescribed steps but—
  - (a) they have failed to find the donor, or
  - (b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value),
 section 14(1) above shall apply to the property as if it belonged to a donor within paragraph (b) of that subsection (application of property where donor has disclaimed right to return of property).
- (7) If—
  - (a) a person has given property as mentioned in subsection (1) above,
  - (b) the specific charitable purposes fail, and
  - (c) the donor has not made a relevant declaration,
 section 14(1) above shall similarly apply to the property as if it belonged to a donor within paragraph (b) of that subsection.
- (8) For the purposes of this section—
  - (a) “solicitation” means a solicitation made in any manner and however communicated to the persons to whom it is addressed,
  - (b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and
  - (c) where any appeal consists of both solicitations that are accompanied by statements within subsection (2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless he proves otherwise.
- (9) In this section “prescribed” means prescribed by regulations made by the Commission, and any such regulations shall be published by the Commission in such manner as it thinks fit.
- (10) Subsections (7) and (10) of section 14 shall apply for the purposes of this section as they apply for the purposes of section 14.”

### *Schemes*

## 18 Cy-près schemes

After section 14A of the 1993 Act (inserted by section 17 above) insert—

### “14B Cy-près schemes

- (1) The power of the court or the Commission to make schemes for the application of property cy-près shall be exercised in accordance with this section.
- (2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied—
  - (a) for such charitable purposes, and

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(b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,  
as it considers appropriate, having regard to the matters set out in subsection (3).

(3) The matters are—

- (a) the spirit of the original gift,
- (b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and
- (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

The “relevant charity” means the charity by or on behalf of which the property is to be applied under the scheme.

(4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes.

(5) In this section references to property given include the property for the time being representing the property originally given or property derived from it.

(6) In this section references to the transfer of property to a charity are references to its transfer—

- (a) to the charity, or
- (b) to the charity trustees, or
- (c) to any trustee for the charity, or
- (d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the scheme may provide.”

## CHAPTER 5

### ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

#### *Suspension or removal of trustees etc. from membership*

#### **19 Power to suspend or remove trustees etc. from membership of charity**

After section 18 of the 1993 Act insert—

##### **“18A Power to suspend or remove trustees etc. from membership of charity**

(1) This section applies where the Commission makes—

- (a) an order under section 18(1) above suspending from his office or employment any trustee, charity trustee, officer, agent or employee of a charity, or
- (b) an order under section 18(2) above removing from his office or employment any officer, agent or employee of a charity,

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and the trustee, charity trustee, officer, agent or employee (as the case may be) is a member of the charity.

- (2) If the order suspends the person in question from his office or employment, the Commission may also make an order suspending his membership of the charity for the period for which he is suspended from his office or employment.
- (3) If the order removes the person in question from his office or employment, the Commission may also make an order—
  - (a) terminating his membership of the charity, and
  - (b) prohibiting him from resuming his membership of the charity without the Commission’s consent.
- (4) If an application for the Commission’s consent under subsection (3)(b) above is made five years or more after the order was made, the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.”

*Directions by Commission*

**20 Power to give specific directions for protection of charity**

After section 19 of the 1993 Act insert—

**“19A Power to give specific directions for protection of charity**

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 8 above with respect to any charity, it is satisfied as mentioned in section 18(1)(a) or (b) above.
- (2) The Commission may by order direct—
  - (a) the charity trustees,
  - (b) any trustee for the charity,
  - (c) any officer or employee of the charity, or
  - (d) (if a body corporate) the charity itself,
 to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.
- (3) An order under this section—
  - (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but
  - (b) may not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.
- (4) Anything done by a person or body under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.

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- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.”

## **21 Power to direct application of charity property**

After section 19A of the 1993 Act (inserted by section 20 above) insert—

### **“19B Power to direct application of charity property**

- (1) This section applies where the Commission is satisfied—
- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity, and
  - (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.
- (2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.
- (3) An order under this section—
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but
  - (b) may not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity.
- (4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.”

### *Publicity relating to schemes*

## **22 Relaxation of publicity requirements relating to schemes etc.**

For section 20 of the 1993 Act substitute—

### **“20 Publicity relating to schemes**

- (1) The Commission may not—
- (a) make any order under this Act to establish a scheme for the administration of a charity, or
  - (b) submit such a scheme to the court or the Minister for an order giving it effect,
- unless, before doing so, the Commission has complied with the publicity requirements in subsection (2) below.

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This is subject to any disapplication of those requirements under subsection (4) below.

- (2) The publicity requirements are—
  - (a) that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice; and
  - (b) that, in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish or in a community in Wales, the Commission must communicate a draft of the scheme to the parish or community council (or, where a parish has no council, to the chairman of the parish meeting).
- (3) The time when any such notice is given or any such communication takes place is to be decided by the Commission.
- (4) The Commission may determine that either or both of the publicity requirements is or are not to apply in relation to a particular scheme if it is satisfied that—
  - (a) by reason of the nature of the scheme, or
  - (b) for any other reason,
 compliance with the requirement or requirements is unnecessary.
- (5) Where the Commission gives public notice of any proposals under this section, the Commission—
  - (a) must take into account any representations made to it within the period specified in the notice, and
  - (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.
- (6) Where the Commission makes an order under this Act to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times—
  - (a) at the Commission's office, and
  - (b) if the charity is a local charity, at some convenient place in the area of the charity.

Paragraph (b) does not apply if the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally.
- (7) Any public notice of any proposals which is to be given under this section—
  - (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
  - (b) is to be given in such manner as the Commission thinks sufficient and appropriate.

### **20A Publicity for orders relating to trustees or other individuals**

- (1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than—

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- (a) an order relating to the official custodian, or
  - (b) an order under section 18(1)(ii) above,
- unless, before doing so, the Commission has complied with the publicity requirement in subsection (2) below.

This is subject to any disapplication of that requirement under subsection (4) below.

- (2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.
- (3) The time when any such notice is given is to be decided by the Commission.
- (4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.
- (5) Before the Commission makes an order under this Act to remove without his consent—
  - (a) a charity trustee or trustee for a charity, or
  - (b) an officer, agent or employee of a charity,the Commission must give him not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.

This does not apply if the person cannot be found or has no known address in the United Kingdom.
- (6) Where the Commission gives notice of any proposals under this section, the Commission—
  - (a) must take into account any representations made to it within the period specified in the notice, and
  - (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.
- (7) Any notice of any proposals which is to be given under this section—
  - (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
  - (b) (in the case of a public notice) is to be given in such manner as the Commission thinks sufficient and appropriate.
- (8) Any notice to be given under subsection (5)—
  - (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.”

#### *Common investment schemes*

### **23 Participation of Scottish and Northern Irish charities in common investment schemes etc.**

- (1) After section 24(3) of the 1993 Act (common investment schemes) insert—

“(3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(3B) In this section “appropriate body” means—

- (a) a Scottish recognised body, or
- (b) a Northern Ireland charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A) above, “charity” includes an appropriate body.

“The relevant provisions” are subsections (1) and (4) to (6) and (in relation only to a charity within paragraph (b)) subsection (7).”

(2) In section 25(2) of that Act (application of provisions of section 24 to common deposit funds) for “subsections (2) to (4)” substitute “subsections (2), (3) and (4)”.

(3) At the end of section 25 add—

“(4) A common deposit scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(5) In this section “appropriate body” means—

- (a) a Scottish recognised body, or
- (b) a Northern Ireland charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4) above, “charity” includes an appropriate body.

(6) “The relevant provisions” are—

- (a) subsection (1) above, and
- (b) subsections (4) and (6) of section 24 above, as they apply in accordance with subsections (2) and (3) above, and
- (c) (in relation only to a charity within subsection (5)(b) above) subsection (7) of that section, as it so applies.”

(4) After section 25 insert—

**“25A Meaning of “Scottish recognised body” and “Northern Ireland charity” in sections 24 and 25**

(1) In sections 24 and 25 above “Scottish recognised body” means a body—

- (a) established under the law of Scotland, or
- (b) managed or controlled wholly or mainly in or from Scotland,

to which the Commissioners for Her Majesty’s Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under section 505 of the Income and Corporation Taxes Act 1988 in respect of income of the body which is applicable and applied to charitable purposes only.

(2) In those sections “Northern Ireland charity” means an institution—

- (a) which is a charity under the law of Northern Ireland, and



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- (b) to which the Commissioners for Her Majesty’s Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under section 505 of the Income and Corporation Taxes Act 1988 in respect of income of the institution which is applicable and applied to charitable purposes only.”
- (5) In section 100(4) of the 1993 Act (provisions extending to Northern Ireland) for “extends” substitute “and sections 24 to 25A extend”.

*Advice or other assistance*

**24 Power to give advice and guidance**

For section 29 of the 1993 Act substitute—

**“29 Power to give advice and guidance**

- (1) The Commission may, on the written application of any charity trustee or trustee for a charity, give that person its opinion or advice in relation to any matter—
  - (a) relating to the performance of any duties of his, as such a trustee, in relation to the charity concerned, or
  - (b) otherwise relating to the proper administration of the charity.
- (2) A charity trustee or trustee for a charity who acts in accordance with any opinion or advice given by the Commission under subsection (1) above (whether to him or to another trustee) is to be taken, as regards his responsibility for so acting, to have acted in accordance with his trust.
- (3) But subsection (2) above does not apply to a person if, when so acting, either—
  - (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or
  - (b) a decision of the court or the Tribunal has been obtained on the matter or proceedings are pending to obtain one.
- (4) The Commission may, in connection with its second general function mentioned in section 1C(2) above, give such advice or guidance with respect to the administration of charities as it considers appropriate.
- (5) Any advice or guidance so given may relate to—
  - (a) charities generally,
  - (b) any class of charities, or
  - (c) any particular charity,and may take such form, and be given in such manner, as the Commission considers appropriate.”

**25 Power to determine membership of charity**

After section 29 of the 1993 Act (as substituted by section 24 of this Act) insert—

**“29A Power to determine membership of charity**

- (1) The Commission may—

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- (a) on the application of a charity, or
  - (b) at any time after the institution of an inquiry under section 8 above with respect to a charity,
- determine who are the members of the charity.
- (2) The Commission’s power under subsection (1) may also be exercised by a person appointed by the Commission for the purpose.
- (3) In a case within subsection (1)(b) the Commission may, if it thinks fit, so appoint the person appointed to conduct the inquiry.”

*Powers of entry etc.*

**26 Power to enter premises and seize documents etc.**

- (1) After section 31 of the 1993 Act insert—

**“31A Power to enter premises**

- (1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by a member of the Commission’s staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) below is satisfied.
- (2) The conditions are—
- (a) that an inquiry has been instituted under section 8 above;
  - (b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or furnished under section 9(1) above; and
  - (c) that, if the Commission were to make an order requiring the document or information to be so produced or furnished—
    - (i) the order would not be complied with, or
    - (ii) the document or information would be removed, tampered with, concealed or destroyed.
- (3) A warrant under this section is a warrant authorising the member of the Commission’s staff who is named in it—
- (a) to enter and search the premises specified in it;
  - (b) to take such other persons with him as the Commission considers are needed to assist him in doing anything that he is authorised to do under the warrant;
  - (c) to take possession of any documents which appear to fall within subsection (2)(b) above, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
  - (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;

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- (e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);
  - (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;
  - (g) to require any such person to give him such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (e) above.
- (4) Entry and search under such a warrant must be at a reasonable hour and within one month of the date of its issue.
- (5) The member of the Commission's staff who is authorised under such a warrant ("the authorised person") must, if required to do so, produce—
  - (a) the warrant, and
  - (b) documentary evidence that he is a member of the Commission's staff, for inspection by the occupier of the premises or anyone acting on his behalf.
- (6) The authorised person must make a written record of—
  - (a) the date and time of his entry on the premises;
  - (b) the number of persons (if any) who accompanied him onto the premises, and the names of any such persons;
  - (c) the period for which he (and any such persons) remained on the premises;
  - (d) what he (and any such persons) did while on the premises; and
  - (e) any document or device of which he took possession while there.
- (7) If required to do so, the authorised person must give a copy of the record to the occupier of the premises or someone acting on his behalf.
- (8) Unless it is not reasonably practicable to do so, the authorised person must comply with the following requirements before leaving the premises, namely—
  - (a) the requirements of subsection (6), and
  - (b) any requirement made under subsection (7) before he leaves the premises.
- (9) Where possession of any document or device is taken under this section—
  - (a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 8 above, or
  - (b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry,as the case may be.
- (10) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable—
  - (a) to the person from whose possession it was taken, or
  - (b) to any of the charity trustees of the charity to which it belonged or related.

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- (11) A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence and liable on summary conviction—
- (a) to imprisonment for a term not exceeding 51 weeks, or
  - (b) to a fine not exceeding level 5 on the standard scale, or to both.”
- (2) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 applies), after paragraph 56 insert—

“*Charities Act 1993 (c. 10)*

- 56A The power of seizure conferred by section 31A(3) of the Charities Act 1993 (seizure of material for the purposes of an inquiry under section 8 of that Act).”

*Mortgages of charity land*

**27 Restrictions on mortgaging**

- (1) Section 38 of the 1993 Act (restrictions on mortgaging) is amended as follows.
- (2) For subsections (2) and (3) substitute—
- “(2) Subsection (1) above shall not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (3A) below (as the case may be).
- (3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—
- (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant;
  - (b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
  - (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.
- (3A) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity’s purposes.
- (3B) Subsection (3) or (as the case may be) subsection (3A) above applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—
- (a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or

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- (b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (3C) Subsection (3D) below applies where—
- (a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2) above, and
  - (b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (3D) In such a case, the charity trustees must not after that date enter into any transaction involving—
- (a) the payment of any such sums, or
  - (b) the undertaking of any such obligations,
- unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (3A) above (as the case may be).”
- (3) In subsection (4) (meaning of “proper advice”)—
- (a) for “subsection (2) above” substitute “this section”; and
  - (b) for “the making of the loan in question” substitute “relation to the loan, grant or other transaction in connection with which his advice is given”.

## CHAPTER 6

### AUDIT OR EXAMINATION OF ACCOUNTS WHERE CHARITY IS NOT A COMPANY

#### **28 Annual audit or examination of accounts of charities which are not companies**

- (1) Section 43 of the 1993 Act (annual audit or examination of accounts of charities which are not companies) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Subsection (2) below applies to a financial year of a charity if—
- (a) the charity’s gross income in that year exceeds £500,000; or
  - (b) the charity’s gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.
- “The accounts threshold” means £100,000 or such other sum as is for the time being specified in section 42(3) above.”
- (3) In subsection (2) (accounts required to be audited) for paragraph (a) substitute—
- “(a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the charity were a company, or”.
- (4) In subsection (3) (independent examinations instead of audits)—
- (a) for the words from “and its gross income” to “subsection (4) below)” substitute “but its gross income in that year exceeds £10,000,”; and
  - (b) at the end insert—

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“This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.”

(5) After subsection (3) insert—

“(3A) If subsection (3) above applies to the accounts of a charity for a year and the charity’s gross income in that year exceeds £250,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is—

- (a) a member of a body for the time being specified in section 249D(3) of the Companies Act 1985 (reporting accountants);
- (b) a member of the Chartered Institute of Public Finance and Accountancy; or
- (c) a Fellow of the Association of Charity Independent Examiners.”

(6) For subsection (8) substitute—

“(8) The Minister may by order—

- (a) amend subsection (1)(a) or (b), (3) or (3A) above by substituting a different sum for any sum for the time being specified there;
- (b) amend subsection (3A) by adding or removing a description of person to or from the list in that subsection or by varying any entry for the time being included in that list.”

## **29 Duty of auditor etc. of charity which is not a company to report matters to Commission**

(1) After section 44 of the 1993 Act insert—

### **“44A Duty of auditors etc. to report matters to Commission**

(1) This section applies to—

- (a) a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above,
- (b) a person acting as an auditor or examiner appointed under section 43A(2) or (3) above, and
- (c) the Auditor General for Wales acting under section 43B(2) or (3) above.

(2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter—

- (a) which relates to the activities or affairs of the charity or of any connected institution or body, and
- (b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under section 8 or 18 above,

he must immediately make a written report on the matter to the Commission.

(3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter—

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- (a) which does not appear to him to be one that he is required to report under subsection (2) above, but
    - (b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,he may make a report on the matter to the Commission.
  - (4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity.
  - (5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.
  - (6) In this section “connected institution or body”, in relation to a charity, means—
    - (a) an institution which is controlled by, or
    - (b) a body corporate in which a substantial interest is held by,the charity or any one or more of the charity trustees acting in his or their capacity as such.
  - (7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.”
- (2) In section 46 of the 1993 Act (special provisions as respects accounts and annual reports of exempt and excepted charities)—
- (a) in subsection (1) for “sections 41 to 45” substitute “sections 41 to 44 or section 45”; and
  - (b) after subsection (2) insert—
    - “(2A) Section 44A(2) to (7) above shall apply in relation to a person appointed to audit, or report on, the accounts of an exempt charity which is not a company as they apply in relation to a person such as is mentioned in section 44A(1).
    - (2B) But section 44A(2) to (7) so apply with the following modifications—
      - (a) any reference to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting as a person appointed as mentioned in subsection (2A) above; and
      - (b) any reference to the Commission or to any of its functions is to be read as a reference to the charity’s principal regulator or to any of that person’s functions in relation to the charity as such.”

### **30 Group accounts**

- (1) After section 49 of the 1993 Act insert—

#### **“49A Group accounts**

The provisions of Schedule 5A to this Act shall have effect with respect to—

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- (a) the preparation and auditing of accounts in respect of groups consisting of parent charities and their subsidiary undertakings (within the meaning of that Schedule), and
  - (b) other matters relating to such groups.”
- (2) Schedule 6 (which inserts the new Schedule 5A into the 1993 Act) has effect.

## CHAPTER 7

### CHARITABLE COMPANIES

#### **31 Relaxation of restriction on altering memorandum etc. of charitable company**

- (1) Section 64 of the 1993 Act (alteration of objects clause etc.) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Where a charity is a company, any regulated alteration by the company—
    - (a) requires the prior written consent of the Commission, and
    - (b) is ineffective if such consent has not been obtained.
  - (2A) The following are “regulated alterations”—
    - (a) any alteration of the objects clause in the company’s memorandum of association,
    - (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and
    - (c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.
  - (2B) For the purposes of subsection (2A) above—
    - (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 below) whose receipt may be authorised under that section; and
    - (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(5) and (6) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.”
- (3) In subsection (3) (documents required to be delivered to registrar of companies), for “any such alteration” substitute “a regulated alteration”.

#### **32 Annual audit or examination of accounts of charitable companies**

- (1) In section 249A(4) of the Companies Act 1985 (c. 6) (circumstances in which charitable company’s accounts may be subject to an accountant’s report instead of an audit)—
- (a) in paragraph (b) (gross income between £90,000 and £250,000) for “£250,000” substitute “£500,000”; and



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- (b) in paragraph (c) (balance sheet total not more than £1.4 million) for “£1.4 million” substitute “£2.8 million”.
- (2) In section 249B(1C) of that Act (circumstances in which parent company or subsidiary not disqualified for exemption from auditing requirement), in paragraph (b) (group’s aggregate turnover not more than £350,000 net or £420,000 gross in case of charity), for “£350,000 net (or £420,000 gross)” substitute “£700,000 net (or £840,000 gross)”.

### **33 Duty of auditor etc. of charitable company to report matters to Commission**

After section 68 of the 1993 Act insert—

#### **“68A Duty of charity’s auditors etc. to report matters to Commission**

- (1) Section 44A(2) to (7) above shall apply in relation to a person acting as—
  - (a) an auditor of a charitable company appointed under Chapter 5 of Part 11 of the Companies Act 1985 (auditors), or
  - (b) a reporting accountant appointed by a charitable company for the purposes of section 249C of that Act (report required instead of audit), as they apply in relation to a person such as is mentioned in section 44A(1).
- (2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting in the capacity mentioned in subsection (1) of this section.
- (3) In this section “charitable company” means a charity which is a company.”

## **CHAPTER 8**

### **CHARITABLE INCORPORATED ORGANISATIONS**

### **34 Charitable incorporated organisations**

Schedule 7, which makes provision about charitable incorporated organisations, has effect.

## **CHAPTER 9**

### **CHARITY TRUSTEES ETC.**

#### *Waiver of disqualification*

### **35 Waiver of trustee’s disqualification**

In section 72 of the 1993 Act (disqualification for being trustee of a charity) after subsection (4) insert—

“(4A) If—

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- (a) a person disqualified under subsection (1)(d) or (e) makes an application under subsection (4) above five years or more after the date on which his disqualification took effect, and
  - (b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),
- the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.”

*Remuneration of trustees etc.*

**36 Remuneration of trustees etc. providing services to charity**

After section 73 of the 1993 Act insert—

**“73A Remuneration of trustees etc. providing services to charity**

- (1) This section applies to remuneration for services provided by a person to or on behalf of a charity where—
- (a) he is a charity trustee or trustee for the charity, or
  - (b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7) below.

- (2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity.
- (3) Condition A is that the amount or maximum amount of the remuneration—
- (a) is set out in an agreement in writing between—
    - (i) the charity or its charity trustees (as the case may be), and
    - (ii) the relevant person,
 under which the relevant person is to provide the services in question to or on behalf of the charity, and
  - (b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.
- (4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.
- (5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—
- (a) a person in respect of whom an agreement within subsection (3) above is in force, or
  - (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or
  - (c) a person connected with a person falling within paragraph (a) or (b) above,

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the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

- (6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.
- (7) Nothing in this section applies to—
- (a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or
  - (b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).
- (8) The provisions or orders within this subsection are—
- (a) any provision contained in the trusts of the charity,
  - (b) any order of the court or the Commission,
  - (c) any statutory provision contained in or having effect under an Act of Parliament other than this section.
- (9) Section 73B below applies for the purposes of this section.

### **73B Supplementary provisions for purposes of section 73A**

- (1) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.
- (2) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).
- (3) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.
- (4) In section 73A—
- “benefit” means a direct or indirect benefit of any nature;
  - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;
  - “remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);
  - “services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.
- (5) For the purposes of section 73A the following persons are “connected” with a charity trustee or trustee for a charity—
- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
  - (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
  - (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
  - (d) an institution which is controlled—

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- (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
  - (ii) by two or more persons falling within sub-paragraph (i), when taken together;
  - (e) a body corporate in which—
    - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
    - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.
- (6) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (5) above as they apply for the purposes of provisions of that Schedule.”

### 37 **Disqualification of trustee receiving remuneration by virtue of section 36**

After section 73B of the 1993 Act (inserted by section 36 above) insert—

#### **“73C Disqualification of trustee receiving remuneration under section 73A**

- (1) This section applies to any charity trustee or trustee for a charity—
  - (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or
  - (b) who is connected with a person who is or would be so entitled.
- (2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.
- (3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.
- (4) Where the Commission is satisfied—
  - (a) that a person (“the disqualified trustee”) has done any act which he was disqualified from doing by virtue of subsection (2) above, and
  - (b) that the disqualified trustee or a person connected with him has received or is to receive from the charity any remuneration under the agreement in question,
 it may make an order under subsection (5) or (6) below (as appropriate).
- (5) An order under this subsection is one requiring the disqualified trustee—
  - (a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b) above;
  - (b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.
- (6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b) above.
- (7) If the Commission makes an order under subsection (5) or (6) above, the disqualified trustee or (as the case may be) connected person accordingly ceases

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to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires him to reimburse to the charity or (as the case may be) as it directs is not to be paid to him.

- (8) Subsections (4) to (6) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.”

*Liability of trustees etc.*

**38 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty**

After section 73C of the 1993 Act (inserted by section 37 above) insert—

**“73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty**

- (1) This section applies to a person who is or has been—
- (a) a charity trustee or trustee for a charity,
  - (b) a person appointed to audit a charity’s accounts (whether appointed under an enactment or otherwise), or
  - (c) an independent examiner, reporting accountant or other person appointed to examine or report on a charity’s accounts (whether appointed under an enactment or otherwise).
- (2) If the Commission considers—
- (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but
  - (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,
- the Commission may make an order relieving him wholly or partly from any such liability.
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.
- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) For the purposes of this section and section 73E below—
- (a) subsection (1)(b) above is to be read as including a reference to the Auditor General for Wales acting as auditor under section 43B above, and
  - (b) subsection (1)(c) above is to be read as including a reference to the Auditor General for Wales acting as examiner under that section;
- and in subsection (1)(b) and (c) any reference to a charity’s accounts is to be read as including any group accounts prepared by the charity trustees of a charity.
- (6) This section does not affect the operation of—

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- (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees),
- (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
- (c) section 73E below (which extends section 727 to auditors etc. of charities which are not companies).

**73E Court’s power to grant relief to apply to all auditors etc. of charities which are not companies**

- (1) Section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor by a company.
- (2) This section applies to—
  - (a) a person acting in a capacity within section 73D(1)(b) or (c) above in a case where, apart from this section, section 727 would not apply in relation to him as a person so acting, and
  - (b) a charity trustee of a CIO.’”

**39 Trustees’ indemnity insurance**

After section 73E of the 1993 Act (inserted by section 38 above) insert—

**“73F Trustees’ indemnity insurance**

- (1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—
  - (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or
  - (b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—
  - (a) any liability incurred by him to pay—
    - (i) a fine imposed in criminal proceedings, or
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
  - (b) any liability incurred by him in defending any criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or
  - (c) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not.

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- (3) For the purposes of subsection (2)(b) above—
- (a) the reference to any such conviction is a reference to one that has become final;
  - (b) a conviction becomes final—
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
  - (c) an appeal is disposed of—
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect.
- (4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.
- (5) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision.
- (6) The Minister may by order make such amendments of subsections (2) and (3) above as he considers appropriate.
- (7) No order may be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) This section—
- (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but
  - (b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.”

## CHAPTER 10

### POWERS OF UNINCORPORATED CHARITIES

#### **40 Power to transfer all property**

For section 74 of the 1993 Act substitute—

##### **“74 Power to transfer all property of unincorporated charity**

- (1) This section applies to a charity if—
- (a) its gross income in its last financial year did not exceed £10,000,
  - (b) it does not hold any designated land, and
  - (c) it is not a company or other body corporate.
- “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

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- (2) The charity trustees of such a charity may resolve for the purposes of this section—
  - (a) that all the property of the charity should be transferred to another charity specified in the resolution, or
  - (b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.
- (3) Any charity so specified may be either a registered charity or a charity which is not required to be registered.
- (4) But the charity trustees of a charity (“the transferor charity”) do not have power to pass a resolution under subsection (2) above unless they are satisfied—
  - (a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and
  - (b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.
- (7) Having received the copy of the resolution, the Commission—
  - (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
  - (a) the circumstances in and by reference to which they have decided to act under this section, or
  - (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (9) Subject to the provisions of section 74A below, a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.
- (10) Where such a resolution has taken effect, the charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred—
  - (a) is to be held by the charity to which it is transferred (“the transferee charity”) in accordance with subsection (11) below, but



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(b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity; and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.

(11) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.

But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property.

(12) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—

- (a) in the transferee charity, in its charity trustees or in any trustee for that charity, or
- (b) in any other person nominated by those charity trustees to hold property in trust for that charity.

(13) The Minister may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

(14) In this section references to the transfer of property to a charity are references to its transfer—

- (a) to the charity, or
- (b) to the charity trustees, or
- (c) to any trustee for the charity, or
- (d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the charity trustees may determine.

(15) Where a charity has a permanent endowment, this section has effect in accordance with section 74B.

#### **74A Resolution not to take effect or to take effect at later date**

(1) This section deals with circumstances in which a resolution under section 74(2) above either—

- (a) does not take effect under section 74(9) above, or
- (b) takes effect at a time later than that mentioned in section 74(9).

(2) A resolution does not take effect under section 74(9) above if before the end of—

- (a) the period of 60 days mentioned in section 74(9) (“the 60-day period”), or
- (b) that period as modified by subsection (3) or (4) below,

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the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.

“On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 74 above has not been complied with in connection with the resolution.

- (3) If under section 74(7) above the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—
  - (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.
- (4) If under section 74(8) above the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—
  - (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the date on which the information or explanations is or are provided to the Commission.
- (5) Subsection (6) below applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (3) and (4) above exceeds 120 days.
- (6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

#### **74B Transfer where charity has permanent endowment**

- (1) This section provides for the operation of section 74 above where a charity within section 74(1) has a permanent endowment (whether or not the charity’s trusts contain provision for the termination of the charity).
- (2) In such a case section 74 applies as follows—
  - (a) if the charity has both a permanent endowment and other property (“unrestricted property”)—
    - (i) a resolution under section 74(2) must relate to both its permanent endowment and its unrestricted property, and
    - (ii) that section applies in relation to its unrestricted property in accordance with subsection (3) below and in relation to its permanent endowment in accordance with subsections (4) to (11) below;
  - (b) if all of the property of the charity is comprised in its permanent endowment, that section applies in relation to its permanent endowment in accordance with subsections (4) to (11) below.
- (3) Section 74 applies in relation to unrestricted property of the charity as if references in that section to all or any of the property of the charity were references to all or any of its unrestricted property.

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- (4) Section 74 applies in relation to the permanent endowment of the charity with the following modifications.
- (5) References in that section to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.
- (6) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.
- (7) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied—
  - (a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and
  - (b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.
- (8) In the case of a transfer to which subsection (7) above applies, the resolution under section 74(2) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Commission for the purposes of this section.
- (9) The requirement in section 74(11) shall apply in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of any such guidance.
- (10) Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.
- (11) For the purposes of sections 74 and 74A above, any reference to any obligation imposed on the charity trustees by or under section 74 includes a reference to any obligation imposed on them by virtue of any of subsections (6) to (8) above.
- (12) Section 74(14) applies for the purposes of this section as it applies for the purposes of section 74.”

#### **41 Power to replace purposes**

After section 74B of the 1993 Act (inserted by section 40 above) insert—

##### **“74C Power to replace purposes of unincorporated charity**

- (1) This section applies to a charity if—
  - (a) its gross income in its last financial year did not exceed £10,000,
  - (b) it does not hold any designated land, and
  - (c) it is not a company or other body corporate.

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“Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

- (2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.
- (3) The other purposes so specified must be charitable purposes.
- (4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) above unless they are satisfied—
  - (a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and
  - (b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.
- (7) Having received the copy of the resolution, the Commission—
  - (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
  - (a) the circumstances in and by reference to which they have decided to act under this section, or
  - (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (9) Subject to the provisions of section 74A above (as they apply in accordance with subsection (10) below), a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.
- (10) Section 74A above applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 74 above, except that any reference to section 74(7), (8) or (9) is to be read as a reference to subsection (7), (8) or (9) above.
- (11) As from the time when a resolution takes effect under subsection (9) above, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.

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- (12) The Minister may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.”

#### **42 Power to modify powers or procedures**

After section 74C of the 1993 Act (inserted by section 41 above) insert—

##### **“74D Power to modify powers or procedures of unincorporated charity**

- (1) This section applies to any charity which is not a company or other body corporate.
- (2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—
- (a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
  - (b) regulating the procedure to be followed in any respect in connection with its administration,
- should be modified in such manner as is specified in the resolution.
- (3) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.
- (4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body either—
- (a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or
  - (b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.
- (5) Where—
- (a) the charity trustees have passed a resolution under subsection (2), and
  - (b) (if subsection (4) applies) a further resolution has been passed under that subsection,
- the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.
- (6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution under subsection (2), or (if later) the date when any such further resolution was passed under subsection (4).”

## **CHAPTER 11**

### **POWERS TO SPEND CAPITAL AND MERGERS**

#### *Spending of capital*

#### **43 Power to spend capital**

For section 75 of the 1993 Act substitute—

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### **“75 Power of unincorporated charities to spend capital: general**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.
- (2) But this section does not apply to a fund if section 75A below (power of larger charities to spend capital given for particular purpose) applies to it.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (5) Once the charity trustees have passed a resolution under subsection (3) above, the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) In this section “available endowment fund”, in relation to a charity, means—
  - (a) the whole of the charity’s permanent endowment if it is all subject to the same trusts, or
  - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

### **75A Power of larger unincorporated charities to spend capital given for particular purpose**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—
  - (a) the capital of the fund consists entirely of property given—
    - (i) by a particular individual,
    - (ii) by a particular institution (by way of grant or otherwise), or
    - (iii) by two or more individuals or institutions in pursuit of a common purpose, and
  - (b) the financial condition in subsection (2) below is met.
- (2) The financial condition in this subsection is met if—
  - (a) the relevant charity’s gross income in its last financial year exceeded £1,000, and
  - (b) the market value of the endowment fund exceeds £10,000.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

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- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (5) The charity trustees—
  - (a) must send a copy of any resolution under subsection (3) above to the Commission, together with a statement of their reasons for passing it, and
  - (b) may not implement the resolution except in accordance with the following provisions of this section.
- (6) Having received the copy of the resolution the Commission may—
  - (a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
  - (a) the circumstances in and by reference to which they have decided to act under this section, or
  - (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (8) When considering whether to concur with the resolution the Commission must take into account—
  - (a) any evidence available to it as to the wishes of the donor or donors mentioned in subsection (1)(a) above, and
  - (b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- (9) The Commission must not concur with the resolution unless it is satisfied—
  - (a) that its implementation would accord with the spirit of the gift or gifts mentioned in subsection (1)(a) above (even though it would be inconsistent with the restrictions mentioned in subsection (3) above), and
  - (b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution.
- (10) Before the end of the period of three months beginning with the relevant date, the Commission must notify the charity trustees in writing either—
  - (a) that the Commission concurs with the resolution, or
  - (b) that it does not concur with it.
- (11) In subsection (10) “the relevant date” means—

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- (a) in a case where the Commission directs the charity trustees under subsection (6) above to give public notice of the resolution, the date when that notice is given, and
- (b) in any other case, the date on which the Commission receives the copy of the resolution in accordance with subsection (5) above.

(12) Where—

- (a) the charity trustees are notified by the Commission that it concurs with the resolution, or
- (b) the period of three months mentioned in subsection (10) above has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (3).

(13) The Minister may by order amend subsection (2) above by substituting a different sum for any sum specified there.

(14) In this section—

- (a) “available endowment fund” has the same meaning as in section 75 above,
- (b) “market value”, in relation to an endowment fund, means—
  - (i) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or
  - (ii) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose, and
- (c) the reference in subsection (1) to the giving of property by an individual includes his giving it under his will.

### **75B Power to spend capital subject to special trusts**

- (1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity (“the relevant charity”) for the purposes of this section.
- (2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—
  - (a) by a particular individual,
  - (b) by a particular institution (by way of grant or otherwise), or



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- (c) by two or more individuals or institutions in pursuit of a common purpose,  
subsections (5) to (11) of section 75A above apply in relation to the resolution and that gift or gifts as they apply in relation to a resolution under section 75A(3) and the gift or gifts mentioned in section 75A(1)(a).
- (5) Where—
- (a) the charity trustees have passed a resolution under subsection (2) above, and
- (b) (in a case where section 75A(5) to (11) above apply in accordance with subsection (4) above) either—
- (i) the charity trustees are notified by the Commission that it concurs with the resolution, or
- (ii) the period of three months mentioned in section 75A(10) has elapsed without the Commission notifying them that it does not concur with the resolution,
- the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (2).
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) The Minister may by order amend subsection (4) above by substituting a different sum for the sum specified there.
- (8) In this section—
- (a) “available endowment fund” has the same meaning as in section 75 above,
- (b) “market value” has the same meaning as in section 75A above, and
- (c) the reference in subsection (4) to the giving of property by an individual includes his giving it under his will.”

### *Mergers*

## **44 Merger of charities**

After section 75B of the 1993 Act (inserted by section 43 above) insert—

### *“Mergers*

#### **75C Register of charity mergers**

- (1) The Commission shall establish and maintain a register of charity mergers.
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with subsections (6) to (9) and such procedures as it may determine.
- (4) In this section “relevant charity merger” means—

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- (a) a merger of two or more charities in connection with which one of them (“the transferee”) has transferred to it all the property of the other or others, each of which (a “transferor”) ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee, or
  - (b) a merger of two or more charities (“transferors”) in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity (“the transferee”).
- (5) In the case of a merger involving the transfer of property of any charity which has both a permanent endowment and other property (“unrestricted property”) and whose trusts do not contain provision for the termination of the charity, subsection (4)(a) or (b) applies in relation to any such charity as if—
- (a) the reference to all of its property were a reference to all of its unrestricted property, and
  - (b) any reference to its ceasing to exist were omitted.
- (6) A notification under subsection (3) above may be given in respect of a relevant charity merger at any time after—
- (a) the transfer of property involved in the merger has taken place, or
  - (b) (if more than one transfer of property is so involved) the last of those transfers has taken place.
- (7) If a vesting declaration is made in connection with a relevant charity merger, a notification under subsection (3) above must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (6) above has taken place.
- (8) A notification under subsection (3) is to be given by the charity trustees of the transferee and must—
- (a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place;
  - (b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities; and
  - (c) in the case of a notification required by subsection (7), set out the matters mentioned in subsection (9).
- (9) The matters are—
- (a) the fact that the vesting declaration in question has been made;
  - (b) the date when the declaration was made; and
  - (c) the date on which the vesting of title under the declaration took place by virtue of section 75E(2) below.
- (10) In this section and section 75D—
- (a) any reference to a transfer of property includes a transfer effected by a vesting declaration; and
  - (b) “vesting declaration” means a declaration to which section 75E(2) below applies.
- (11) Nothing in this section or section 75E or 75F applies in a case where section 69K (amalgamation of CIOs) or 69M (transfer of CIO’s undertaking) applies.

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### **75D Register of charity mergers: supplementary**

- (1) Subsection (2) applies to the entry to be made in the register in respect of a relevant charity merger, as required by section 75C(3) above.
- (2) The entry must—
  - (a) specify the date when the transfer or transfers of property involved in the merger took place,
  - (b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 75C(9) above, and
  - (c) contain such other particulars of the merger as the Commission thinks fit.
- (3) The register shall be open to public inspection at all reasonable times.
- (4) Where any information contained in the register is not in documentary form, subsection (3) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (5) In this section—

“the register” means the register of charity mergers;  
“relevant charity merger” has the same meaning as in section 75C.

### **75E Pre-merger vesting declarations**

- (1) Subsection (2) below applies to a declaration which—
  - (a) is made by deed for the purposes of this section by the charity trustees of the transferor,
  - (b) is made in connection with a relevant charity merger, and
  - (c) is to the effect that (subject to subsections (3) and (4)) all of the transferor’s property is to vest in the transferee on such date as is specified in the declaration (“the specified date”).
- (2) The declaration operates on the specified date to vest the legal title to all of the transferor’s property in the transferee, without the need for any further document transferring it.

This is subject to subsections (3) and (4).
- (3) Subsection (2) does not apply to—
  - (a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock);
  - (b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor’s interest without the consent of some other person, unless that consent has been obtained before the specified date; or
  - (c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment.

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- (4) In its application to registered land within the meaning of the Land Registration Act 2002, subsection (2) has effect subject to section 27 of that Act (dispositions required to be registered).
- (5) In this section “relevant charity merger” has the same meaning as in section 75C.
- (6) In this section—
  - (a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 75C above, and
  - (b) any reference to all of the transferor’s property, where the transferor is a charity within section 75C(5), is a reference to all of the transferor’s unrestricted property (within the meaning of that provision).
- (7) In this section any reference to the transferee, in relation to a relevant charity merger, is a reference to—
  - (a) the transferee (within the meaning of section 75C above), if it is a company or other body corporate, and
  - (b) otherwise, to the charity trustees of the transferee (within the meaning of that section).

#### **75F Effect of registering charity merger on gifts to transferor**

- (1) This section applies where a relevant charity merger is registered in the register of charity mergers.
- (2) Any gift which—
  - (a) is expressed as a gift to the transferor, and
  - (b) takes effect on or after the date of registration of the merger, takes effect as a gift to the transferee, unless it is an excluded gift.
- (3) A gift is an “excluded gift” if—
  - (a) the transferor is a charity within section 75C(5), and
  - (b) the gift is intended to be held subject to the trusts on which the whole or part of the charity’s permanent endowment is held.
- (4) In this section—
  - “relevant charity merger” has the same meaning as in section 75C;
  - and
  - “transferor” and “transferee” have the same meanings as in section 75E.”

## PART 3

### FUNDING FOR CHARITABLE, BENEVOLENT OR PHILANTHROPIC INSTITUTIONS

#### CHAPTER 1

##### PUBLIC CHARITABLE COLLECTIONS

###### *Preliminary*

#### **45 Regulation of public charitable collections**

- (1) This Chapter regulates public charitable collections, which are of the following two types—
  - (a) collections in a public place; and
  - (b) door to door collections.
- (2) For the purposes of this Chapter—
  - (a) “public charitable collection” means (subject to section 46) a charitable appeal which is made—
    - (i) in any public place, or
    - (ii) by means of visits to houses or business premises (or both);
  - (b) “charitable appeal” means an appeal to members of the public which is—
    - (i) an appeal to them to give money or other property, or
    - (ii) an appeal falling within subsection (4),(or both) and which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes;
  - (c) a “collection in a public place” is a public charitable collection that is made in a public place, as mentioned in paragraph (a)(i);
  - (d) a “door to door collection” is a public charitable collection that is made by means of visits to houses or business premises (or both), as mentioned in paragraph (a)(ii).
- (3) For the purposes of subsection (2)(b)—
  - (a) the reference to the giving of money is to doing so by whatever means; and
  - (b) it does not matter whether the giving of money or other property is for consideration or otherwise.
- (4) An appeal falls within this subsection if it consists in or includes—
  - (a) the making of an offer to sell goods or to supply services, or
  - (b) the exposing of goods for sale,to members of the public.
- (5) In this section—
  - “business premises” means any premises used for business or other commercial purposes;
  - “house” includes any part of a building constituting a separate dwelling;
  - “public place” means—

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- (a) any highway, and
  - (b) (subject to subsection (6)) any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either—
    - (i) is not within a building, or
    - (ii) if within a building, is a public area within any station, airport or shopping precinct or any other similar public area.
- (6) In subsection (5), paragraph (b) of the definition of “public place” does not include—
- (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or
  - (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question.

#### **46 Charitable appeals that are not public charitable collections**

- (1) A charitable appeal is not a public charitable collection if the appeal—
- (a) is made in the course of a public meeting; or
  - (b) is made—
    - (i) on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or
    - (ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it,
 where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise); or
  - (c) is made on land to which members of the public have access only—
    - (i) by virtue of the express or implied permission of the occupier of the land, or
    - (ii) by virtue of any enactment,
 and the occupier is the promoter of the collection; or
  - (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.
- (2) For the purposes of subsection (1)(c) “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.
- (3) For the purposes of subsection (1)(d) a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.

#### **47 Other definitions for purposes of this Chapter**

- (1) In this Chapter—
- “charitable, benevolent or philanthropic institution” means—
    - (a) a charity, or
    - (b) an institution (other than a charity) which is established for charitable, benevolent, or philanthropic purposes;
  - “collector”, in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made by him alone or with others and whether made by him for remuneration or otherwise);

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“local authority” means a unitary authority, the council of a district so far as it is not a unitary authority, the council of a London borough or of a Welsh county or county borough, the Common Council of the City of London or the Council of the Isles of Scilly;

“prescribed” means prescribed by regulations under section 63;

“proceeds”, in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to the charitable appeal in question;

“promoter”, in relation to a public charitable collection, means—

- (a) a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or
- (b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection,

and associated expressions are to be construed accordingly;

“public collections certificate” means a certificate issued by the Commission under section 52.

- (2) In subsection (1) “unitary authority” means—
  - (a) the council of a county so far as it is the council for an area for which there are no district councils;
  - (b) the council of any district comprised in an area for which there is no county council.
- (3) The functions exercisable under this Chapter by a local authority are to be exercisable—
  - (a) as respects the Inner Temple, by its Sub-Treasurer, and
  - (b) as respects the Middle Temple, by its Under Treasurer;and references in this Chapter to a local authority or to the area of a local authority are to be construed accordingly.

### *Restrictions on conducting collections*

## **48 Restrictions on conducting collections in a public place**

- (1) A collection in a public place must not be conducted unless—
  - (a) the promoters of the collection hold a public collections certificate in force under section 52 in respect of the collection, and
  - (b) the collection is conducted in accordance with a permit issued under section 59 by the local authority in whose area it is conducted.
- (2) Subsection (1) does not apply to a public charitable collection which is an exempt collection by virtue of section 50 (local, short-term collections).
- (3) Where—
  - (a) a collection in a public place is conducted in contravention of subsection (1), and
  - (b) the circumstances of the case do not fall within section 50(6),every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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#### **49 Restrictions on conducting door to door collections**

- (1) A door to door collection must not be conducted unless the promoters of the collection—
- (a) hold a public collections certificate in force under section 52 in respect of the collection, and
  - (b) have within the prescribed period falling before the day (or the first of the days) on which the collection takes place—
    - (i) notified the local authority in whose area the collection is to be conducted of the matters mentioned in subsection (3), and
    - (ii) provided that authority with a copy of the certificate mentioned in paragraph (a).
- (2) Subsection (1) does not apply to a door to door collection which is an exempt collection by virtue of section 50 (local, short-term collections).
- (3) The matters referred to in subsection (1)(b)(i) are—
- (a) the purpose for which the proceeds of the appeal are to be applied;
  - (b) the prescribed particulars of when the collection is to be conducted;
  - (c) the locality within which the collection is to be conducted; and
  - (d) such other matters as may be prescribed.
- (4) Where—
- (a) a door to door collection is conducted in contravention of subsection (1), and
  - (b) the circumstances of the case do not fall within section 50(6),
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- This is subject to subsection (5).
- (5) Where—
- (a) a door to door collection is conducted in contravention of subsection (1),
  - (b) the appeal is for goods only, and
  - (c) the circumstances of the case do not fall within section 50(6),
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In subsection (5) “goods” includes all personal chattels other than things in action and money.

#### **50 Exemption for local, short-term collections**

- (1) A public charitable collection is an exempt collection if—
- (a) it is a local, short-term collection (see subsection (2)), and
  - (b) the promoters notify the local authority in whose area it is to be conducted of the matters mentioned in subsection (3) within the prescribed period falling before the day (or the first of the days) on which the collection takes place,
- unless, within the prescribed period beginning with the date when they are so notified, the local authority serve a notice under subsection (4) on the promoters.
- (2) A public charitable collection is a local, short term collection if—
- (a) the appeal is local in character; and



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- (b) the duration of the appeal does not exceed the prescribed period of time.
- (3) The matters referred to in subsection (1)(b) are—
  - (a) the purpose for which the proceeds of the appeal are to be applied;
  - (b) the date or dates on which the collection is to be conducted;
  - (c) the place at which, or the locality within which, the collection is to be conducted; and
  - (d) such other matters as may be prescribed.
- (4) Where it appears to the local authority—
  - (a) that the collection is not a local, short-term collection, or
  - (b) that the promoters or any of them have or has on any occasion—
    - (i) breached any provision of regulations made under section 63, or
    - (ii) been convicted of an offence within section 53(2)(a)(i) to (v),they must serve on the promoters written notice of their decision to that effect and the reasons for their decision.
- (5) That notice must also state the right of appeal conferred by section 62(1) and the time within which such an appeal must be brought.
- (6) Where—
  - (a) a collection in a public place is conducted otherwise than in accordance with section 48(1) or a door to door collection is conducted otherwise than in accordance with section 49(1), and
  - (b) the collection is a local, short term collection but the promoters do not notify the local authority as mentioned in subsection (1)(b),every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Public collections certificates*

### **51 Applications for certificates**

- (1) A person or persons proposing to promote public charitable collections (other than exempt collections) may apply to the Charity Commission for a public collections certificate in respect of those collections.
- (2) The application must be made—
  - (a) within the specified period falling before the first of the collections is to commence, or
  - (b) before such later date as the Commission may allow in the case of that application.
- (3) The application must—
  - (a) be made in such form as may be specified,
  - (b) specify the period for which the certificate is sought (which must be no more than 5 years), and
  - (c) contain such other information as may be specified.

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- (4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Chapter, in the context of such certificates, to public charitable collections are to be read accordingly.
- (5) In subsections (2) and (3) “specified” means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate.
- (6) Regulations under subsection (5)—
  - (a) must be published in such manner as the Commission considers appropriate,
  - (b) may make different provision for different cases or descriptions of case, and
  - (c) may make such incidental, supplementary, consequential or transitional provision as the Commission considers appropriate.
- (7) In this section “exempt collection” means a public charitable collection which is an exempt collection by virtue of section 50.

## **52 Determination of applications and issue of certificates**

- (1) On receiving an application for a public collections certificate made in accordance with section 51, the Commission may make such inquiries (whether under section 54 or otherwise) as it thinks fit.
- (2) The Commission must, after making any such inquiries, determine the application by either—
  - (a) issuing a public collections certificate in respect of the collections, or
  - (b) refusing the application on one or more of the grounds specified in section 53(1).
- (3) A public collections certificate—
  - (a) must specify such matters as may be prescribed, and
  - (b) shall (subject to section 56) be in force for—
    - (i) the period specified in the application in accordance with section 51(3)(b), or
    - (ii) such shorter period as the Commission thinks fit.
- (4) The Commission may, at the time of issuing a public collections certificate, attach to it such conditions as it thinks fit.
- (5) Conditions attached under subsection (4) may include conditions prescribed for the purposes of that subsection.
- (6) The Commission must secure that the terms of any conditions attached under subsection (4) are consistent with the provisions of any regulations under section 63 (whether or not prescribing conditions for the purposes of that subsection).
- (7) Where the Commission—
  - (a) refuses to issue a certificate, or
  - (b) attaches any condition to it,it must serve on the applicant written notice of its decision and the reasons for its decision.

- (8) That notice must also state the right of appeal conferred by section 57(1) and the time within which such an appeal must be brought.

### **53 Grounds for refusing to issue a certificate**

- (1) The grounds on which the Commission may refuse an application for a public collections certificate are—
- (a) that the applicant has been convicted of a relevant offence;
  - (b) where the applicant is a person other than a charitable, benevolent or philanthropic institution for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections;
  - (c) that it appears to the Commission that the applicant, in promoting any other collection authorised under this Chapter or under section 119 of the 1982 Act, failed to exercise the required due diligence;
  - (d) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections;
  - (e) that it appears to the Commission that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds of the collections;
  - (f) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances;
  - (g) that the applicant has failed to provide information—
    - (i) required for the purposes of the application for the certificate or a previous application, or
    - (ii) in response to a request under section 54(1);
  - (h) that it appears to the Commission that information so provided to it by the applicant is false or misleading in a material particular;
  - (i) that it appears to the Commission that the applicant or any person authorised by him—
    - (i) has breached any conditions attached to a previous public collections certificate, or
    - (ii) has persistently breached any conditions attached to a permit issued under section 59;
  - (j) that it appears to the Commission that the applicant or any person authorised by him has on any occasion breached any provision of regulations made under section 63(1)(b).
- (2) For the purposes of subsection (1)—
- (a) a “relevant offence” is—
    - (i) an offence under section 5 of the 1916 Act;
    - (ii) an offence under the 1939 Act;
    - (iii) an offence under section 119 of the 1982 Act or regulations made under it;
    - (iv) an offence under this Chapter;
    - (v) an offence involving dishonesty; or

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- (vi) an offence of a kind the commission of which would, in the opinion of the Commission, be likely to be facilitated by the issuing to the applicant of a public collections certificate; and
- (b) the “required due diligence” is due diligence—
  - (i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were (or will be) fit and proper persons;
  - (ii) to secure that such persons complied (or will comply) with the provisions of regulations under section 63(1)(b) of this Act or (as the case may be) section 119 of the 1982 Act; or
  - (iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised.
- (3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) is to be construed as a reference to any of the applicants.
- (4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 63(1)(b) of this Act or (as the case may be) under section 119 of the 1982 Act.
- (5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised—
  - (a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or
  - (b) under the 1939 Act (collection of money or other property by means of visits from house to house),
 as it applies to his conduct in relation to a collection authorised under this Chapter, but subject to the modifications set out in subsection (6).
- (6) The modifications are—
  - (a) in the case of a collection authorised under regulations made under the 1916 Act—
    - (i) the reference in subsection (2)(b)(ii) to regulations under section 63(1)(b) of this Act is to be construed as a reference to the regulations under which the collection in question was authorised, and
    - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to any written authority provided to a collector pursuant to those regulations; and
  - (b) in the case of a collection authorised under the 1939 Act—
    - (i) the reference in subsection (2)(b)(ii) to regulations under section 63(1)(b) of this Act is to be construed as a reference to regulations under section 4 of that Act, and
    - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to badges or certificates of authority in a form prescribed by such regulations.
- (7) In subsections (1)(c) and (5) a reference to a collection authorised under this Chapter is a reference to a public charitable collection that—
  - (a) is conducted in accordance with section 48 or section 49 (as the case may be), or

(b) is an exempt collection by virtue of section 50.

(8) In this section—

“the 1916 Act” means the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31);

“the 1939 Act” means the House to House Collections Act 1939 (c. 44); and

“the 1982 Act” means the Civic Government (Scotland) Act 1982 (c. 45).

#### **54 Power to call for information and documents**

(1) The Commission may request—

(a) any applicant for a public collections certificate, or

(b) any person to whom such a certificate has been issued,

to provide it with any information in his possession, or document in his custody or under this control, which is relevant to the exercise of any of its functions under this Chapter.

(2) Nothing in this section affects the power conferred on the Commission by section 9 of the 1993 Act.

#### **55 Transfer of certificate between trustees of unincorporated charity**

(1) One or more individuals to whom a public collections certificate has been issued (“the holders”) may apply to the Commission for a direction that the certificate be transferred to one or more other individuals (“the recipients”).

(2) An application under subsection (1) must—

(a) be in such form as may be specified, and

(b) contain such information as may be specified.

(3) The Commission may direct that the certificate be transferred if it is satisfied that—

(a) each of the holders is or was a trustee of a charity which is not a body corporate;

(b) each of the recipients is a trustee of that charity and consents to the transfer; and

(c) the charity trustees consent to the transfer.

(4) Where the Commission refuses to direct that a certificate be transferred, it must serve on the holders written notice of—

(a) its decision, and

(b) the reasons for its decision.

(5) That notice must also state the right of appeal conferred by section 57(2) and the time within which such an appeal must be brought.

(6) Subsections (5) and (6) of section 51 apply for the purposes of subsection (2) of this section as they apply for the purposes of subsection (3) of that section.

(7) Except as provided by this section, a public collections certificate is not transferable.

#### **56 Withdrawal or variation etc. of certificates**

(1) Where subsection (2), (3) or (4) applies, the Commission may—

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- (a) withdraw a public collections certificate,
  - (b) suspend such a certificate,
  - (c) attach any condition (or further condition) to such a certificate, or
  - (d) vary any existing condition of such a certificate.
- (2) This subsection applies where the Commission—
- (a) has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate, and
  - (b) is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions.
- (3) This subsection applies where—
- (a) the holder of a certificate has unreasonably refused to provide any information or document in response to a request under section 54(1), or
  - (b) the Commission has reason to believe that information provided to it by the holder of a certificate (or, where there is more than one holder, by any of them) for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular.
- (4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing.
- (5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the certificate or by varying an existing condition) must be one that it would be appropriate for the Commission to attach to the certificate under section 52(4) if the holder was applying for it in the circumstances prevailing at that time.
- (6) The exercise by the Commission of the power conferred by paragraph (b), (c) or (d) of subsection (1) on one occasion does not prevent it from exercising any of the powers conferred by that subsection on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the Commission issued the certificate is a reference to the time when it last exercised any of those powers.
- (7) Where the Commission—
- (a) withdraws or suspends a certificate,
  - (b) attaches a condition to a certificate, or
  - (c) varies an existing condition of a certificate,
- it must serve on the holder written notice of its decision and the reasons for its decision.
- (8) That notice must also state the right of appeal conferred by section 57(3) and the time within which such an appeal must be brought.
- (9) If the Commission—
- (a) considers that the interests of the public require a decision by it under this section to have immediate effect, and
  - (b) includes a statement to that effect and the reasons for it in the notice served under subsection (7),
- the decision takes effect when that notice is served on the holder.

- (10) In any other case the certificate shall continue to have effect as if it had not been withdrawn or suspended or (as the case may be) as if the condition had not been attached or varied—
- (a) until the time for bringing an appeal under section 57(3) has expired, or
  - (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.
- (11) A certificate suspended under this section shall (subject to any appeal and any withdrawal of the certificate) remain suspended until—
- (a) such time as the Commission may by notice direct that the certificate is again in force, or
  - (b) the end of the period of six months beginning with the date on which the suspension takes effect,
- whichever is the sooner.

## **57 Appeals against decisions of the Commission**

- (1) A person who has duly applied to the Commission for a public collections certificate may appeal to the Charity Tribunal (“the Tribunal”) against a decision of the Commission under section 52—
- (a) to refuse to issue the certificate, or
  - (b) to attach any condition to it.
- (2) A person to whom a public collections certificate has been issued may appeal to the Tribunal against a decision of the Commission not to direct that the certificate be transferred under section 55.
- (3) A person to whom a public collections certificate has been issued may appeal to the Tribunal against a decision of the Commission under section 56—
- (a) to withdraw or suspend the certificate,
  - (b) to attach a condition to the certificate, or
  - (c) to vary an existing condition of the certificate.
- (4) The Attorney General may appeal to the Tribunal against a decision of the Commission—
- (a) to issue, or to refuse to issue, a certificate,
  - (b) to attach, or not to attach, any condition to a certificate (whether under section 52 or section 56),
  - (c) to direct, or not to direct, that a certificate be transferred under section 55,
  - (d) to withdraw or suspend, or not to withdraw or suspend, a certificate, or
  - (e) to vary, or not to vary, an existing condition of a certificate.
- (5) In determining an appeal under this section, the Tribunal—
- (a) must consider afresh the decision appealed against, and
  - (b) may take into account evidence which was not available to the Commission.
- (6) On an appeal under this section, the Tribunal may—
- (a) dismiss the appeal,
  - (b) quash the decision, or
  - (c) substitute for the decision another decision of a kind that the Commission could have made;

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and in any case the Tribunal may give such directions as it thinks fit, having regard to the provisions of this Chapter and of regulations under section 63.

- (7) If the Tribunal quashes the decision, it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).

### *Permits*

## **58 Applications for permits to conduct collections in public places**

- (1) A person or persons proposing to promote a collection in a public place (other than an exempt collection) in the area of a local authority may apply to the authority for a permit to conduct that collection.
- (2) The application must be made within the prescribed period falling before the day (or the first of the days) on which the collection is to take place, except as provided in subsection (4).
- (3) The application must—
  - (a) specify the date or dates in respect of which it is desired that the permit, if issued, should have effect (which, in the case of two or more dates, must not span a period of more than 12 months);
  - (b) be accompanied by a copy of the public collections certificate in force under section 52 in respect of the proposed collection; and
  - (c) contain such information as may be prescribed.
- (4) Where an application (“the certificate application”) has been made in accordance with section 51 for a public collections certificate in respect of the collection and either—
  - (a) the certificate application has not been determined by the end of the period mentioned in subsection (2) above, or
  - (b) the certificate application has been determined by the issue of such a certificate but at a time when there is insufficient time remaining for the application mentioned in subsection (2) (“the permit application”) to be made by the end of that period,

the permit application must be made as early as practicable before the day (or the first of the days) on which the collection is to take place.
- (5) In this section “exempt collection” means a collection in a public place which is an exempt collection by virtue of section 50.

## **59 Determination of applications and issue of permits**

- (1) On receiving an application made in accordance with section 58 for a permit in respect of a collection in a public place, a local authority must determine the application within the prescribed period by either—
  - (a) issuing a permit in respect of the collection, or
  - (b) refusing the application on the ground specified in section 60(1).
- (2) Where a local authority issue such a permit, it shall (subject to section 61) have effect in respect of the date or dates specified in the application in accordance with section 58(3)
  - (a).



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- (3) At the time of issuing a permit under this section, a local authority may attach to it such conditions within paragraphs (a) to (d) below as they think fit, having regard to the local circumstances of the collection—
- (a) conditions specifying the day of the week, date, time or frequency of the collection;
  - (b) conditions specifying the locality or localities within their area in which the collection may be conducted;
  - (c) conditions regulating the manner in which the collection is to be conducted;
  - (d) such other conditions as may be prescribed for the purposes of this subsection.
- (4) A local authority must secure that the terms of any conditions attached under subsection (3) are consistent with the provisions of any regulations under section 63 (whether or not prescribing conditions for the purposes of that subsection).
- (5) Where a local authority—
- (a) refuse to issue a permit, or
  - (b) attach any condition to it,
- they must serve on the applicant written notice of their decision and the reasons for their decision.
- (6) That notice must also state the right of appeal conferred by section 62(2) and the time within which such an appeal must be brought.

## **60 Refusal of permits**

- (1) The only ground on which a local authority may refuse an application for a permit to conduct a collection in a public place is that it appears to them that the collection would cause undue inconvenience to members of the public by reason of—
- (a) the day or the week or date on or in which,
  - (b) the time at which,
  - (c) the frequency with which, or
  - (d) the locality or localities in which,
- it is proposed to be conducted.
- (2) In making a decision under subsection (1), a local authority may have regard to the fact (where it is the case) that the collection is proposed to be conducted—
- (a) wholly or partly in a locality in which another collection in a public place is already authorised to be conducted under this Chapter, and
  - (b) on a day on which that other collection is already so authorised, or on the day falling immediately before, or immediately after, any such day.
- (3) A local authority must not, however, have regard to the matters mentioned in subsection (2) if it appears to them—
- (a) that the proposed collection would be conducted only in one location, which is on land to which members of the public would have access only—
    - (i) by virtue of the express or implied permission of the occupier of the land, or
    - (ii) by virtue of any enactment, and
  - (b) that the occupier of the land consents to that collection being conducted there;

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and for this purpose “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.

- (4) In this section a reference to a collection in a public place authorised under this Chapter is a reference to a collection in a public place that—
- (a) is conducted in accordance with section 48, or
  - (b) is an exempt collection by virtue of section 50.

## **61 Withdrawal or variation etc. of permits**

- (1) Where subsection (2), (3) or (4) applies, a local authority who have issued a permit under section 59 may—
- (a) withdraw the permit,
  - (b) attach any condition (or further condition) to the permit, or
  - (c) vary any existing condition of the permit.
- (2) This subsection applies where the local authority—
- (a) have reason to believe that there has been a change in the circumstances which prevailed at the time when they issued the permit, and
  - (b) are of the opinion that, if the application for the permit had been made in the new circumstances, they would not have issued the permit or would have issued it subject to different or additional conditions.
- (3) This subsection applies where the local authority have reason to believe that any information provided to them by the holder of a permit (or, where there is more than one holder, by any of them) for the purposes of the application for the permit was false or misleading in a material particular.
- (4) This subsection applies where the local authority have reason to believe that there has been or is likely to be a breach of any condition of a permit issued by them, or that a breach of such a condition is continuing.
- (5) Any condition imposed at any time by a local authority under subsection (1) (whether by attaching a new condition to the permit or by varying an existing condition) must be one that it would be appropriate for the authority to attach to the permit under section 59(3) if the holder was applying for it in the circumstances prevailing at that time.
- (6) The exercise by a local authority of the power conferred by paragraph (b) or (c) of subsection (1) on one occasion does not prevent them from exercising any of the powers conferred by that subsection on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the local authority issued the permit is a reference to the time when they last exercised any of those powers.
- (7) Where under this section a local authority—
- (a) withdraw a permit,
  - (b) attach a condition to a permit, or
  - (c) vary an existing condition of a permit,
- they must serve on the holder written notice of their decision and the reasons for their decision.
- (8) That notice must also state the right of appeal conferred by section 62(3) and the time within which such an appeal must be brought.

- (9) Where a local authority withdraw a permit under this section, they must send a copy of their decision and the reasons for it to the Commission.
- (10) Where a local authority under this section withdraw a permit, attach any condition to a permit, or vary an existing condition of a permit, the permit shall continue to have effect as if it had not been withdrawn or (as the case may be) as if the condition had not been attached or varied—
  - (a) until the time for bringing an appeal under section 62(3) has expired, or
  - (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

## **62 Appeals against decisions of local authority**

- (1) A person who, in relation to a public charitable collection, has duly notified a local authority of the matters mentioned in section 50(3) may appeal to a magistrates' court against a decision of the local authority under section 50(4)—
  - (a) that the collection is not a local, short-term collection, or
  - (b) that the promoters or any of them has breached any such provision, or been convicted of any such offence, as is mentioned in paragraph (b) of that subsection.
- (2) A person who has duly applied to a local authority for a permit to conduct a collection in a public place in the authority's area may appeal to a magistrates' court against a decision of the authority under section 59—
  - (a) to refuse to issue a permit, or
  - (b) to attach any condition to it.
- (3) A person to whom a permit has been issued may appeal to a magistrates' court against a decision of the local authority under section 61—
  - (a) to withdraw the permit,
  - (b) to attach a condition to the permit, or
  - (c) to vary an existing condition of the permit.
- (4) An appeal under subsection (1), (2) or (3) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 (c. 43) shall apply to the proceedings.
- (5) Any such appeal shall be brought within 14 days of the date of service on the person in question of the relevant notice under section 50(4), section 59(5) or (as the case may be) section 61(7); and for the purposes of this section an appeal shall be taken to be brought when the complaint is made.
- (6) An appeal against the decision of a magistrates' court on an appeal under subsection (1), (2) or (3) may be brought to the Crown Court.
- (7) On an appeal to a magistrates' court or the Crown Court under this section, the court may confirm, vary or reverse the local authority's decision and generally give such directions as it thinks fit, having regard to the provisions of this Chapter and of any regulations under section 63.
- (8) On an appeal against a decision of a local authority under section 50(4), directions under subsection (7) may include a direction that the collection may be conducted—
  - (a) on the date or dates notified in accordance with section 50(3)(b), or
  - (b) on such other date or dates as may be specified in the direction;

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and if so conducted the collection is to be regarded as one that is an exempt collection by virtue of section 50.

- (9) It shall be the duty of the local authority to comply with any directions given by the court under subsection (7); but the authority need not comply with any directions given by a magistrates' court—
- (a) until the time for bringing an appeal under subsection (6) has expired, or
  - (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

### *Supplementary*

## **63 Regulations**

- (1) The Minister may make regulations—
- (a) prescribing the matters which a local authority are to take into account in determining whether a collection is local in character for the purposes of section 50(2)(a);
  - (b) for the purpose of regulating the conduct of public charitable collections;
  - (c) prescribing anything falling to be prescribed by virtue of any provision of this Chapter.
- (2) The matters which may be prescribed by regulations under subsection (1)(a) include—
- (a) the extent of the area within which the appeal is to be conducted;
  - (b) whether the appeal forms part of a series of appeals;
  - (c) the number of collectors making the appeal and whether they are acting for remuneration or otherwise;
  - (d) the financial resources (of any description) of any charitable, benevolent or philanthropic institution for whose benefit the appeal is to be conducted;
  - (e) where the promoters live or have any place of business.
- (3) Regulations under subsection (1)(b) may make provision—
- (a) about the keeping and publication of accounts;
  - (b) for the prevention of annoyance to members of the public;
  - (c) with respect to the use by collectors of badges and certificates of authority, or badges incorporating such certificates, including, in particular, provision—
    - (i) prescribing the form of such badges and certificates;
    - (ii) requiring a collector, on request, to permit his badge, or any certificate of authority held by him of the purposes of the collection, to be inspected by a constable or a duly authorised officer of a local authority, or by an occupier of any premises visited by him in the course of the collection;
  - (d) for prohibiting persons under a prescribed age from acting as collectors, and prohibiting others from causing them so to act.
- (4) Nothing in subsection (2) or (3) prejudices the generality of subsection (1)(a) or (b).
- (5) Regulations under this section may provide that any failure to comply with a specified provision of the regulations is to be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

- (6) Before making regulations under this section the Minister must consult such persons or bodies of persons as he considers appropriate.

#### **64 Offences**

- (1) A person commits an offence if, in connection with any charitable appeal, he displays or uses—
- (a) a prescribed badge or prescribed certificate of authority which is not for the time being held by him for the purposes of the appeal pursuant to regulations under section 63, or
  - (b) any badge or article, or any certificate or other document, so nearly resembling a prescribed badge or (as the case may be) a prescribed certificate of authority as to be likely to deceive a member of the public.
- (2) A person commits an offence if—
- (a) for the purposes of an application made under section 51 or section 58, or
  - (b) for the purposes of section 49 or section 50,
- he knowingly or recklessly furnishes any information which is false or misleading in a material particular.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In subsection (1) “prescribed badge” and “prescribed certificate of authority” mean respectively a badge and a certificate of authority in such form as may be prescribed.

#### **65 Offences by bodies corporate**

- (1) Where any offence under this Chapter or any regulations made under it—
- (a) is committed by a body corporate, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity,
- he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### **66 Service of documents**

- (1) This section applies to any notice required to be served under this Chapter.
- (2) A notice to which this section applies may be served on a person (other than a body corporate)—
- (a) by delivering it to that person;
  - (b) by leaving it at his last known address in the United Kingdom; or
  - (c) by sending it by post to him at that address.
- (3) A notice to which this section applies may be served on a body corporate by delivering it or sending it by post—

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- (a) to the registered or principal office of the body in the United Kingdom, or
  - (b) if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities (as the case may be).
- (4) A notice to which this section applies may also be served on a person (including a body corporate) by sending it by post to that person at an address notified by that person for the purposes of this subsection to the person or persons by whom it is required to be served.

## CHAPTER 2

### FUND-RAISING

#### **67 Statements indicating benefits for charitable institutions and fund-raisers**

- (1) Section 60 of the Charities Act 1992 (c. 41) (fund-raisers required to indicate institutions benefiting and arrangements for remuneration) is amended as follows.
- (2) In subsection (1) (statements by professional fund-raisers raising money for particular charitable institutions), for paragraph (c) substitute—
- “(c) the method by which the fund-raiser’s remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.”
- (3) In subsection (2) (statements by professional fund-raisers raising money for charitable purposes etc.), for paragraph (c) substitute—
- “(c) the method by which his remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.”
- (4) In subsection (3) (statements by commercial participators raising money for particular charitable institutions), for paragraph (c) substitute—
- “(c) the notifiable amount of whichever of the following sums is applicable in the circumstances—
- (i) the sum representing so much of the consideration given for goods or services sold or supplied by him as is to be given to or applied for the benefit of the institution or institutions concerned,
  - (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by him as is to be so given or applied, or
  - (iii) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so given or supplied.”
- (5) After subsection (3) insert—
- “(3A) In subsections (1) to (3) a reference to the “notifiable amount” of any remuneration or other sum is a reference—
- (a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; and

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- (b) otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.”

## **68 Statements indicating benefits for charitable institutions and collectors**

After section 60 of the 1992 Act insert—

### **“60A Other persons making appeals required to indicate institutions benefiting and arrangements for remuneration**

- (1) Subsections (1) and (2) of section 60 apply to a person acting for reward as a collector in respect of a public charitable collection as they apply to a professional fund-raiser.
- (2) But those subsections do not so apply to a person excluded by virtue of—
  - (a) subsection (3) below, or
  - (b) section 60B(1) (exclusion of lower-paid collectors).
- (3) Those subsections do not so apply to a person if—
  - (a) section 60(1) or (2) applies apart from subsection (1) (by virtue of the exception in section 58(2)(c) for persons treated as promoters), or
  - (b) subsection (4) or (5) applies,in relation to his acting for reward as a collector in respect of the collection mentioned in subsection (1) above.
- (4) Where a person within subsection (6) solicits money or other property for the benefit of one or more particular charitable institutions, the solicitation shall be accompanied by a statement clearly indicating—
  - (a) the name or names of the institution or institutions for whose benefit the solicitation is being made;
  - (b) if there is more than one such institution, the proportions in which the institutions are respectively to benefit;
  - (c) the fact that he is an officer, employee or trustee of the institution or company mentioned in subsection (6); and
  - (d) the fact that he is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.
- (5) Where a person within subsection (6) solicits money or other property for charitable, benevolent or philanthropic purposes of any description (rather than for the benefit of one or more particular charitable institutions), the solicitation shall be accompanied by a statement clearly indicating—
  - (a) the fact that he is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions;
  - (b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions;
  - (c) the fact that he is an officer, employee or trustee of the institution or company mentioned in subsection (6); and
  - (d) the fact that he is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.

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- (6) A person is within this subsection if—
- (a) he is an officer or employee of a charitable institution or a company connected with any such institution, or a trustee of any such institution,
  - (b) he is acting as a collector in that capacity, and
  - (c) he receives remuneration either in his capacity as officer, employee or trustee or for acting as a collector.
- (7) But a person is not within subsection (6) if he is excluded by virtue of section 60B(4).
- (8) Where any requirement of—
- (a) subsection (1) or (2) of section 60, as it applies by virtue of subsection (1) above, or
  - (b) subsection (4) or (5) above,
- is not complied with in relation to any solicitation, the collector concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) Section 60(8) and (9) apply in relation to an offence under subsection (8) above as they apply in relation to an offence under section 60(7).
- (10) In this section—
- “the appeal”, in relation to any solicitation by a collector, means the campaign or other fund-raising venture in the course of which the solicitation is made;
- “collector” has the meaning given by section 47(1) of the Charities Act 2006;
- “public charitable collection” has the meaning given by section 45 of that Act.

### **60B Exclusion of lower-paid collectors from provisions of section 60A**

- (1) Section 60(1) and (2) do not apply (by virtue of section 60A(1)) to a person who is under the earnings limit in subsection (2) below.
- (2) A person is under the earnings limit in this subsection if he does not receive—
- (a) more than—
    - (i) £5 per day, or
    - (ii) £500 per year,
 by way of remuneration for acting as a collector in relation to relevant collections, or
  - (b) more than £500 by way of remuneration for acting as a collector in relation to the collection mentioned in section 60A(1).
- (3) In subsection (2) “relevant collections” means public charitable collections conducted for the benefit of—
- (a) the charitable institution or institutions, or
  - (b) the charitable, benevolent or philanthropic purposes,
- for whose benefit the collection mentioned in section 60A(1) is conducted.



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- (4) A person is not within section 60A(6) if he is under the earnings limit in subsection (5) below.
- (5) A person is under the earnings limit in this subsection if the remuneration received by him as mentioned in section 60A(6)(c)—
  - (a) is not more than—
    - (i) £5 per day, or
    - (ii) £500 per year, or
  - (b) if a lump sum, is not more than £500.
- (6) The Minister may by order amend subsections (2) and (5) by substituting a different sum for any sum for the time being specified there.”

## **69 Reserve power to control fund-raising by charitable institutions**

After section 64 of the 1992 Act insert—

### **“64A Reserve power to control fund-raising by charitable institutions**

- (1) The Minister may make such regulations as appear to him to be necessary or desirable for or in connection with regulating charity fund-raising.
- (2) In this section “charity fund-raising” means activities which are carried on by—
  - (a) charitable institutions,
  - (b) persons managing charitable institutions, or
  - (c) persons or companies connected with such institutions,and involve soliciting or otherwise procuring funds for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes.  
But “activities” does not include primary purpose trading.
- (3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where—
  - (a) those institutions,
  - (b) the persons managing them, or
  - (c) persons or companies connected with such institutions,are engaged in charity fund-raising.
- (4) A “good practice requirement” is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that—
  - (a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;
  - (b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;
  - (c) it does not result in undue pressure being placed on persons to donate funds;
  - (d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).

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- (5) The matters are—
- (a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution;
  - (b) any use to which funds donated in response to the fund-raising are to be put by such an institution or company;
  - (c) the activities, achievements or finances of such an institution or company.
- (6) Regulations under this section may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) For the purposes of this section—
- (a) “funds” means money or other property;
  - (b) “general charitable, benevolent or philanthropic purposes” means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions;
  - (c) the persons “managing” a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution; and
  - (d) a person is “connected” with a charitable institution if he is an employee or agent of—
    - (i) the institution,
    - (ii) the persons managing it, or
    - (iii) a company connected with it,
 or he is a volunteer acting on behalf of the institution or such a company.
- (8) In this section “primary purpose trading”, in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where—
- (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the institution; or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the institution.”

### CHAPTER 3

#### FINANCIAL ASSISTANCE

#### **70 Power of relevant Minister to give financial assistance to charitable, benevolent or philanthropic institutions**

- (1) A relevant Minister may give financial assistance to any charitable, benevolent or philanthropic institution in respect of any of the institution’s activities which directly or indirectly benefit the whole or any part of England (whether or not they also benefit any other area).

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- (2) Financial assistance under subsection (1) may be given in any form and, in particular, may be given by way of—
  - (a) grants,
  - (b) loans,
  - (c) guarantees, or
  - (d) incurring expenditure for the benefit of the person assisted.
- (3) Financial assistance under subsection (1) may be given on such terms and conditions as the relevant Minister considers appropriate.
- (4) Those terms and conditions may, in particular, include provision as to—
  - (a) the purposes for which the assistance may be used;
  - (b) circumstances in which the assistance is to be repaid, or otherwise made good, to the relevant Minister, and the manner in which that is to be done;
  - (c) the making of reports to the relevant Minister regarding the uses to which the assistance has been put;
  - (d) the keeping, and making available for inspection, of accounts and other records;
  - (e) the carrying out of examinations by the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the assistance has been used;
  - (f) the giving by the institution of financial assistance in any form to other persons on such terms and conditions as the institution or the relevant Minister considers appropriate.
- (5) A person receiving assistance under this section must comply with the terms and conditions on which it is given, and compliance may be enforced by the relevant Minister.
- (6) A relevant Minister may make arrangements for—
  - (a) assistance under subsection (1) to be given, or
  - (b) any other of his functions under this section to be exercised,by some other person.
- (7) Arrangements under subsection (6) may make provision for the functions concerned to be so exercised—
  - (a) either wholly or to such extent as may be specified in the arrangements, and
  - (b) either generally or in such cases or circumstances as may be so specified,but do not prevent the functions concerned from being exercised by a relevant Minister.
- (8) As soon as possible after 31st March in each year, a relevant Minister must make a report on any exercise by him of any powers under this section during the period of 12 months ending on that day.
- (9) The relevant Minister must lay a copy of the report before each House of Parliament.
- (10) In this section “charitable, benevolent or philanthropic institution” means—
  - (a) a charity, or
  - (b) an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes.

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- (11) In this section “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office.

**71 Power of National Assembly for Wales to give financial assistance to charitable, benevolent or philanthropic institutions**

- (1) The National Assembly for Wales may give financial assistance to any charitable, benevolent or philanthropic institution in respect of any of the institution’s activities which directly or indirectly benefit the whole or any part of Wales (whether or not they also benefit any other area).
- (2) Financial assistance under subsection (1) may be given in any form and, in particular, may be given by way of—
- (a) grants,
  - (b) loans,
  - (c) guarantees, or
  - (d) incurring expenditure for the benefit of the person assisted.
- (3) Financial assistance under subsection (1) may be given on such terms and conditions as the Assembly considers appropriate.
- (4) Those terms and conditions may, in particular, include provision as to—
- (a) the purposes for which the assistance may be used;
  - (b) circumstances in which the assistance is to be repaid, or otherwise made good, to the Assembly, and the manner in which that is to be done;
  - (c) the making of reports to the Assembly regarding the uses to which the assistance has been put;
  - (d) the keeping, and making available for inspection, of accounts and other records;
  - (e) the carrying out of examinations by the Auditor General for Wales into the economy, efficiency and effectiveness with which the assistance has been used;
  - (f) the giving by the institution of financial assistance in any form to other persons on such terms and conditions as the institution or the Assembly considers appropriate.
- (5) A person receiving assistance under this section must comply with the terms and conditions on which it is given, and compliance may be enforced by the Assembly.
- (6) The Assembly may make arrangements for—
- (a) assistance under subsection (1) to be given, or
  - (b) any other of its functions under this section to be exercised,
- by some other person.
- (7) Arrangements under subsection (6) may make provision for the functions concerned to be so exercised—
- (a) either wholly or to such extent as may be specified in the arrangements, and
  - (b) either generally or in such cases or circumstances as may be so specified,
- but do not prevent the functions concerned from being exercised by the Assembly.

- (8) After 31st March in each year, the Assembly must publish a report on the exercise of powers under this section during the period of 12 months ending on that day.
- (9) In this section “charitable, benevolent or philanthropic institution” means—
  - (a) a charity, or
  - (b) an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes.

## PART 4

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **72 Disclosure of information to and by Northern Ireland regulator**

- (1) This section applies if a body (referred to in this section as “the Northern Ireland regulator”) is established to exercise functions in Northern Ireland which are similar in nature to the functions exercised in England and Wales by the Charity Commission.
- (2) The Minister may by regulations authorise relevant public authorities to disclose information to the Northern Ireland regulator for the purpose of enabling or assisting the Northern Ireland regulator to discharge any of its functions.
- (3) If the regulations authorise the disclosure of Revenue and Customs information, they must contain provision in relation to that disclosure which corresponds to the provision made in relation to the disclosure of such information by section 10(2) to (4) of the 1993 Act (as substituted by paragraph 104 of Schedule 8 to this Act).
- (4) In the case of information disclosed to the Northern Ireland regulator pursuant to regulations made under this section, any power of the Northern Ireland regulator to disclose the information is exercisable subject to any express restriction subject to which the information was disclosed to the Northern Ireland regulator.
- (5) Subsection (4) does not apply in relation to Revenue and Customs information disclosed to the Northern Ireland regulator pursuant to regulations made under this section; but any such information may not be further disclosed except with the consent of the Commissioners for Her Majesty’s Revenue and Customs.
- (6) Any person specified, or of a description specified, in regulations made under this section who discloses information in contravention of subsection (5) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (7) It is a defence for a person charged with an offence under subsection (5) of disclosing information to prove that he reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.

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- (8) In the application of this section to Scotland or Northern Ireland, the reference to 12 months in subsection (6) is to be read as a reference to 6 months.
- (9) In this section—
- “relevant public authority” means—
- (a) any government department (other than a Northern Ireland department),
  - (b) any local authority in England, Wales or Scotland,
  - (c) any person who is a constable in England and Wales or Scotland,
  - (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities), except a body or person whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters;
- “Revenue and Customs information” means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11);
- “transferred matter” has the same meaning as in the Northern Ireland Act 1998 (c. 47).

### 73 Report on operation of this Act

- (1) The Minister must, before the end of the period of five years beginning with the day on which this Act is passed, appoint a person to review generally the operation of this Act.
- (2) The review must address, in particular, the following matters—
  - (a) the effect of the Act on—
    - (i) excepted charities,
    - (ii) public confidence in charities,
    - (iii) the level of charitable donations, and
    - (iv) the willingness of individuals to volunteer,
  - (b) the status of the Charity Commission as a government department, and
  - (c) any other matters the Minister considers appropriate.
- (3) After the person appointed under subsection (1) has completed his review, he must compile a report of his conclusions.
- (4) The Minister must lay before Parliament a copy of the report mentioned in subsection (3).
- (5) For the purposes of this section a charity is an excepted charity if —
  - (a) it falls within paragraph (b) or (c) of section 3A(2) of the 1993 Act (as amended by section 9 of this Act), or
  - (b) it does not fall within either of those paragraphs but, immediately before the appointed day (within the meaning of section 10 of this Act), it fell within section 3(5)(b) or (5B)(b) of the 1993 Act.

## General

### 74 Orders and regulations

- (1) Any power of a relevant Minister to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the relevant Minister considers appropriate.
- (3) Subject to subsection (4), orders or regulations made by a relevant Minister under this Act are to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to—
  - (a) any order under section 11,
  - (b) any regulations under section 13(4)(b) which amend any provision of an Act,
  - (c) any regulations under section 72,
  - (d) any order under section 75(4) which amends or repeals any provision of an Act or an Act of the Scottish Parliament,
  - (e) any order under section 76 or 77, or
  - (f) any order under section 79(2).
- (5) No order or regulations within subsection (4)(a), (b), (c), (d) or (e) may be made by a relevant Minister (whether alone or with other provisions) unless a draft of the order or regulations has been laid before, and approved by resolution of, each House of Parliament.
- (6) If a draft of an instrument containing an order under section 11 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.
- (7) In this section “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office.

### 75 Amendments, repeals, revocations and transitional provisions

- (1) Schedule 8 contains minor and consequential amendments.
- (2) Schedule 9 makes provision for the repeal and revocation of enactments (including enactments which are spent).
- (3) Schedule 10 contains transitional provisions and savings.
- (4) A relevant Minister may by order make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,as he considers appropriate for the general purposes, or any particular purposes, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.

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*Status: This is the original version (as it was originally enacted).*

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- (5) An order under subsection (4) may amend, repeal, revoke or otherwise modify any enactment (including an enactment restating, with or without modifications, an enactment amended by this Act).
- (6) In this section “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office.

## **76 Pre-consolidation amendments**

- (1) The Minister may by order make such amendments of the enactments relating to charities as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or part of those enactments.
- (2) An order under this section shall not come into force unless—
  - (a) a single Act, or
  - (b) a group of two or more Acts,
 is passed consolidating the whole or part of the enactments relating to charities (with or without any other enactments).
- (3) If such an Act or group of Acts is passed, the order shall (by virtue of this subsection) come into force immediately before the Act or group of Acts comes into force.
- (4) Once an order under this section has come into force, no further order may be made under this section.
- (5) In this section—
  - “amendments” includes repeals, revocations and modifications, and
  - “the enactments relating to charities” means—
    - (a) the Charities Act 1992 (c. 41), the Charities Act 1993 (c. 10) and this Act,
    - (b) any other enactment relating to institutions which fall within section 1(1) of this Act, and
    - (c) any other enactment, so far as forming part of the law of England and Wales, which makes provision relating to bodies or other institutions which are charities under the law of Scotland or Northern Ireland,
 and section 78(2)(a) (definition of “charity”) does not apply for the purposes of this section.

## **77 Amendments reflecting changes in company law audit provisions**

- (1) The Minister may by order make such amendments of the 1993 Act or this Act as he considers appropriate—
  - (a) in consequence of, or in connection with, any changes made or to be made by any enactment to the provisions of company law relating to the accounts of charitable companies or to the auditing of, or preparation of reports in respect of, such accounts;
  - (b) for the purposes of, or in connection with, applying provisions of Schedule 5A to the 1993 Act (group accounts) to charitable companies that are not required to produce group accounts under company law.
- (2) In this section—
  - “accounts” includes group accounts;



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“amendments” includes repeals and modifications;  
“charitable companies” means companies which are charities;  
“company law” means the enactments relating to companies.

## **78 Interpretation**

- (1) In this Act—  
“the 1992 Act” means the Charities Act 1992 (c. 41);  
“the 1993 Act” means the Charities Act 1993 (c. 10).
- (2) In this Act—  
(a) “charity” has the meaning given by section 1(1);  
(b) “charitable purposes” has (in accordance with section 2(6)) the meaning given by section 2(1); and  
(c) “charity trustees” has the same meaning as in the 1993 Act;  
but (subject to subsection (3) below) the exclusions contained in section 96(2) of the 1993 Act (ecclesiastical corporations etc.) have effect in relation to references to a charity in this Act as they have effect in relation to such references in that Act.
- (3) Those exclusions do not have effect in relation to references in section 1 or any reference to the law relating to charities in England and Wales.
- (4) In this Act “enactment” includes—  
(a) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),  
(b) a provision of a Measure of the Church Assembly or of the General Synod of the Church of England, and  
(c) (in the context of section 6(5) or 75(5)) any provision made by or under an Act of the Scottish Parliament or Northern Ireland legislation,  
and references to enactments include enactments passed or made after the passing of this Act.
- (5) In this Act “institution” means an institution whether incorporated or not, and includes a trust or undertaking.
- (6) In this Act “the Minister” means the Minister for the Cabinet Office.
- (7) Subsections (2) to (5) apply except where the context otherwise requires.

## **79 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—  
(a) section 13(4) and (5),  
(b) section 74,  
(c) section 75(4) and (5),  
(d) section 78,  
(e) section 77,  
(f) this section and section 80, and  
(g) the following provisions of Schedule 8—  
paragraph 90(2),  
paragraph 104 so far as it confers power to make regulations, and

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paragraph 174(d),  
and section 75(1) so far as relating to those provisions.

- (2) Otherwise, this Act comes into force on such day as the Minister may by order appoint.
- (3) An order under subsection (2)—
  - (a) may appoint different days for different purposes or different areas;
  - (b) make such provision as the Minister considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

## **80 Short title and extent**

- (1) This Act may be cited as the Charities Act 2006.
- (2) Subject to subsections (3) to (7), this Act extends to England and Wales only.
- (3) The following provisions extend also to Scotland—
  - (a) sections 1 to 3 and 5,
  - (b) section 6(5),
  - (c) sections 72 and 74,
  - (d) section 75(2) and (3) and Schedules 9 and 10 so far as relating to the Recreational Charities Act 1958 (c. 17), and
  - (e) section 75(4) and (5), sections 76 to 79 and this section.
- (4) But the provisions referred to in subsection (3)(a) and (d) affect the law of Scotland only so far as they affect the construction of references to charities or charitable purposes in enactments which relate to matters falling within Section A1 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46) (reserved matters: fiscal policy etc.); and so far as they so affect the law of Scotland—
  - (a) references in sections 1(1) and 2(1) to the law of England and Wales are to be read as references to the law of Scotland, and
  - (b) the reference in section 1(1) to the High Court is to be read as a reference to the Court of Session.
- (5) The following provisions extend also to Northern Ireland—
  - (a) sections 1 to 3 and 5,
  - (b) section 6(5),
  - (c) section 23,
  - (d) sections 72 and 74,
  - (e) section 75(2) and (3) and Schedules 9 and 10 so far as relating to the Recreational Charities Act 1958 (c. 17), and
  - (f) section 75(4) and (5), sections 76 to 79 and this section.
- (6) But the provisions referred to in subsection (5)(a) and (e) affect the law of Northern Ireland only so far as they affect the construction of references to charities or charitable purposes in enactments which relate to matters falling within paragraph 9 of Schedule 2 to the Northern Ireland Act 1998 (c. 47) (excepted matters: taxes and duties); and so far as they so affect the law of Northern Ireland—
  - (a) references in sections 1(1) and 2(1) to the law of England and Wales are to be read as references to the law of Northern Ireland, and

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- (b) the reference in section 1(1) to the High Court is to be read as a reference to the High Court in Northern Ireland.
- (7) Any amendment, repeal or revocation made by this Act has the same extent as the enactment to which it relates.
- (8) But subsection (7) does not apply to any amendment or repeal made in the Recreational Charities Act 1958 by a provision referred to in subsection (3) or (5).
- (9) Subsection (7) also does not apply to—
  - (a) the amendments made by section 32 in the Companies Act 1985 (c. 6), or
  - (b) those made by Schedule 8 in the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31), or
  - (c) the repeal made in that Act by Schedule 9,  
which extend to England and Wales only.