



# Charities Act 1993 (repealed)

## 1993 CHAPTER 10

### PART IX

#### MISCELLANEOUS

##### *Powers of investment*

**F170 Relaxation of restrictions on wider-range investments.**

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**Textual Amendments**

**F1** S. 70 repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(1), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; s. 70 repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

**F271 Extension of powers of investment.**

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**Textual Amendments**

**F2** S. 71 repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(1), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; s. 71 repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IX. (See end of Document for details)*

### *Disqualification for acting as charity trustee*

## **72 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 [<sup>F3</sup>or he is the subject of a bankruptcy restrictions order or an interim order];
- (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 18(2)(i) above, or
  - (ii) by the Commissioners under section 20(1A)(i) of the <sup>M1</sup>Charities Act 1960 (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 the <sup>M2</sup>Charities Act 1992), or
  - (iii) 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 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities) [<sup>F4</sup>or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)], from being concerned in the management or control of any body;
- (f) he is subject to a disqualification order [<sup>F5</sup>or disqualification undertaking] under the <sup>M3</sup>Company Directors Disqualification Act 1986 [<sup>F5</sup>to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989][<sup>F6</sup>or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002] or to an order made under section 429(2)(b) of the <sup>M4</sup>Insolvency Act 1986 (failure to pay under county court administration order).

(2) In subsection (1) above—

- (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 <sup>M5</sup>Rehabilitation of Offenders Act 1974;
- (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration [<sup>F7</sup>or the making of a bankruptcy restrictions order or an interim order] 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.

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- (3) Where (apart from this subsection) a person is disqualified under subsection (1)(b) above 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 <sup>M6</sup>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) above for being a charity trustee or trustee for such a charity if—
- [<sup>F8</sup>(a) in the case of a person subject to a disqualification order or disqualification undertaking under the <sup>M7</sup>Company Directors Disqualification Act 1986, leave for the purposes of section 1(1)(a) or 1A(1)(a) of that Act has been granted for him to act as director of the charity,
  - (aa) in the case of a person subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 [<sup>F9</sup>or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002], leave has been granted by the High Court in Northern Ireland for him to act as director of the charity]
  - (b) in the case of a person subject to an order under section 429(2)(b) of the <sup>M8</sup>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) above, 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 [<sup>F10</sup>or disqualification undertaking] under the Company Directors Disqualification Act 1986, or
    - (ii) section 11(1) [<sup>F11</sup>12(2)[<sup>F12</sup>,12A or 12B]] of that Act (undischarged bankrupts; failure to pay under county court administration order [<sup>F13</sup>Northern Irish disqualification orders][<sup>F14</sup>; Northern Irish disqualification undertakings]),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) Any waiver under subsection (4) above shall be notified in writing to the person concerned.
- (6) 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) above either—
- (a) by an order of the Commissioners made before or after the commencement of subsection (1) above, or
  - (b) by an order of the High Court made after the commencement of section 45(1) of the <sup>M9</sup>Charities Act 1992;
- 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.
- (7) The entries in the register kept under subsection (6) above shall be available for public inspection in legible form at all reasonable times.

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### Textual Amendments

- F3** Words in s. 72(1)(b) inserted (29.6.2006) by Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 4(a)**
- F4** Words in s. 72(1)(e) inserted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(2)**
- F5** Words in s. 72(1)(f) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(a)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F6** Words in s. 72(1)(f) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(a)**
- F7** Words in s. 72(2)(b) inserted (29.6.2006) by Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 4(b)**
- F8** S. 72(3)(a)(aa) substituted (2.4.2001) for s. 72(3)(a) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F9** Words in s. 72(3)(aa) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(b)**
- F10** Words in s. 72(4)(a)(i) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(i)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F11** Words in s. 72(4)(a)(ii) substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(ii)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F12** Words in s. 72(4)(a)(ii) substituted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(c)**
- F13** Words in s. 72(4)(a)(ii) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(ii)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F14** Words in s. 72(4)(a)(ii) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(c)**

### Marginal Citations

- M1** 1960 c. 58.  
**M2** 1992 c. 41.  
**M3** 1986 c. 46.  
**M4** 1986 c. 45.  
**M5** 1974 c. 53.  
**M6** 1986 c. 46.  
**M7** 1986 c. 46.  
**M8** 1986 c. 45.  
**M9** 1992 c. 41.

## 73 Person acting as charity trustee while disqualified.

- (1) Subject to subsection (2) below, 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 72 above 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.

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- (2) Subsection (1) above 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 72(1) above.
- (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 72 above 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 72 above, 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.
- (5) Subsection (4) above 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.

#### *Small charities*

VALID FROM 27/02/2007

#### **74 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;
  - (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—

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- (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) above 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) above 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) above 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) above, 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 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) above.
- (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

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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) above, 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) above, 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 [<sup>F15</sup>Minister] may by order amend subsection (1) above 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.

### Textual Amendments

**F15** Word in s. 74(11) substituted (13.12.2006) by [Transfer of Functions \(Third Sector, Communities and Equality\) Order 2006 \(S.I. 2006/2951\)](#), art. 1(2), [Sch. para. 4\(v\)](#)

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## **75 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) above 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 74 above (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) above, 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) above.
- (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 by virtue of this section to expend any property of the charity without regard to any such restrictions as are mentioned in subsection (2) above.
- (9) The Secretary of State may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.



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- (10) In this section “charitable company” means a charity which is a company or other body corporate.

### *Local charities*

## **76 Local authority’s index of local charities.**

- (1) The council of a county [<sup>F16</sup>or county borough] or of a district or London borough and the Common Council of the City of London may maintain an index of local charities or of any class of local charities in the council’s area, and may publish information contained in the index, or summaries or extracts taken from it.
- (2) A council proposing to establish or maintaining under this section an index of local charities or of any class of local charities shall, on request, be supplied by the Commissioners free of charge with copies of such entries in the register of charities as are relevant to the index or with particulars of any changes in the entries of which copies have been supplied before; and the Commissioners may arrange that they will without further request supply a council with particulars of any such changes.
- (3) An index maintained under this section shall be open to public inspection at all reasonable times.
- (4) A council may employ any voluntary organisation as their agent for the purposes of this section, on such terms and within such limits (if any) or in such cases as they may agree; and for this purpose “voluntary organisation” means any body of which the activities are carried on otherwise than for profit, not being a public or local authority.
- (5) A joint board discharging any of a council’s functions shall have the same powers under this section as the council as respects local charities in the council’s area which are established for purposes similar or complementary to any services provided by the board.

#### **Textual Amendments**

**F16** Words in s. 76(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(1)** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

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

**C1** Ss. 76-78 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 15** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

## **77 Reviews of local charities by local authority.**

- (1) The council of a county [<sup>F17</sup>or county borough] or of a district or London borough and the Common Council of the City of London may, subject to the following provisions of this section, initiate, and carry out in co-operation with the charity trustees, a review of the working of any group of local charities with the same or similar purposes in the council’s area, and may make to the Commissioners such report on the review and such recommendations arising from it as the council after consultation with the trustees think fit.

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- (2) A council having power to initiate reviews under this section may co-operate with other persons in any review by them of the working of local charities in the council's area (with or without other charities), or may join with other persons in initiating and carrying out such a review.
- (3) No review initiated by a council under this section shall extend to any charity without the consent of the charity trustees, nor to any ecclesiastical charity.
- (4) No review initiated under this section by the council of a district shall extend to the working in any county of a local charity established for purposes similar or complementary to any services provided by county councils unless the review so extends with the consent of the council of that county.

[<sup>F18</sup>(4A) Subsection (4) above does not apply in relation to Wales.]

- (5) Subsections (4) and (5) of section 76 above shall apply for the purposes of this section as they apply for the purposes of that section.

#### Textual Amendments

**F17** Words in s. 77(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

**F18** S. 77(4A) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

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

**C2** Ss. 76-78 extended (with modifications) (19.9.1995) by 1995 c. 48, ss. 70, 125(2), **Sch. 9 para. 15** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

## 78 Co-operation between charities, and between charities and local authorities.

- (1) Any local council and any joint board discharging any functions of such a council—
  - (a) may make, with any charity established for purposes similar or complementary to services provided by the council or board, arrangements for co-ordinating the activities of the council or board and those of the charity in the interests of persons who may benefit from those services or from the charity; and
  - (b) shall be at liberty to disclose to any such charity in the interests of those persons any information obtained in connection with the services provided by the council or board, whether or not arrangements have been made with the charity under this subsection.

In this subsection “local council” means [<sup>F19</sup>in relation to England,] the council of a county, or of a district, London borough, [<sup>F20</sup>or parish], and includes also the Common Council of the City of London and the Council of the Isles of Scilly [<sup>F21</sup>and, in relation to Wales, the council of a county, county borough or community].

- (2) Charity trustees shall, notwithstanding anything in the trusts of the charity, have power by virtue of this subsection to do all or any of the following things, where it appears to them likely to promote or make more effective the work of the charity, and may defray the expense of so doing out of any income or money applicable as income of the charity, that is to say—

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- (a) they may co-operate in any review undertaken under section 77 above or otherwise of the working of charities or any class of charities;
- (b) they may make arrangements with an authority acting under subsection (1) above or with another charity for co-ordinating their activities and those of the authority or of the other charity;
- (c) they may publish information of other charities with a view to bringing them to the notice of those for whose benefit they are intended.

#### Textual Amendments

**F19** Words in s. 78(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

**F20** Words in s. 78(1) substituted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(b)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

**F21** Words in s. 78(1) added (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(c)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

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

**C3** S. 78 extended (with modifications) (19.9.1995) by 1995 c. 48, ss. 70, 125(2), **Sch. 9 para. 15** (with Sch. 8 para. 7)

## 79 Parochial charities.

- (1) Where trustees hold any property for the purposes of a public recreation ground, or of allotments (whether under inclosure Acts or otherwise), for the benefit of inhabitants of a parish having a parish council, or for other charitable purposes connected with such a parish, except for an ecclesiastical charity, they may with the approval of the Commissioners and with the consent of the parish council transfer the property to the parish council or to persons appointed by the parish council; and the council or their appointees shall hold the property on the same trusts and subject to the same conditions as the trustees did.

This subsection shall apply to property held for any public purposes as it applies to property held for charitable purposes.

- (2) Where the charity trustees of a parochial charity in a parish, not being an ecclesiastical charity nor a charity founded within the preceding forty years, do not include persons elected by the local government electors, ratepayers or inhabitants of the parish or appointed by the parish council or parish meeting, the parish council or parish meeting may appoint additional charity trustees, to such number as the Commissioners may allow; and if there is a sole charity trustee not elected or appointed as aforesaid of any such charity, the number of the charity trustees may, with the approval of the Commissioners, be increased to three of whom one may be nominated by the person holding the office of the sole trustee and one by the parish council or parish meeting.
- (3) Where, under the trusts of a charity other than an ecclesiastical charity, the inhabitants of a rural parish (whether in vestry or not) or a select vestry were formerly (in 1894) entitled to appoint charity trustees for, or trustees or beneficiaries of, the charity, then—
  - (a) in a parish having a parish council, the appointment shall be made by the parish council or, in the case of beneficiaries, by persons appointed by the parish council; and

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IX. (See end of Document for details)*

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- (b) in a parish not having a parish council, the appointment shall be made by the parish meeting.
- (4) Where overseers as such or, except in the case of an ecclesiastical charity, churchwardens as such were formerly (in 1894) charity trustees of or trustees for a parochial charity in a rural parish, either alone or jointly with other persons, then instead of the former overseer or church warden trustees there shall be trustees (to a number not greater than that of the former overseer or churchwarden trustees) appointed by the parish council or, if there is no parish council, by the parish meeting.
  - (5) Where, outside Greater London (other than the outer London boroughs), overseers of a parish as such were formerly (in 1927) charity trustees of or trustees for any charity, either alone or jointly with other persons, then instead of the former overseer trustees there shall be trustees (to a number not greater than that of the former overseer trustees) appointed by the parish council or, if there is no parish council, by the parish meeting.
  - (6) In the case of an urban parish existing immediately before the passing of the <sup>M10</sup>Local Government Act 1972 which after 1st April 1974 is not comprised in a parish, the power of appointment under subsection (5) above shall be exercisable by the district council.
  - (7) In the application of the foregoing provisions of this section to Wales—
    - (a) for references in subsections (1) and (2) to a parish or a parish council there shall be substituted respectively references to a community or a community council;
    - (b) for references in subsections (3)(a) and (b) to a parish, a parish council or a parish meeting there shall be substituted respectively references to a community, a community council or the <sup>F22</sup>council of the county or (as the case may be) county borough;
    - (c) for references in subsections (4) and (5) to a parish council or a parish meeting there shall be substituted respectively references to a community council or the <sup>F22</sup>council of the county or (as the case may be) county borough].
  - (8) Any appointment of a charity trustee or trustee for a charity which is made by virtue of this section shall be for a term of four years, and a retiring trustee shall be eligible for re-appointment but—
    - (a) on an appointment under subsection (2) above, where no previous appointments have been made by virtue of that subsection or of the corresponding provision of the <sup>M11</sup>Local Government Act 1894 or the <sup>M12</sup>Charities Act 1960, and more than one trustee is appointed, half of those appointed (or as nearly as may be) shall be appointed for a term of two years; and
    - (b) an appointment made to fill a casual vacancy shall be for the remainder of the term of the previous appointment.
  - <sup>F23</sup>(9) This section shall not affect the trusteeship, control or management of any <sup>F24</sup>foundation or voluntary school within the meaning of the School Standards and Framework Act 1998.]]
  - (10) The provisions of this section shall not extend to the Isles of Scilly, and shall have effect subject to any order (including any future order) made under any enactment relating to local government with respect to local government areas or the powers of local authorities.

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- (11) In this section the expression “formerly (in 1894)” relates to the period immediately before the passing of the Local Government Act 1894, and the expression “formerly (in 1927)” to the period immediately before 1st April 1927; and the word “former” shall be construed accordingly.

#### Textual Amendments

- F22** Words in s. 79(b)(c) substituted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(4)** (with ss. 54(5) (7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1996/396, art. 4, **Sch. 2**
- F23** S. 79(9) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 119** (with s. 1(4), **Sch. 39**)
- F24** Words in s. 79(9) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 49** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

#### Marginal Citations

- M10** 1972 c. 70.  
**M11** 1894 c. 73.  
**M12** 1960 c. 58.

### *Scottish charities*

## **80 Supervision by Commissioners of certain Scottish charities.**

- (1) The following provisions of this Act, namely—

- (a) sections 8 and 9,
- (b) section 18 (except subsection (2)(ii)), and
- (c) section 19,

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.

- (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) below, 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) above 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 [<sup>F25</sup>Scottish Charity Regulator].

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- (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 [<sup>F26</sup>Scottish Charity Regulator] 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) below, 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.
- (5) The Commissioners may specify in an order under subsection (4) above 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” [<sup>F27</sup>means a body entered in the Scottish Charity Register].

#### Textual Amendments

- F25** Words in s. 80(3) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(a)**
- F26** Words in s. 80(4)(b) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(a)**
- F27** Words in s. 80(6) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(b)**

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

- C4** S. 80: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, **Sch.** (with art. 7)

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*Administrative provisions about charities*

PROSPECTIVE

**81 Manner of giving notice of charity meetings, etc.**

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**82 Manner of executing instruments.**

- (1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.
- (2) An authority under subsection (1) above—
  - (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
  - (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
  - (c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the charity trustees, have effect as a continuing authority given by the charity trustees from time to time of the charity and exercisable by such trustees.
- (3) In any authority under this section to execute a deed or instrument in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority also to execute it for them in the name and on behalf of the official custodian or of any other person, in any case in which the charity trustees could do so.
- (4) Where a deed or instrument purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.
- (5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

**83 Transfer and evidence of title to property vested in trustees.**

- (1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting and is attested by two persons present at the meeting.

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- (2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) above, if executed as a deed, shall have the like operation under section 40 of the <sup>M13</sup>Trustee Act 1925 (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees) as if the appointment or discharge were effected by the deed.
- (3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1) above, then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.
- (4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of the <sup>M14</sup>Charities Act 1960.
- (5) This section shall apply in relation to any institution to which the <sup>M15</sup>Literary and Scientific Institutions Act 1854 applies as it applies in relation to a charity.

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**Marginal Citations**

**M13** 1925 c. 19.

**M14** 1960 c. 58.

**M15** 1854 c. 112.



**Status:**

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**Changes to legislation:**

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