



Charities Act 1992

1992 CHAPTER 41

PART I

CHARITIES

Preliminary

1 Interpretation of Part I, etc.

(1) In this Part—

“the 1960 Act” means the ^{M1}Charities Act 1960;

“financial year”—

(a) in relation to a charity which is a company, shall be construed in accordance with section 223 of the ^{M2}Companies Act 1985; and

(b) in relation to any other charity, shall be construed in accordance with regulations made by virtue of section 20(2);

“gross income”, in relation to a charity, means its gross recorded income from all sources, including special trusts;

“independent examiner”, in relation to a charity, means such a person as is mentioned in section 21(3)(a);

“the official custodian” means the official custodian for charities;

“the register” (unless the context otherwise requires) means the register of charities kept under section 4 of the 1960 Act, and “registered” shall be construed accordingly;

“special trust” means property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property.

(2) Subject to subsection (3) below, sections 45 and 46 of the 1960 Act (interpretation) shall have effect for the purposes of this Part as they have effect for the purposes of that Act.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (3) A special trust shall not, by itself, constitute a charity for the purposes of sections 19 to 26.
- (4) No vesting or transfer of any property in pursuance of any provision of this Part, or of any provision of the 1960 Act as amended by this Part, shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Commencement Information

II S. 1 partly in force at 1.9.1992; (except the definitions of "financial year", "independent examiner" and "special trust" in s. 1(1) and (3)), see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

Marginal Citations

M1 1960 c.58.

M2 1985 c.6.

Registration of charities

2 The register of charities.

- (1) Section 4 of the 1960 Act (the register of charities) shall be amended as follows.
- (2) For subsection (1) there shall be substituted—
- “(1) The Commissioners shall continue to keep a register of charities, which shall be kept by them in such manner as they think fit.”
- (3) In subsection (2), after “so excepted” there shall be inserted “ (other than one excepted by paragraph (a) of that subsection) ”.
- (4) After subsection (2) there shall be inserted—
- “(2A) The register shall contain—
- (a) the name of every registered charity; and
 - (b) such other particulars of, and such other information relating to, every such charity as the Commissioners think fit.”
- (5) In subsection (4), for paragraph (c) there shall be substituted—
- “(c) any charity which has neither—
- (i) any permanent endowment, nor
 - (ii) the use or occupation of any land,
- and whose income from all sources does not in aggregate amount to more than £1,000 a year; ”.
- (6) After subsection (7) there shall be inserted—
- “(7A) Where any information contained in the register is not in documentary form, subsection (7) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

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- (7B) If the Commissioners so determine, that subsection shall not apply to any particular information contained in the register and specified in their determination.”
- (7) After subsection (8) there shall be inserted—
- “(8A) If he thinks it expedient to do so—
- (a) in consequence of changes in the value of money, or
 - (b) with a view to extending the scope of the exception provided for by subsection (4)(c) above,
- the Secretary of State may by order amend subsection (4)(c) by substituting a different sum for the sum for the time being specified there.
- (8B) Any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (8) Where an exempt charity is on the register immediately before the time when subsection (3) above comes into force, its registration shall cease to have effect at that time.
- (9) Section 4 of the 1960 Act, as amended by this section, and with the omission of repealed provisions, is set out in Schedule 1 to this Act.

Commencement Information

I2 S. 2 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

VALID FROM 01/01/1993

3 Status of registered charity (other than small charity) to appear on official publications etc.

- (1) This section applies to a registered charity if its gross income in its last financial year exceeded £5,000.
- (2) Where this section applies to a registered charity, the fact that it is a registered charity shall be stated in English in legible characters—
 - (a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;
 - (b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and
 - (c) in all bills rendered by it and in all its invoices, receipts and letters of credit.
- (3) Subsection (2)(a) has effect whether the solicitation is express or implied, and whether the money or other property is to be given for any consideration or not.
- (4) If, in the case of a registered charity to which this section applies, any person issues or authorises the issue of any document falling within paragraph (a) or (c) of subsection (2) in which the fact that the charity is a registered charity is not stated as required by that subsection, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.

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- (5) If, in the case of any such registered charity, any person signs any document falling within paragraph (b) of subsection (2) in which the fact that the charity is a registered charity is not stated as required by that subsection, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (6) The Secretary of State may by order amend subsection (1) by substituting a different sum for the sum for the time being specified there.

Modifications etc. (not altering text)

C1 S. 3(1) modified(*temp.*) (28.7.1992) by S.I. 1992/1900, art. 4(2).

Commencement Information

I3 S. 3 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Charity names

4 Power of Commissioners to require charity's name to be changed.

- (1) Where this subsection applies to a charity, the Commissioners may give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the charity trustees may determine with the approval of the Commissioners.
- (2) Subsection (1) applies to a charity if—
- (a) it is a registered charity and its name (“the registered name”)—
 - (i) is the same as, or
 - (ii) is in the opinion of the Commissioners too like,

the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not);
 - (b) the name of the charity is in the opinion of the Commissioners likely to mislead the public as to the true nature—
 - (i) of the purposes of the charity as set out in its trusts, or
 - (ii) of the activities which the charity carries on under its trusts in pursuit of those purposes;
 - (c) the name of the charity includes any word or expression for the time being specified in regulations made by the Secretary of State and the inclusion in its name of that word or expression is in the opinion of the Commissioners likely to mislead the public in any respect as to the status of the charity;
 - (d) the name of the charity is in the opinion of the Commissioners likely to give the impression that the charity is connected in some way with Her Majesty's Government or any local authority, or with any other body of persons or any individual, when it is not so connected; or
 - (e) the name of the charity is in the opinion of the Commissioners offensive;
- and in this subsection any reference to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.

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- (3) Any direction given by virtue of subsection (2)(a) above must be given within 12 months of the time when the registered name was entered in the register in respect of the charity.
- (4) Any direction given under this section with respect to a charity shall be given to the charity trustees; and on receiving any such direction the charity trustees shall give effect to it notwithstanding anything in the trusts of the charity.
- (5) Where the name of any charity is changed under this section, then (without prejudice to section 4(6)(b) of the 1960 Act (notification of changes in particulars of registered charity)) it shall be the duty of the charity trustees forthwith to notify the Commissioners of the charity's new name and of the date on which the change occurred.
- (6) A change of name by a charity under this section does not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.
- (7) Section 26(3) of the ^{M3}Companies Act 1985 (minor variations in names to be disregarded) shall apply for the purposes of this section as if the reference to section 26(1)(c) of that Act were a reference to subsection (2)(a) above.
- (8) Any reference in this section to the charity trustees of a charity shall, in relation to a charity which is a company, be read as a reference to the directors of the company.
- (9) Nothing in this section applies to an exempt charity.

Commencement Information

I4 S. 4 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

Marginal Citations

M3 1985 c.6.

5 Effect of direction under s. 4 where charity is a company.

- (1) Where any direction is given under section 4 of this Act with respect to a charity which is a company, the direction shall be taken to require the name of the charity to be changed by resolution of the directors of the company.
- (2) Section 380 of the ^{M4}Companies Act 1985 (registration etc. of resolutions and agreements) shall apply to any resolution passed by the directors in compliance with any such direction.
- (3) Where the name of such a charity is changed in compliance with any such direction, the registrar of companies—
 - (a) shall (subject to section 26 of the ^{M5}Companies Act 1985 (prohibition on registration of certain names)) enter the new name on the register of companies in place of the former name, and
 - (b) shall issue a certificate of incorporation altered to meet the circumstances of the case;

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and the change of name has effect from the date on which the altered certificate is issued.

Commencement Information

I5 S. 5 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1, (with art. 2(2)).

Marginal Citations

M4 1985 c.6.

M5 1985 c.6.

Supervision and control by Commissioners

6 General power to institute inquiries.

(1) Section 6 of the 1960 Act (general power to institute inquiries) shall be amended as follows.

(2) In subsection (3)—

(a) for the words from “may by order” to “require” there shall be substituted “, or a person appointed by them to conduct it, may direct ”; and

(b) for paragraph (b) there shall be substituted—

“(b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;

(c) to attend at a specified time and place and give evidence or produce any such documents.”

(3) In subsection (5), for “an order or precept under paragraph (b)” there shall be substituted “ a direction under paragraph (c) ”.

(4) Subsection (6) (exemption for person claiming to hold property adversely to a charity) shall be omitted.

(5) For subsection (7) there shall be substituted—

“(7) Where an inquiry has been held under this section, the Commissioners may either—

(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as they think fit, to be printed and published, or

(b) publish any such report or statement in some other way which is calculated in their opinion to bring it to the attention of persons who may wish to make representations to them about the action to be taken.”

(6) Subsection (9) (which is superseded by section 54(2) below) shall be omitted.

Commencement Information

I6 S. 6 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

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7 Power of Commissioners to obtain information and documents.

(1) Section 7 of the 1960 Act (power to call for documents and search records) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) The Commissioners may by order—

(a) require any person to furnish them with any information in his possession which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian for charities;

(b) require any person who has in his custody or under his control any document which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian for charities—

(i) to furnish them with a copy of or extract from the document,
or

(ii) (unless the document forms part of the records or other documents of a court or of a public or local authority) to transmit the document itself to them for their inspection.”

(3) Subsection (4) (exemption for person claiming to hold property adversely to a charity) shall be omitted.

(4) At the end of the section there shall be added—

“(6) The rights conferred by subsection (2) above shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.”

Commencement Information

I7 S. 7 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

VALID FROM 01/11/1992

8 Power to act for protection of charities.

(1) Section 20 of the 1960 Act (power to act for protection of charities) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(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

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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.”

(3) In subsection (2), after “subsection (1)” there shall be inserted “ or (1A) ”.

(4) In subsection (3), for paragraph (a) there shall be substituted—

“(a) where, within the last five years, the trustee—

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- (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;”.
- (5) For subsection (7) there shall be substituted—
- “(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.”
- (6) In subsection (8), for the words from the beginning to “the suspension” there shall be substituted “ 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 ”.
- (7) In subsection (9), after “section” there shall be inserted “ otherwise than by virtue of subsection (1) above ”.
- (8) After subsection (9) there shall be inserted—
- “(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).”
- (9) For subsection (10) there shall be substituted—
- “(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

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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).”

(10) Section 20 of the 1960 Act, as amended by this section, and with the omission of repealed provisions, is set out in Schedule 1 to this Act.

Commencement Information

18 S. 8 wholly in force at 1.11.1992 see s. 79(2) and S.I. 1992/1900, art. 3(1), Sch. 2.

VALID FROM 01/11/1992

9 Supplementary provisions relating to receiver and manager appointed for a charity.

After section 20 of the 1960 Act there shall be inserted—

“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—

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- (a) give such directions, or
- (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.”

Commencement Information

19 S. 9 wholly in force at 1.11.1992 see s. 79(2) and S.I. 1992/1900, art. 3(1), Sch. 2.

VALID FROM 01/11/1992

10 Additional powers exercisable by Commissioners in relation to charitable companies.

- (1) At the end of section 30 of the 1960 Act (charitable companies: winding up) there shall be added—
 - “(2) Where a charity may be so wound up by the High Court, such a petition may also be presented by the Commissioners if, at any time after they have instituted an inquiry 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

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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.”

(2) The existing provisions of section 30 of the 1960 Act (as amended by the ^{M6}Companies Act 1989) shall accordingly constitute subsection (1) of that section.

Commencement Information

I10 S. 10 wholly in force at 1.11.1992 see s. 79(2) and S.I. 1992/1900, art. 3(1), Sch. 2.

Marginal Citations

M6 1989 c.40.

11 Report of inquiry held by Commissioners to be evidence in certain proceedings.

After section 28 of the 1960 Act there shall be inserted—

“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.”

Commencement Information

I11 S. 11 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

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VALID FROM 01/11/1992

12 Supervision by Commissioners of certain Scottish charities.

(1) The following provisions of the 1960 Act (as amended by this Act), namely—

- (a) sections 6 and 7,
- (b) section 20 (except subsection (1A)(ii)), and
- (c) section 20A,

shall have effect in relation to any recognised body which is managed or controlled wholly or mainly in or from England or Wales as they have effect in relation to a charity; and in paragraph 3(6) of Schedule 1 to that Act (constitution etc. of Commissioners) the reference to sections 6, 20 and 20A of that Act includes a reference to those sections as applied by this subsection.

(2) Where—

- (a) a recognised body is managed or controlled wholly or mainly in or from Scotland, but
- (b) any person in England and Wales holds any property on behalf of the body or of any person concerned in its management or control,

then, if the Commissioners are satisfied as to the matters mentioned in subsection (3), they may make an order requiring the person holding the property not to part with it without their approval.

(3) The matters referred to in subsection (2) are—

- (a) that there has been any misconduct or mismanagement in the administration of the body; and
- (b) that it is necessary or desirable to make an order under that subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body;

and the reference in that subsection to the Commissioners being satisfied as to those matters is a reference to their being so satisfied on the basis of such information as may be supplied to them by the Lord Advocate.

(4) Where—

- (a) any person in England and Wales holds any property on behalf of a recognised body or of any person concerned in the management or control of such a body, and
- (b) the Commissioners are satisfied (whether on the basis of such information as may be supplied to them by the Lord Advocate or otherwise)—
 - (i) that there has been any misconduct or mismanagement in the administration of the body, and
 - (ii) that it is necessary or desirable to make an order under this subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body,

the Commissioners may by order vest the property in such recognised body or charity as is specified in the order in accordance with subsection (5), or require any persons in whom the property is vested to transfer it to any such body or charity, or appoint any person to transfer the property to any such body or charity.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (5) The Commissioners may specify in an order under subsection (4) such other recognised body or such charity as they consider appropriate, being a body or charity whose purposes are, in the opinion of the Commissioners, as similar in character to those of the body referred to in paragraph (a) of that subsection as is reasonably practicable; but the Commissioners shall not so specify any body or charity unless they have received—
- (a) from the persons concerned in the management or control of the body, or
 - (b) from the charity trustees of the charity,
- as the case may be, written confirmation that they are willing to accept the property.
- (6) In this section “recognised body” has the same meaning as in Part I of the ^{M7}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (Scottish charities).

Commencement Information

I12 S. 12 wholly in force at 1.11.1992 see s. 79(2) and S.I. 1992/1900, art. 3(1), **Sch. 2**.

Marginal Citations

M7 1990 c.40.

Powers with respect to administration of charities

13 Commissioners’ concurrent jurisdiction with High Court for certain purposes.

- (1) Section 18 of the 1960 Act (Commissioners’ concurrent jurisdiction with High Court for certain purposes) shall be amended as follows.
- (2) At the end of subsection (4) there shall be added “; or
 - (c) in the case of a charity other than an exempt charity, on the application of the Attorney General.”
- (3) For subsection (5) there shall be substituted—

“(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.”
- (4) In subsection (6), for the words from “the Commissioners may” to “(5) above:” there shall be substituted “ 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: ”.
- (5) After subsection (6) there shall be inserted—

“(6A) Where—

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (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.”

(6) At the end of the section there shall be added—

“(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.”

Commencement Information

I13 S. 13 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

14 Trust corporations appointed by Commissioners under 1960 Act.

(1) After section 21 of the 1960 Act there shall be inserted—

“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.”

(2) The amendment made by subsection (1) above shall be deemed always to have had effect; but in the section 21A inserted by that subsection the reference to section 128 of the ^{M8}Supreme Court Act 1981 shall, in relation to any time before 1st January 1982, be construed as a reference to section 175(1) of the ^{M9}Supreme Court of Judicature (Consolidation) Act 1925.

Status: Point in time view as at 01/09/1992. 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 1992, Part 1. (See end of Document for details)

Commencement Information

I14 S. 14 wholly in force at 1.9.1992 and s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M8 1981 c.54.

M9 1925 c.49.

VALID FROM 01/01/1993

15 Application of property cy-pres.

(1) Section 14 of the 1960 Act (application cy-pres of gifts of donors unknown or disclaiming) shall be amended as follows.

(2) In subsection (1)—

(a) for “after such advertisements and inquiries as are reasonable, cannot” there shall be substituted “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 ”; and

(b) for “written disclaimer” there shall be inserted “ disclaimer in the prescribed form ”.

(3) After subsection (1) there shall be inserted—

“(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.”

(4) In subsection (4)(b), for “twelve” there shall be substituted “ six ”.

(5) After subsection (4) there shall be inserted—

“(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.”

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

(6) After subsection (5) there shall be inserted—

“(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.”

Commencement Information

I15 S. 15 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

16 Common deposit funds.

After section 22 of the 1960 Act there shall be inserted—

“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;”.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

Commencement Information

I16 S. 16 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

17 Power of Commissioners to authorise certain ex gratia payments etc. by charities.

After section 23 of the 1960 Act there shall be inserted—

“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.”

Commencement Information

I17 S. 17 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

VALID FROM 01/01/1993

18 Dormant bank accounts of charities.

- (1) Where the Commissioners—
 - (a) are informed by a relevant institution—
 - (i) that it holds one or more accounts in the name of or on behalf of a particular charity (“the relevant charity”), and
 - (ii) that the account, or (if it so holds two or more accounts) each of the accounts, is dormant, and
 - (b) are unable, after making reasonable inquiries, to locate that charity or any of its trustees,

they may give a direction under subsection (2).
- (2) A direction under this subsection is a direction which—
 - (a) requires the institution concerned to transfer the amount, or (as the case may be) the aggregate amount, standing to the credit of the relevant charity in the account or accounts in question to such other charity as is specified in the direction in accordance with subsection (3); or
 - (b) requires the institution concerned to transfer to each of two or more other charities so specified in the direction such part of that amount or aggregate amount as is there specified in relation to that charity.
- (3) The Commissioners may specify in a direction under subsection (2) such other charity or charities as they consider appropriate, having regard, in a case where the purposes of the relevant charity are known to them, to those purposes and to the purposes of the other charity or charities; but the Commissioners shall not so specify any charity unless they have received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.
- (4) Any amount received by a charity by virtue of this section shall be received by the charity on terms that—
 - (a) it shall be held and applied by the charity for the purposes of the charity, but
 - (b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity.
- (5) Where—
 - (a) the Commissioners have been informed as mentioned in subsection (1)(a) by any relevant institution, and
 - (b) before any transfer is made by the institution in pursuance of a direction under subsection (2), the institution has, by reason of any circumstances, cause to believe that the account, or (as the case may be) any of the accounts, held by it in the name of or on behalf of the relevant charity is no longer dormant,

the institution shall forthwith notify those circumstances in writing to the Commissioners; and, if it appears to the Commissioners that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) which has previously been given by them to the institution with respect to the relevant charity.

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

- (6) The receipt of any charity trustees or trustee for a charity in respect of any amount received from a relevant institution by virtue of this section shall be a complete discharge of the institution in respect of that amount.
- (7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commissioners for the purpose of enabling them to discharge their functions under this section.
- (8) For the purposes of this section—
- (a) an account is dormant if no transaction, other than—
- (i) a transaction consisting in a payment into the account, or
 - (ii) a transaction which the institution holding the account has itself caused to be effected,
- has been effected in relation to the account within the period of five years immediately preceding the date when the Commissioners are informed as mentioned in paragraph (a) of subsection (1);
- (b) a “relevant institution” means—
- (i) the Bank of England;
 - (ii) an institution which is authorised by the Bank of England to operate a deposit-taking business under Part I of the ^{M10}Banking Act 1987;
 - (iii) a building society which is authorised by the Building Societies Commission under section 9 of the ^{M11}Building Societies Act 1986 to raise money from its members; or
 - (iv) such other institution mentioned in Schedule 2 to the ^{M12}Banking Act 1987 as the Secretary of State may prescribe by regulations; and
- (c) references to the transfer of any amount to a charity are references to its transfer—
- (i) to the charity trustees, or
 - (ii) to any trustee for the charity,
- as the charity trustees may determine (and any reference to any amount received by a charity shall be construed accordingly).
- (9) For the purpose of determining the matters in respect of which any of the powers conferred by section 6 or 7 of the 1960 Act (power of Commissioners to institute inquiries or obtain information) may be exercised it shall be assumed that the Commissioners have no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of the Commissioners under this section, be required under section 6(3)(a) of that Act to furnish any statements, or answer any questions or inquiries, with respect to any such accounts held by the institution).
- This subsection applies to accounts which are dormant accounts by virtue of subsection (8)(a) above but would not be such accounts if sub-paragraph (i) of that provision were omitted.
- (10) Subsection (1) shall not apply to any account held in the name of or on behalf of an exempt charity.

Modifications etc. (not altering text)

C2 S. 18(8) amended (1.1.1993) by S.I. 1992/3218, reg. 82(1), Sch. 10 Pt. I para.33.

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

Commencement Information

I18 S. 18 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Marginal Citations

M10 1987 c.22.

M11 1986 c.53.

M12 1987 c.22.

Charity accounts

19 Duty to keep accounting records.

- (1) The charity trustees of a charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to—
 - (a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time, and
 - (b) enable the trustees to ensure that, where any statements of accounts are prepared by them under section 20(1), those statements of accounts comply with the requirements of regulations under that provision.
- (2) The accounting records shall in particular contain—
 - (a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the assets and liabilities of the charity.
- (3) The charity trustees of a charity shall preserve any accounting records made for the purposes of this section in respect of the charity for at least six years from the end of the financial year of the charity in which they are made.
- (4) Where a charity ceases to exist within the period of six years mentioned in subsection (3) as it applies to any accounting records, the obligation to preserve those records in accordance with that subsection shall continue to be discharged by the last charity trustees of the charity, unless the Commissioners consent in writing to the records being destroyed or otherwise disposed of.
- (5) Nothing in this section applies to a charity which is a company.

20 Annual statements of accounts.

- (1) The charity trustees of a charity shall (subject to subsection (3)) prepare in respect of each financial year of the charity a statement of accounts complying with such requirements as to its form and contents as may be prescribed by regulations made by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision—
 - (a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
 - (b) as to any information to be provided by way of notes to the accounts;

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and regulations under that subsection may also make provision for determining the financial years of a charity for the purposes of this Part and any regulations made under it.

- (3) Where a charity's gross income in any financial year does not exceed £25,000, the charity trustees may, in respect of that year, elect to prepare the following, namely—
 - (a) a receipts and payments account, and
 - (b) a statement of assets and liabilities,
 instead of a statement of accounts under subsection (1).
- (4) The charity trustees of a charity shall preserve—
 - (a) any statement of accounts prepared by them under subsection (1), or
 - (b) any account and statement prepared by them under subsection (3),
 for at least six years from the end of the financial year to which any such statement relates or (as the case may be) to which any such account and statement relate.
- (5) Subsection (4) of section 19 shall apply in relation to the preservation of any such statement or account and statement as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being read as references to subsection (4) above).
- (6) The Secretary of State may by order amend subsection (3) above by substituting a different sum for the sum for the time being specified there.
- (7) Nothing in this section applies to a charity which is a company.

21 Annual audit or examination of charity accounts.

- (1) Subsection (2) applies to a financial year of a charity (“the relevant year”) if the charity's gross income or total expenditure in any of the following, namely—
 - (a) the relevant year,
 - (b) the financial year of the charity immediately preceding the relevant year (if any), and
 - (c) the financial year of the charity immediately preceding the year specified in paragraph (b) (if any),
 exceeds £100,000.
- (2) If this subsection applies to a financial year of a charity, the accounts of the charity for that year shall be audited by a person who—
 - (a) is, in accordance with section 25 of the ^{M13}Companies Act 1989 (eligibility for appointment), eligible for appointment as a company auditor, or
 - (b) is a member of a body for the time being specified in regulations under section 22 below and is under the rules of that body eligible for appointment as auditor of the charity.
- (3) If subsection (2) does not apply to a financial year of a charity, then (subject to subsection (4)) the accounts of the charity for that year shall, at the election of the charity trustees, either—
 - (a) be examined by an independent examiner, that is to say an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts, or
 - (b) be audited by such a person as is mentioned in subsection (2).

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- (4) Where it appears to the Commissioners—
- (a) that subsection (2), or (as the case may be) subsection (3), has not been complied with in relation to a financial year of a charity within ten months from the end of that year, or
 - (b) that, although subsection (2) does not apply to a financial year of a charity, it would nevertheless be desirable for the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection,
- the Commissioners may by order require the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection.
- (5) If the Commissioners make an order under subsection (4) with respect to a charity, then unless—
- (a) the order is made by virtue of paragraph (b) of that subsection, and
 - (b) the charity trustees themselves appoint an auditor in accordance with the order,
- the auditor shall be a person appointed by the Commissioners.
- (6) The expenses of any audit carried out by an auditor appointed by the Commissioners under subsection (5), including the auditor's remuneration, shall be recoverable by the Commissioners—
- (a) from the charity trustees of the charity concerned, who shall be personally liable, jointly and severally, for those expenses; or
 - (b) to the extent that it appears to the Commissioners not to be practical to seek recovery of those expenses in accordance with paragraph (a), from the funds of the charity.
- (7) The Commissioners may—
- (a) give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner;
 - (b) give such directions as they think appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(a);
- and any such guidance or directions may either be of general application or apply to a particular charity only.
- (8) The Secretary of State may by order amend subsection (1) by substituting a different sum for the sum for the time being specified there.
- (9) Nothing in this section applies to a charity which is a company; but section 8(3) to (6) of the 1960 Act (power of Commissioners to require condition and accounts of charity to be investigated and audited) shall continue to apply to such a charity.

Marginal Citations

M13 1989 c. 40.

22 Supplementary provisions relating to audits etc.

- (1) The Secretary of State may by regulations make provision—
- (a) specifying one or more bodies for the purposes of section 21(2)(b);

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- (b) with respect to the duties of an auditor carrying out an audit under section 21, including provision with respect to the making by him of a report on—
 - (i) the statement of accounts prepared for the financial year in question under section 20(1), or
 - (ii) the account and statement so prepared under section 20(3),
 as the case may be;
 - (c) with respect to the making by an independent examiner of a report in respect of an examination carried out by him under section 21;
 - (d) conferring on such an auditor or on an independent examiner a right of access with respect to books, documents and other records (however kept) which relate to the charity concerned;
 - (e) entitling such an auditor or an independent examiner to require, in the case of a charity, information and explanations from past or present charity trustees or trustees for the charity, or from past or present officers or employees of the charity;
 - (f) enabling the Commissioners, in circumstances specified in the regulations, to dispense with the requirements of section 21(2) or (3) in the case of a particular charity or in the case of any particular financial year of a charity.
- (2) If any person fails to afford an auditor or an independent examiner any facility to which he is entitled by virtue of subsection (1)(d) or (e), the Commissioners may by order give—
- (a) to that person, or
 - (b) to the charity trustees for the time being of the charity concerned,
- such directions as the Commissioners think appropriate for securing that the default is made good.
- (3) Section 727 of the ^{M14}Companies Act 1985 (power of court to grant relief in certain cases) shall have effect in relation to an auditor or independent examiner appointed by a charity in pursuance of section 21 above as it has effect in relation to a person employed as auditor by a company within the meaning of that Act.

Marginal Citations

M14 1985 c.6.

23 Annual reports.

- (1) The charity trustees of a charity shall prepare in respect of each financial year of the charity an annual report containing—
- (a) such a report by the trustees on the activities of the charity during that year, and
 - (b) such other information relating to the charity or to its trustees or officers,
- as may be prescribed by regulations made by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision—
- (a) for any such report as is mentioned in paragraph (a) of that subsection to be prepared in accordance with such principles as are specified or referred to in the regulations;

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- (b) enabling the Commissioners to dispense with any requirement prescribed by virtue of subsection (1)(b) in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.
- (3) The annual report required to be prepared under this section in respect of any financial year of a charity shall be transmitted to the Commissioners by the charity trustees—
 - (a) within ten months from the end of that year, or
 - (b) within such longer period as the Commissioners may for any special reason allow in the case of that report.
- (4) Subject to subsection (5), any such annual report shall have attached to it the statement of accounts prepared for the financial year in question under section 20(1) or (as the case may be) the account and statement so prepared under section 20(3), together with—
 - (a) where the accounts of the charity for that year have been audited under section 21, a copy of the report made by the auditor on that statement of accounts or (as the case may be) on that account and statement;
 - (b) where the accounts of the charity for that year have been examined under section 21, a copy of the report made by the independent examiner in respect of the examination carried out by him under that section.
- (5) Subsection (4) does not apply to a charity which is a company, and any annual report transmitted by the charity trustees of such a charity under subsection (3) shall instead have attached to it a copy of the charity's annual accounts prepared for the financial year in question under Part VII of the ^{M15}Companies Act 1985, together with a copy of the auditors' report on those accounts.
- (6) Any annual report transmitted to the Commissioners under subsection (3), together with the documents attached to it, shall be kept by the Commissioners for such period as they think fit.

Marginal Citations

M15 1985 c.6.

24 Special provision as respects accounts and annual reports of exempt and other excepted charities.

- (1) Nothing in sections 19 to 23 applies to any exempt charity; but section 32(1) and (2) of the 1960 Act (general obligation to keep accounts) shall continue to apply to any such charity.
- (2) Nothing in sections 21 to 23 applies to any charity which—
 - (a) falls within section 4(4)(c) of the 1960 Act (certain charities with an annual income not exceeding £1,000), and
 - (b) is not registered.
- (3) Except in accordance with subsection (6) below, nothing in section 23 applies to any charity (other than an exempt charity or a charity which falls within section 4(4)(c) of the 1960 Act) which—

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- (a) is excepted by section 4(4) of that Act (charities not required to be registered), and
 - (b) is not registered.
- (4) If requested to do so by the Commissioners, the charity trustees of any such charity as is mentioned in subsection (3) above shall prepare an annual report in respect of such financial year of the charity as is specified in the Commissioners' request.
- (5) Any report prepared under subsection (4) above shall contain—
- (a) such a report by the charity trustees on the activities of the charity during the year in question, and
 - (b) such other information relating to the charity or to its trustees or officers, as may be prescribed by regulations made under section 23(1) in relation to annual reports prepared under that provision.
- (6) Subsections (3) to (6) of section 23 shall apply to any report required to be prepared under subsection (4) above as if it were an annual report required to be prepared under subsection (1) of that section.
- (7) Any reference in this section to a charity which falls within section 4(4)(c) of the 1960 Act includes a reference to a charity which falls within that provision but is also excepted from registration by section 4(4)(b) of that Act (charities excepted by order or regulations).

25 Public inspection of annual reports etc.

- (1) Any annual report or other document kept by the Commissioners in pursuance of section 23(6) shall be open to public inspection at all reasonable times—
- (a) during the period for which it is so kept; or
 - (b) if the Commissioners so determine, during such lesser period as they may specify.
- (2) Section 9 of the 1960 Act (supply by Commissioners of copies of documents open to public inspection) shall have effect as if the reference to that Act included a reference to subsection (1) above.
- (3) Where any person—
- (a) requests the charity trustees of a charity in writing to provide him with a copy of the charity's most recent accounts, and
 - (b) pays them such reasonable fee (if any) as they may require in respect of the costs of complying with the request,
- those trustees shall comply with the request within the period of two months beginning with the date on which it is made.
- (4) In subsection (3) the reference to a charity's most recent accounts is—
- (a) in the case of a charity other than one falling within any of paragraphs (b) to (d) below, a reference to the statement of accounts or account and statement prepared in pursuance of section 20(1) or (3) in respect of the last financial year of the charity the accounts for which have been audited or examined under section 21;
 - (b) in the case of such a charity as is mentioned in section 24(2), a reference to the statement of accounts or account and statement prepared in pursuance of section 20(1) or (3) in respect of the last financial year of the charity in respect

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

of which a statement of accounts or account and statement has or have been so prepared;

- (c) in the case of a charity which is a company, a reference to the annual accounts of the company most recently audited under Part VII of the ^{M16}Companies Act 1985; and
- (d) in the case of an exempt charity, a reference to the accounts of the charity most recently audited in pursuance of any statutory or other requirement or, if its accounts are not required to be audited, the accounts most recently prepared in respect of the charity.

Marginal Citations

M16 1985 c.6.

26 Annual returns by registered charities.

- (1) Every registered charity shall prepare in respect of each of its financial years an annual return in such form, and containing such information, as may be prescribed by regulations made by the Commissioners.
- (2) Any such return shall be transmitted to the Commissioners by the date by which the charity trustees are, by virtue of section 23(3), required to transmit to them the annual report required to be prepared in respect of the financial year in question.
- (3) The Commissioners may dispense with the requirements of subsection (1) in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

27 Offences.

Any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed—

- (a) by section 23(3) (taken with section 23(4) or (5), as the case may require), or
- (b) by section 25(3) or 26(2),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.

VALID FROM 01/01/1993

Charity proceedings

28 Power of Commissioners to bring proceedings with respect to charities.

After section 26 of the 1960 Act there shall be inserted—

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

“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.”

Commencement Information

119 S. 28 wholly in force at 1.1.1993 by S.I. 1992/1900, art. 4(1), Sch. 3.

Charity property

29 Divestment of charity property held by official custodian for charities.

- (1) The official custodian shall, in accordance with this section, divest himself of all property to which this subsection applies.
- (2) Subsection (1) applies to any property held by the official custodian in his capacity as such, with the exception of—
 - (a) any land; and
 - (b) any property (other than land) which is vested in him by virtue of an order of the Commissioners under section 20 of the 1960 Act (power to act for protection of charities).
- (3) Where property to which subsection (1) applies is held by the official custodian in trust for particular charities, he shall (subject to subsection (7)) divest himself of that property in such manner as the Commissioners may direct.
- (4) Without prejudice to the generality of subsection (3), directions given by the Commissioners under that subsection may make different provision in relation to

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different property held by the official custodian or in relation to different classes or descriptions of property held by him, including (in particular)—

- (a) provision designed to secure that the divestment required by subsection (1) is effected in stages or by means of transfers or other disposals taking place at different times;
 - (b) provision requiring the official custodian to transfer any specified investments, or any specified class or description of investments, held by him in trust for a charity—
 - (i) to the charity trustees or any trustee for the charity, or
 - (ii) to a person nominated by the charity trustees to hold any such investments in trust for the charity;
 - (c) provision requiring the official custodian to sell or call in any specified investments, or any specified class or description of investments, so held by him and to pay any proceeds of sale or other money accruing therefrom—
 - (i) to the charity trustees or any trustee for the charity, or
 - (ii) into any bank account kept in its name.
- (5) The charity trustees of a charity may, in the case of any property falling to be transferred by the official custodian in accordance with a direction under subsection (3), nominate a person to hold any such property in trust for the charity; but a person shall not be so nominated unless—
- (a) if an individual, he resides in England and Wales; or
 - (b) if a body corporate, it has a place of business there.
- (6) Directions under subsection (3) shall, in the case of any property vested in the official custodian by virtue of section 22(6) of the 1960 Act (common investment funds), provide for any such property to be transferred—
- (a) to the trustees appointed to manage the common investment fund concerned; or
 - (b) to any person nominated by those trustees who is authorised by or under the common investment scheme concerned to hold that fund or any part of it.
- (7) Where the official custodian—
- (a) holds any relevant property in trust for a charity, but
 - (b) after making reasonable inquiries is unable to locate the charity or any of its trustees,
- he shall—
- (i) unless the relevant property is money, sell the property and hold the proceeds of sale pending the giving by the Commissioners of a direction under subsection (8);
 - (ii) if the relevant property is money, hold it pending the giving of any such direction;
- and for this purpose “relevant property” means any property to which subsection (1) applies or any proceeds of sale or other money accruing to the official custodian in consequence of a direction under subsection (3).
- (8) Where subsection (7) applies in relation to a charity (“the dormant charity”), the Commissioners may direct the official custodian—
- (a) to pay such amount as is held by him in accordance with that subsection to such other charity as is specified in the direction in accordance with subsection (9), or

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- (b) to pay to each of two or more other charities so specified in the direction such part of that amount as is there specified in relation to that charity.
- (9) The Commissioners may specify in a direction under subsection (8) such charity or charities as they consider appropriate, being in each case a charity whose purposes are, in the opinion of the Commissioners, as similar in character to those of the dormant charity as is reasonably practicable; but the Commissioners shall not so specify any charity unless they have received from the charity trustees written confirmation that they are willing to accept the amount proposed to be paid to the charity.
- (10) Any amount received by a charity by virtue of subsection (8) shall be received by the charity on terms that—
 - (a) it shall be held and applied by the charity for the purposes of the charity, but
 - (b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it, or (as the case may be) the property which it represents, was subject as property of the dormant charity.
- (11) At such time as the Commissioners are satisfied that the official custodian has divested himself of all property held by him in trust for particular charities, all remaining funds held by him as official custodian shall be paid by him into the Consolidated Fund.
- (12) Nothing in subsection (11) applies in relation to any property held by the official custodian which falls within subsection (2)(a) or (b).
- (13) In this section “land” does not include any interest in land by way of mortgage or other security.

Commencement Information

I20 S. 29 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

30 Provisions supplementary to s. 29.

- (1) Any directions of the Commissioners under section 29 above shall have effect notwithstanding anything—
 - (a) in the trusts of a charity, or
 - (b) in section 17(1) of the 1960 Act (supplementary provisions as to property vested in official custodian).
- (2) Subject to subsection (3), any provision—
 - (a) of the trusts of a charity, or
 - (b) of any directions given by an order of the Commissioners made in connection with a transaction requiring the sanction of an order under section 29(1) of the 1960 Act (restrictions on dealing with charity property),
 shall cease to have effect if and to the extent that it requires or authorises personal property of the charity to be transferred to or held by the official custodian; and for this purpose “personal property” extends to any mortgage or other real security, but does not include any interest in land other than such an interest by way of mortgage or other security.
- (3) Subsection (2) does not apply to—
 - (a) any provision of an order made under section 20 of the 1960 Act (power to act for protection of charities); or

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- (b) any provision of any other order, or of any scheme, of the Commissioners if the provision requires trustees of a charity to make payments into an account maintained by the official custodian with a view to the accumulation of a sum as capital of the charity (whether or not by way of recoupment of a sum expended out of the charity's permanent endowment);
- but any such provision as is mentioned in paragraph (b) shall have effect as if, instead of requiring the trustees to make such payments into an account maintained by the official custodian, it required the trustees to make such payments into an account maintained by them or by any other person (apart from the official custodian) who is either a trustee for the charity or a person nominated by them to hold such payments in trust for the charity.
- (4) The disposal of any property by the official custodian in accordance with section 29 above shall operate to discharge him from his trusteeship of that property.
- (5) Where any instrument issued by the official custodian in connection with any such disposal contains a printed reproduction of his official seal, that instrument shall have the same effect as if it were duly sealed with his official seal.

Commencement Information

I21 S. 30 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

31 Divestment in the case of land subject to Reverter of Sites Act 1987.

- (1) Where—
- (a) any land is vested in the official custodian in trust for a charity, and
 - (b) it appears to the Commissioners that section 1 of the 1987 Act (right of reverter replaced by trust for sale) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances,
- the jurisdiction which, under section 18 of the 1960 Act (Commissioners' concurrent jurisdiction with High Court for certain purposes), is exercisable by the Commissioners for the purpose of discharging a trustee for a charity may, at any time before section 1 of the 1987 Act operates in relation to the land, be exercised by them of their own motion for the purpose of—
- (i) making an order discharging the official custodian from his trusteeship of the land, and
 - (ii) making such vesting orders and giving such directions as appear to them to be necessary or expedient in consequence.
- (2) Where—
- (a) section 1 of the 1987 Act has operated in relation to any land which, immediately before the time when that section so operated, was vested in the official custodian in trust for a charity, and
 - (b) the land remains vested in him but on the trust arising under that section,
- the court or the Commissioners (of their own motion) may—
- (i) make an order discharging the official custodian from his trusteeship of the land, and
 - (ii) (subject to the following provisions of this section) make such vesting orders and give such directions as appear to it or them to be necessary or expedient in consequence.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (3) Where any order discharging the official custodian from his trusteeship of any land—
- (a) is made by the court under section 16(3) of the 1960 Act (discharge of official custodian), or by the Commissioners under section 18 of that Act, on the grounds that section 1 of the 1987 Act will, or is likely to, operate in relation to the land, or
 - (b) is made by the court or the Commissioners under subsection (2) above,
- the persons in whom the land is to be vested on the discharge of the official custodian shall be the relevant charity trustees (as defined in subsection (4) below), unless the court or (as the case may be) the Commissioners is or are satisfied that it would be appropriate for it to be vested in some other persons.
- (4) In subsection (3) above “the relevant charity trustees” means—
- (a) in relation to an order made as mentioned in paragraph (a) of that subsection, the charity trustees of the charity in trust for which the land is vested in the official custodian immediately before the time when the order takes effect, or
 - (b) in relation to an order made under subsection (2) above, the charity trustees of the charity in trust for which the land was vested in the official custodian immediately before the time when section 1 of the 1987 Act operated in relation to the land.
- (5) Where—
- (a) section 1 of the 1987 Act has operated in relation to any such land as is mentioned in subsection (2)(a) above, and
 - (b) the land remains vested in the official custodian as mentioned in subsection (2) (b) above,
- then (subject to subsection (6)), all the powers, duties and liabilities that would, apart from this section, be those of the official custodian as trustee for sale of the land shall instead be those of the charity trustees of the charity concerned; and those trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.
- (6) Subsection (5) shall not be taken to require or authorise those trustees to sell the land at a time when it remains vested in the official custodian.
- (7) Where—
- (a) the official custodian has been discharged from his trusteeship of any land by an order under subsection (2), and
 - (b) the land has, in accordance with subsection (3), been vested in the charity trustees concerned or (as the case may be) in any persons other than those trustees,
- the land shall be held by those trustees, or (as the case may be) by those persons, as trustees for sale on the terms of the trust arising under section 1 of the 1987 Act.
- (8) The official custodian shall not be liable to any person in respect of any loss or misapplication of any land vested in him in accordance with that section unless it is occasioned by or through any wilful neglect or default of his or of any person acting for him; but the Consolidated Fund shall be liable to make good to any person any sums for which the official custodian may be liable by reason of any such neglect or default.
- (9) In this section—
- (a) “the 1987 Act” means the ^{M17}Reverter of Sites Act 1987; and

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- (b) any reference to section 1 of the 1987 Act operating in relation to any land is a reference to a trust for sale arising in relation to the land under that section.

Commencement Information

I22 S. 31 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M17 1987 c.15.

VALID FROM 01/01/1993

32 Restrictions on dispositions of charity land.

- (1) Subject to the following provisions of this section and section 37, no land held by or in trust for a charity shall be sold, leased or otherwise disposed of without an order of the court or of the Commissioners.
- (2) Subsection (1) above shall not apply to a disposition of such land if—
- (a) the disposition is made to a person who is not—
 - (i) a connected person (as defined in Schedule 2 to this Act), or
 - (ii) a trustee for, or nominee of, a connected person; and
 - (b) the requirements of subsection (3) or (5) below have been complied with in relation to it.
- (3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5), the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—
- (a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;
 - (b) advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report (unless he has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and
 - (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.
- (4) For the purposes of subsection (3) a person is a qualified surveyor if—
- (a) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the Secretary of State; and
 - (b) he is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

- (5) Where the proposed disposition is the granting of a lease for a term ending not more than seven years after it is granted (other than one granted wholly or partly in consideration of a fine), the charity trustees must, before entering into an agreement for the lease—
- (a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and
 - (b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.
- (6) Where—
- (a) any land is held by or in trust for a charity, and
 - (b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,
- then (subject to subsections (7) and (8) and without prejudice to the operation of the preceding provisions of this section), the land shall not be sold, leased or otherwise disposed of unless the charity trustees have previously—
- (i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and
 - (ii) taken into consideration any representations made to them within that time about the proposed disposition.
- (7) Subsection (6) shall not apply to any such disposition of land as is there mentioned if—
- (a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or
 - (b) the disposition is the granting of a lease for a term ending not more than two years after it is granted (other than one granted wholly or partly in consideration of a fine).
- (8) The Commissioners may direct—
- (a) that subsection (6) shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or
 - (b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,
- if, on an application made to them in writing by or on behalf of the charity or charities in question, the Commissioners are satisfied that it would be in the interests of the charity or charities for them to give the direction.
- (9) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—
- (a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established; or

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- (b) to any disposition of land held by or in trust for a charity which—
 - (i) is made to another charity otherwise than for the best price that can reasonably be obtained, and
 - (ii) is authorised to be so made by the trusts of the first-mentioned charity; or
 - (c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—
 - (i) is granted otherwise than for the best rent that can reasonably be obtained; and
 - (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.
- (10) Nothing in this section applies—
- (a) to any disposition of land held by or in trust for an exempt charity;
 - (b) to any disposition of land by way of mortgage or other security; or
 - (c) to any disposition of an advowson.
- (11) In this section “land” means land in England or Wales.

Commencement Information

I23 S. 32 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

VALID FROM 01/01/1993

33 Supplementary provisions relating to dispositions of charity land.

- (1) Any of the following instruments, namely—
- (a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and
 - (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,
- shall state—
- (i) that the land is held by or in trust for a charity,
 - (ii) whether the charity is an exempt charity and whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (9) of section 32, and
 - (iii) if it is not an exempt charity and the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.
- (2) Where any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 32 applies, the charity trustees shall certify in the instrument by which the disposition is effected—
- (a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

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- (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.
- (3) Where subsection (2) above has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.
- (4) Where—
- (a) any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 32 applies, but
 - (b) subsection (2) above has not been complied with in relation to the disposition,
- then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition shall be valid whether or not—
- (i) (where subsection (1) of that section applies) the disposition has been sanctioned by an order of the court or of the Commissioners, or
 - (ii) (where subsection (2) of that section applies) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.
- (5) Any of the following instruments, namely—
- (a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and
 - (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,
- shall state—
- (i) that the land will, as a result of the disposition, be held by or in trust for a charity,
 - (ii) whether the charity is an exempt charity, and
 - (iii) if it is not an exempt charity, that the restrictions on disposition imposed by section 32 will apply to the land (subject to subsection (9) of that section).
- (6) In section 29(1) of the ^{M18}Settled Land Act 1925 (charitable and public trusts)—
- (a) the requirement for a conveyance of land held on charitable, ecclesiastical or public trusts to state that it is held on such trusts shall not apply to any instrument to which subsection (1) above applies; and
 - (b) the requirement imposed on a purchaser, in the circumstances mentioned in section 29(1) of that Act, to see that any consents or orders requisite for authorising a transaction have been obtained shall not apply in relation to any disposition in relation to which subsection (2) above has been complied with;
- and expressions used in this subsection which are also used in that Act have the same meaning as in that Act.
- (7) Where—
- (a) the disposition to be effected by any such instrument as is mentioned in subsection (1)(b) or (5)(b) will be a registered disposition, or

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(b) any such instrument will on taking effect be an instrument to which section 123(1) of the ^{M19}Land Registration Act 1925 (compulsory registration of title) applies,

the statement which, by virtue of subsection (1) or (5), is to be contained in the instrument shall be in such form as may be prescribed.

(8) Where—

(a) an application is duly made—

(i) for registration of a disposition of registered land, or

(ii) for registration of a person's title under a disposition of unregistered land, and

(b) the instrument by which the disposition is effected contains a statement complying with subsections (5) and (7) above, and

(c) the charity by or in trust for which the land is held as a result of the disposition is not an exempt charity,

the registrar shall enter in the register, in respect of the land, a restriction in such form as may be prescribed.

(9) Where—

(a) any such restriction is entered in the register in respect of any land, and

(b) the charity by or in trust for which the land is held becomes an exempt charity,

the charity trustees shall apply to the registrar for the restriction to be withdrawn; and on receiving any application duly made under this subsection the registrar shall withdraw the restriction.

(10) Where—

(a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or

(b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees shall apply to the registrar for such a restriction as is mentioned in subsection (8) to be entered in the register in respect of the land; and on receiving any application duly made under this subsection the registrar shall enter such a restriction in the register in respect of the land.

(11) In this section—

(a) references to a disposition of land do not include references to—

(i) a disposition of land by way of mortgage or other security,

(ii) any disposition of an advowson, or

(iii) any release of a rentcharge falling within section 37(1); and

(b) “land” means land in England or Wales;

and subsections (7) to (10) above shall be construed as one with the ^{M20}Land Registration Act 1925.

Commencement Information

I24 S. 33 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

Marginal Citations

M18 1925 c.18.

M19 1925 c.21.

M20 1925 c.21.

VALID FROM 01/01/1993

34 Restrictions on mortgaging charity land.

- (1) Subject to subsection (2), no mortgage of land held by or in trust for a charity shall be granted without an order of the court or of the Commissioners.
- (2) Subsection (1) shall not apply to a mortgage of any such land by way of security for the repayment of a loan where the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the matters mentioned in subsection (3).
- (3) Those matters are—
 - (a) whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;
 - (b) whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and
 - (c) the ability of the charity to repay on those terms the sum proposed to be borrowed.
- (4) For the purposes of subsection (2) proper advice is the advice of a person—
 - (a) who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters; and
 - (b) who has no financial interest in the making of the loan in question;
 and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of his employment as an officer or employee of the charity or of the charity trustees.
- (5) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 32(9)(a).
- (6) In this section—

“land” means land in England or Wales;

“mortgage” includes a charge.
- (7) Nothing in this section applies to an exempt charity.

Commencement Information

I25 S. 34 in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

VALID FROM 01/01/1993

35 Supplementary provisions relating to mortgaging of charity land.

- (1) Any mortgage of land held by or in trust for a charity shall state—
 - (a) that the land is held by or in trust for a charity,
 - (b) whether the charity is an exempt charity and whether the mortgage is one falling within subsection (5) of section 34, and
 - (c) if it is not an exempt charity and the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply;and where the mortgage will be a registered disposition any such statement shall be in such form as may be prescribed.
- (2) Where subsection (1) or (2) of section 34 applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—
 - (a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the court or of the Commissioners (as the case may be), or
 - (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.
- (3) Where subsection (2) above has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.
- (4) Where—
 - (a) subsection (1) or (2) of section 34 applies to any mortgage of land held by or in trust for a charity, but
 - (b) subsection (2) above has not been complied with in relation to the mortgage, then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—
 - (i) (where subsection (1) of that section applies) the mortgage has been sanctioned by an order of the court or of the Commissioners, or
 - (ii) (where subsection (2) of that section applies) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in that subsection.
- (5) In section 29(1) of the ^{M21}Settled Land Act 1925 (charitable and public trusts)—
 - (a) the requirement for a mortgage of land held on charitable, ecclesiastical or public trusts (as a “conveyance” of such land for the purposes of that Act) to state that it is held on such trusts shall not apply to any mortgage to which subsection (1) above applies; and
 - (b) the requirement imposed on a mortgagee (as a “purchaser” for those purposes), in the circumstances mentioned in section 29(1) of that Act, to see that any consents or orders requisite for authorising a transaction have

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

been obtained shall not apply in relation to any mortgage in relation to which subsection (2) above has been complied with;
and expressions used in this subsection which are also used in that Act have the same meaning as in that Act.

(6) In this section—

“mortgage” includes a charge, and “mortgagee” shall be construed accordingly;

“land” means land in England or Wales;

“prescribed” and “registered disposition” have the same meaning as in the ^{M22}Land Registration Act 1925.

Commencement Information

I26 S. 35 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), **Sch. 3**.

Marginal Citations

M21 1925 c.18.

M22 1925 c.21.

VALID FROM 01/01/1993

36 Removal of requirements under statutory provisions for consent to dealings with charity land.

(1) Any provision—

- (a) establishing or regulating a particular charity and contained in, or having effect under, any Act of Parliament, or
- (b) contained in the trusts of a charity,

shall cease to have effect if and to the extent that it provides for dispositions of, or other dealings with, land held by or in trust for the charity to require the consent of the Commissioners (whether signified by order or otherwise).

(2) Any provision of an order or scheme under the ^{M23}Education Act 1944 or the ^{M24}Education Act 1973 relating to a charity shall cease to have effect if and to the extent that it requires, in relation to any sale, lease or other disposition of land held by or in trust for the charity, approval by the Commissioners or the Secretary of State of the amount for which the land is to be sold, leased or otherwise disposed of.

(3) In this section “land” means land in England or Wales.

Commencement Information

I27 S. 36 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), **Sch. 3**.

Marginal Citations

M23 1944 c.31.

M24 1973 c.16.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

VALID FROM 01/01/1993

37 Release of charity rentcharges.

- (1) Section 32(1) shall not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than ten times the annual amount of the rentcharge.
- (2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £500, any costs incurred by the charity in connection with proving its title to the rentcharge shall be recoverable by the charity from the person or persons in whose favour the rentcharge is being released.
- (3) Neither section 32(1) nor subsection (2) above applies where a rentcharge which a charity is entitled to receive is redeemed under sections 8 to 10 of the ^{M25}Rentcharges Act 1977.
- (4) The Secretary of State may by order amend subsection (2) above by substituting a different sum for the sum for the time being specified there.
- (5) Subsections (2) to (8) of section 27 of the 1960 Act (special procedure for redemption of charity rentcharges) shall cease to have effect.

Commencement Information

I28 S. 37 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), **Sch. 3**.

Marginal Citations

M25 1977 c.30.

Powers of investment

38 Relaxation of restrictions on wider-range investments.

- (1) The Secretary of State may by order made with the consent of the Treasury—
 - (a) direct that, in the case of a trust fund consisting of property held by or in trust for a charity, any division of the fund in pursuance of section 2(1) of the ^{M26}Trustee Investments Act 1961 (trust funds to be divided so that wider-range and narrower-range investments are equal in value) shall be made so that the value of the wider-range part at the time of the division bears to the then value of the narrower-range part such proportion as is specified in the order;
 - (b) provide that, in its application in relation to such a trust fund, that Act shall have effect subject to such modifications so specified as the Secretary of State considers appropriate in consequence of, or in connection with, any such direction.
- (2) Where, before the coming into force of an order under this section, a trust fund consisting of property held by or in trust for a charity has already been divided in pursuance of section 2(1) of that Act, the fund may, notwithstanding anything in that provision, be again divided (once only) in pursuance of that provision during the continuance in force of the order.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) Expressions used in this section which are also used in the ^{M27}Trustee Investments Act 1961 have the same meaning as in that Act.
- (5) In the application of this section to Scotland, “charity” means a recognised body within the meaning of section 1(7) of the ^{M28}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Commencement Information

I29 S. 38 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

Marginal Citations

M26 1961 c.62.

M27 1961 c.62.

M28 1990 c.40.

39 Extension of powers of investment.

- (1) The Secretary of State may by regulations made with the consent of the Treasury make, with respect to property held by or in trust for a charity, provision authorising a trustee to invest such property in any manner specified in the regulations, being a manner of investment not for the time being included in any Part of Schedule 1 to the ^{M29}Trustee Investments Act 1961.
- (2) Regulations under this section may make such provision—
 - (a) regulating the investment of property in any manner authorised by virtue of subsection (1), and
 - (b) with respect to the variation and retention of investments so made, as the Secretary of State considers appropriate.
- (3) Such regulations may, in particular, make provision—
 - (a) imposing restrictions with respect to the proportion of the property held by or in trust for a charity which may be invested in any manner authorised by virtue of subsection (1), being either restrictions applying to investment in any such manner generally or restrictions applying to investment in any particular such manner;
 - (b) imposing the like requirements with respect to the obtaining and consideration of advice as are imposed by any of the provisions of section 6 of the ^{M30}Trustee Investments Act 1961 (duty of trustees in choosing investments).
- (4) Any power of investment conferred by any regulations under this section—
 - (a) shall be in addition to, and not in derogation from, any power conferred otherwise than by such regulations; and
 - (b) shall not be limited by the trusts of a charity (in so far as they are not contained in any Act or instrument made under an enactment) unless it is excluded by those trusts in express terms;

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

but any such power shall only be exercisable by a trustee in so far as a contrary intention is not expressed in any Act or in any instrument made under an enactment and relating to the powers of the trustee.

(5) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.

(6) In this section “property”—

(a) in England and Wales, means real or personal property of any description, including money and things in action, but does not include an interest in expectancy; and

(b) in Scotland, means property of any description (whether heritable or moveable, corporeal or incorporeal) which is presently enjoyable, but does not include a future interest, whether vested or contingent;

and any reference to property held by or in trust for a charity is a reference to property so held, whether it is for the time being in a state of investment or not.

(7) In the application of this section to Scotland, “charity” means a recognised body within the meaning of section 1(7) of the ^{M31}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Commencement Information

I30 S. 39 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

Marginal Citations

M29 1961 c.62.

M30 1961 c.62.

M31 1990 c.40.

VALID FROM 01/01/1993

Charitable companies

40 Charitable companies: alteration of objects clause etc.

For subsections (2) and (3) of section 30A of the 1960 Act (as amended by the ^{M32} Companies Act 1989) there shall be substituted—

“(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—

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (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.”

Commencement Information

I31 S. 40 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Marginal Citations

M32 1989 c.40.

41 Charitable companies: requirement of consent of Commissioners to certain acts.

After section 30B of the 1960 Act (as amended by the ^{M33} Companies Act 1989) there shall be inserted—

“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);

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

- (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).”

Commencement Information

I32 S. 41 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Marginal Citations

M33 1989 c.40.

42 Charitable companies: name to appear on correspondence etc.

The following section shall be inserted in the 1960 Act after the section 30BA inserted by section 41 above—

“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.).”

Commencement Information

I33 S. 42 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Small charities

43 Small charities: power to transfer all property, modify objects etc.

- (1) This section applies to a charity if—
 - (a) its gross income in its last financial year did not exceed £5,000, and
 - (b) it does not hold any land on trusts which stipulate that the land is to be used for the purposes, or any particular purposes, of the charity,
 and it is neither an exempt charity nor a charitable company.
- (2) Subject to the following provisions of this section, the charity trustees of a charity to which this section applies may resolve for the purposes of this section—
 - (a) that all the property of the charity should be transferred to such other charity as is specified in the resolution, being either a registered charity or a charity which is not required to be registered;

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

- (b) that all the property of the charity should be divided, in such manner as is specified in the resolution, between such two or more other charities as are so specified, being in each case either a registered charity or a charity which is not required to be registered;
 - (c) that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with such other purposes, being in law charitable, as are specified in the resolution;
 - (d) that any provision of the trusts of the charity—
 - (i) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
 - (ii) regulating the procedure to be followed in any respect in connection with its administration,should be modified in such manner as is specified in the resolution.
- (3) Any resolution passed under subsection (2) must be passed by a majority of not less than two-thirds of such charity trustees as vote on the resolution.
- (4) The charity trustees of a charity to which this section applies (“the transferor charity”) shall not have power to pass a resolution under subsection (2)(a) or (b) unless they are satisfied—
- (a) that the existing purposes of the transferor charity have ceased to be conducive to a suitable and effective application of the charity’s resources; and
 - (b) that the purposes of the charity or charities specified in the resolution are as similar in character to the purposes of the transferor charity as is reasonably practicable;
- and before passing the resolution they must have received from the charity trustees of the charity, or (as the case may be) of each of the charities, specified in the resolution written confirmation that those trustees are willing to accept a transfer of property under this section.
- (5) The charity trustees of any such charity shall not have power to pass a resolution under subsection (2)(c) unless they are satisfied—
- (a) that the existing purposes of the charity (or, as the case may be, such of them as it is proposed to replace) have ceased to be conducive to a suitable and effective application of the charity’s resources; and
 - (b) that the purposes specified in the resolution are as similar in character to those existing purposes as is practical in the circumstances.
- (6) Where charity trustees have passed a resolution under subsection (2), they shall—
- (a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and
 - (b) send a copy of the resolution to the Commissioners, together with a statement of their reasons for passing it.
- (7) The Commissioners may, when considering the resolution, require the charity trustees to provide additional information or explanation—
- (a) as to the circumstances in and by reference to which they have determined to act under this section, or
 - (b) relating to their compliance with this section in connection with the resolution;
- and the Commissioners shall take into account any representations made to them by persons appearing to them to be interested in the charity where those representations

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

are made within the period of six weeks beginning with the date when the Commissioners receive a copy of the resolution by virtue of subsection (6)(b).

- (8) Where the Commissioners have so received a copy of a resolution from any charity trustees and it appears to them that the trustees have complied with this section in connection with the resolution, the Commissioners shall, within the period of three months beginning with the date when they receive the copy of the resolution, notify the trustees in writing either—
- (a) that the Commissioners concur with the resolution; or
 - (b) that they do not concur with it.
- (9) Where the Commissioners so notify their concurrence with the resolution, then—
- (a) if the resolution was passed under subsection (2)(a) or (b), the charity trustees shall arrange for all the property of the transferor charity to be transferred in accordance with the resolution and on terms that any property so transferred—
 - (i) shall be held and applied by the charity to which it is transferred (“the transferee charity”) for the purposes of that charity, but
 - (ii) shall, as property of the transferee charity, nevertheless be subject to any restrictions on expenditure to which it is subject as property of the transferor charity,
 and those trustees shall arrange for it to be so transferred by such date as may be specified in the notification; and
 - (b) if the resolution was passed under subsection (2)(c) or (d), the trusts of the charity shall be deemed, as from such date as may be specified in the notification, to have been modified in accordance with the terms of the resolution.
- (10) For the purpose of enabling any property to be transferred to a charity under this section, the Commissioners shall have power, at the request of the charity trustees of that charity, to make orders vesting any property of the transferor charity—
- (a) in the charity trustees of the first-mentioned charity or in any trustee for that charity, or
 - (b) in any other person nominated by those charity trustees to hold the property in trust for that charity.
- (11) The Secretary of State may by order amend subsection (1) by substituting a different sum for the sum for the time being specified there.
- (12) In this section—
- (a) “charitable company” means a charity which is a company or other body corporate; and
 - (b) references to the transfer of property to a charity are references to its transfer—
 - (i) to the charity trustees, or
 - (ii) to any trustee for the charity, or
 - (iii) to a person nominated by the charity trustees to hold it in trust for the charity,
 as the charity trustees may determine.

Modifications etc. (not altering text)

C3 S. 43(1) amended(*temp.*) (28.7.1992) by S.I. 1992/1900, art. 2(3).

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

Commencement Information

I34 S. 43 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

44 Small charities: power to spend capital.

- (1) This section applies to a charity if—
 - (a) it has a permanent endowment which does not consist of or comprise any land, and
 - (b) its gross income in its last financial year did not exceed £1,000, and it is neither an exempt charity nor a charitable company.
- (2) Where the charity trustees of a charity to which this section applies are of the opinion that the property of the charity is too small, in relation to its purposes, for any useful purpose to be achieved by the expenditure of income alone, they may resolve for the purposes of this section that the charity ought to be freed from the restrictions with respect to expenditure of capital to which its permanent endowment is subject.
- (3) Any resolution passed under subsection (2) must be passed by a majority of not less than two-thirds of such charity trustees as vote on the resolution.
- (4) Before passing such a resolution the charity trustees must consider whether any reasonable possibility exists of effecting a transfer or division of all the charity's property under section 43 (disregarding any such transfer or division as would, in their opinion, impose on the charity an unacceptable burden of costs).
- (5) Where charity trustees have passed a resolution under subsection (2), they shall—
 - (a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and
 - (b) send a copy of the resolution to the Commissioners, together with a statement of their reasons for passing it.
- (6) The Commissioners may, when considering the resolution, require the charity trustees to provide additional information or explanation—
 - (a) as to the circumstances in and by reference to which they have determined to act under this section, or
 - (b) relating to their compliance with this section in connection with the resolution; and the Commissioners shall take into account any representations made to them by persons appearing to them to be interested in the charity where those representations are made within the period of six weeks beginning with the date when the Commissioners receive a copy of the resolution by virtue of subsection (5)(b).
- (7) Where the Commissioners have so received a copy of a resolution from any charity trustees and it appears to them that the trustees have complied with this section in connection with the resolution, the Commissioners shall, within the period of three months beginning with the date when they receive the copy of the resolution, notify the trustees in writing either—
 - (a) that the Commissioners concur with the resolution; or
 - (b) that they do not concur with it.
- (8) Where the Commissioners so notify their concurrence with the resolution, the charity trustees shall have, as from such date as may be specified in the notification, power

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

by virtue of this section to expend any property of the charity without regard to any such restrictions as are mentioned in subsection (2).

- (9) The Secretary of State may by order amend subsection (1) by substituting a different sum for the sum for the time being specified there.
- (10) In this section “charitable company” means a charity which is a company or other body corporate.

Modifications etc. (not altering text)

C4 S. 44(1) amended(*temp.*) (28.7.1992) by S.I. 1992/1990, art. 2(3).

Commencement Information

I35 S. 44 wholly in force at 1.9.1992 see 79(2) and S.I. 1992/1990, art. 2(1), Sch. 1.

VALID FROM 01/01/1993

Disqualification for acting as charity trustee

45 Persons disqualified for being trustees of a charity.

- (1) Subject to the following provisions of this section, a person shall be disqualified for being a charity trustee or trustee for a charity if—
- (a) he has been convicted of any offence involving dishonesty or deception;
 - (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;
 - (c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - (d) he has been removed from the office of charity trustee or trustee for a charity by an order made—
 - (i) by the Commissioners under section 20(1A)(i) of the 1960 Act (power to act for protection of charities) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of this Act), or
 - (ii) by the High Court,
 on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;
 - (e) he has been removed, under section 7 of the ^{M34}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;
 - (f) he is subject to a disqualification order under the ^{M35}Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the ^{M36}Insolvency Act 1986 (failure to pay under county court administration order).
- (2) In subsection (1)—

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- (a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the ^{M37}Rehabilitation of Offenders Act 1974;
 - (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the commencement of that subsection;
 - (c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and
 - (d) paragraphs (d) to (f) apply in relation to orders made and removals effected before or after the commencement of that subsection.
- (3) Where (apart from this subsection) a person is disqualified under subsection (1) (b) for being a charity trustee or trustee for any charity which is a company, he shall not be so disqualified if leave has been granted under section 11 of the ^{M38}Company Directors Disqualification Act 1986 (undischarged bankrupts) for him to act as director of the charity; and similarly a person shall not be disqualified under subsection (1)(f) for being a charity trustee or trustee for such a charity if—
- (a) in the case of a person subject to a disqualification order, leave under the order has been granted for him to act as director of the charity, or
 - (b) in the case of a person subject to an order under section 429(2)(b) of the ^{M39}Insolvency Act 1986, leave has been granted by the court which made the order for him to so act.
- (4) The Commissioners may, on the application of any person disqualified under subsection (1), waive his disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—
- (a) the person concerned is for the time being prohibited, by virtue of—
 - (i) a disqualification order under the ^{M40}Company Directors Disqualification Act 1986, or
 - (ii) section 11(1) or 12(2) of that Act (undischarged bankrupts; failure to pay under county court administration order),
 from acting as director of the charity; and
 - (b) leave has not been granted for him to act as director of any other company.
- (5) Without prejudice to the generality of section 13 of the ^{M41}Interpretation Act 1978 (anticipatory exercise of powers), the Commissioners may—
- (a) at any time before the commencement of subsection (1) above, and
 - (b) on the application of a person who would be disqualified under that subsection as from that commencement,
- grant that person a waiver under subsection (4) taking effect as from that commencement.
- (6) Any waiver under subsection (4) shall be notified in writing to the person concerned.
- (7) For the purposes of this section the Commissioners shall keep, in such manner as they think fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) either—
- (a) by an order of the Commissioners made before or after the commencement of subsection (1), or

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(b) by an order of the High Court made after the commencement of that subsection;

and, where any person is so removed from office by an order of the High Court, the court shall notify the Commissioners of his removal.

(8) The entries in the register kept under subsection (7) shall be available for public inspection in legible form at all reasonable times.

Commencement Information

I36 S. 45 wholly in force at 1.1.1993 by S.I. 1992/1900, art. 4(1), Sch. 3.

Marginal Citations

M34 1990 c.40.

M35 1986 c.46.

M36 1986 c.45.

M37 1974 c.53.

M38 1986 c.46.

M39 1986 c.45.

M40 1986 c.46.

M41 1978 c.30.

46 Person acting as charity trustee while disqualified.

(1) Subject to subsection (2), any person who acts as a charity trustee or trustee for a charity while he is disqualified for being such a trustee by virtue of section 45 shall be guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(2) Subsection (1) shall not apply where—

(a) the charity concerned is a company; and

(b) the disqualified person is disqualified by virtue only of paragraph (b) or (f) of section 45(1).

(3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 45 shall not be invalid by reason only of that disqualification.

(4) Where the Commissioners are satisfied—

(a) that any person has acted as charity trustee or trustee for a charity (other than an exempt charity) while disqualified for being such a trustee by virtue of section 45, and

(b) that, while so acting, he has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with his acting as charity trustee or trustee for the charity,

they may by order direct him to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by them) of any such benefit.

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(5) Subsection (4) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity.

Commencement Information

I37 S. 46 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Miscellaneous and supplementary

47 Minor and consequential amendments of 1960 Act.

The 1960 Act shall have effect subject to the amendments specified in Schedule 3 to this Act (which are either minor amendments or amendments consequential on the preceding provisions of this Part of this Act).

Commencement Information

I38 S. 47 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

VALID FROM 01/01/1993

48 Amendment of Charitable Trustees Incorporation Act 1872.

The ^{M42}Charitable Trustees Incorporation Act 1872 shall have effect subject to the amendments specified in Schedule 4 to this Act.

Commencement Information

I39 S. 48 wholly in force at 1.1.1993 see s. 79(2) and S.I. 1992/1900, art. 4(1), Sch. 3.

Marginal Citations

M42 1872 c.24.

49 Amendment of Redundant Churches and Other Religious Buildings Act 1969.

The ^{M43}Redundant Churches and Other Religious Buildings Act ^{M44}1969 shall have effect subject to the amendments specified in Schedule 5 to this Act.

Commencement Information

I40 S. 49 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M43 1969 c.22.

Status: Point in time view as at 01/09/1992. 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 1992, Part I. (See end of Document for details)

M44 1969 c.22.

50 Contributions towards maintenance etc. of almshouses.

- (1) Any provision in the trusts of an almshouse charity which relates to the payment by persons resident in the charity's almshouses of contributions towards the cost of maintaining those almshouses and essential services in them shall cease to have effect if and to the extent that it provides for the amount, or the maximum amount, of such contributions to be a sum specified, approved or authorised by the Commissioners.
- (2) In subsection (1)—
 - “almshouse” means any premises maintained as an almshouse, whether they are called an almshouse or not; and
 - “almshouse charity” means a charity which is authorised under its trusts to maintain almshouses.

Commencement Information

I41 S. 50 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

51 Fees and other amounts payable to Commissioners.

- (1) The Secretary of State may by regulations require the payment to the Commissioners of such fees as may be prescribed in respect of—
 - (a) the discharge by the Commissioners of such functions under the enactments relating to charities as may be prescribed;
 - (b) the inspection of the register of charities or of other material kept by them under those enactments, or the furnishing of copies of or extracts from documents so kept.
- (2) Regulations under this section may—
 - (a) confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee;
 - (b) provide for the remission or refunding of a prescribed fee (in whole or in part) in prescribed circumstances.
- (3) A statutory instrument containing any regulations under this section which require the payment of a fee in respect of any matter for which no fee was previously payable shall not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (4) The Commissioners may impose charges of such amounts as they consider reasonable in respect of the supply of any publications produced by them.
- (5) Any fees and other payments received by the Commissioners by virtue of this section shall be paid into the Consolidated Fund.
- (6) In this section “prescribed” means prescribed by regulations under this section.

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Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part I. (See end of Document for details)

Commencement Information

I42 S. 51 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

52 Disclosure of information to and by Commissioners.

- (1) Subject to subsection (2) and to any express restriction imposed by or under any other enactment, a body or person to whom this section applies may disclose to the Charity Commissioners any information received by that body or person under or for the purposes of any enactment, where the disclosure is made by the body or person for the purpose of enabling or assisting the Commissioners to discharge any of their functions.
- (2) Subsection (1) shall not have effect in relation to the Commissioners of Customs and Excise or the Commissioners of Inland Revenue; but either of those bodies of Commissioners (“the relevant body”) may disclose to the Charity Commissioners the following information, namely—
 - (a) the name and address of any institution which has for any purpose been treated by the relevant body as established for charitable purposes;
 - (b) information as to the purposes of an institution and the trusts under which it is established or regulated, where the disclosure is made by the relevant body in order to give or obtain assistance in determining whether the institution ought for any purpose to be treated as established for charitable purposes; and
 - (c) information with respect to an institution which has for any purpose been treated as so established but which appears to the relevant body—
 - (i) to be, or to have been, carrying on activities which are not charitable, or
 - (ii) to be, or to have been, applying any of its funds for purposes which are not charitable.
- (3) In subsection (2) any reference to an institution shall, in relation to the Commissioners of Inland Revenue, be construed as a reference to an institution in England and Wales.
- (4) Subject to subsection (5), the Charity Commissioners may disclose to a body or person to whom this section applies any information received by them under or for the purposes of any enactment, where the disclosure is made by the Commissioners—
 - (a) for any purpose connected with the discharge of their functions, and
 - (b) for the purpose of enabling or assisting that body or person to discharge any of its or his functions.
- (5) Where any information disclosed to the Charity Commissioners under subsection (1) or (2) is so disclosed subject to any express restriction on the disclosure of the information by the Commissioners, the Commissioners’ power of disclosure under subsection (4) shall, in relation to the information, be exercisable by them subject to any such restriction.
- (6) This section applies to the following bodies and persons—
 - (a) any government department (including a Northern Ireland department);
 - (b) any local authority;
 - (c) any constable; and

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- (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) In subsection (6)(d) the reference to any such body or person as is there mentioned shall, in relation to a disclosure by the Charity Commissioners under subsection (4), be construed as including a reference to any such body or person in a country or territory outside the United Kingdom.
- (8) Nothing in this section shall be construed as affecting any power of disclosure exercisable apart from this section.
- (9) In this section “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the ^{M45}Interpretation Act 1978).

Commencement Information

I43 S. 52 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M45 1978 c.30.

53 Data protection.

An order under section 30 of ^{M46} the Data Protection Act 1984 (exemption from subject access provisions of data held for the purpose of discharging designated functions in connection with the regulation of financial services etc.) may designate for the purposes of that section, as if they were functions conferred by or under such an enactment as is there mentioned, any functions of the Commissioners appearing to the Secretary of State to be—

- (a) connected with the protection of charities against misconduct or mismanagement (whether by trustees or other persons) in their administration; or
- (b) connected with the protection of the property of charities from loss or misapplication or with the recovery of such property.

Commencement Information

I44 S. 53 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M46 1984 c.35.

54 Supply of false or misleading information to Commissioners, etc.

- (1) Any person who knowingly or recklessly provides the Commissioners with information which is false or misleading in a material particular shall be guilty of an offence if the information—
- (a) is provided in purported compliance with a requirement imposed by or under a relevant enactment; or

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- (b) is provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Commissioners for the purpose of discharging their functions under a relevant enactment.
- (2) Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under a relevant enactment, to produce to the Commissioners shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (4) In this section—
 - (a) “relevant enactment” means this Act, the 1960 Act or the ^{M47}Charitable Trustees Incorporation Act 1872; and
 - (b) references to the Commissioners include references to any person conducting an inquiry under section 6 of the 1960 Act (general power to institute inquiries).

Commencement Information

I45 S. 54 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

Marginal Citations

M47 1872 c.24.

55 Restriction on institution of proceedings for certain offences.

- (1) No proceedings for an offence to which this section applies shall be instituted except by or with the consent of the Director of Public Prosecutions.
- (2) This section applies to any offence under—
 - (a) section 3 above;
 - (b) section 20(10) of the 1960 Act, as amended by section 8 above;
 - (c) section 27 above;
 - (d) section 46(1) above; or
 - (e) section 54 above.

Commencement Information

I46 S. 55 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), **Sch. 1**.

56 Enforcement of requirements by order of Commissioners, and other provisions as to orders made by them.

- (1) If a person fails to comply with any requirement imposed by or under—
 - (a) this Part of this Act,
 - (b) the 1960 Act, or

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- (c) the 1872 Act,
- then (subject to subsection (2)) the Commissioners may by order give him such directions as they consider appropriate for securing that the default is made good.
- (2) Subsection (1) does not apply to any such requirement if—
- (a) a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty; or
 - (b) the requirement is imposed—
 - (i) by an order of the Commissioners to which section 41 of the 1960 Act (enforcement of orders as for contempt of High Court) applies (whether by virtue of subsection (3) below or otherwise), or
 - (ii) by a direction of the Commissioners to which that section applies by virtue of section 57(2) below.
- (3) Section 41 of the 1960 Act applies to any order made by the Commissioners under subsection (1) above or under any of the following provisions, namely—
- (a) section 12 above,
 - (b) section 22(2) above,
 - (c) section 46 above, and
 - (d) section 12A of the 1872 Act,
- as that section applies to any such order of the Commissioners as is mentioned in that section.
- (4) Subject to subsection (5) below, section 40 of the 1960 Act (miscellaneous provisions as to orders of Commissioners) shall apply to any order made by the Commissioners under this Act or the 1872 Act as it applies to any order made by them under the 1960 Act (the second reference to that Act in subsection (3) of that section being read as a reference to this Act or the 1872 Act, as the case may require).
- (5) Subsection (3) of that section does not apply by virtue of subsection (4) above to any order made by the Commissioners under section 72 below or under section 12A of the 1872 Act.
- (6) In this section “the 1872 Act” means the ^{M48}Charitable Trustees Incorporation Act 1872.

Commencement Information

I47 S. 56 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Marginal Citations

M48 1872 c.24.

57 Directions of the Commissioners.

- (1) Any direction given by the Commissioners under any provision contained in this Part of this Act or in the 1960 Act—
- (a) may be varied or revoked by a further direction given under that provision; and
 - (b) shall be given in writing.
- (2) In the 1960 Act—

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- (a) subsections (1), (2) and (4) of section 40 (miscellaneous provisions as to orders of Commissioners) shall apply to any such direction as they apply to an order made by the Commissioners under that Act; and
 - (b) section 41 (enforcement of orders as for contempt of High Court) shall apply to any such direction as it applies to any such order of the Commissioners as is mentioned in that section.
- (3) In subsection (1) the reference to the Commissioners includes, in relation to a direction under section 6(3) of the 1960 Act (general power to institute inquiries), a reference to any person conducting an inquiry under that section.
- (4) Nothing in this section shall be read as applying to any directions contained in an order made by the Commissioners under section 56(1) above.

Commencement Information

I48 S. 57 wholly in force at 1.9.1992 see s. 79(2) and S.I. 1992/1900, art. 2(1), Sch. 1.

Status:

Point in time view as at 01/09/1992. 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 1992, Part I.