



# Charities Act 1993 (repealed)

## 1993 CHAPTER 10

### PART X

#### SUPPLEMENTARY

**84 Supply by Commissioners of copies of documents open to public inspection.**

The Commissioners shall, at the request of any person, furnish him with copies of, or extracts from, any document in their possession which is for the time being open to inspection under Parts II to VI of this Act.

**85 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 by the regulations in respect of—
  - (a) the discharge by the Commissioners of such functions under the enactments relating to charities as may be so 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 circumstances prescribed by the regulations.
- (3) 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.

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- (5) Any fees and other payments received by the Commissioners by virtue of this section shall be paid into the Consolidated Fund.

## **86 Regulations and orders.**

- (1) Any regulations or order of the Secretary of State under this Act—
- (a) shall be made by statutory instrument; and
  - (b) (subject to subsection (2) below) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1)(b) above does not apply—
- (a) to an order under section 17(2), 70 or 99(2);
  - (b) to any regulations under section 71; or
  - (c) to any regulations to which section 85(3) applies.
- (3) Any regulations of the Secretary of State or the Commissioners and any order of the Secretary of State under this Act may make—
- (a) different provision for different cases; and
  - (b) such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State or, as the case may be, the Commissioners consider appropriate.
- (4) Before making any regulations under section 42, 44 or 45 above the Secretary of State shall consult such persons or bodies of persons as he considers appropriate.

### **Extent Information**

- E1** S. 86 extends to England and Wales only except that so much of s. 86 as relates to ss. 70 and 71 extends also to Scotland.

## **87 Enforcement of requirements by order of Commissioners.**

- (1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2) below) the Commissioners may by order give him such directions as they consider appropriate for securing that the default is made good.
- (2) Subsection (1) above 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 88 below applies, or
    - (ii) by a direction of the Commissioners to which that section applies by virtue of section 90(2) below.

## **88 Enforcement of orders of Commissioners.**

A person guilty of disobedience—

- (a) to an order of the Commissioners under section 9(1), 44(2), 61, 73 or 80 above; or

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- (b) to an order of the Commissioners under section 16 or 18 above requiring a transfer of property or payment to be called for or made; or
- (c) to an order of the Commissioners requiring a default under this Act to be made good;

may on the application of the Commissioners to the High Court be dealt with as for disobedience to an order of the High Court.

## **89 Other provisions as to orders of Commissioners.**

- (1) Any order made by the Commissioners under this Act may include such incidental or supplementary provisions as the Commissioners think expedient for carrying into effect the objects of the order, and where the Commissioners exercise any jurisdiction to make such an order on an application or reference to them, they may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion.
- (2) Where the Commissioners make an order under this Act, then (without prejudice to the requirements of this Act where the order is subject to appeal) they may themselves give such public notice as they think fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity affected by the order.
- (3) The Commissioners at any time within twelve months after they have made an order under any provision of this Act other than section 61 if they are satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act, may with or without any application or reference to them discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.
- (4) Except for the purposes of subsection (3) above or of an appeal under this Act, an order made by the Commissioners under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

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

- C1** S. 89(1)(2)(4) applied (1.8.1993) by 1992 c. 41, s. 72(5) (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 29(7) of this Act).

## **90 Directions of the Commissioners.**

- (1) Any direction given by the Commissioners under any provision contained in this Act—
  - (a) may be varied or revoked by a further direction given under that provision; and
  - (b) shall be given in writing.
- (2) Sections 88 and 89(1), (2) and (4) above shall apply to any such directions as they apply to an order of the Commissioners.
- (3) In subsection (1) above the reference to the Commissioners includes, in relation to a direction under subsection (3) of section 8 above, a reference to any person conducting an inquiry under that section.

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- (4) Nothing in this section shall be read as applying to any directions contained in an order made by the Commissioners under section 87(1) above.

## **91 Service of orders and directions.**

- (1) This section applies to any order or direction made or given by the Commissioners under this Act.
- (2) An order or direction to which this section applies may be served on a person (other than a body corporate)—
- (a) by delivering it to that person;
  - (b) by leaving it at his last known address in the United Kingdom; or
  - (c) by sending it by post to him at that address.
- (3) An order or direction to which this section applies may be served on a body corporate by delivering it or sending it by post—
- (a) to the registered or principal office of the body in the United Kingdom, or
  - (b) if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities (as the case may be).
- (4) Any such order or direction may also be served on a person (including a body corporate) by sending it by post to that person at an address notified by that person to the Commissioners for the purposes of this subsection.
- (5) In this section any reference to the Commissioners includes, in relation to a direction given under subsection (3) of section 8 above, a reference to any person conducting an inquiry under that section.

## **92 Appeals from Commissioners.**

- (1) Provision shall be made by rules of court for regulating appeals to the High Court under this Act against orders or decisions of the Commissioners.
- (2) On such an appeal the Attorney General shall be entitled to appear and be heard, and such other persons as the rules allow or as the court may direct.

## **93 Miscellaneous provisions as to evidence.**

- (1) Where, in any proceedings to recover or compel payment of any rentcharge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rentcharge or other periodical payment has at any time been paid for twelve consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income, and no proof of its origin shall be necessary.
- (2) In any proceedings, the following documents, that is to say,—
- (a) the printed copies of the reports of the Commissioners for enquiring concerning charities, 1818 to 1837, who were appointed under the Act 58 Geo. 3. c. 91 and subsequent Acts; and

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(b) the printed copies of the reports which were made for various counties and county boroughs to the Charity Commissioners by their assistant commissioners and presented to the House of Commons as returns to orders of various dates beginning with 8th December 1890, and ending with 9th September 1909,

shall be admissible as evidence of the documents and facts stated in them.

(3) Evidence of any order, certificate or other document issued by the Commissioners may be given by means of a copy retained by them, or taken from a copy so retained, and certified to be a true copy by any officer of the Commissioners generally or specially authorised by them to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.

#### **94 Restriction on institution of proceedings for certain offences.**

(1) No proceedings for an offence under this Act 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 5;
- (b) section 11;
- (c) section 18(14);
- (d) section 49; or
- (e) section 73(1).

#### **95 Offences by bodies corporate.**

Where any offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In relation to a body corporate whose affairs are managed by its members, “director” means a member of the body corporate.

#### **96 Construction of references to a “charity” or to particular classes of charity.**

(1) In this Act, except in so far as the context otherwise requires—

“charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court’s jurisdiction with respect to charities;

“ecclesiastical charity” has the same meaning as in the <sup>M1</sup>Local Government Act 1894;

“exempt charity” means (subject to section 24(8) above) a charity comprised in Schedule 2 to this Act;

“local charity” means, in relation to any area, a charity established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of that area or of part of it;

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“parochial charity” means, in relation to any parish or (in Wales) community, a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to inhabitants of the parish or community, or of a single ancient ecclesiastical parish which included that parish or community or part of it, or of an area consisting of that parish or community with not more than four neighbouring parishes or communities.

- (2) The expression “charity” is not in this Act applicable—
- (a) to any ecclesiastical corporation (that is to say, any corporation in the Church of England, whether sole or aggregate, which is established for spiritual purposes) in respect of the corporate property of the corporation, except to a corporation aggregate having some purposes which are not ecclesiastical in respect of its corporate property held for those purposes; or
  - (b) to any Diocesan Board of Finance within the meaning of the <sup>M2</sup>Endowments and Glebe Measure 1976 for any diocese in respect of the diocesan glebe land of that diocese within the meaning of that Measure; or
  - (c) to any trust of property for purposes for which the property has been consecrated.
- (3) A charity shall be deemed for the purposes of this Act to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.
- (4) References in this Act to a charity whose income from all sources does not in aggregate amount to more than a specified amount shall be construed—
- (a) by reference to the gross revenues of the charity, or
  - (b) if the Commissioners so determine, by reference to the amount which they estimate to be the likely amount of those revenues,
- but without (in either case) bringing into account anything for the yearly value of land occupied by the charity apart from the pecuniary income (if any) received from that land; and any question as to the application of any such reference to a charity shall be determined by the Commissioners, whose decision shall be final.
- (5) The Commissioners may direct that for all or any of the purposes of this Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity.
- [<sup>F1</sup>(6) The Commissioners may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees shall be treated as a single charity.]

#### Textual Amendments

**F1** S. 96(6) inserted (8.11.1995) by 1995 c. 48, s. 1

#### Marginal Citations

**M1** 1894 c. 73.

**M2** 1976 No. 4.

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## 97 General interpretation.

(1) In this Act, except in so far as the context otherwise requires—

“charitable purposes” means purposes which are exclusively charitable according to the law of England and Wales;

“charity trustees” means the persons having the general control and management of the administration of a charity;

“the Commissioners” means the Charity Commissioners for England and Wales;

“company” means a company formed and registered under the <sup>M3</sup>Companies Act 1985 or to which the provisions of that Act apply as they apply to such a company;

“the court” means the High Court and, within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court;

“financial year”—

- (a) in relation to a charity which is a company, shall be construed in accordance with section 223 of the Companies Act 1985; and
- (b) in relation to any other charity, shall be construed in accordance with regulations made by virtue of section 42(2) above;

but this definition is subject to the transitional provisions in section 99(4) below and Part II of Schedule 8 to this Act;

“gross income”, in relation to 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 43(3)(a) above;

“institution” includes any trust or undertaking;

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

“permanent endowment” shall be construed in accordance with section 96(3) above;

“the register” means the register of charities kept under section 3 above 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 but a special trust shall not, by itself, constitute a charity for the purposes of Part VI of this Act;

“trusts” in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning.

(2) In this Act, except in so far as the context otherwise requires, “document” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form—

- (a) any reference to its production shall be construed as a reference to the furnishing of a copy of it in legible form; and

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- (b) any reference to the furnishing of a copy of, or extract from, it shall accordingly be construed as a reference to the furnishing of a copy of, or extract from, it in legible form.
- (3) No vesting or transfer of any property in pursuance of any provision of Part IV or IX of this Act shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

#### Marginal Citations

M3 1985 c. 6.

### 98 Consequential amendments and repeals.

- (1) The enactments mentioned in Schedule 6 to this Act shall be amended as provided in that Schedule.
- (2) The enactments mentioned in Schedule 7 to this Act are hereby repealed to the extent specified in the third column of the Schedule.

### 99 Commencement and transitional provisions.

- (1) Subject to subsection (2) below this Act shall come into force on 1st August 1993.
- <sup>F2</sup>(2) Part VI, section 69 and paragraph 21(3) of Schedule 6 shall not come into force until such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions or different purposes.
- (3) Until the coming into force of all the provisions mentioned in subsection (2) above the provisions mentioned in Part I of Schedule 8 to this Act shall continue in force notwithstanding their repeal.
- (4) Part II of Schedule 8 to this Act shall have effect until the coming into force of the first regulations made by virtue of section 42(2) above for determining the financial year of a charity for the purposes of the provisions mentioned in that Part.

#### Textual Amendments

F2 S. 99(2) power wholly exercised (14.10.1995): different dates appointed for specified provisions by S.I. 1995/2695, arts. 2, 3 (with art. 4)

### 100 Short title and extent.

- (1) This Act may be cited as the Charities Act 1993.
- (2) Subject to subsection (3) to (6) below, this Act extends only to England and Wales.
- (3) Section 10 above and this section extend to the whole of the United Kingdom.
- (4) Section 15(2) extends also to Northern Ireland.
- (5) Sections 70 and 71 and so much of section 86 as relates to those sections extend also to Scotland.



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- (6) The amendments in Schedule 6 and the repeals in Schedule 7 have the same extent as the enactments to which they refer and section 98 above extends accordingly.

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