



# Charities Act 2006

## 2006 CHAPTER 50

### PART 2

#### REGULATION OF CHARITIES

#### CHAPTER 11

##### POWERS TO SPEND CAPITAL AND MERGERS

##### *Spending of capital*

#### 43 Power to spend capital

For section 75 of the 1993 Act substitute—

**“75 Power of unincorporated charities to spend capital: general**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.
- (2) But this section does not apply to a fund if section 75A below (power of larger charities to spend capital given for particular purpose) applies to it.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

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- (5) Once the charity trustees have passed a resolution under subsection (3) above, the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) In this section “available endowment fund”, in relation to a charity, means—
  - (a) the whole of the charity’s permanent endowment if it is all subject to the same trusts, or
  - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

**75A Power of larger unincorporated charities to spend capital given for particular purpose**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—
  - (a) the capital of the fund consists entirely of property given—
    - (i) by a particular individual,
    - (ii) by a particular institution (by way of grant or otherwise), or
    - (iii) by two or more individuals or institutions in pursuit of a common purpose, and
  - (b) the financial condition in subsection (2) below is met.
- (2) The financial condition in this subsection is met if—
  - (a) the relevant charity’s gross income in its last financial year exceeded £1,000, and
  - (b) the market value of the endowment fund exceeds £10,000.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (5) The charity trustees—
  - (a) must send a copy of any resolution under subsection (3) above to the Commission, together with a statement of their reasons for passing it, and
  - (b) may not implement the resolution except in accordance with the following provisions of this section.
- (6) Having received the copy of the resolution the Commission may—
  - (a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

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- (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
  - (a) the circumstances in and by reference to which they have decided to act under this section, or
  - (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (8) When considering whether to concur with the resolution the Commission must take into account—
  - (a) any evidence available to it as to the wishes of the donor or donors mentioned in subsection (1)(a) above, and
  - (b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- (9) The Commission must not concur with the resolution unless it is satisfied—
  - (a) that its implementation would accord with the spirit of the gift or gifts mentioned in subsection (1)(a) above (even though it would be inconsistent with the restrictions mentioned in subsection (3) above), and
  - (b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution.
- (10) Before the end of the period of three months beginning with the relevant date, the Commission must notify the charity trustees in writing either—
  - (a) that the Commission concurs with the resolution, or
  - (b) that it does not concur with it.
- (11) In subsection (10) “the relevant date” means—
  - (a) in a case where the Commission directs the charity trustees under subsection (6) above to give public notice of the resolution, the date when that notice is given, and
  - (b) in any other case, the date on which the Commission receives the copy of the resolution in accordance with subsection (5) above.
- (12) Where—
  - (a) the charity trustees are notified by the Commission that it concurs with the resolution, or
  - (b) the period of three months mentioned in subsection (10) above has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (3).

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- (13) The Minister may by order amend subsection (2) above by substituting a different sum for any sum specified there.
- (14) In this section—
- (a) “available endowment fund” has the same meaning as in section 75 above,
  - (b) “market value”, in relation to an endowment fund, means—
    - (i) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or
    - (ii) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose, and
  - (c) the reference in subsection (1) to the giving of property by an individual includes his giving it under his will.

### **75B Power to spend capital subject to special trusts**

- (1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity (“the relevant charity”) for the purposes of this section.
- (2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—
- (a) by a particular individual,
  - (b) by a particular institution (by way of grant or otherwise), or
  - (c) by two or more individuals or institutions in pursuit of a common purpose,
- subsections (5) to (11) of section 75A above apply in relation to the resolution and that gift or gifts as they apply in relation to a resolution under section 75A(3) and the gift or gifts mentioned in section 75A(1)(a).
- (5) Where—
- (a) the charity trustees have passed a resolution under subsection (2) above, and
  - (b) (in a case where section 75A(5) to (11) above apply in accordance with subsection (4) above) either—
    - (i) the charity trustees are notified by the Commission that it concurs with the resolution, or
    - (ii) the period of three months mentioned in section 75A(10) has elapsed without the Commission notifying them that it does not concur with the resolution,

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the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (2).

- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) The Minister may by order amend subsection (4) above by substituting a different sum for the sum specified there.
- (8) In this section—
  - (a) “available endowment fund” has the same meaning as in section 75 above,
  - (b) “market value” has the same meaning as in section 75A above, and
  - (c) the reference in subsection (4) to the giving of property by an individual includes his giving it under his will.”