
STATUTORY INSTRUMENTS

1987 No. 2048 (N.I. 19)

NORTHERN IRELAND

The Charities (Northern Ireland) Order 1987

Made - - - - - *26th November 1987*

Coming into Operation *27th January 1988*

At the Court at Buckingham Palace, the 26th day of November 1987

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Charities (Northern Ireland) Order 1987.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“accounting period” means a period of not more than 15 months or less than 12 months;

“the Act of 1964” means the Charities Act (Northern Ireland) 1964;

“the Department” means the Department of Finance and Personnel;

“permanent endowment” shall be construed in accordance with paragraph (3).

(3) A charity shall be deemed for the purposes of this Order to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without

distinction between capital and income, and in this Order “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being so expended.

Extension of powers of trustees of certain charities

Resolution by trustees of old charity to alter objects

- 3.—(1) This Article applies to any charity—
- (a) which has the following characteristics—
 - (i) the sole or primary object of the charity is the relief of poverty (within any meaning given to that expression under the law of charitable trusts, as applied for the time being), and
 - (ii) it is established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of a particular area in Northern Ireland; and
 - (b) which is not a company or other body corporate; and
 - (c) where—
 - (i) at least 50 years have elapsed since the date of the charity’s foundation, or
 - (ii) it is subject to a scheme (whether established by the court or by the Department) for the joint administration of two or more charities, and in the case of each of the charities comprised in the scheme at least 50 years have elapsed since the date of its foundation.
- (2) If the trustees are of the opinion—
- (a) that the objects of the charity may fairly be considered obsolete or lacking in usefulness, or impossible of achievement, having regard to the period that has elapsed since the charity was founded, the social and economic changes that have taken place in that period and other circumstances (if any) relevant to the functioning and administration of the charity, and
 - (b) that an alteration of the charity’s objects is required in order that the charity’s resources may be applied to better effect, consistently with the spirit of the original gift, they may (subject to the following provisions) pass a resolution that the trusts of the charity be modified by replacing the objects of the charity by other objects, being in law charitable, specified in the resolution.
- (3) The objects so specified must be, in the trustees' opinion, not so far dissimilar in character to those of the original charitable gift that this modification of the charity’s trusts would constitute an unjustifiable departure from the intentions of the founder of the charity or violate the spirit of the gift.
- (4) The trustees must take such steps as are reasonably open to them to secure the approval to the proposed alteration of objects of any person identifiable as having been the founder of the charity.
- (5) The resolution of the trustees must be unanimous and be in the form set out in Schedule 1.
- (6) Having passed the resolution, the trustees shall—
- (a) give such public notice that they have done so as they think reasonable and justified, having regard to the resources of the charity and the extent of its area of benefit, and
 - (b) send copies of the resolution to the Department, accompanied by a statement of their reasons for being of the opinions specified in paragraphs (2) and (3).

The trustees need not comply with sub-paragraph (a) if they consider that, in all the circumstances, no useful purpose would be served by giving public notice of the resolution.

(7) The Department may, when considering the resolution, require the trustees to provide additional information or explanation as to the circumstances in and by reference to which they have determined to act under this Article or as to their compliance with this Article; and the Department shall take into consideration any representations made by any persons appearing to the Department to be interested.

(8) The Department shall, not more than 3 months from the time when it receives a copy of the resolution from the trustees—

- (a) if it appears to the Department that the requirements of this Article are satisfied in respect of the resolution, and that the proposed alteration of objects is justified in all the circumstances (treating the trustees' opinion under paragraphs (2) and (3) as prima facie well-founded and not to be set aside in the absence of contrary considerations), give to the trustees notice of the Department's concurrence with the resolution, or
- (b) give them notice that further time is required in which to consider the case (but so that not more than an additional 6 months shall be taken for that purpose), or
- (c) give them notice that the Department does not concur with the resolution.

Any notice given by the Department under this paragraph (including any notice of concurrence, or non-concurrence, given after the Department has taken further time for consideration) shall be in writing.

(9) If the Department gives notice of its concurrence with the resolution then, with effect from the date specified in the notice, the trusts of the charity shall, by virtue of this Article, be deemed modified in accordance with the terms of the resolution, and the trust instrument shall have effect accordingly.

(10) References in this Article to a charity's trust instrument include any document which for the time being lays down or regulates the manner in which the charity's property may or must be applied.

(11) This Article does not apply to a charity which is a company or other body corporate.

Power for trustees of small charities to transfer whole property to another charity

4.—(1) Subject to and in accordance with this Article, the trustees of a charity may pass a resolution that the whole property of the charity be transferred to another charity, to be held and applied by, and as property of, that other charity.

(2) Such a resolution shall not have effect unless in the case of the charity first-mentioned ("the transferor charity") its gross income in the preceding accounting period was £200 or less; and the trustees must, before passing such a resolution—

- (a) obtain from the trustees of the other charity ("the transferee charity") written confirmation that they are willing to accept a transfer of property under this Article, and
- (b) have formed the opinion that the objects of the transferee charity are not so far dissimilar in character to those of the original charitable gift that the proposed transfer would constitute an unjustifiable departure from the intentions of the founder of the transferor charity or violate the spirit of the gift.

(3) The trustees must also take such steps as are reasonably open to them to secure the approval to the proposed transfer of any person identifiable as having been the founder of the charity.

(4) The resolution of the trustees must be unanimous and be in the form set out in Schedule 2.

(5) Having passed the resolution, the trustees shall—

- (a) give such public notice that they have done so as they think reasonable and justified, having regard to the resources of the charity and the extent of its area of benefit, and
- (b) send copies of the resolution to the Department accompanied by a statement of their reasons for wishing to effect a transfer of property under this Article.

The trustees need not comply with sub-paragraph (a) if they consider that, in all the circumstances, no useful purpose would be served by giving public notice of the resolution.

(6) The Department may, when considering the resolution, require the trustees to provide additional information or explanation as to the circumstances in and by reference to which they have determined to act under this Article or as to their compliance with this Article; and the Department shall take into consideration any representations made by any persons appearing to the Department to be interested.

(7) The Department shall, not more than 3 months from the time when it receives a copy of the resolution from the trustees—

- (a) if it appears to the Department that the requirements of this Article are satisfied in respect of the resolution and that it is a proper case (treating the trustees' opinion under paragraph (2)(b) as prima facie well-founded and not to be set aside in the absence of contrary considerations), give to the trustees notice of the Department's concurrence with the resolution, or
- (b) give them notice that further time is required in which to consider the case (but so that not more than an additional 6 months shall be taken for that purpose), or
- (c) give them notice that the Department does not concur with the resolution.

Any notice given by the Department under this paragraph (including any notice of concurrence, or non-concurrence, given after the Department has taken further time for consideration) shall be in writing.

(8) If the Department gives notice of its concurrence with the resolution, the trustees of the transferor charity shall on receipt of the notice make arrangements for the transfer of the whole property of the charity to the trustees of the transferee charity, to be acquired by that charity on the terms of this Article.

(9) Those terms are as follows—

- (a) all property acquired from the transferor charity which was expendable as income in the hands of that charity is to be treated as expendable in the hands of the transferee charity;
- (b) any property of the transferor charity which was not expendable as income, having formed part of that charity's permanent endowment, is to remain subject to the same restrictions on expenditure as applied before the transfer;
- (c) the whole property acquired by the transferee charity is to be held and applied for the objects of that charity.

(10) The trustees of the transferor charity shall have all such powers as are necessary to transfer the property of the charity under this Article.

(11) This Article does not apply to a charity which is a company or other body corporate.

(12) The Department may by order subject to affirmative resolution amend paragraph (2) by substituting for the sum there specified such other sum as the Department considers appropriate.

Power for very small charities to spend capital

5.—(1) Where, in the case of a charity having a permanent endowment—

- (a) the value of the endowment is £25 or less and the endowment does not consist of or comprise any land or interest in land, and
- (b) the charity's gross income in the preceding accounting period was £5 or less, and
- (c) the charity trustees are of the opinion that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone,

the trustees may pass a resolution that the charity ought to be freed from any restrictions imposed by law with respect to expenditure of capital.

(2) Before passing such a resolution, the trustees must consider whether any reasonable possibility exists of effecting a transfer of the charity's property to another charity under Article 4 (disregarding any such transfer as would, in the trustees' opinion, impose on their charity an unacceptable burden of costs).

(3) The resolution of the trustees must be unanimous and be in the form set out in Schedule 3.

(4) Having passed the resolution, the trustees shall send a copy of it to the Department and shall then have power by virtue of this Article to expend any property of the charity without regard to any restriction imposed by law and applying to the expenditure of capital but not to the expenditure of income.

(5) The Department may by order subject to affirmative resolution amend paragraph (1)(a) and (b) by substituting for either of the sums there specified such other sum as the Department considers appropriate.

Amendments of the Act of 1964

Increase and variation of certain financial limits

6.—(1) In section 13(1) of the Act of 1964 (power of Department to make a cy-près scheme in certain circumstances if the aggregate value of the property to be comprised in the scheme does not exceed £5,000), for the words “five thousand pounds” there shall be substituted “£50,000”.

(2) In section 14(1) of that Act (power of personal representatives to transfer property, not exceeding £250 in value, which is devised or bequeathed to a misdescribed charitable institution), for the words “two hundred and fifty pounds” there shall be substituted “£2,500”.

(3) In section 24(1) of that Act (power of Department to make a scheme for the application for charitable purposes of property, not exceeding £5,000 in value, given so that it could be used for charitable or non-charitable purposes) for the words “five thousand pounds” there shall be substituted “£50,000”.

(4) After section 31 of that Act there shall be inserted the following section—

“Variation of financial limits.

31A. The Department may by order subject to affirmative resolution amend sections 13(1), 14(1) and 24(1) by substituting for any sum specified in any of those provisions such other sum as the Department considers appropriate.”.

Value of property for purposes of the Act of 1964

7. For section 32 of the Act of 1964 (calculation of value of land and periodical payments charged on or issuing out of land) there shall be substituted the following section—

“32 Value of land, etc., for purposes of Act.

(1) In determining the value of any property for the purposes of this Act, the value of any land and of any periodical payment charged on or issuing out of land shall be taken to be such amount as may be specified in a certificate given by or on behalf of the Commissioner of Valuation.

(2) Any document purporting to be a certificate given by or on behalf of the Commissioner of Valuation for the purposes of subsection (1) shall be received in evidence and, until the contrary is proved, be deemed to be duly given.”.

Application to this Order of certain provisions of the Act of 1964

8. Sections 34 to 36 of the Act of 1964 (annual report by Department, interpretation, and saving for functions of Attorney-General) shall apply to this Order and accordingly—

- (a) in section 34, at the end of subsection (1) there shall be added the words “and the Charities (Northern Ireland) Order 1987”;
- (b) in section 35, after the words “this Act” there shall be inserted the words “and the Charities (Northern Ireland) Order 1987”;
- (c) in section 36, after the words “in this Act” there shall be inserted the words “or the Charities (Northern Ireland) Order 1987”.

Miscellaneous

Effect of alteration of instruments establishing charity as a body corporate

9.—(1) 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, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect any of the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the application of any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money’s worth;
- (b) the application of any property representing property so acquired;
- (c) the application of any property representing income which has accrued before the alteration is made;
- (d) the application of the income from any such property as is mentioned in sub-paragraph (a), (b) or (c).

Transfer of functions relating to the House to House Charitable Collections Act (Northern Ireland) 1952

10. The functions of the Department of Health and Social Services under or for the purposes of the House to House Charitable Collections Act (Northern Ireland) 1952 (including the functions of the head of that Department) are hereby transferred to the Department of Finance and Personnel.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

1

Article 3.

FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 3

Introductory

We are the trustees of the.....Charity, being a charity to which Article 3 of the Charities (Northern Ireland) Order 1987 applies.

We are of the opinion—

^{*}(a) that the objects of the charity may fairly be considered obsolete or lacking in usefulness, or impossible of achievement, having regard to the period that has elapsed since the charity was founded, the social and economic changes that have taken place in that period and other circumstances relevant to the functioning and administration of the charity, as follows

.....
.....
.....

(relevant circumstances, if any, to be specified)

and

(b) that an alteration of the charity's objects, as set out in

.....
(here specify the applicable trust instrument)

is required in order that the charity's resources may be applied to better effect, consistently with the spirit of the original gift.

* Delete any words or phrases not applicable.

Alternative objects, being in law charitable, are specified in the schedule to this resolution and are in our opinion not so far dissimilar in character to those of the original charitable gift that this modification of the charity's trusts would constitute an unjustifiable departure from the intentions of the founder of the charity or violate the spirit of the gift.

We have complied with Article 3(4) of the Charities (Northern Ireland) Order 1987.

Resolution

We, the trustees of this charity, under and in pursuance of Article 3 of the Charities (Northern Ireland) Order 1987, hereby resolve that the trusts of the charity be modified by replacing the objects set out in the trust instrument by the alternative objects specified in the schedule.

Signed:

.....
.....

TRUSTEES OF THE.....CHARITY

Schedule to this Resolution

ALTERNATIVE OBJECTS PROPOSED TO REPLACE THOSE SET OUT IN THE TRUST INSTRUMENT

.....
.....

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

FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 4

Introductory

We are the trustees of the.....Charity, of which the gross income in the preceding accounting period was £..... .

We think it expedient that the whole property of the charity be transferred to another charity, to be held and applied for, and as property of, that other charity.

We have obtained from the trustees of the.....(here name proposed transferee charity), written confirmation that they are willing to accept a transfer of property under Article 4 of the Charities (Northern Ireland) Order 1987.

We have formed the opinion that the objects of theCharity are not so far dissimilar in character to those of the original charitable gift that the proposed transfer would constitute an unjustifiable departure from the intentions of the founder of the.....Charity or violate the spirit of the gift.

We have complied with Article 4(3) of the Charities (Northern Ireland) Order 1987.

Resolution

We, the trustees of the.....Charity, under and in pursuance of Article 4 of the Charities (Northern Ireland) Order 1987, hereby resolve that the whole property of the charity, including its permanent endowment, be transferred to the.....Charity.

Signed:
.....
.....

TRUSTEES OF THECHARITY

FORM OF RESOLUTION BY CHARITY TRUSTEES UNDER ARTICLE 5

Introductory

We are the trustees of the.....Charity.

The value of the charity's permanent endowment is £..... (or thereabouts), and the endowment does not consist of or comprise land or any interest in land, and its gross income in the preceding accounting period was £.....

We are of the opinion that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone.

We have complied with Article 5(2) of the Charities (Northern Ireland) Order 1987.

Resolution

We, the trustees of the said charity, under and in pursuance of Article 5 of the Charities (Northern Ireland) Order 1987, hereby resolve that the charity ought to be freed from any restrictions imposed by law with respect to expenditure of capital.

Signed:
.....
.....

TRUSTEES OF THE.....CHARITY

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives the trustees of certain charities additional powers, amends the Charities Act (Northern Ireland) 1964 and makes other changes in the law relating to charities in Northern Ireland.

Article 3 enables the trustees of a local charity for the relief of poverty which is at least fifty years old to alter the objects of the charity by resolution approved by the Department of Finance and Personnel if the trustees believe that the objects have become obsolete, lacking in usefulness or impossible of achievement. Article 4 enables the trustees of charities whose income is £200 or less to transfer the property of the charities to charities with similar objects and Article 5 frees the trustees of certain very small charities from restrictions on the expenditure of capital.

Article 6 increases certain financial limits under the Charities Act (Northern Ireland) 1964 and provides for their future variation by subordinate legislation. Article 7 simplifies the calculation of the value of land, etc., for the purposes of that Act and Article 8 applies to this Order certain supplementary provisions of that Act including section 34 which requires the Department of Finance and Personnel to produce an annual report. Article 9 places a restriction on the power of a charity which is a body corporate to alter its instruments and Article 10 transfers to the Department of Finance and Personnel the functions of the Department of Health and Social Services under the House to House Charitable Collections Act (Northern Ireland) 1952.