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STATUTORY INSTRUMENTS

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**1987 No. 2048 (N.I. 19)**

**The Charities (Northern Ireland) Order 1987 <sup>F1</sup>**

26th November 1987

<sup>F2</sup>

**F1** functions transf. by SR 1999/481

**F2** Order repealed (prosp.) by [Charities Act \(Northern Ireland\) 2008 \(c. 12\)](#), ss. 184, 185(1), [Sch. 9](#)

Introductory

**Title and commencement**

1.—(1) This Order may be cited as the Charities (Northern Ireland) Order 1987.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“accounting period” means a period of not more than 15 months or less than 12 months;

“the Act of 1964” means the Charities Act (Northern Ireland) 1964 ;

[<sup>F3</sup>“company” means a company formed and registered under the Companies Order, or to which the provisions of that Order apply as they apply to such a company;

“Companies Order” means the Companies (Northern Ireland) Order 1986;]

“the Department” means the Department of Finance and Personnel;

“permanent endowment” shall be construed in accordance with paragraph (3).

(3) A charity shall be deemed for the purposes of this Order to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Order “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being so expended.

**F3** [1990 NI 10](#)

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*Changes to legislation: There are currently no known outstanding effects for the The Charities (Northern Ireland) Order 1987. (See end of Document for details)*

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## Extension of powers of trustees of certain charities

### Resolution by trustees of old charity to alter objects

- 3.—(1) This Article applies to any charity—
- (a) which has the following characteristics—
    - (i) the sole or primary object of the charity is the relief of poverty (within any meaning given to that expression under the law of charitable trusts, as applied for the time being), and
    - (ii) it is established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of a particular area in Northern Ireland; and
  - (b) which is not a company or other body corporate; and
  - (c) where—
    - (i) at least 50 years have elapsed since the date of the charity's foundation, or
    - (ii) it is subject to a scheme (whether established by the court or by the Department) for the joint administration of two or more charities, and in the case of each of the charities comprised in the scheme at least 50 years have elapsed since the date of its foundation.
- (2) If the trustees are of the opinion—
- (a) that the objects of the charity may fairly be considered obsolete or lacking in usefulness, or impossible of achievement, having regard to the period that has elapsed since the charity was founded, the social and economic changes that have taken place in that period and other circumstances (if any) relevant to the functioning and administration of the charity, and
  - (b) that an alteration of the charity's objects is required in order that the charity's resources may be applied to better effect, consistently with the spirit of the original gift,
- they may (subject to the following provisions) pass a resolution that the trusts of the charity be modified by replacing the objects of the charity by other objects, being in law charitable, specified in the resolution.
- (3) The objects so specified must be, in the trustees' opinion, not so far dissimilar in character to those of the original charitable gift that this modification of the charity's trusts would constitute an unjustifiable departure from the intentions of the founder of the charity or violate the spirit of the gift.
- (4) The trustees must take such steps as are reasonably open to them to secure the approval to the proposed alteration of objects of any person identifiable as having been the founder of the charity.
- (5) The resolution of the trustees must be unanimous and be in the form set out in Schedule 1.
- (6) Having passed the resolution, the trustees shall—
- (a) give such public notice that they have done so as they think reasonable and justified, having regard to the resources of the charity and the extent of its area of benefit, and
  - (b) send copies of the resolution to the Department, accompanied by a statement of their reasons for being of the opinions specified in paragraphs (2) and (3).

The trustees need not comply with sub-paragraph (a) if they consider that, in all the circumstances, no useful purpose would be served by giving public notice of the resolution.

(7) The Department may, when considering the resolution, require the trustees to provide additional information or explanation as to the circumstances in and by reference to which they have determined to act under this Article or as to their compliance with this Article; and the Department

shall take into consideration any representations made by any persons appearing to the Department to be interested.

(8) The Department shall, not more than 3 months from the time when it receives a copy of the resolution from the trustees—

- (a) if it appears to the Department that the requirements of this Article are satisfied in respect of the resolution, and that the proposed alteration of objects is justified in all the circumstances (treating the trustees' opinion under paragraphs (2) and (3) as prima facie well-founded and not to be set aside in the absence of contrary considerations), give to the trustees notice of the Department's concurrence with the resolution, or
- (b) give them notice that further time is required in which to consider the case (but so that not more than an additional 6 months shall be taken for that purpose), or
- (c) give them notice that the Department does not concur with the resolution.

Any notice given by the Department under this paragraph (including any notice of concurrence, or non-concurrence, given after the Department has taken further time for consideration) shall be in writing.

(9) If the Department gives notice of its concurrence with the resolution then, with effect from the date specified in the notice, the trusts of the charity shall, by virtue of this Article, be deemed modified in accordance with the terms of the resolution, and the trust instrument shall have effect accordingly.

(10) References in this Article to a charity's trust instrument include any document which for the time being lays down or regulates the manner in which the charity's property may or must be applied.

(11) This Article does not apply to a charity which is a company or other body corporate.

#### **Power for trustees of small charities to transfer whole property to another charity**

4.—(1) Subject to and in accordance with this Article, the trustees of a charity may pass a resolution that the whole property of the charity be transferred to another charity, to be held and applied by, and as property of, that other charity.

(2) Such a resolution shall not have effect unless in the case of the charity first-mentioned ( “the transferor charity” ) its gross income in the preceding accounting period was £200 or less; and the trustees must, before passing such a resolution—

- (a) obtain from the trustees of the other charity ( “the transferee charity” ) written confirmation that they are willing to accept a transfer of property under this Article, and
- (b) have formed the opinion that the objects of the transferee charity are not so far dissimilar in character to those of the original charitable gift that the proposed transfer would constitute an unjustifiable departure from the intentions of the founder of the transferor charity or violate the spirit of the gift.

(3) The trustees must also take such steps as are reasonably open to them to secure the approval to the proposed transfer of any person identifiable as having been the founder of the charity.

(4) The resolution of the trustees must be unanimous and be in the form set out in Schedule 2.

(5) Having passed the resolution, the trustees shall—

- (a) give such public notice that they have done so as they think reasonable and justified, having regard to the resources of the charity and the extent of its area of benefit, and
- (b) send copies of the resolution to the Department accompanied by a statement of their reasons for wishing to effect a transfer of property under this Article.

The trustees need not comply with sub-paragraph (a) if they consider that, in all the circumstances, no useful purpose would be served by giving public notice of the resolution.

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(6) The Department may, when considering the resolution, require the trustees to provide additional information or explanation as to the circumstances in and by reference to which they have determined to act under this Article or as to their compliance with this Article; and the Department shall take into consideration any representations made by any persons appearing to the Department to be interested.

(7) The Department shall, not more than 3 months from the time when it receives a copy of the resolution from the trustees—

- (a) if it appears to the Department that the requirements of this Article are satisfied in respect of the resolution and that it is a proper case (treating the trustees' opinion under paragraph (2)(b) as prima facie well-founded and not to be set aside in the absence of contrary considerations), give to the trustees notice of the Department's concurrence with the resolution, or
- (b) give them notice that further time is required in which to consider the case (but so that not more than an additional 6 months shall be taken for that purpose), or
- (c) give them notice that the Department does not concur with the resolution.

Any notice given by the Department under this paragraph (including any notice of concurrence, or non-concurrence, given after the Department has taken further time for consideration) shall be in writing.

(8) If the Department gives notice of its concurrence with the resolution, the trustees of the transferor charity shall on receipt of the notice make arrangements for the transfer of the whole property of the charity to the trustees of the transferee charity, to be acquired by that charity on the terms of this Article.

(9) Those terms are as follows—

- (a) all property acquired from the transferor charity which was expendable as income in the hands of that charity is to be treated as expendable in the hands of the transferee charity;
- (b) any property of the transferor charity which was not expendable as income, having formed part of that charity's permanent endowment, is to remain subject to the same restrictions on expenditure as applied before the transfer;
- (c) the whole property acquired by the transferee charity is to be held and applied for the objects of that charity.

(10) The trustees of the transferor charity shall have all such powers as are necessary to transfer the property of the charity under this Article.

(11) This Article does not apply to a charity which is a company or other body corporate.

(12) The Department may by order subject to affirmative resolution amend paragraph (2) by substituting for the sum there specified such other sum as the Department considers appropriate.

### **Power for very small charities to spend capital**

5.—(1) Where, in the case of a charity having a permanent endowment—

- (a) the value of the endowment is £25 or less and the endowment does not consist of or comprise any land or interest in land, and
- (b) the charity's gross income in the preceding accounting period was £5 or less, and
- (c) the charity trustees are of the opinion that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone,

the trustees may pass a resolution that the charity ought to be freed from any restrictions imposed by law with respect to expenditure of capital.

(2) Before passing such a resolution, the trustees must consider whether any reasonable possibility exists of effecting a transfer of the charity's property to another charity under Article 4 (disregarding any such transfer as would, in the trustees' opinion, impose on their charity an unacceptable burden of costs).

(3) The resolution of the trustees must be unanimous and be in the form set out in Schedule 3.

(4) Having passed the resolution, the trustees shall send a copy of it to the Department and shall then have power by virtue of this Article to expend any property of the charity without regard to any restriction imposed by law and applying to the expenditure of capital but not to the expenditure of income.

(5) The Department may by order subject to affirmative resolution amend paragraph (1)(a) and (b) by substituting for either of the sums there specified such other sum as the Department considers appropriate.

## Amendments of the Act of 1964

### **Increase and variation of certain financial limits**

6.—(1) In section 13(1) of the Act of 1964 (power of Department to make a cy-près scheme in certain circumstances if the aggregate value of the property to be comprised in the scheme does not exceed £5,000), for the words “five thousand pounds” there shall be substituted “£50,000”.

(2) In section 14(1) of that Act (power of personal representatives to transfer property, not exceeding £250 in value, which is devised or bequeathed to a misdescribed charitable institution), for the words “two hundred and fifty pounds” there shall be substituted “£2,500”.

(3) In section 24(1) of that Act (power of Department to make a scheme for the application for charitable purposes of property, not exceeding £5,000 in value, given so that it could be used for charitable or non-charitable purposes) for the words “five thousand pounds” there shall be substituted “£50,000”.

(4) After section 31 of that Act there shall be inserted the following section—

#### **“Variation of financial limits.**

**31A.** The Department may by order subject to affirmative resolution amend sections 13(1), 14(1) and 24(1) by substituting for any sum specified in any of those provisions such other sum as the Department considers appropriate.”.

### **Value of property for purposes of the Act of 1964**

7. For section 32 of the Act of 1964 (calculation of value of land and periodical payments charged on or issuing out of land) there shall be substituted the following section—

#### **“Value of land, etc., for purposes of Act.**

**32.—**(1) In determining the value of any property for the purposes of this Act, the value of any land and of any periodical payment charged on or issuing out of land shall be taken to be such amount as may be specified in a certificate given by or on behalf of the Commissioner of Valuation.

(2) Any document purporting to be a certificate given by or on behalf of the Commissioner of Valuation for the purposes of subsection (1) shall be received in evidence and, until the contrary is proved, be deemed to be duly given.”.

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### **Application to this Order of certain provisions of the Act of 1964**

8. Sections 34 to 36 of the Act of 1964 (annual report by Department, interpretation, and saving for functions of Attorney-General) shall apply to this Order and accordingly—

- (a) in section 34, at the end of subsection (1) there shall be added the words “and the Charities (Northern Ireland) Order 1987”;
- (b) in section 35, after the words “this Act” there shall be inserted the words “ and the Charities (Northern Ireland) Order 1987 ”;
- (c) in section 36, after the words “in this Act” there shall be inserted the words “ or the Charities (Northern Ireland) Order 1987 ”.

### *Miscellaneous*

#### **[<sup>F4</sup>Charitable companies: alteration of objects clause**

9.—(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 or 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.

(2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Department; and it shall deliver a copy of that consent to the registrar of companies under Article 17(1)(a) or (b) of the Companies Order along with the printed copy of the memorandum as altered.

(3) Article 17(3) of that Order (offences) applies in relation to a default in complying with paragraph (2) as regards the delivery of a copy of the Departments's consent.]

<b>F4</b> 1990 NI 10
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#### **Charitable companies: invalidity of certain transactions**

9A.—(1) Articles 45 and 45A of the Companies Order (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 paragraph (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.

(4) Where a company is a charity, the ratification of an act under Article 45(3) of the Companies Order, or the ratification of a transaction to which Article 330A of that Order applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Department.

#### **Charitable companies: status to appear on correspondence, etc.**

**9B.**—(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 by or on behalf of the company,
- (d) in all conveyances purporting to be executed by the company, and
- (e) in all its bills of parcels, invoices, receipts and letters of credit.

(2) In paragraph (1)(d) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Article 357(2) to (4) of the Companies Order (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of paragraph (1).

VALID FROM 01/10/2008

#### **[<sup>F5</sup>Civil consequences of failure to make required disclosure**

**9BA.**—(1) This Article applies to any legal proceedings brought by a company to which Article 9B applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that Article.

- (2) The proceedings shall be dismissed if the defendant to the proceedings shows—
  - (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the latter's failure to comply with Article 9B, or
  - (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the claimant's failure to comply with that Article,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This Article does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.]

**F5** Arts. 9B-9BB substituted (1.10.2008) for art. 9B by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(3), 4(1), [Sch. 3 para. 5](#) (with arts. 6, 11, 12)

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VALID FROM 01/10/2008

**[<sup>F6</sup>Criminal consequences of failure to make required disclosure**

**9BB.**—(1) Where a company fails, without reasonable excuse, to comply with Article 9B, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(2) For this purpose a shadow director of the company is treated as an officer of the company if the failure is to comply with Article 9B(1)(a) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under section 82 of the Companies Act 2006.

(3) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(4) Expressions used in this Article have the same meaning as in section 84 of the Companies Act 2006 (criminal consequences of failure to disclose company's registered name).]

**F6** Arts. 9B-9BB substituted (1.10.2008) for art. 9B by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(3), 4(1), **Sch. 3 para. 5** (with arts. 6, 11, 12)

*Art. 10 rep. by SR 1993/493*



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## SCHEDULES

### SCHEDULE 1

Article 3.

#### FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 3

##### Introductory

We \_\_\_\_\_ are \_\_\_\_\_ the \_\_\_\_\_ trustees \_\_\_\_\_ of the.....Charity, being a charity to which Article 3 of the Charities (Northern Ireland) Order 1987 applies.

We are of the opinion—

- (a) that the objects of the charity may fairly be considered obsolete or lacking in usefulness, or impossible of achievement, having regard to the period that has elapsed since the charity was founded, the social and economic changes that have taken place in that period and other circumstances relevant to the functioning and administration of the charity, as follows

.....  
.....  
.....

(relevant circumstances, if any, to be specified) and

- (b) that an alteration of the charity's objects, as set out in.....

(here specify the applicable trust instrument)

is required in order that the charity's resources may be applied to better effect, consistently with the spirit of the original gift.

\*Delete any words or phrases not applicable.

Alternative objects, being in law charitable, are specified in the schedule to this resolution and are in our opinion not so far dissimilar in character to those of the original charitable gift that this modification of the charity's trusts would constitute an unjustifiable departure from the intentions of the founder of the charity or violate the spirit of the gift.

We have complied with Article 3(4) of the Charities (Northern Ireland) Order 1987.

##### Resolution

We, the trustees of this charity, under and in pursuance of Article 3 of the Charities (Northern Ireland) Order 1987, hereby resolve that the trusts of the charity be modified by replacing the objects set out in the trust instrument by the alternative objects specified in the schedule.

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Signed:.....

Signed:.....

Signed:.....

TRUSTEES OF  
THE.....CHARITY

Schedule to this Resolution

ALTERNATIVE OBJECTS PROPOSED TO REPLACE THOSE SET OUT IN THE TRUST INSTRUMENT

.....  
.....

SCHEDULE 2 Article 4.

FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 4

Introductory

We are the trustees of the.....Charity, of which the gross income in the preceding accounting period was £.....

We think it expedient that the whole property of the charity be transferred to another charity, to be held and applied for, and as property of, that other charity.

We have obtained from the trustees of the.....(here name proposed transferee charity), written confirmation that they are willing to accept a transfer of property under Article 4 of the Charities (Northern Ireland) Order 1987.

We have formed the opinion that the objects of the.....Charity are not so far dissimilar in character to those of the original charitable gift that the proposed transfer would constitute an unjustifiable departure from the intentions of the founder of the.....Charity or violate the spirit of the gift.

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We have complied with Article 4(3) of the Charities (Northern Ireland) Order 1987.

Resolution

We, the trustees of the.....Charity, under and in pursuance of Article 4 of the Charities (Northern Ireland) Order 1987, hereby resolve that the whole property of the charity, including its permanent endowment, be transferred to the.....Charity.

Signed:

.....  
.....  
.....

TRUSTEES OF THE.....CHARITY

SCHEDULE 3

Article 5.

FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 5

Introductory

We are the trustees of the.....Charity.

The value of the charity's permanent endowment is £..... (or thereabouts), and the endowment does not consist of or comprise land or any interest in land, and its gross income in the preceding accounting period was £.....

We are of the opinion that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone.

We have complied with Article 5(2) of the Charities (Northern Ireland) Order 1987.

Resolution

We, the trustees of the said charity, under and in pursuance of Article 5 of the Charities (Northern Ireland) Order 1987, hereby resolve that the charity ought to be freed from any restrictions imposed by law with respect to expenditure of capital.

Signed:.....

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TRUSTEES OF THE.....CHARITY

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