



# Charities Act 1960 (repealed)

1960 CHAPTER 58 8 and 9 Eliz 2

## PART III

APPLICATION OF PROPERTY CY-PRES, AND ASSISTANCE AND  
SUPERVISION OF CHARITIES BY COURT AND CENTRAL AUTHORITIES

*Extended powers of court, and variation of charters*

### 13 Occasions for applying property cypres.

- (1) Subject to subsection (2) below, the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-pres shall be as follows:—
- (a) where the original purposes, in whole or in part,—
    - (i) have been as far as may be fulfilled; or
    - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
  - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
  - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
  - (e) where the original purposes, in whole or in part, have, since they were laid down,—
    - (i) been adequately provided for by other means; or

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- (ii) ceased, as being useless or harmful to the community or for other reasons, to be a law charitable; or
  - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Subsection (1) above shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-pres, except in so far as those conditions require a failure of the original purposes.
- (3) References in the foregoing subsections to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in the Third Schedule to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.
- (5) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-pres, to secure its effective use for charity by taking steps to enable it to be so applied.

#### **14 Application cy-pres of gifts of donors unknown or disclaiming.**

- (1) Property given for specific charitable purposes which fail shall be applicable cy-pres as if given for charitable purposes generally, where it belongs—
- (a) to a donor who, <sup>[F1]</sup>after—
    - (i) the prescribed advertisements and inquiries have been published and made, and
    - (ii) the prescribed period beginning with the publication of those advertisements has expired,
 cannot be identified or cannot be found; or]
  - (b) to a donor who has executed a <sup>[F2]</sup>disclaimer in the prescribed form] of his right to have the property returned.

<sup>[F3]</sup>(1A) Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees shall not be liable to any person in respect of the property if no claim by him to be interested in it is received by them before the expiry of the period mentioned in subsection (1)(a)(ii) above.]

- (2) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—
- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
  - (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

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- (3) The court may by order direct that property not falling within subsection (2) above shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the court either—
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
  - (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (4) Where property is applied cy-pres by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or (3) above,—
- (a) the scheme shall specify the total amount of that property; and
  - (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than [<sup>F4</sup>six] months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
  - (c) the scheme may include directions as to the provision to be made for meeting any such claim.

[<sup>F5</sup>(4A) Where—

- (a) any sum is, in accordance with any such directions, set aside for meeting any such claims, but
- (b) the aggregate amount of any such claims actually made exceeds the relevant amount,

then, if the Commissioners so direct, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in paragraph (b) above; and for this purpose “the relevant amount” means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors’ gifts.]

- (5) For the purposes of this section, charitable purposes shall be deemed to “fail” where any difficulty in applying property to those purposes makes that property or the part not applicable cy-pres available to be returned to the donors.

[<sup>F6</sup>(5A) In this section “prescribed” means prescribed by regulations made by the Commissioners; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (1)(a) above, make provision as to the form and content of such advertisements as well as the manner in which they are to be published.

(5B) Any regulations made by the Commissioners under this section shall be published by the Commissioners in such manner as they think fit.]

- (6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

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- (7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

#### **Textual Amendments**

- F1** Words in s. 14(1)(a) substituted (1.1.1993) by Charities Act (c. 41), s. 15(2)(a); S.I. 1992/1900, art. 4(1), **Sch.3**
- F2** Words in s. 14(1)(b) substituted (1.1.1993) by Charities Act 1992 (c. 41), s. 15(2)(b); S.I. 1992/1900, art. 4(1), **Sch.3**
- F3** S. 14(1A) added (1.1.1993) by Charities Act 1992 (c. 41), s. 15(3); S.I. 1992/1900, art. 4(1), **Sch.3**
- F4** Word in s. 14(4)(b) substituted (1.1.1993) by Charities Act 1992 (c. 41), s. 15(4); S.I. 1992/1900, art. 4(1), **Sch.3**
- F5** S. 14(4A) inserted (1.1.1993) by Charities Act 1992 (c. 41), s. 15(5); S.I. 1992/1900, art. 4(1), **Sch.3**
- F6** S. 14(5A)(5B) inserted (1.1.1993) by Charities Act 1992 (c. 41), s. 15(6); S.I. 1992/1900, art. 4(1), **Sch.3**

## **15 Charities governed by charter, or by or under statute.**

- (1) Where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, a scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the cy-pres application of any such property) may be made by the court under the court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter, but shall be so framed that the scheme, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect.
- (2) Where under the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or under powers conferred by this Act or by any enactment relating to charities of the Parliament of Northern Ireland, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the scheme, to amend any Royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in like manner as the charter it amends.
- (3) The jurisdiction of the court with respect to charities shall not be excluded or restricted in the case of a charity of any description mentioned in the Fourth Schedule to this Act by the operation of the enactments or instruments there mentioned in relation to that description, and a scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and may also make any such provision as is authorised by that Schedule.

*Property vested in official custodian*

## **16 Entrusting charity property to official custodian, and termination of trust.**

- [<sup>F7</sup>(1) The court may by order—

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- (a) vest in the official custodian for charities any land or interest in land held by or in trust for a charity;
  - (b) authorise or require the persons in whom any such land or interest is vested to transfer it to him; or
  - (c) appoint any person to transfer any such land or interest to him;
- and for this purpose “interest in land” means any interest in land other than such an interest by way of mortgage or other security.]

<sup>F8</sup>(2) .....

- (3) Where property is vested in the official custodian for charities in trust for a charity, the court may make an order discharging him from the trusteeship as respects all or any of that property.
- (4) Where the official custodian for charities is discharged from his trusteeship of any property, or the trusts on which he holds any property come to an end, the court may make such vesting orders and give such directions as may seem to the court to be necessary or expedient in consequence.
- (5) No person shall be liable for any loss occasioned by his acting in conformity with an order under this section or by his giving effect to anything done in pursuance of such an order, or be excused from so doing by reason of the order having been in any respect improperly obtained; and no vesting or transfer of any property in pursuance of this section shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

#### Textual Amendments

**F7** S. 16(1) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 4(a)**; S.I.1992/1900, art. 2(1), **Sch.1**

**F8** S. 16(2) repealed (1.9.1992) by Charities Act 1992 (c. 41), s. 47, **Sch. 3** para (4)(b), Sch. 7; S.I. 1992/1900, art. 2(1), **Sch. 1**

### 17 Supplementary provisions as to property vested in official custodian.

- (1) Subject to the provisions of this Act, where property is vested in the official custodian for charities in trust for a charity, he shall not exercise any powers of management, but he shall as trustee of any property have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a corporation appointed custodian trustee under section four of the <sup>M1</sup>Public Trustee Act 1906 except that he shall have no power to charge fees.
- (2) [<sup>F9</sup>Subject to subsection (2A) below,]where any land or interest in land is vested in the official custodian for charities in trust for a charity, the charity trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly [<sup>F10</sup>execute or do in their own name and on their own behalf if the land or interest were vested in them.]

[<sup>F11</sup>(2A) If any land or interest in land is so vested in the official custodian for charities by virtue of an order under section 20 of this Act, the power conferred on the charity trustees by subsection (2) above shall not be exercisable by them in relation to any transaction affecting the land or interest, unless the transaction is authorised by order of the court or of the Commissioners.]

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- (3) Where any land or interest in land is vested in the official custodian for charities in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land or interest as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land or interest being vested in him shall be enforceable by or against the charity trustees as if the land or interest were vested in them.
- (4) In relation to a corporate charity, subsections (2) [<sup>F12</sup>, (2A)] and (3) above shall apply with the substitution of references to the charity for references to the charity trustees.
- (5) Subsections (2) [<sup>F12</sup>, (2A)] and (3) above shall not authorise any charity trustees or charity to impose any personal liability on the official custodian for charities.
- (6) Where the official custodian for charities is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees, without thereby incurring any liability.

#### Textual Amendments

- F9** Words in s. 17(2) inserted (1.1.1993) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 5(a)(i)**; S.I. 1992/1900, art. 4(1), **Sch.3**
- F10** Words in s. 17(2) substituted (1.1.1993) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 5(a)(ii)**; S.I. 1992/1900, art. 4(1), **Sch.3**
- F11** S. 17(2A) inserted (1.1.1993) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 5(b)**; S.I. 1992/1900, art. 4(1), **Sch.3**
- F12** Words in s. 17(4)(5) inserted (1.1.1993) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 5(c)**; S.I. 1992/1900, art. 4(1), **Sch.3**

#### Modifications etc. (not altering text)

- C1** S. 17(1) excluded (1.9.1992) by Charities Act 1992 (c. 41), s. 30(1); S.I. 1992/1900, art. 2(1), **Sch. 1**

#### Marginal Citations

- M1** 1906 c. 55.

*Powers of Commissioners and Minister to make schemes, etc.*

## 18 Concurrent jurisdiction with High Court for certain purposes.

- (1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes, that is to say:—
  - (a) establishing a scheme for the administration of a charity;
  - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or [<sup>F13</sup>employee];
  - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.
- (2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to

give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) above and without any further order of the court.

- (3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.
- (4) Subject to the following subsections, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except—
- (a) on the application of the charity; or
  - (b) on an order of the court under subsection (2) above <sup>[F14]</sup>; or
  - (c) in the case of a charity other than an exempt charity, on the application of the Attorney General.]

<sup>[F15]</sup>(5) In the case of a charity which is not an exempt charity and whose income from all sources does not in aggregate exceed £500 a year, the Commissioners may exercise their jurisdiction under this section on the application—

- (a) of any one or more of the charity trustees; or
- (b) of any person interested in the charity; or
- (c) of any two or more inhabitants of the area of the charity, if it is a local charity.]

(6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so, <sup>[F16]</sup>and the Commissioners have given the charity trustees an opportunity to make representations to them, the Commissioners may proceed as if an application for a scheme had been made by the charity:]

Provided that the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.

<sup>[F17]</sup>(6A) Where—

- (a) a charity cannot apply to the Commissioners for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but
- (b) such an application is made by such number of the charity trustees as the Commissioners consider appropriate in the circumstances of the case,

the Commissioners may nevertheless proceed as if the application were an application made by the charity.]

- (7) The Commissioners may on the application of any charity trustee or trustee for a charity exercise their jurisdiction under this section for the purpose of discharging him from his trusteeship.
- (8) Before exercising any jurisdiction under this section otherwise than on an order of the court, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom or who is party or privy to an application for the exercise of the jurisdiction; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

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- (9) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.
- (10) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.
- (11) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order (unless he is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity):  
Provided that no appeal shall be brought under this subsection except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of one of the judges of the High Court attached to the Chancery Division.
- (12) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (11) above as a charity trustee, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area and the parish council of any rural parish comprising the area or any part of it; . . . <sup>F18</sup>
- (13) . . . . . <sup>F19</sup>
- [<sup>F20</sup>(13) If he thinks it expedient to do so—
- (a) in consequence of changes in the value of money, or
- (b) with a view to increasing the number of charities in respect of which the Commissioners may exercise their jurisdiction under this section in accordance with subsection (5) above,
- the Secretary of State may by order amend that subsection by substituting a different sum for the sum for the time being specified there.
- (14) Any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F13** Word in s. 18(1)(b) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para.6**; S.I. 1992/1900, art. 2(1), **Sch.1**
- F14** Word and s. 18(4)(c) added (1.9.1992) by Charities Act 1992 (c. 41), s. 13(2); S.I. 1992/1900, art. 2(1), **Sch.1**
- F15** S. 18(5) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 13(3); S.I. 1992/1900, art. 2(1), **Sch.1**
- F16** Words in s. 18(6) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 13(4); S.I. 1992/1900, art. 2(1), **Sch.1**
- F17** S. 18(6A) inserted (1.9.1992) by Charities Act 1992 (c. 41), s. 13(5); S.I. 1992/1900, art. 2(1), **Sch.1**
- F18** Words repealed by Local Government Act 1972 (c. 70), **Sch. 30**
- F19** Ss. 18(13), 19(9), 20(11), 22(12) repealed by Education Act 1973 (c. 16), **Sch. 2 Pt. III**
- F20** S. 18(13)(14) added (1.9.1992) by Charities Act 1992 (c. 41), s. 13(6); S.I. 1992/1900, art. 2(1), **Sch.1**



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#### Modifications etc. (not altering text)

- C2 S. 18 extended by Redundant Churches and other Religious Buildings Act 1969 (c. 22), s. 4(3)
- C3 S. 18 except subsection (6) applied by Redundant Churches and other Religious Buildings Act 1969 (c. 22), s. 4(4)
- C4 S. 18(4) amended by Pastoral Measure 1968 (No. 1), Sch. 3 para. 11(5), 16(1)(e)
- C5 S. 18 amended by Pastoral Measure 1983 (No. 1, SIF 21:4), ss. 20, 21, 22, 24, 27, 29, 31, 32, 40, Sch. 3 paras. 11(6), 94(2)
- C6 S. 18 extended by Charities Act 1985 (c. 20, SIF 19), s. 1(7)(8)
- C7 S. 18 modified (1.9.1992) by Charities Act 1992 (c. 41), s. 31(1); S.I. 1992/1900, art. 2(1), Sch.1
- C8 Ss. 18(3)(8),(10)–(12), 19(1)–(7), 21 applied with modifications by Coal Industry Act 1987 (c. 3, SIF 86), s. 5(3)(8)(9)
- C9 S. 18(4) excluded by Reserve Forces Act 1980 (c.9, SIF 7:2), s. 147(6)

## 19 Further powers to make schemes or alter application of charitable property.

- (1) Where it appears to the Commissioners that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of Parliament establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by them apart from this section, or that it is for any reason proper for the scheme to be subject to parliamentary review, then (subject to subsection (6) below) the Commissioners may settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commissioners under this section may be given effect by order of the Secretary of State made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament.
- (3) Without prejudice to the operation of section six of the <sup>M2</sup>Statutory Instruments Act 1946 in other cases, in the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act of Parliament, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.
- (4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section eighteen of this Act.
- (5) Where subsection (3) above applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (6) The Commissioners shall not proceed under this section without the like application <sup>F21</sup> . . . , and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section eighteen of this Act; but on any application [<sup>F22</sup>for a scheme, or in a case where they act by virtue of subsection (6) or (6A) of that section,] the Commissioners may proceed under this section or that as appears to them appropriate.
- (7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or

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the Commissioners be defrayed out of any moneys applicable for the purposes of a charity:

Provided that this subsection shall not apply in the case of an exempt charity.

(8) Where the Commissioners are satisfied—

- (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
- (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-pres; and
- (c) that it is for any reason not yet desirable to make such a scheme;

then the Commissioners may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity:

Provided that the order shall not extend to more than three hundred pounds out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than one hundred pounds out of the income accruing in any of those three years.

(9) ..... F23

#### Subordinate Legislation Made

- P1 S. 19: for previous exercises of power see Index to Government Orders
- P2 S. 19(2): power exercised by S.I. 1991/1141

#### Textual Amendments

- F21 Words in s. 19(6) omitted (1.9.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 7(a), Sch.7; S.I. 1992/1900, art. 2(1), Sch.1
- F22 Words in s. 19(6) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 7(b); S.I. 1992/1900, art. 2(1), Sch. 1
- F23 S. 19(9) repealed by Education Act 1973 (c. 16), Sch. 2 Pt. III

#### Modifications etc. (not altering text)

- C10 S. 19 extended by Charities Act 1985 (c. 20, SIF 19), s. 1(7)(8)
- C11 S. 19(1)–(7) applied with modifications by Coal Industry Act 1987 (c. 3, SIF 86), s. 5(3)(8)(9)

#### Marginal Citations

- M2 1946 c. 36.

### <sup>X1</sup>20 Power to act for protection of charities.

[<sup>F24</sup>(1) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are satisfied—

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; or
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity;

the Commissioners may of their own motion do one or more of the following things, namely—

- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
- (ii) by order appoint such number of additional charity trustees as they consider necessary for the proper administration of the charity;
- (iii) by order vest any property held by or in trust for the charity in the official custodian for charities, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;
- (iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioners;
- (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;
  - (vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioners;
  - (vii) by order appoint (in accordance with section 20A of this Act) a receiver and manager in respect of the property and affairs of the charity.

(1A) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are satisfied—

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; and
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity;

the Commissioners may of their own motion do either or both of the following things, namely—

- (i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
- (ii) by order establish a scheme for the administration of the charity.]

(2) The references in subsection (1) [<sup>F25</sup>or (1A)] above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(3) The Commissioners may also remove a charity trustee by order made of their own motion—

- [<sup>F26</sup>(a) where, within the last five years, the trustee—
  - (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III. (See end of Document for details)*

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- (ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;
  - (aa) where the trustee is a corporation in liquidation;
  - (ab) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act 1983;
  - (b) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (c) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (4) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—
  - (a) in place of a charity trustee removed by them under this section or otherwise;
  - (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
  - (c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee, because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.
- (5) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section eighteen of this Act.
- (6) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section eighteen of this Act.
- [<sup>F27</sup>(7) Subject to subsection (7A) below, subsections (10) and (11) of section 18 of this Act shall apply to orders under this section as they apply to orders under that section.
- (7A) The requirement to obtain any such certificate or leave as is mentioned in the proviso to section 18(11) shall not apply to—
  - (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity's property and affairs, or
  - (b) an appeal by a person against an order under subsection (1A)(i) or (3)(a) above removing him from his office or employment.
- (7B) Subsection (12) of section 18 of this Act shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.]
- (8) [<sup>F28</sup>The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or

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employment for a period of more than twelve months; but (without prejudice to the generality of section 40(1) of this Act) any such order made in the case of any person may make provision as respects the period of his suspension] for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

(9) Before exercising any jurisdiction under this section [<sup>F29</sup>otherwise than by virtue of subsection (1) above], the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

[<sup>F30</sup>(9A) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).]

[<sup>F31</sup>(10) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

(10A) Subsection (10) above shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) above (whether proceedings in respect of the contravention are brought against him under subsection (10) above or not).]

(11) . . . . . <sup>F32</sup>

(12) This section shall not apply to an exempt charity.

#### Editorial Information

X1 S. 20 as amended was set out in [Charities Act 1992 \(c. 41\)](#), [Sch. 1](#)

#### Textual Amendments

F24 S. 20(1) substituted (1.11.1992) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(2\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F25 Words in s. 20(2) inserted (1.11.1992) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(3\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F26 S. 20(3)(a)(aa)(ab) substituted (1.11.1992) for s. 20(3)(a) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(4\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F27 S. 20(7)(7A)(7B) substituted (1.11.1992) for s. 20 (7) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(5\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F28 Words in s. 20(8) substituted (1.11.1992) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(6\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F29 Words in s. 20(9) inserted (1.11.1992) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(7\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F30 S. 20(9A) inserted (1.11.1992) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(8\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F31 S. 20(10)(10A) substituted (1.11.1992) for s. 20(10) by [Charities Act 1992 \(c. 41\)](#), [s. 8\(9\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

F32 Ss. 18(13), 19(9), 20(11), 22(12) repealed by [Education Act 1973 \(c. 16\)](#), [Sch. 2 Pt. III](#)

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III. (See end of Document for details)*

#### Modifications etc. (not altering text)

- C12** S. 20 (except subsection (1A)(ii)) extended (1.11.1992) by Charities Act 1992 (c. 41), s. 12(1)(b); S.I. 1992/1900, art. 3(1), Sch. 2  
S. 20(10) restricted (1.9.92) by Charities Act 1992 (c. 41), s. 55(2)(b); S.I. 1992/1900, art. 2(1), Sch. 1

## 20 Power to act for protection of charities. **E+W+N.I.**

[<sup>F60</sup>(1) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are satisfied—

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; or
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity;

the Commissioners may of their own motion do one or more of the following things, namely—

- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
  - (ii) by order appoint such number of additional charity trustees as they consider necessary for the proper administration of the charity;
  - (iii) by order vest any property held by or in trust for the charity in the official custodian for charities, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;
  - (iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioners;
- (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;
  - (vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioners;
  - (vii) by order appoint (in accordance with section 20A of this Act) a receiver and manager in respect of the property and affairs of the charity.

(1A) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are satisfied—

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; and
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity;

the Commissioners may of their own motion do either or both of the following things, namely—

- (i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
  - (ii) by order establish a scheme for the administration of the charity.]
- (2) The references in subsection (1) [<sup>F61</sup>or (1A)] above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.
- (3) The Commissioners may also remove a charity trustee by order made of their own motion—
- [<sup>F62</sup>(a) where, within the last five years, the trustee—
    - (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or
    - (ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;
  - (aa) where the trustee is a corporation in liquidation;
  - (ab) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act 1983;
  - (b) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (c) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (4) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—
- (a) in place of a charity trustee removed by them under this section or otherwise;
  - (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
  - (c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee, because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.
- (5) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section eighteen of this Act.
- (6) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section eighteen of this Act.



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[<sup>F63</sup>(7) Subject to subsection (7A) below, subsections (10) and (11) of section 18 of this Act shall apply to orders under this section as they apply to orders under that section.

(7A) The requirement to obtain any such certificate or leave as is mentioned in the proviso to section 18(11) shall not apply to—

- (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity’s property and affairs, or
- (b) an appeal by a person against an order under subsection (1A)(i) or (3)(a) above removing him from his office or employment.

(7B) Subsection (12) of section 18 of this Act shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.]

(8) [<sup>F64</sup>The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than twelve months; but (without prejudice to the generality of section 40(1) of this Act) any such order made in the case of any person may make provision as respects the period of his suspension] for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

(9) Before exercising any jurisdiction under this section [<sup>F65</sup>otherwise than by virtue of subsection (1) above], the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient’s last known address in the United Kingdom.

[<sup>F66</sup>(9A) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).]

[<sup>F67</sup>(10) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

(10A) Subsection (10) above shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) above (whether proceedings in respect of the contravention are brought against him under subsection (10) above or not).]

(11) ..... <sup>F68</sup>

(12) This section shall not apply to an exempt charity.

**Textual Amendments**

**F60** S. 20(1) substituted (1.11.1992) by Charities Act 1992 (c. 41), s. 8(2); S.I. 1992/1900, art. 3(1), Sch. 2



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- F61** Words in s. 20(2) inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 8(3); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F62** S. 20(3)(a)(aa)(ab) substituted (1.11.1992) for s. 20(3)(a) by Charities Act 1992 (c. 41), s. 8(4); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F63** S. 20(7)(7A)(7B) substituted (1.11.1992) for s. 20 (7) by Charities Act 1992 (c. 41), s. 8(5); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F64** Words in s. 20(8) substituted (1.11.1992) by Charities Act 1992 (c. 41), s. 8(6); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F65** Words in s. 20(9) inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 8(7); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F66** S. 20(9A) inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 8(8); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F67** S. 20(10)(10A) substituted (1.11.1992) for s. 20(10) by Charities Act 1992 (c. 41), s. 8(9); S.I. 1992/1900, art. 3(1), **Sch. 2**
- F68** Ss. 18(13), 19(9), 20(11), 22(12) repealed by Education Act 1973 (c. 16), **Sch. 2 Pt. III**

#### **Modifications etc. (not altering text)**

- C20** S. 20 (except subsection (1A)(ii)) extended (1.11.1992) by Charities Act 1992 (c. 41), s. 12(1)(b); S.I. 1992/1900, art. 3(1), **Sch. 2**
- S. 20(10) restricted (1.9.92) by Charities Act 1992 (c. 41), s. 55(2)(b); S.I. 1992/1900, art. 2(1), **Sch. 1**

### **[<sup>F33</sup>20A Supplementary provisions relating to receiver and manager appointed for a charity.**

- (1) The Commissioners may under section 20(1)(vii) of this Act appoint to be receiver and manager in respect of the property and affairs of a charity such person (other than an officer or employee of theirs) as they think fit.
- (2) Without prejudice to the generality of section 40(1) of this Act, any order made by the Commissioners under section 20(1)(vii) of this Act may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by him under the supervision of the Commissioners.
- (3) In connection with the discharge of those functions any such order may provide—
  - (a) for the receiver and manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
  - (b) for any powers or duties exercisable or falling to be performed by the receiver and manager by virtue of paragraph (a) above to be exercisable or performed by him to the exclusion of those trustees.
- (4) Where a person has been appointed receiver and manager by any such order—
  - (a) section 24 of this Act shall apply to him and to his functions as a person so appointed as it applies to a charity trustee of the charity concerned and to his duties as such; and
  - (b) the Commissioners may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (5) The High Court may on an application under subsection (4)(b) above—
  - (a) give such directions, or

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- (b) make such orders declaring the rights of any persons (whether before the court or not),  
as it thinks just; and the costs of any such application shall be paid by the charity concerned.
- (6) Regulations may make provision with respect to—
- (a) the appointment and removal of persons appointed in accordance with this section;
  - (b) the remuneration of such persons out of the income of the charities concerned;
  - (c) the making of reports to the Commissioners by such persons.
- (7) Regulations under subsection (6) above may, in particular, authorise the Commissioners—
- (a) to require security for the due discharge of his functions to be given by a person so appointed;
  - (b) to determine the amount of such a person's remuneration;
  - (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.]

#### **Textual Amendments**

**F33** S. 20A inserted (1.11.1992) by [Charities Act 1992 \(c. 41\), s.9](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

#### **Modifications etc. (not altering text)**

**C13** S. 20A extended (1.11.1992) by [Charities Act 1992 \(c. 41\), s. 12\(1\)\(c\)](#); S.I. 1992/1900, art. 3(1), [Sch. 2](#)

## **21 Publicity for proceedings under ss. 18 to 20.**

- (1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the Secretary of State for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity in a rural parish (other than an ecclesiastical charity), a draft of the scheme has been communicated to the parish council or, in the case of a parish not having a parish council, to the chairman of the parish meeting.
- (2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian for charities), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme: Provided that this subsection shall not apply [<sup>F34</sup>in the case of an order under section 20(1)(ii), or] in the case of an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.
- (3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or [<sup>F35</sup>employee] of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

- (4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either without modification or with such modifications as appear to them to be desirable.
- (5) Where the Commissioners make an order which is subject to appeal under subsection (11) of section eighteen of this Act, the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.
- (6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.
- (7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.
- (8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

**Textual Amendments**

**F34** Words in s. 21(2) inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 8(a); S.I. 1992/1900, art. 3(1), Sch. 2

**F35** Word in s. 21(3) substituted (1.9.1992) by Charities act 1992 (c. 41), s. 47, Sch. 3 para. 8(b); S.I. 1992/1900, art. 2(1), Sch. 1

**Modifications etc. (not altering text)**

**C14** S. 21 applied by Redundant Churches and other Religious Buildings Act 1969 (c. 22), s. 4(4)

**C15** Ss. 18(3)(8),(10)–(12), 19(1)–(7), 21 applied with modifications by Coal Industry Act 1987 (c. 3, SIF 86), s. 5(3)(8)(9)

**21 Publicity for proceedings under ss. 18 to 20. E+W+N.I.**

- (1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the Secretary of State for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity in a rural parish (other than an ecclesiastical charity), a draft of the scheme has been communicated to the parish council or, in the case of a parish not having a parish council, to the chairman of the parish meeting.
- (2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian for

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charities), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme:

Provided that this subsection shall not apply [<sup>F69</sup>in the case of an order under section 20(1)(ii), or] in the case of an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.

- (3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or [<sup>F70</sup>employee] of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.
- (4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either without modification or with such modifications as appear to them to be desirable.
- (5) Where the Commissioners make an order which is subject to appeal under subsection (11) of section eighteen of this Act, the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.
- (6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.
- (7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.
- (8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

#### Textual Amendments

- F69** Words in s. 21(2) inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 8(a); S.I. 1992/1900, art. 3(1), Sch. 2
- F70** Word in s. 21(3) substituted (1.9.1992) by Charities act 1992 (c. 41), s. 47, Sch. 3 para. 8(b); S.I. 1992/1900, art. 2(1), Sch. 1

#### Modifications etc. (not altering text)

- C21** S. 21 applied by Redundant Churches and other Religious Buildings Act 1969 (c. 22), s. 4(4)
- C22** Ss. 18(3)(8),(10)–(12), 19(1)–(7), 21 applied with modifications by Coal Industry Act 1987 (c. 3, SIF 86), s. 5(3)(8)(9)

**[<sup>F36</sup>21A Application of provisions to trust corporations appointed under s.18 or 20.**

In the definition of “trust corporation” contained in the following provisions, namely—

- (a) section 117(xxx) of the Settled Land Act 1925,
- (b) section 68(18) of the Trustee Act 1925,
- (c) section 205(xxviii) of the Law of Property Act 1925,
- (d) section 55(xxvi) of the Administration of Estates Act 1925, and
- (e) section 128 of the Supreme Court Act 1981,

the reference to a corporation appointed by the court in any particular case to be a trustee includes a reference to a corporation appointed by the Commissioners under this Act to be a trustee.]

**Textual Amendments**

**F36** S. 21A inserted (retrospectively) by Charities Act 1992 (c. 41), s. 14(1), (with s. 14(2)); S.I. 1992/1900, art. 2(1), Sch. 1

**Modifications etc. (not altering text)**

**C16** S. 21A modified (retrospectively) by Charities Act 1992 (c. 41), s. 14(2); S.I. 1992/1900, art. 2(1), Sch. 1

*Establishment of common investment funds***22 Schemes to establish common investment funds.**

- (1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as “common investment schemes”) for the establishment of common investment funds under trusts which provide—
  - (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
  - (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.
- (2) The court or the Commissioners may make a common investment scheme on the application of any two or more charities.
- (3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.
- (4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision—
  - (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee of or trustee for a participating charity;

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- (b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;
  - (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;
  - (d) for enabling moneys to be borrowed temporarily for the purpose of meeting payments to be made out of the fund;
  - (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;
  - (f) for regulating the accounts and information to be supplied to participating charities.
- (5) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme; and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.
- <sup>F37</sup>(6) .....
- (7) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (8) The powers of investment of every charity shall include power to participate in common investment schemes, unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.
- (9) A common investment fund shall be deemed for all purposes to be a charity, <sup>F38</sup> . . . and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.
- (10) ..... <sup>F39</sup>
- (11) [<sup>F40</sup>Subsections (9)] above shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charity.
- (12) ..... <sup>F41</sup>

**Textual Amendments**

- F37** S. 22(6) repealed (1.9.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 9(a), **Sch.7**; S.I. 1992/1900, art. 2(1), **Sch. 1**
- F38** Words in s. 22(9) repealed (1.9.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 9(b), **Sch.7**; S.I. 1992/1900, art. 2(1), **Sch. 1**
- F39** S. 22(10) repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2)(3), **Sch. 16 para. 1(a)**, Sch. 17 Pt. I
- F40** Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 1(a)**
- F41** Ss. 18(13), 19(9), 20(11), 22(12) repealed by Education Act 1973 (c. 16), **Sch. 2 Pt. III**

**[<sup>F42</sup>22A Schemes to establish common deposit funds.**

- (1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as “common deposit schemes”) for the establishment of common deposit funds under trusts which provide—
- (a) for sums to be deposited by or on behalf of a charity participating in the scheme and invested under the control of trustees appointed to manage the fund; and
  - (b) for any such charity to be entitled (subject to the provisions of the scheme) to repayment of any sums so deposited and to interest thereon at a rate determined under the scheme.
- (2) Subject to subsection (3) below, the following provisions of section 22 of this Act, namely—
- (a) subsections (2) to (4), and
  - (b) subsections (7) to (11),
- shall have effect in relation to common deposit schemes and common deposit funds as they have effect in relation to common investment schemes and common investment funds.
- (3) In its application in accordance with subsection (2) above, subsection (4) of that section shall have effect with the substitution for paragraphs (b) and (c) of the following paragraphs—
- (”) for regulating as to time, amount or otherwise the right to repayment of sums deposited in the fund;
  - (c) for authorising a part of the income for any year to be credited to a reserve account maintained for the purpose of counteracting any losses accruing to the fund, and generally for regulating the manner in which the rate of interest on deposits is to be determined from time to time;”.]

**Textual Amendments**

- F42** S. 22A inserted (1.9.1992) by Charities Act 1992 (c. 41), s.16; S.I. 1992/1900, art. 2(1), **Sch.1**



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### *Miscellaneous powers of Commissioners and Minister*

## **23 Power to authorise dealings with charity property, etc.**

- (1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.
- (2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1) above) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.
- (3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being as if contained in the trusts of the charity: Provided that any such directions may on the application of the charity be modified or superseded by a further order.
- (4) Without prejudice to the generality of subsection (3) above, the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.
- (5) An order under this section may authorise any act, notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below, or that the trusts of the charity provide for the act to be done by or under the authority of the court; but no such order shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity, or confer any authority in relation to a disused church as defined in that subsection, or shall extend or alter the purposes of the charity.
- (6) The Acts referred to in subsection (5) above as the disabling Acts are the <sup>M3</sup>Ecclesiastical Leases Act 1571, the <sup>M4</sup>Ecclesiastical Leases Act 1572, the <sup>M5</sup>Ecclesiastical Leases Act 1575 and the <sup>M6</sup>Ecclesiastical Leases Act 1836; and in that subsection “disused church” means a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect under the Union of Benefices Measures 1923 to 1952 or the Reorganisation Areas Measures 1944 and 1954 and extends to any land which under such a scheme is to be used or disposed of with a disused church, and for this purpose “building” includes part of a building.

#### **Marginal Citations**

**M3** 1571 c. 10.

**M4** 1572 c. 11.



**M5** 1575 c. 11.

**M6** 1836 c. 20.

[<sup>F43</sup>**23A Power to authorise certain ex gratia payments etc.**

- (1) Subject to subsection (3) below, the Commissioners may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—
  - (a) to make any application of property of the charity, or
  - (b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,
 in a case where the charity trustees—
  - (i) (apart from this section) have no power to do so, but
  - (ii) in all the circumstances regard themselves as being under a moral obligation to do so.
- (2) The power conferred on the Commissioners by subsection (1) above shall be exercisable by them under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require the Commissioners, in such circumstances as are specified in the directions—
  - (a) to refrain from exercising that power; or
  - (b) to consult the Attorney General before exercising it.
- (3) Where—
  - (a) an application is made to the Commissioners for them to exercise that power in a case where they are not precluded from doing so by any such directions, but
  - (b) they consider that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by them,
 they shall refer the application to the Attorney General.
- (4) It is hereby declared that where, in the case of any application made to them as mentioned in subsection (3)(a) above, the Commissioners determine the application by refusing to authorise charity trustees to take any action falling within subsection (1) (a) or (b) above, that refusal shall not preclude the Attorney General, on an application subsequently made to him by the trustees, from authorising the trustees to take that action.]

**Textual Amendments**

**F43** S. 23A inserted (1.9.1992) by Charities Act 1992 (c. 41), s.17; S.I. 1992/1900, art. 2(1), Sch.1

**24 Power to advise charity trustees.**

- (1) The Commissioners may on the written application of any charity trustee give him their opinion or advice on any matter affecting the performance of his duties as such.
- (2) A charity trustee or trustee for a charity acting in accordance with the opinion or advice of the Commissioners given under this section with respect to the charity shall be deemed, as regards his responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—

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- (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or
- (b) the decision of the court has been obtained on the matter or proceedings are pending to obtain one.

## **25 Powers for preservation of charity documents.**

- (1) The Commissioners may provide books in which any deed, will or other document relating to a charity may be enrolled.
- (2) The Commissioners may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commissioners deposit them with the Commissioners for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.
- (3) Where a document is enrolled by the Commissioners or is for the time being deposited with them under this section, evidence of its contents may be given by means of a copy certified by any officer of the Commissioners generally or specially authorised by them to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.
- (4) Regulations may make provision for such documents deposited with the Commissioners under this section as may be prescribed to be destroyed or otherwise disposed of after such period or in such circumstances as may be prescribed.
- (5) Subsections (3) and (4) above shall apply to any document transmitted to the Commissioners under section seven of this Act and kept by them under subsection (3) of that section, as if the document had been deposited with them for safe keeping under this section.

## **26 Power to order taxation of solicitor's bill.**

- (1) The Commissioners may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, shall be taxed, together with the costs of the taxation, by a taxing officer in such division of the High Court as may be specified in the order, or by the taxing officer of any other court having jurisdiction to order the taxation of the bill.
- (2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the taxing officer shall have the same powers and duties, and the costs of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are taxed.
- (3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill, unless the Commissioners are of opinion that it contains exorbitant charges; and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the High Court by reason either of an agreement as to his remuneration or of the lapse of time since payment of the bill.

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**Modifications etc. (not altering text)**

C17 S. 26(1)(2)(3) amended (1.1.1992) by S.I. 1991/2684, arts. 2, 4, Sch.1.

[<sup>F44</sup>**26A Power of Commissioners to bring proceedings with respect to charities.**

- (1) Subject to subsection (2) below, the Commissioners may exercise the same powers with respect to—
  - (a) the taking of legal proceedings with reference to charities or the property or affairs of charities, or
  - (b) the compromise of claims with a view to avoiding or ending such proceedings, as are exercisable by the Attorney General acting ex officio.
- (2) Subsection (1) above does not apply to the power of the Attorney General under section 30(1) of this Act to present a petition for the winding up of a charity.
- (3) The practice and procedure to be followed in relation to any proceedings taken by the Commissioners under subsection (1) above shall be the same in all respects (and in particular as regards costs) as if they were proceedings taken by the Attorney General acting ex officio.
- (4) No rule of law or practice shall be taken to require the Attorney General to be a party to any such proceedings.
- (5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.]

**Textual Amendments**

F44 S. 26A inserted (1.1.1993) by Charities Act 1992 (c. 41), s.28; S.I. 1992/1900, art. 4(1), Sch. 3

<sup>F45</sup>**27** .....

**Textual Amendments**

F45 S. 27 repealed (1.1.1993) by Charities Act 1992 (c. 41), s. 37(5), Sch.7; S.I. 1992/1900, art. 4(1), Sch. 3 (with art. 4(3))

*Miscellaneous*

**28 Taking of legal proceedings.**

- (1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity, if it is a local charity, but not by any other person.

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- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioners.
- (3) The Commissioners shall not, without special reasons, authorise the taking of charity proceedings where in their opinion the case can be dealt with by them under the powers of this Act. [<sup>F46</sup>(other than those conferred by section 26A of this Act).]
- (4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.
- (5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, the proceedings may nevertheless be entertained or proceeded with if after the order had been applied for and refused leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.
- (6) Nothing in the foregoing subsections shall apply to the taking of proceedings by the Attorney General, with or without a relator [<sup>F47</sup>, or to the taking of proceedings by the Commissioners in accordance with section 26A of this Act.].
- (7) Where it appears to the Commissioners, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney General, the Commissioners shall so inform the Attorney General, and send him such statements and particulars as they think necessary to explain the matter.
- (8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under the court’s jurisdiction with respect to charities, or brought under the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.
- (9) The <sup>M7</sup>Charities Procedure Act 1812 and so much of any local or private Act establishing or regulating a charity as relates to the persons by whom or the manner or form in which any charity proceedings may be brought shall cease to have effect.

#### Textual Amendments

**F46** Words in s. 28(3) added (1.9.1992) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 10(a)**; S.I. 1992/1900, art. 2(1), **Sch.1**

**F47** Words in s. 28(6) added (1.9.1992) by Charities Act 1992 (c. 41), s. 47, **Sch. 3 para. 10(b)**; S.I. 1992/1900, art. 2(1), **Sch.1**

#### Modifications etc. (not altering text)

**C18** S. 28(5) modified by Reserve Forces Act 1980 (c. 9, SIF 7:2), s. 147(5)

#### Marginal Citations

**M7** 1812 c. 101.

*Status:* Point in time view as at 01/01/1993. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III. (See end of Document for details)

**[<sup>F48</sup>28A Report of s.6 inquiry to be evidence in certain proceedings.**

- (1) A copy of the report of the person conducting an inquiry under section 6 of this Act shall, if certified by the Commissioners to be a true copy, be admissible in any proceedings to which this section applies—
  - (a) as evidence of any fact stated in the report; and
  - (b) as evidence of the opinion of that person as to any matter referred to in it.
- (2) This section applies to—
  - (a) any legal proceedings instituted by the Commissioners under this Part of this Act; and
  - (b) any legal proceedings instituted by the Attorney General in respect of a charity.
- (3) A document purporting to be a certificate issued for the purposes of subsection (1) above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.]

**Textual Amendments**

**F48** S. 28A inserted (1.9.1992) by Charities Act 1992 (c. 41), s.11; S.I. 1992/1900, art. 2(1), Sch.1

**[<sup>F49</sup>29** .....

**Textual Amendments**

**F49** S. 29 repealed (1.1.1993) by Charities Act 1992 (c. 41), s. 78(2), Sch.7; S.I. 1992/1900, art. 4(1), Sch. 3

VALID FROM 01/08/1993

**[<sup>F50</sup>30** .....

**Textual Amendments**

**F50** Act repealed (1.8.1993) except ss. 28(9), 35(6), 38(3)-(5), 39(2), 48, 49, Sch. 6 by 1993 c. 10, ss. 98(2), 99(1), Sch.7

**[<sup>F51F52</sup>30.Charitable companies: Winding up.**

**[(1)]**

Where a charity may be wound up by the High Court under the <sup>M8</sup> Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.

[ Where a charity may be so wound up by the High Court, such a petition may also be <sup>F53</sup>(2) presented by the Commissioners if, at any time after they have instituted an inquiry

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under section 6 of this Act with respect to the charity, they are satisfied as mentioned in section 20(1)(a) or (b) of this Act.

- (3) Where a charitable company is dissolved, the Commissioners may make an application under section 651 of the Companies Act 1985 (power of court to declare dissolution of company void) for an order to be made under that section with respect to the company; and for this purpose subsection (1) of that section shall have effect in relation to a charitable company as if the reference to the liquidator of the company included a reference to the Commissioners.
- (4) Where a charitable company's name has been struck off the register of companies under section 652 of the Companies Act 1985 (power of registrar to strike defunct company off register), the Commissioners may make an application under section 653(2) of that Act (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose section 653(2) shall have effect in relation to a charitable company as if the reference to any such person aggrieved as is there mentioned included a reference to the Commissioners.
- (5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.
- (6) In this section "charitable company" means a company which is a charity.]]

#### Textual Amendments

- F51** Ss. 30–30C substituted (4.2.1991) for s. 30 containing subsections (1) and (2) by [Companies Act 1989](#) (c. 40, SIF 27), **ss. 111(1)**
- F52** S. 30 renumbered as s. 30(1) (1.11.1992) by [Charities Act 1992](#) (c. 41), **s. 10(2)**; S.I. 1992/1900, art. 3(1), **Sch. 2**
- F53** S. 30(1)-(6) added (1.11.1992) by [Charities Act 1992](#) (c. 41), **s. 10(1)**; S.I. 1992/1900, art. 3(1), **Sch. 2**

#### Marginal Citations

- M8** 1986 c.45 (66)

### —0 Charitable companies: alteration of objects clause.

(30A) (1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money of money's worth, or any property representing property so acquired,
- (b) any property representing income which has accrued before the alteration is made, or
- (c) the income from any such property as aforesaid.

[<sup>F54</sup>(2) Where a charity is a company, any alteration by it—

- (a) of the objects clause in its memorandum of association, or
- (b) of any other provision in its memorandum of association, or any provision in its articles of association, which is a provision directing or restricting the manner in which property of the company may be used or applied,

is ineffective without the prior written consent of the Commissioners.

- (3) Where a company has made any such alteration in accordance with subsection (2) above and—
- (a) in connection with the alteration is required by virtue of—
    - (i) section 6(1) of the Companies Act 1985 (delivery of documents following alteration of objects), or
    - (ii) that provision as applied by section 17(3) of that Act (alteration of condition in memorandum which could have been contained in articles),
 to deliver to the registrar of companies a printed copy of its memorandum, as altered, or
  - (b) is required by virtue of section 380(1) of that Act (registration etc. of resolutions and agreements) to forward to the registrar a printed or other copy of the special resolution effecting the alteration,
- the copy so delivered or forwarded by the company shall be accompanied by a copy of the Commissioners' consent.
- (4) Section 6(3) of that Act (offences) shall apply to any default by a company in complying with subsection (3) above as it applies to any such default as is mentioned in that provision.]

#### Textual Amendments

**F54** S. 30A (2)-(4) substituted (1.1.1993) by Charities Act 1992 (c. 41), s.40; S.I.1992/1900, art. 4(1), Sch. 3

### 30B Charitable companies: invalidity of certain transactions.

- (1) Sections 35 and 35A of the <sup>M9</sup> Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
- (a) gives full consideration in money or money's worth in relation to the act in question, and
  - (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,
- or who does not know at the time the act is done that the company is a charity.
- (2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) the burden of proving—
- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
  - (b) that a person knew that the company was a charity,
- lies on the person making that allegation.



*Status: Point in time view as at 01/01/1993. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III. (See end of Document for details)*

- (4) Where a company is a charity, the ratification of an act under section 35(3) of the Companies Act 1985, or the ratification of a transaction to which section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commissioners.

**Modifications etc. (not altering text)**

**C19** S. 30B excluded by S.I. 1990/2569, art. 7(4)

**Marginal Citations**

**M9** 1985 c.6 (27).

**[<sup>F55</sup>30BA Charitable companies: requirement of consent of Commissioners to certain acts.**

- (1) Where a company is a charity—
- (a) any approval given by the company for the purposes of any of the provisions of the Companies Act 1985 specified in subsection (2) below, and
  - (b) any affirmation by it for the purposes of section 322(2)(c) of that Act (affirmation of voidable arrangements under which assets are acquired by or from a director or person connected with him),
- is ineffective without the prior written consent of the Commissioners.
- (2) The provisions of the Companies Act 1985 referred to in subsection (1)(a) above are—
- (a) section 312 (payment to director in respect of loss of office or retirement);
  - (b) section 313(1) (payment to director in respect of loss of office or retirement made in connection with transfer of undertaking or property of company);
  - (c) section 319(3) (incorporation in director's service contract of term whereby his employment will or may continue for a period of more than 5 years);
  - (d) section 320(1) (arrangement whereby assets are acquired by or from director or person connected with him);
  - (e) section 337(3)(a) (provision of funds to meet certain expenses incurred by director).]

**Textual Amendments**

**F55** S. 30BA inserted (1.1.1993) by Charities Act 1992 (c. 41), s.41; S.I. 1992/1900, art. 4(1), Sch. 3

**[<sup>F56</sup>30BB Charitable companies: name to appear on correspondence etc.**

Section 30(7) of the Companies Act 1985 (exemption from requirements relating to publication of name etc.) shall not, in its application to any company which is a charity, have the effect of exempting the company from the requirements of section 349(1) of that Act (company's name to appear in its correspondence etc.).]

**Textual Amendments**

**F56** S. 30BB inserted (1.1.1993) by Charities Act 1992 (c. 41), s.42; S.I. 1992/1900, art. 4(1), Sch. 3



**Status:** Point in time view as at 01/01/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III. (See end of Document for details)

**30C.— Charitable companies: status to appear on correspondence, etc.**

- (1) Where a company is a charity and its name does not include the word “charity” or the word “charitable”, the fact that the company is a charity shall be stated in English in legible characters—
  - (a) in all business letters of the company,
  - (b) in all its notices and other official publications,
  - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed <sup>F57</sup> . . . on behalf of the company,
  - (d) in all conveyances purporting to be executed by the company, and
  - (e) in all [<sup>F58</sup>bills rendered by it and in all its], invoices, receipts and letters of credit.
- (2) In subsection (1)(d) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.
- (3) Section 349(2) to (4) of the <sup>M10</sup> Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (1) above.

**Textual Amendments**

**F57** Words in s. 30C(1)(c) repealed (1.9.1992) by Charities Act 1992 (c. 41), ss. 47, 78(2), Sch. 3 para. 11(a), Sch.7; S.I. 1992/1900, art. 2(1), Sch. 1

**F58** Words in s. 30C(1)(e) substituted (1.9.1992) by Charities Act 1992 (c. 41), s. 47, Sch. 3 para. 11(b); S.I. 1992/1900, art. 2(1), Sch. 1

**Marginal Citations**

**M10** 1985 c.6 (27).

<sup>F59</sup>**31** .....

**Textual Amendments**

**F59** S. 31 repealed (1.9.1992) by Charities Act 1992 (c. 41), ss. 47, 78(2), Sch. 3 para. 12, Sch.7; S.I. 1992/1900, art. 2(1), Sch. 1

**Status:**

Point in time view as at 01/01/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Charities Act 1960 (repealed), Part III.