Charities Act 2011

2011 CHAPTER 25

PART 10

CHARITABLE COMPANIES ETC.

Introductory

193 Meaning of "charitable company"

In this Act "charitable company" means a charity which is a company.

Disclosure of charitable status by companies

194 Requirement to disclose charitable status

(1) Where a charitable company's 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.

(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.

195 Civil consequences of failure to make required disclosure

(1) This section applies to any legal proceedings brought by a charitable company to which section 194 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 must be dismissed if it is shown that the defendant to the proceedings—

(a) has a claim against the company arising out of the contract or conveyance that the defendant has been unable to pursue because of the company's failure to comply with section 194, or

(b) has suffered some financial loss in connection with the contract or conveyance because of the company'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 that person may have against another in any proceedings brought by the other.

196 Criminal consequences of failure to make required disclosure

(1) Where a charitable company fails, without reasonable excuse, to comply with section 194, 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 194(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.

(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 10% 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).

Restrictions on alteration of objects

197 Alteration of objects by bodies corporate and charitable status

(1) Subsection (2) applies where a charity—

(a) is a company or other body corporate, and

(b) has power to alter the instruments establishing or regulating it as a body corporate.

(2) No exercise of the power which has the effect of the body ceasing to be a charity is 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.

198 Alteration of objects by companies and Commission's consent

(1) Any regulated alteration by a charitable company—

(a) requires the prior written consent of the Commission, and

(b) is ineffective if such consent has not been obtained.

(2) The following are regulated alterations—

(a) an amendment of the company's articles of association adding, removing or altering a statement of the company's objects,

(b) any alteration of any provision of its articles of association directing the application of property of the company on its dissolution, and

(c) any alteration of any provision of its 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.

(3) Where a company that has made a regulated alteration in accordance with subsection (1) is required—

(a) by section 26 of the Companies Act 2006 to send to the registrar of companies a copy of its articles as amended,

(b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or

(c) by section 31 of that Act to give notice to the registrar of the amendment,

the copy or notice must be accompanied by a copy of the Commission's consent.

(4) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(5) Subsections (2) to (4) of section 30 of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (3) as in relation to a failure to comply with that section.

199 Meaning of "benefit" in s.198(2)

For the purposes of section 198(2)(c) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 185) whose receipt may be authorised under that section.

200 Meaning of "connected person" in s.198(2)

(1) For the purposes of section 198(2)(c), the following persons are connected with a director or member of a charitable company—

(a) a child, parent, grandchild, grandparent, brother or sister of the director or member;

(b) the spouse or civil partner of the director or member or of any person falling within paragraph (a);

(c) a person carrying on business in partnership with the director or member or with any person falling within paragraph (a) or (b);

(d) an institution which is controlled—

(i) by the director or member or by any person falling within paragraph (a), (b) or (c), or

(ii) by two or more persons falling within sub-paragraph (i), when taken together.

(e) a body corporate in which—

(i) the director or member or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or

(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(2) Sections 350 to 352 (meaning of child, spouse, civil partner, controlled institution and substantial interest) apply for the purposes of subsection (1).

Acts requiring Commission consent

201 Consent of Commission required for approval etc. by members of charitable companies

(1) In the case of a charitable company, each of the following is ineffective without the prior written consent of the Commission—

(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), and

(b) any affirmation given by members of the company under section 196 or 214 of the 2006 Act (affirmation of unapproved property transactions and loans).

(2) The provisions of the 2006 Act 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.).

202 Consent of Commission required for certain acts of charitable company

(1) A charitable company 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 disapplies 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 201(2).

(4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) is to be treated as being of no effect in relation to the act.

Restoration of charitable company to register

203 Application for restoration of charitable company to register

(1) The Commission may make an application under section 1029 of the Companies Act 2006 (application to court for restoration to the register of companies) to restore a charitable company to the register of companies.

(2) The power exercisable by the Commission by virtue of this section is exercisable—

(a) by the Commission of its own motion, but

(b) only with the agreement of the Attorney General on each occasion.