



Charities Act 1993 (repealed)

1993 CHAPTER 10

PART VIII

CHARITABLE COMPANIES

63 Winding up.

- (1) Where a charity may be wound up by the High Court under the ^{M1}Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.
- (2) Where a charity may be so wound up by the High Court, such a petition may also be presented by [^{F1}the Commission] if, at any time after [^{F2}it has instituted] an inquiry under section 8 above with respect to the charity, [^{F3}it is satisfied] as mentioned in section 18(1)(a) or (b) above.
- (3) Where a charitable company is dissolved, [^{F4}the Commission] may make an application under section 651 of the ^{M2}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 [^{F4}the Commission].
- (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), [^{F5}the Commission] may make an application under section 653(2) of that Act (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose section 653(2) shall have effect in relation to a charitable company as if the reference to any such person aggrieved as is there mentioned included a reference to [^{F5}the Commission].
- (5) The powers exercisable by [^{F6}the Commission] by virtue of this section shall be exercisable [^{F7}by the Commission of its own motion], but shall be exercisable only with the agreement of the Attorney General on each occasion.

Status: Point in time view as at 01/10/2008.

Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part VIII.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

(6) In this section “charitable company” means a company which is a charity.

Textual Amendments

- F1** Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F2** Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F3** Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(c)**; S.I. 2007/309, art. 2, Sch.
- F4** Words in s. 63(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(3)**; S.I. 2007/309, art. 2, Sch.
- F5** Words in s. 63(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(4)**; S.I. 2007/309, art. 2, Sch.
- F6** Words in s. 63(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(5)(a)**; S.I. 2007/309, art. 2, Sch.
- F7** Words in s. 63(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(5)(b)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

- M1** 1986 c. 45.
- M2** 1985 c. 6.

64 Alteration of objects clause.

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

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

[^{F8}(2) Where a charity is a company, any regulated alteration by the company—

- (a) requires the prior written consent of the Commission, and
- (b) is ineffective if such consent has not been obtained.

(2A) The following are “regulated alterations”—

- (a) any alteration of the objects clause in the company’s memorandum of association,
- (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and
- (c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(2B) For the purposes of subsection (2A) above—

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- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section; and
- (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(5) and (6) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.]
- (3) Where a company has made [^{F9}a regulated alteration] in accordance with subsection (2) above and—
- (a) in connection with the alteration is required by virtue of—
- (i) section 6(1) of the Companies Act 1985 (delivery of documents following alteration of objects), or
- (ii) that provision as applied by section 17(3) of that Act (alteration of condition in memorandum which could have been contained in articles),
- to deliver to the registrar of companies a printed copy of its memorandum, as altered, or
- [^{F10}(b) is required by section 30 of the Companies Act 2006 (copies of resolutions affecting a company’s constitution) to forward to the registrar a copy of the special resolution effecting the alteration,]
- the copy so delivered or forwarded by the company shall be accompanied by a copy of [^{F11}the Commission's consent].
- (4) Section 6(3) of that Act (offences) shall apply to any default by a company in complying with subsection (3) above as it applies to any such default as is mentioned in that provision.

Textual Amendments

- F8** S. 64(2)-(2B) substituted for s. 64(2) (18.3.2008) by Charities Act 2006 (c. 50), ss. 31(2), 79(2); S.I. 2008/751, art. 2, Sch. (with art. 8)
- F9** Words in s. 64(3) substituted (18.3.2008) by Charities Act 2006 (c. 50), ss. 31(3), 79(2); S.I. 2008/751, art. 2, Sch. (with art. 8)
- F10** S. 64(3)(b) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), Sch. 4 para. 79 (with art. 12)
- F11** Words in s. 64(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 151; S.I. 2007/309, art. 2, Sch.

65 Invalidity of certain transactions.

- (1) Sections 35 and 35A of the ^{M3}Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
- (a) gives full consideration in money or money’s worth in relation to the act in question, and
- (b) does not know that the act is not permitted by the company’s memorandum or, as the case may be, is beyond the powers of the directors,
- or who does not know at the time the act is done that the company is a charity.

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- (2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) above the burden of proving—
- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,
- lies on the person making that allegation.
- (4) Where a company is a charity, the ratification of an act under section 35(3) of the Companies Act 1985, or the ratification of a transaction to which section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of [^{F12}the Commission].

Textual Amendments

F12 Words in s. 65(4) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 152](#); [S.I. 2007/309](#), art. 2, Sch.

Marginal Citations

M3 [1985 c. 6](#).

[^{F13}66] **Consent of Commission required for approval etc by members of charitable companies**

- (1) Where a company is a charity—
- (a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2) below, and
 - (b) any affirmation given by members of the company under section 196 or 214 of that Act (affirmation of unapproved property transactions and loans),
- is ineffective without the prior written consent of the Commission.
- (2) The provisions are—
- (a) section 188 (directors' long-term service contracts);
 - (b) section 190 (substantial property transactions with directors etc);
 - (c) section 197, 198 or 200 (loans and quasi-loans to directors etc);
 - (d) section 201 (credit transactions for benefit of directors etc);
 - (e) section 203 (related arrangements);
 - (f) section 217 (payments to directors for loss of office);
 - (g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

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Textual Amendments

F13 Ss. 66, 66A substituted (1.10.2007) for s. 66 by [Companies Act 2006 \(c. 46\)](#), **ss. 226**, 1300(2); S.I. 2007/2194, art. 2(1)(d) (with arts. 712)

66A Consent of Commission required for certain acts of charitable company

- (1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.
- (2) This section applies to an act that—
 - (a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but
 - (b) would require such approval but for an exemption in the provision in question that disappplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate.
- (3) The reference to a listed provision is a reference to a provision listed in section 66(2) above.
- (4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) shall be treated as of no effect in relation to the act.]

Textual Amendments

F13 Ss. 66, 66A substituted (1.10.2007) for s. 66 by [Companies Act 2006 \(c. 46\)](#), **ss. 226**, 1300(2); S.I. 2007/2194, art. 2(1)(d) (with arts. 712)

^{F14}67 Name to appear on correspondence etc.

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Textual Amendments

F14 S. 67 repealed (1.10.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(3), **Sch. 4** (with arts. 6, 11, 12)

[^{F15}68 Requirement to disclose charitable status

- (1) Where a company is a charity and its name does not include the word “charity” or “charitable”, the fact that the company is a charity must be stated in legible characters—
 - (a) in every location, and in every description of document or communication, in which it is required by regulations under section 82 of the Companies Act 2006 to state its registered name, and
 - (b) in all conveyances purporting to be executed by the company.

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- (2) Where a company's name includes the word "elusen" or "elusennol" (the Welsh equivalents of "charity" and "charitable"), subsection (1) does not apply in relation to any document that is wholly in Welsh.
- (3) The statement required by subsection (1) must be in English, except that, in the case of a document that is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the word "elusen" or "elusennol".
- (4) In subsection (1)(b) "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

Textual Amendments

F15 Ss. 68-68ZB substituted for s. 68 (1.10.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(3), **Sch. 3 para. 7** (with arts. 6, 11, 12)

68ZA. Civil consequences of failure to make required disclosure

- (1) This section applies to any legal proceedings brought by a company to which section 68 applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that section.
- (2) The proceedings shall be dismissed if the defendant to the proceedings shows—
 - (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the latter's failure to comply with section 68, or
 - (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the claimant's failure to comply with that section, unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.
- (3) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

Textual Amendments

F15 Ss. 68-68ZB substituted for s. 68 (1.10.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(3), **Sch. 3 para. 7** (with arts. 6, 11, 12)

68ZB. Criminal consequences of failure to make required disclosure

- (1) Where a company fails, without reasonable excuse, to comply with section 68, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (2) For this purpose a shadow director of the company is treated as an officer of the company if the failure is to comply with section 68(1)(a) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under section 82 of the Companies Act 2006.

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- (3) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) Expressions used in this section have the same meaning as in section 84 of the Companies Act 2006 (criminal consequences of failure to disclose company's registered name).]

Textual Amendments

- F15** Ss. 68-68ZB substituted for s. 68 (1.10.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(3), **Sch. 3 para. 7** (with arts. 6, 11, 12)

[^{F16}68A Duty of charity's auditors etc. to report matters to Commission

- (1) Section 44A(2) to (7) above shall apply in relation to a person [^{F17}acting as an auditor of a charitable company appointed under Chapter 2 of Part 16 of the Companies Act 2006 (appointment of auditors) as they apply] in relation to a person such as is mentioned in section 44A(1).
- (2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting in the capacity mentioned in subsection (1) of this section.
- (3) In this section “charitable company” means a charity which is a company.]

Textual Amendments

- F16** S. 68A inserted (1.4.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 33, 79(2)** (with [Sch. 10 para. 10](#)); [S.I. 2008/945](#), art. 2, [Sch. 1](#)
- F17** Words in s. 68A(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Charities Act 2006 \(Charitable Companies Audit and Group Accounts Provisions\) Order 2008 \(S.I. 2008/527\)](#), arts. 1(1), **6**

69 Investigation of accounts.

- (1) In the case of a charity which is a company [^{F18}the Commission] may by order require that the condition and [^{F19}relevant] accounts of the charity for such period as [^{F20}the Commission thinks fit] shall be investigated and audited by an auditor appointed [^{F21}by the Commission], being a person eligible for appointment as a [^{F22}statutory auditor under Part 42 of the Companies Act 2006] .

[^{F23}(1A) “Relevant accounts” means accounts required to be audited under [^{F24}Part 16 of the Companies Act 2006] .]

- (2) An auditor acting under subsection (1) above—
 - (a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;

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- (b) shall be entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the charity such information and explanation as he thinks necessary for the performance of his duties;
- (c) shall at the conclusion or during the progress of the audit make such reports to [^{F25}the Commission] about the audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity trustees.
- (3) The expenses of any audit under subsection (1) above, including the remuneration of the auditor, shall be paid by [^{F26}the Commission].
- (4) If any person fails to afford an auditor any facility to which he is entitled under subsection (2) above [^{F27}the Commission] may by order give to that person or to the charity trustees for the time being such directions as [^{F28}the Commission thinks] appropriate for securing that the default is made good.

Textual Amendments

- F18** Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F19** Words in s. 69(1) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **7(2)**
- F20** Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F21** Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(c)**; S.I. 2007/309, art. 2, Sch.
- F22** Words in s. 69(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(rr)** (with arts. 6, 11, 12)
- F23** S. 69(1A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **7(3)**
- F24** Words in s. 69(1A) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 192(8)** (with arts. 6, 11, 12)
- F25** Words in s. 69(2)(c) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(3)**; S.I. 2007/309, art. 2, Sch.
- F26** Words in s. 69(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(3)**; S.I. 2007/309, art. 2, Sch.
- F27** Words in s. 69(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(4)(a)**; S.I. 2007/309, art. 2, Sch.
- F28** Words in s. 69(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(4)(b)**; S.I. 2007/309, art. 2, Sch.

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