



# Charities Act 2011

## 2011 CHAPTER 25

### PART 14

#### SPECIAL TRUSTS

#### **287 Meaning of “special trust”**

- (1) In this Act, “special trust” means property which—
  - (a) is held and administered by or on behalf of a charity for any special purposes of the charity, and
  - (b) is so held and administered on separate trusts relating only to that property.
- (2) But a special trust does not, by itself, constitute a charity for the purposes of Part 8 (charity accounts, reports and returns).

#### **288 Power to spend capital subject to special trusts: general**

- (1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 12(1), is to be treated as a separate charity (“the relevant charity”) for the purposes of this section and sections 289 to 292.
- (2) But this section does not apply to such a fund if sections 289 to 291 (power to spend capital subject to special trusts: larger fund) apply in relation to it.
- (3) If the condition in subsection (4) 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.
- (4) The condition 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (5) Once the charity trustees have passed a resolution under subsection (3), 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” has the same meaning as in section 281 (power of unincorporated charities to spend capital: general).

### **289 Resolution to spend capital subject to special trusts: larger fund**

- (1) This section applies to a fund within section 288(1) 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 market value of the fund exceeds £10,000.
- (2) If the condition in subsection (3) 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 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) The charity trustees—
  - (a) must send a copy of any resolution under subsection (2) to the Commission, together with a statement of their reasons for passing it, and
  - (b) may not implement the resolution except in accordance with sections 290 and 291.
- (5) In this section, “market value” has the same meaning as in section 282 (resolution to spend larger fund for given for particular purpose).
- (6) In subsection (1), the reference to the giving of property by an individual includes the individual’s giving it by will.

### **290 Notice of, and information about, s.289 resolution**

- (1) Having received the copy of the resolution under section 289(4), 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
  - (b) if it gives such a direction, must take into account any representations made to it—
    - (i) by persons appearing to it to be interested in the relevant charity, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (2) 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 section 289, or
  - (b) their compliance with any obligation imposed on them by or under section 289 or this section in connection with the resolution.

## **291 When and how s.289 resolution takes effect**

- (1) When considering whether to concur with the resolution under section 289(2), the Commission must take into account—
- (a) any evidence available to it as to the wishes of the donor or donors mentioned in section 289(1)(a), and
  - (b) any changes in the circumstances relating to the relevant 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).
- (2) 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 section 289(1)(a) (even though it would be inconsistent with the restrictions mentioned in section 289(2)), and
  - (b) that the charity trustees have complied with the obligations imposed on them by or under section 289 or 290 in connection with the resolution.
- (3) Before the end of the period of 3 months beginning with the relevant date, the Commission must notify the charity trustees in writing—
- (a) that the Commission concurs with the resolution, or
  - (b) that it does not concur with it.
- (4) In subsection (3) “the relevant date” means—
- (a) if the Commission directs the charity trustees under section 290(1) to give public notice of the resolution, the date when that notice is given, and
  - (b) otherwise, the date on which the Commission receives the copy of the resolution in accordance with section 289(4).
- (5) Where—
- (a) the charity trustees are notified by the Commission that it concurs with the resolution, or
  - (b) the period of 3 months mentioned in subsection (3) 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 section 289(2).
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

---

*Status: This is the original version (as it was originally enacted).*

---

## **292 Power to alter sum specified in s.289**

The Minister may by order amend section 289(1) (market value of fund for purposes of resolution to spend capital subject to special trusts: larger fund) by substituting a different sum for the sum for the time being specified there.