

Status: Point in time view as at 18/02/2011.

Changes to legislation: There are currently no known outstanding effects for the Charities Act (Northern Ireland) 2008, Cross Heading: Additional powers of Commission. (See end of Document for details)



2008 CHAPTER 12

PART 6

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

Additional powers of Commission

Power to authorise dealings with charity property, etc.

46.—(1) Subject to the provisions of this section, where it appears to the Commission that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Commission may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1)) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.

(3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being

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as if contained in the trusts of the charity; but any such directions may on the application of the charity be modified or superseded by a further order.

(4) Without prejudice to the generality of subsection (3), the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.

(5) An order under this section may authorise an act notwithstanding that the trusts of the charity provide for the act to be done by or under the authority of the Court; but no such order authorises the doing of any act expressly prohibited by any statutory provision or by the trusts of the charity or shall extend or alter the purposes of the charity.

(6) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).

Modifications etc. (not altering text)

- C1 [S. 46](#) modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\)](#), [art. 2](#), Sch.

Power to authorise ex gratia payments, etc.

47.—(1) Subject to subsection (3), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—

- (a) to make any application of property of the charity, or
- (b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,

in a case where the charity trustees—

- (i) (apart from this subsection) have no power to do so, but
- (ii) in all the circumstances regard themselves as being under a moral obligation to do so.

(2) The power conferred on the Commission by subsection (1) shall be exercisable by the Commission under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require the Commission, in such circumstances as are specified in the directions—

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- (a) to refrain from exercising that power; or
- (b) to consult the Attorney General before exercising it.

(3) Where—

- (a) an application is made to the Commission for it to exercise that power in a case where it is not precluded from doing so by any such directions, but
- (b) the Commission considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by the Commission,

the Commission shall refer the application to the Attorney General.

(4) It is hereby declared that where, in the case of any application made to the Commission as mentioned in subsection (3)(a), the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (1)(a) or (b), that refusal shall not preclude the Attorney General, on an application subsequently made to the Attorney General by the trustees, from authorising the trustees to take that action.

Modifications etc. (not altering text)

- C2** S. 47 modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\)](#), [art. 2](#), Sch.

Power to give directions about dormant bank accounts of charities

48.—(1) Where the Commission—

- (a) is informed by a relevant institution—
 - (i) that it holds one or more accounts in the name of or on behalf of a particular charity (“the relevant charity”), and
 - (ii) that the account, or (if it so holds two or more accounts) each of the accounts, is dormant, and
- (b) is unable, after making reasonable inquiries, to locate that charity or any of its trustees,

it may give a direction under subsection (2).

(2) A direction under this subsection is a direction which—

- (a) requires the institution concerned to transfer the amount, or (as the case may be) the aggregate amount, standing to the credit of the relevant charity in the account or accounts in question to such other charity as is specified in the direction in accordance with subsection (3); or
- (b) requires the institution concerned to transfer to each of two or more other charities so specified in the direction such part of that amount or aggregate amount as is there specified in relation to that charity.

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(3) The Commission may specify in a direction under subsection (2) such other charity or charities as it considers appropriate, having regard, in a case where the purposes of the relevant charity are known to the Commission, to those purposes and to the purposes of the other charity or charities; but the Commission shall not so specify any charity unless it has received from the charity trustees confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.

(4) Any amount received by a charity by virtue of this section shall be received by the charity on terms that—

- (a) it shall be held and applied by the charity for the purposes of the charity, but
- (b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity.

(5) Where—

- (a) the Commission has been informed as mentioned in subsection (1)(a) by any relevant institution, and
- (b) before any transfer is made by the institution in pursuance of a direction under subsection (2), the institution has, by reason of any circumstances, cause to believe that the account, or (as the case may be) any of the accounts, held by it in the name of or on behalf of the relevant charity is no longer dormant,

the institution shall forthwith notify those circumstances in writing to the Commission; and, if it appears to the Commission that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) which has previously been given by them to the institution with respect to the relevant charity.

(6) The receipt of any charity trustees or trustee for a charity in respect of any amount received from a relevant institution by virtue of this section shall be complete discharge of the institution in respect of that amount.

(7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commission for the purpose of enabling them to discharge their functions under this section.

(8) For the purposes of this section—

- (a) an account is dormant if no transaction, other than—
 - (i) a transaction consisting in a payment into the account, or
 - (ii) a transaction which the institution holding the account has itself caused to be effected,

has been effected in relation to the account within the period of 5 years immediately preceding the date when the Commission is informed as mentioned in paragraph (a) of subsection (1);

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- (b) “relevant institution” means—
- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits,
 - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits,
- and this definition must be read with section 22 of and Schedule 2 to that Act and any relevant order under that section; and
- (c) references to the transfer of any amount to a charity are references to its transfer—
- (i) to the charity trustees, or
 - (ii) to any trustee for the charity,
- as the charity trustees may determine (and any reference to any amount received by a charity shall be construed accordingly).

(9) For the purpose of determining the matters in respect of which any of the powers conferred by section 22 or 23 may be exercised it shall be assumed that the Commission has no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of the Commission under this section, be required under section 22(3)(a) to furnish any statements, or answer any question or inquiries, with respect to any such accounts held by the institution).

This subsection applies to accounts which are dormant accounts by virtue of subsection (8)(a) but would not be such accounts if sub-paragraph (i) of that provision were omitted.

Modifications etc. (not altering text)

- C3** [S. 48](#) modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\)](#), [art. 2](#), Sch.

Power to give advice and guidance

49.—(1) The Commission may, on the application of any charity trustee or trustee for a charity, give that person (T) its opinion or advice in relation to any matter—

- (a) relating to the performance of any of T's duties, as such a trustee, in relation to the charity concerned, or
- (b) otherwise relating to the proper administration of the charity.

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(2) Where T acts in accordance with any opinion or advice given by the Commission under subsection (1) (whether to T or to another trustee) T is to be taken, as regards T's responsibility for so acting, to have acted in accordance with T's trust.

(3) But subsection (2) does not apply to T if, when so acting, either—

- (a) T knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or
- (b) a decision of the Court or the Tribunal has been obtained on the matter or proceedings are pending to obtain one.

(4) The Commission may, in connection with its second general function mentioned in section 8(2), give such advice or guidance with respect to the administration of charities as it considers appropriate.

(5) Any advice or guidance so given may relate to—

- (a) charities generally,
- (b) any class of charities, or
- (c) any particular charity,

and may take such form, and be given in such manner, as the Commission considers appropriate.

Modifications etc. (not altering text)

- C4 [S. 49](#) modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\)](#), [art. 2](#), Sch.

Power to determine membership of charity

50.—(1) The Commission may—

- (a) on the application of a charity, or
- (b) at any time after the institution of an inquiry under section 22 with respect to a charity,

determine who are the members of the charity.

(2) The Commission's power under subsection (1) may also be exercised by a person appointed by the Commission for the purpose.

(3) In a case within subsection (1)(b) the Commission may, if it thinks fit, so appoint the person appointed to conduct the inquiry.

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Modifications etc. (not altering text)

- C5 S. 50 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), art. 2, Sch.

Powers for preservation of charity documents

51.—(1) The Commission may provide books in which any deed, will or other document relating to a charity may be enrolled.

(2) The Commission may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commission deposit them with the Commission for safe keeping, except in the case of documents required by some other statutory provision to be kept elsewhere.

(3) Where a document is enrolled by the Commission or is for the time being deposited with the Commission under this section, evidence of its contents may be given by means of a copy certified by any member of staff of the Commission generally or specially authorised by the Commission 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 or of the original document being enrolled or deposited as aforesaid.

(4) Regulations made by the Department may make provision for such documents deposited with the Commission under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.

(5) Subsections (3) and (4) shall apply to any document transmitted to the Commission under section 23 and kept by the Commission under subsection (3) of that section, as if the document had been deposited with the Commission for safe keeping under this section.

Modifications etc. (not altering text)

- C6 S. 51(3)-(5) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), art. 2, Sch.

Commencement Information

- II S. 51 partly in operation; s. 51 not in operation at Royal Assent see s. 185(1); s. 51(3)-(5) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, art. 2, Sch.

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Power to enter premises

52.—(1) A lay magistrate may issue a warrant under this section if satisfied, on a complaint by a member of the Commission's staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.

(2) The conditions are—

- (a) that an inquiry has been instituted under section 22;
- (b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or furnished under section 23(1); and
- (c) that, if the Commission were to make an order requiring the document or information to be so produced or furnished—
 - (i) the order would not be complied with, or
 - (ii) the document or information would be removed, tampered with, concealed or destroyed.

(3) A warrant under this section is a warrant authorising the member of the Commission's staff (A) who is named in it—

- (a) to enter and search the premises specified in it;
- (b) to take on to the premises such other persons as the Commission considers are needed to assist A in doing anything that A is authorised to do under the warrant;
- (c) to take possession of any documents which appear to fall within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
- (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;
- (e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);
- (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;
- (g) to require any such person to give A such assistance as A may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

(4) Entry and search under such a warrant must be at a reasonable hour and within one month of the date of its issue.

(5) A must, if required to do so, produce—

- (a) the warrant, and

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(b) documentary evidence that A is a member of the Commission's staff, for inspection by the occupier of the premises or anyone acting on the occupier's behalf.

(6) A must make a written record of—

- (a) the date and time of entering the premises;
- (b) the number of persons (if any) who accompanied A onto the premises;
- (c) the period for which A (and any such persons) remained on the premises;
- (d) what A (and any such persons) did while on the premises; and
- (e) any document or device of which A took possession while there.

(7) If required to do so, A must give a copy of the record to the occupier of the premises or someone acting on the occupier's behalf.

(8) Unless it is not reasonably practicable to do so, A must comply with the following requirements before leaving the premises, namely—

- (a) the requirements of subsection (6), and
- (b) any requirement made under subsection (7) before A leaves the premises.

(9) Where possession of any document or device is taken under this section—

- (a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 22, or
- (b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry,

as the case may be.

(10) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable—

- (a) to the person from whose possession it was taken, or
- (b) to any of the charity trustees of the charity to which it belonged or related.

(11) A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence and liable on summary conviction—

- (a) to imprisonment for a term not exceeding 6 months, or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

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Modifications etc. (not altering text)

- C7** S. 52 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

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