

*Status: Point in time view as at 14/03/2012.*

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## SCHEDULES

### SCHEDULE 5

Section 120.

#### CHARITABLE PROPERTY ON DISBANDING OF UNITS

#### PART I

#### PRELIMINARY

##### *Designation of successor to disbanded unit*

- 1 (1) A warrant of Her Majesty may designate, for the purposes of this Schedule, any unit of a reserve force as the successor to any unit or other body of the same or any other reserve force which has been or is to be disbanded.
- (2) The Secretary of State shall send a copy of any such warrant to—
- (a) [<sup>F1</sup>the Charity Commission] ;
  - <sup>F2</sup>(b) .....
  - (c) the Department of Health and Social Services for Northern Ireland; and
  - (d) a trustee of each charity in England and Wales or Northern Ireland, or a person concerned in the management or control of each recognised body, affected by the warrant by virtue of the following provisions of this Schedule.
- (3) A copy of a warrant required to be sent under this paragraph may be sent by post; and any such copy shall be sent so as to arrive on or before the day on which the warrant comes into force and, in any event, not more than 14 days from the day on which the warrant is made.

#### Textual Amendments

**F1** Words in Sch. 5 para. 1(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 181\(2\)](#); [S.I. 2007/309, art. 2, Sch.](#)

**F2** Sch. 5 para. 1(2)(b) repealed (19.5.1999) by [S.I. 1999/678, art. 5 \(with art. 7\)](#)

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

**C1** Sch. 5 para. 1: 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](#))

#### *General interpretation*

- 2 In this Schedule—
- “disbanded unit” means a unit for which a successor is designated under paragraph 1;

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“charity” has the <sup>M1</sup>same meaning (in relation to England and Wales) [<sup>F3</sup>as it has under section 1(1) of the Charities Act 2011] and (in relation to Northern Ireland) as in the <sup>M2</sup>Charities Act (Northern Ireland) 1964;

“recognised body” has the same meaning as in Part I of the <sup>M3</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“warrant” means a warrant making such a designation, and references to disbandment of a body of a reserve force (however expressed) include references to its amalgamation with another unit or body.

#### Textual Amendments

**F3** Words in Sch. 5 para. 2 substituted (14.3.2012 immediately before the commencement of Charities Act 2011 (c. 25), Sch. 7 para. 69(1)) by S.I. 2011/1396, art. 1, Sch. para. 36(b) (which substitution is subsequently superseded (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 69(1) (with s. 20(2), Sch. 8))

#### Marginal Citations

**M1** 1993 c. 10.  
**M2** 1964 c. 33 (N.I.).  
**M3** 1990 c. 40.

## PART II

### SUCCESSION TO CHARITABLE PROPERTY: ENGLAND AND WALES

#### *Effect of designation of successor to disbanded unit*

- 3 (1) On and after the day on which a warrant comes into force, any charitable property which is held for the purposes of the disbanded unit in question shall (subject to the provisions of this Part of this Schedule) be held for the corresponding purposes, or most nearly corresponding purposes, of the successor unit designated by the warrant.
- (2) In this Part of this Schedule “charitable property” means any property belonging to a charity.
- (3) The same jurisdiction and powers shall be exercisable in relation to any charity owning property to which sub-paragraph (1) applies as would be exercisable if that sub-paragraph were not a provision of an Act of Parliament regulating that charity.

#### *Exclusion of charitable property from paragraph 3*

- 4 (1) If [<sup>F4</sup>Charity Commission considers] that paragraph 3(1) should not apply to all or any of the charitable property held for the purposes of a disbanded unit, [<sup>F5</sup>it] may make an order providing that paragraph 3(1) shall not apply or shall cease to apply to that property or part.
- (2) An order under this paragraph may be made at any time within the period of 6 months beginning with the day on which the warrant is made.

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#### Textual Amendments

- F4** Words in Sch. 5 para. 4(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 181\(3\)\(a\)](#); [S.I. 2007/309](#), art. 2, Sch.
- F5** Word in Sch. 5 para. 4(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 181\(3\)\(b\)](#); [S.I. 2007/309](#), art. 2, Sch.

5 (1) If a charity affected by a warrant or any trustee of, or person interested in, such a charity considers that paragraph 3(1) should not apply to all or any of the property held by the charity for the purposes of the disbanded unit in question, then the charity, trustee or person interested, as the case may be, may apply to the court for an order providing that paragraph 3(1) shall cease to apply to that property or part.

[<sup>F6</sup>(2) An application under this paragraph—

- (a) may be made at any time within the period of 6 months beginning with the day on which the warrant comes into force; and
- (b) is subject to subsections (2) to (5) of section 115 of the Charities Act 2011 (proceedings not to be begun without the consent of the Charity Commission or leave of a judge of the High Court),

and for the purposes of subsection (5) of that section an application for an order of the Commission authorising proceedings under this paragraph is deemed to be refused if it is not granted during the period of one month beginning with the day on which the application is received by the Commission.

(3) In this paragraph “the court” has the same meaning as in the Charities Act 2011.]

#### Textual Amendments

- F6** [Sch. 5 para. 5\(2\)\(3\)](#) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 69\(2\)](#) (with [s. 20\(2\)](#), [Sch. 8](#))

#### *Application of property otherwise than under paragraph 3*

[<sup>F7</sup>6 In any case where—

- (a) the Secretary of State requests the Charity Commission to make provision with respect to any charitable property which is held for the purposes of a unit of a reserve force that has been or is to be disbanded, or
- (b) an order is made under paragraph 4 or 5 excluding any charitable property so held from the operation of paragraph 3(1),

the Commission may, regardless of anything in section 70(2) of the Charities Act 2011 (limit on jurisdiction to make schemes etc. for the protection of charities), exercise its jurisdiction under section 69 with respect to the property to which the request or order relates.]

#### Textual Amendments

- F7** [Sch. 5 para. 6](#) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 69\(3\)](#) (with [s. 20\(2\)](#), [Sch. 8](#))

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*Validity of certain acts by trustees*

- 7 Neither a warrant nor any order under paragraph 4 or 5 shall affect the validity of anything done or omitted with respect to any property affected by the warrant or order before a copy of the warrant or order is received by a trustee of the charity in question.

*Saving for interests in property contingent on disbandment of unit*

- 8 Nothing in this Part of this Schedule applies to any property held by a charity for the purposes of a unit that has been or is to be disbanded if, under the terms on which the property is so held—
- (a) any interest of the charity in the property is determined on the disbanding of that unit; and
  - (b) any other person or charity has an interest in the property contingent upon the determination of the interest of the charity.

**PART III**

SUCCESSION TO CHARITABLE PROPERTY: SCOTLAND

*Effect of designation of successor to disbanded unit*

- 9 (1) On and after the day on which a warrant comes into force, any charitable property which is held for the purposes of the disbanded unit in question shall (subject to the provisions of this Part of this Schedule) be held for the corresponding purposes, or most nearly corresponding purposes, of the successor unit designated by the warrant.
- (2) In this Part of this Schedule “charitable property” means any property belonging to a recognised body.

*Exclusion of charitable property from paragraph 9*

- 10 (1) If the Lord Advocate considers that paragraph 9 should not apply to all or any of the charitable property held for the purposes of a disbanded unit, he may give a direction providing that paragraph 9 shall not apply or shall cease to apply to that property or part.
- (2) A direction under this paragraph may be given at any time during the period of 6 months beginning with the day on which the warrant is made.

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

- C2** Sch. 5 para. 10: 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. \(with art. 7\)](#)
- Sch. 5 para. 10: Transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), [Sch. 1 \(with art. 7\)](#)

- 11 (1) If a recognised body affected by a warrant or any person concerned in the management or control of, or interested in, such a body considers that paragraph 9 should not apply to all or any of the charitable property held by the recognised body

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for the purposes of the disbanded unit in question, then the recognised body, person concerned in its management or control or person interested, as the case may be, may apply by petition to the Court of Session for the court to make an order—

- (a) providing that paragraph 9 shall cease to apply to that property or part; and
- (b) exercising, with respect to that property or part, any of the court's powers relating to a charitable or other permanent endowment.

(2) On an application under sub-paragraph (1), the court may exercise any such power as is mentioned in sub-paragraph (1)(b) to make such order as it considers to be appropriate, whether or not that power would normally be exercisable at the instance of such a petitioner.

(3) An application under this paragraph may be made at any time within the period of 6 months beginning with the day on which the warrant comes into force.

#### *Power of Lord Advocate to apply to Court of Session*

- 12 (1) Where a body of a reserve force has been or is to be disbanded, the Lord Advocate —
- (a) if he has not given a direction under paragraph 9, may; and
  - (b) if he has given such a direction, shall,

apply by petition to the Court of Session for the court to make an order exercising, with respect to any charitable property which is held for the purposes of the disbanded unit, any of the court's powers relating to a charitable or other permanent endowment.

(2) On an application under sub-paragraph (1), the court may, subject to any such direction, exercise any such power to make such order as it considers to be appropriate, whether or not that power would normally be exercisable at the instance of the Lord Advocate.

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

**C3** Sch. 5 para. 12: 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](#))

Sch. 5 para. 12: Transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), [Sch. 1](#) (with [art. 7](#))

#### *Validity of certain acts*

- 13 None of the following, that is to say, a warrant, a direction under paragraph 10 or an order under paragraph 11 or 12 shall affect the validity of anything done or omitted with respect to any property affected by the warrant, direction or order before a copy of the warrant, direction or order is received by a person concerned in the management or control of the recognised body in question.

#### *Saving for interests in property contingent on disbandment of unit*

- 14 Nothing in this Part of this Schedule applies to any property held by a recognised body for the purposes of a unit that has been or is to be disbanded if, under the terms on which the property is so held—

- (a) any interest of the recognised body in the property is determined on the disbanding of that unit; and

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- (b) any other person or recognised body has an interest in the property contingent upon the determination of the interest of the recognised body.

## PART IV

### SUCCESSION TO CHARITABLE PROPERTY: NORTHERN IRELAND

#### *Effect of designation of successor to disbanded unit*

- 15 (1) On and after the day on which a warrant comes into force, any charitable property which is held for the purposes of the disbanded unit in question and administered for those purposes according to the law of Northern Ireland shall (subject to the provisions of this Part of this Schedule) be held for the corresponding purposes, or most nearly corresponding purposes, of the successor unit designated by the warrant.
- (2) In this Part of this Schedule “charitable property” means any property belonging to a charity.
- (3) The same jurisdiction and powers shall be exercisable in relation to any charity owning property to which sub-paragraph (1) applies as would be exercisable if that sub-paragraph were not a provision of an Act of Parliament regulating the charity.

#### *Exclusion of charitable property from paragraph 15*

- 16 (1) If the Department of Health and Social Services for Northern Ireland considers that paragraph 15(1) should not apply to all or any of the charitable property held for the purposes of a disbanded unit, that Department may make an order providing that paragraph 15(1) shall not apply or shall cease to apply to that property.
- (2) An order under this paragraph may be made at any time during the period of 6 months beginning with the day on which the warrant is made.
- 17 (1) If a charity affected by a warrant or any trustee of, or person interested in, such a charity considers that paragraph 15(1) should not apply to all or any of the property held by the charity for the purposes of the disbanded unit in question, then the charity, trustee or person interested, as the case may be, may apply to the court for an order providing that paragraph 15(1) shall cease to apply to that property or part.
- (2) An application under this paragraph—
- (a) may be made at any time within the period of 6 months beginning with the day on which the warrant comes into force; and
- (b) is subject to section 29(3) of the <sup>M4</sup>Charities Act (Northern Ireland) 1964 (under which an application for an order of the court in connection with the administration of a charity may not be made without the consent of the Attorney General for Northern Ireland).
- (3) In this paragraph “the court” has the same meaning as in the <sup>M5</sup>Charities Act (Northern Ireland) 1964.

#### Marginal Citations

M4 1964 c. 33 (N.I.).

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**M5** 1964 c. 33 (N.I.).

*Application of property otherwise than under paragraph 15*

- 18 In any case where—
- (a) the Secretary of State requests the Department of Health and Social Services for Northern Ireland to make provision with respect to any charitable property held for the purposes of a unit of a reserve force which has been or is to be disbanded; or
  - (b) an order is made under paragraph 16 or 17 excluding any charitable property so held from the operation of paragraph 15(1),
- the Department may, notwithstanding anything in subsection (1) of section 13 of the <sup>M6</sup>Charities Act (Northern Ireland) 1964 and irrespective of the value of the property in question, exercise its jurisdiction under that section with respect to the property to which the request or order relates.

**Marginal Citations**

**M6** 1964 c. 33 (N.I.).

*Validity of certain acts by trustees*

- 19 Neither a warrant nor any order under paragraph 16 or 17 shall affect the validity of anything done or omitted with respect to any property affected by the warrant or order before a copy of the warrant or order is received by a trustee of the charity in question.

*Saving for interests in property contingent on disbandment of unit*

- 20 Nothing in this Part of this Schedule applies to any property held by a charity for the purposes of a unit which has been or is to be disbanded if, under the terms on which the property is so held—
- (a) any interest of the charity in the property is determined on the disbanding of that unit; and
  - (b) any other person or charity has an interest in the property contingent upon the determination of the interest of the charity.

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