



# Charities Act 1992

## 1992 CHAPTER 41

### PART I

#### CHARITIES

##### *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—

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- (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

**II** 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 <sup>M1</sup>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 <sup>M2</sup>Supreme Court of Judicature (Consolidation) Act 1925.

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### Commencement Information

**I2** 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

**M1** 1981 c.54.

**M2** 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.”

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(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

**I3** 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;”.

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#### Commencement Information

**14** 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

**15** S. 17 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 01/01/1993

## 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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- (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 <sup>M3</sup>Banking Act 1987;
  - (iii) a building society which is authorised by the Building Societies Commission under section 9 of the <sup>M4</sup>Building Societies Act 1986 to raise money from its members; or
  - (iv) such other institution mentioned in Schedule 2 to the <sup>M5</sup>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)**

C1 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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#### **Commencement Information**

**I6** 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**

**M3** 1987 c.22.

**M4** 1986 c.53.

**M5** 1987 c.22.



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