Charities Act 1993

1993 CHAPTER 10

An Act to consolidate the Charitable Trustees Incorporation Act 1872 and, except for certain spent or transitional provisions, the Charities Act 1960 and Part I of the Charities Act 1992. [27th May 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act extended (1.10.1998) by 1992 c. 13, **s. 22A(1)(2)** (as added (1.10.1998) by 1998 c. 30, **s. 41(2)**) (with s. 42(8)); S.I. 1998/2215, **art. 2**

C2 Act modified (8.8.1998) by 1998 c. 31, s. 11, **Sch. 1 para. 10** (with ss. 138(9), 144(6)); S.I. 1998/2048, **art. 2**

C3 Act excluded (1.9.1999) by 1998 c. 31, **s. 23(3)**; S.I. 1999/2323, art. 2(1), **Sch. 1**

C4 Act amended (1.9.1999) by 1998 c. 31, **s. 23(1)(2)**; S.I. 1999/2323, art. 2(1), **Sch. 1**
Act: power to modify conferred (2.4.2002) by 2000 c. 39, **s. 7(2)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

C5 Act: power to amend conferred (8.11.2006) by Charities Act 2006 (c. 50), **s. 77**

C6 Act: transfer of functions (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), **art. 3(2)(c)**

PART I

THE CHARITY COMMISSIONERS AND THE OFFICIAL CUSTODIAN FOR CHARITIES

1 The Charity Commissioners.

(1) There shall continue to be a body of Charity Commissioners for England and Wales, and they shall have such functions as are conferred on them by this Act in addition to any functions under any other enactment for the time being in force.

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(2) The provisions of Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of the Commissioners and other matters relating to the Commissioners and their officers and employees.

(3) The Commissioners shall (without prejudice to their specific powers and duties under other enactments) have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses.

(4) It shall be the general object of the Commissioners so to act in the case of any charity (unless it is a matter of altering its purposes) as best to promote and make effective the work of the charity in meeting the needs designated by its trusts; but the Commissioners shall not themselves have power to act in the administration of a charity.

(5) The Commissioners shall, as soon as possible after the end of every year, make to the **[**[F1]Minister**]** a report on their operations during that year, and he shall lay a copy of the report before each House of Parliament.

Textual Amendments

F1 Word in s. 1(5) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(a)**

2 The official custodian for charities.

(1) There shall continue to be an officer known as the official custodian for charities (in this Act referred to as "the official custodian") whose function it shall be to act as trustee for charities in the cases provided for by this Act; and the official custodian shall be by that name a corporation sole having perpetual succession and using an official seal which shall be officially and judicially noticed.

(2) Such officer of the Commissioners as they may from time to time designate shall be the official custodian.

(3) The official custodian shall perform his duties in accordance with such general or special directions as may be given him by the Commissioners, and his expenses (except those re-imbursed to him or recovered by him as trustee for any charity) shall be defrayed by the Commissioners.

(4) Anything which is required to or may be done by, to or before the official custodian may be done by, to or before any officer of the Commissioners generally or specially authorised by them to act for him during a vacancy in his office or otherwise.

(5) The official custodian shall not be liable as trustee for any charity in respect of any loss or of the mis-application of any property unless it is occasioned by or through the wilful neglect or default of the custodian or of any person acting for him; but the Consolidated Fund shall be liable to make good to a charity any sums for which the custodian may be liable by reason of any such neglect or default.

(6) The official custodian shall keep such books of account and such records in relation thereto as may be directed by the Treasury and shall prepare accounts in such form, in such manner and at such times as may be so directed.

(7) The accounts so prepared shall be examined and certified by the Comptroller and Auditor General, and the report to be made by the Commissioners to the **[**[F2]Minister**]** for any year shall include a copy of the accounts so prepared for any period ending in or with the year and of the certificate and report of the Comptroller and Auditor General with respect to those accounts.

Textual Amendments

F2 Word in s. 2(7) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(b)**

PART II

REGISTRATION AND NAMES OF CHARITIES

Registration of charities

3 The register of charities.

(1) The Commissioners shall continue to keep a register of charities, which shall be kept by them in such manner as they think fit.

(2) There shall be entered in the register every charity not excepted by subsection (5) below; and a charity so excepted (other than one excepted by paragraph (a) of that subsection) may be entered in the register at the request of the charity, but (whether or not it was excepted at the time of registration) may at any time, and shall at the request of the charity, be removed from the register.

(3) The register shall contain—

(a) the name of every registered charity; and

(b) such other particulars of, and such other information relating to, every such charity as the Commissioners think fit.

(4) Any institution which no longer appears to the Commissioners to be a charity shall be removed from the register, with effect, where the removal is due to any change in its purposes or trusts, from the date of that change; and there shall also be removed from the register any charity which ceases to exist or does not operate.

(5) The following charities are not required to be registered—

(a) any charity comprised in Schedule 2 to this Act (in this Act referred to as an "exempt charity");

(b) any charity which is excepted by order or regulations;

(c) any charity which has neither—

(i) any permanent endowment, nor

(ii) the use or occupation of any land,

and whose income from all sources does not in aggregate amount to more than £1,000 a year;

and no charity is required to be registered in respect of any registered place of worship.

[[F3](5A) In subsection (5) above, paragraph (a) shall be read as referring also to—

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(a) any higher education corporation within the meaning of the Education Reform Act 1988, and

(b) any further education corporation within the meaning of the Further and Higher Education Act 1992.**]**

[[F4](5B) In addition, in subsection (5) above—

(a) paragraph (a) shall be read as referring also to—

(i) any body to which section 23(1)(a) or (b) of the School Standards and Framework Act 1998 applies, and

(ii) any Education Action Forum established by virtue of section 10(1) of that Act; and

(b) paragraph (b) shall be read as referring also to any foundation to which section 23(3) of that Act applies;

but an order of the Commissioners, or regulations made by the **[**[F5]Minister**]** , may provide that section 23(3) of that Act shall cease to apply to any such foundation as is mentioned in that provision or to any such foundation of a description specified in the order or regulations.**]**

(6) With any application for a charity to be registered there shall be supplied to the Commissioners copies of its trusts (or, if they are not set out in any extant document, particulars of them), and such other documents or information as may be prescribed by regulations made by the **[**[F5]Minister**]** or as the Commissioners may require for the purpose of the application.

(7) It shall be the duty—

(a) of the charity trustees of any charity which is not registered nor excepted from registration to apply for it to be registered, and to supply the documents and information required by subsection (6) above; and

(b) of the charity trustees (or last charity trustees) of any institution which is for the time being registered to notify the Commissioners if it ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and to supply to the Commissioners particulars of any such change and copies of any new trusts or alterations of the trusts.

(8) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times; and copies (or particulars) of the trusts of any registered charity as supplied to the Commissioners under this section shall, so long as it remains on the register, be kept by them and be open to public inspection at all reasonable times, except in so far as regulations made by the **[**[F5]Minister**]** otherwise provide.

(9) Where any information contained in the register is not in documentary form, subsection (8) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

(10) If the Commissioners so determine, subsection (8) above shall not apply to any particular information contained in the register and specified in their determination.

(11) Nothing in the foregoing subsections shall require any person to supply the Commissioners with copies of schemes for the administration of a charity made otherwise than by the court, or to notify the Commissioners of any change made with respect to a registered charity by such a scheme, or require a person, if he refers the Commissioners to a document or copy already in the possession of the Commissioners, to supply a further copy of the document; but where by virtue of this subsection a copy

of any document need not be supplied to the Commissioners, a copy of it, if it relates to a registered charity, shall be open to inspection under subsection (8) above as if supplied to the Commissioners under this section.

(12) If the **[**[F5]Minister**]** thinks it expedient to do so—

(a) in consequence of changes in the value of money, or

(b) with a view to extending the scope of the exception provided for by subsection (5)(c) above,

he may by order amend subsection (5)(c) by substituting a different sum for the sum for the time being specified there.

(13) The reference in subsection (5)(b) above to a charity which is excepted by order or regulations is to a charity which—

(a) is for the time being permanently or temporarily excepted by order of the Commissioners; or

(b) is of a description permanently or temporarily excepted by regulations made by the **[**[F5]Minister**]** ,

and which complies with any conditions of the exception.

(14) In this section "registered place of worship" means any land or building falling within section 9 of the [M1]Places of Worship Registration Act 1855 (that is to say, the land and buildings which if the [M2]Charities Act 1960 had not been passed, would by virtue of that section as amended by subsequent enactments be partially exempted from the operation of the [M3]Charitable Trusts Act 1853), and for the purposes of this subsection "building" includes part of a building.

Textual Amendments

F3 S. 3(5A) inserted (1.10.1998) by 1998 c. 30, s. 44(1), **Sch. 3 para. 9** (with s. 42(8)); S.I. 1998/2215, **art. 2**

F4 S. 3(5B) inserted (1.2.1999) by 1998 c. 31, s. 140(1), **Sch. 30**, para. 48 (with ss. 138(9), 144(6)); S.I. 1999/120, art. 2(1), **Sch. 1**

F5 Word in s. 3 substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(c)**

Marginal Citations

M1 1855 c. 81.

M2 1960 c. 58.

M3 1853 c. 137.

4 Effect of, and claims and objections to, registration.

(1) An institution shall for all purposes other than rectification of the register be conclusively presumed to be or to have been a charity at any time when it is or was on the register of charities.

(2) Any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity, object to its being entered by the Commissioners in the register, or apply to them for it to be removed from the register; and provision may be made by regulations made by the **[**[F6]Minister**]** as to the manner in which any such objection or application is to be made, prosecuted or dealt with.

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(3) An appeal against any decision of the Commissioners to enter or not to enter an institution in the register of charities, or to remove or not to remove an institution from the register, may be brought in the High Court by the Attorney General, or by the persons who are or claim to be the charity trustees of the institution, or by any person whose objection or application under subsection (2) above is disallowed by the decision.

(4) If there is an appeal to the High Court against any decision of the Commissioners to enter an institution in the register, or not to remove an institution from the register, then until the Commissioners are satisfied whether the decision of the Commissioners is or is not to stand, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) above an institution shall be deemed not to be on the register during any period when the entry relating to it is in suspense under this subsection.

(5) Any question affecting the registration or removal from the register of an institution may, notwithstanding that it has been determined by a decision on appeal under subsection (3) above, be considered afresh by the Commissioners and shall not be concluded by that decision, if it appears to the Commissioners that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such an appeal or not.

Textual Amendments

F6 Word in s. 4(2) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(e)**

5 Status of registered charity (other than small charity) to appear on official publications etc.

(1) This section applies to a registered charity if its gross income in its last financial year exceeded **[**[F7]£10,000**]**.

(2) Where this section applies to a registered charity, the fact that it is a registered charity shall be stated [F8]. . . in legible characters—

(a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;

(b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and

(c) in all bills rendered by it and in all its invoices, receipts and letters of credit.

[F9]**[**(2A) The statement required by subsection (2) above shall be in English, except that, in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the words "elusen cofrestredig" (the Welsh equivalent of "registered charity").**]**

(3) Subsection (2)(a) above has effect whether the solicitation is express or implied, and whether the money or other property is to be given for any consideration or not.

(4) If, in the case of a registered charity to which this section applies, any person issues or authorises the issue of any document falling within paragraph (a) or (c) of subsection (2) above **[**[F10]which does not contain the statement**]** required by that

subsection, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If, in the case of any such registered charity, any person signs any document falling within paragraph (b) of subsection (2) above **[**[F11]which does not contain the statement**]** required by that subsection, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) The **[**[F12]Minister**]** may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

Textual Amendments

F7 Figure in s. 5(1) substituted (1.12.1995) by S.I. 1995/2696, **art. 2(2)**

F8 Words in s. 5(2) repealed (21.12.1993) by 1993 c. 38, ss. 32(2), 35(1), 36(1), **Sch. 2**

F9 S. 5(2A) inserted (21.12.1993) by 1993 c. 38, **ss. 32(3)**, 36(1)

F10 Words in s. 5(4) substituted (21.12.1993) by 1993 c. 38, **ss. 32(4)**, 36(1)

F11 Words in s. 5(5) substituted (21.12.1993) by 1993 c. 38, **ss. 32(5)**, 36(1)

F12 Word in s. 5(6) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(f)**

Charity names

6 Power of Commissioners to require charity's name to be changed.

(1) Where this subsection applies to a charity, the Commissioners may give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the charity trustees may determine with the approval of the Commissioners.

(2) Subsection (1) above applies to a charity if—

(a) it is a registered charity and its name ("the registered name")—

(i) is the same as, or

(ii) is in the opinion of the Commissioners too like,

the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not);

(b) the name of the charity is in the opinion of the Commissioners likely to mislead the public as to the true nature—

(i) of the purposes of the charity as set out in its trusts, or

(ii) of the activities which the charity carries on under its trusts in pursuit of those purposes;

(c) the name of the charity includes any word or expression for the time being specified in regulations made by the **[**[F13]Minister**]** and the inclusion in its name of that word or expression is in the opinion of the Commissioners likely to mislead the public in any respect as to the status of the charity;

(d) the name of the charity is in the opinion of the Commissioners likely to give the impression that the charity is connected in some way with Her Majesty's Government or any local authority, or with any other body of persons or any individual, when it is not so connected; or

(e) the name of the charity is in the opinion of the Commissioners offensive;

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and in this subsection any reference to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.

(3) Any direction given by virtue of subsection (2)(a) above must be given within twelve months of the time when the registered name was entered in the register in respect of the charity.

(4) Any direction given under this section with respect to a charity shall be given to the charity trustees; and on receiving any such direction the charity trustees shall give effect to it notwithstanding anything in the trusts of the charity.

(5) Where the name of any charity is changed under this section, then (without prejudice to section 3(7)(b) above) it shall be the duty of the charity trustees forthwith to notify the Commissioners of the charity's new name and of the date on which the change occurred.

(6) A change of name by a charity under this section does not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(7) Section 26(3) of the [M4]Companies Act 1985 (minor variations in names to be disregarded) shall apply for the purposes of this section as if the reference to section 26(1)(c) of that Act were a reference to subsection (2)(a) above.

(8) Any reference in this section to the charity trustees of a charity shall, in relation to a charity which is a company, be read as a reference to the directors of the company.

(9) Nothing in this section applies to an exempt charity.

Textual Amendments

F13 Word in s. 6(2)(c) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(g)**

Marginal Citations

M4 1985 c. 6.

7 Effect of direction under s. 6 where charity is a company.

(1) Where any direction is given under section 6 above with respect to a charity which is a company, the direction shall be taken to require the name of the charity to be changed by resolution of the directors of the company.

(2) Section 380 of the [M5]Companies Act 1985 (registration etc. of resolutions and agreements) shall apply to any resolution passed by the directors in compliance with any such direction.

(3) Where the name of such a charity is changed in compliance with any such direction, the registrar of companies—

(a) shall, subject to section 26 of the Companies Act 1985 (prohibition on registration of certain names), enter the new name on the register of companies in place of the former name, and

(b) shall issue a certificate of incorporation altered to meet the circumstances of the case;

and the change of name has effect from the date on which the altered certificate is issued.

Marginal Citations

M5 1985 c. 6.

PART III

COMMISSIONERS' INFORMATION POWERS

8 General power to institute inquiries.

(1) The Commissioners may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes, but no such inquiry shall extend to any exempt charity.

(2) The Commissioners may either conduct such an inquiry themselves or appoint a person to conduct it and make a report to them.

(3) For the purposes of any such inquiry the Commissioners, or a person appointed by them to conduct it, may direct any person (subject to the provisions of this section)—

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;

(c) to attend at a specified time and place and give evidence or produce any such documents.

(4) For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) The Commissioners may pay to any person the necessary expenses of his attendance to give evidence or produce documents for the purpose of an inquiry under this section, and a person shall not be required in obedience to a direction under paragraph (c) of subsection (3) above to go more than ten miles from his place of residence unless those expenses are paid or tendered to him.

(6) Where an inquiry has been held under this section, the Commissioners may either—

(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as they think fit, to be printed and published, or

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(b) publish any such report or statement in some other way which is calculated in their opinion to bring it to the attention of persons who may wish to make representations to them about the action to be taken.

(7) The council of a county or district, the Common Council of the City of London and the council of a London borough may contribute to the expenses of the Commissioners in connection with inquiries under this section into local charities in the council's area.

9 Power to call for documents and search records.

(1) The Commissioners may by order—

(a) require any person to furnish them with any information in his possession which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian;

(b) require any person who has in his custody or under his control any document which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian—

(i) to furnish them with a copy of or extract from the document, or

(ii) (unless the document forms part of the records or other documents of a court or of a public or local authority) to transmit the document itself to them for their inspection.

(2) Any officer of the Commissioners, if so authorised by them, shall be entitled without payment to inspect and take copies of or extracts from the records or other documents of any court, or of any public registry or office of records, for any purpose connected with the discharge of the functions of the Commissioners or of the official custodian.

(3) The Commissioners shall be entitled without payment to keep any copy or extract furnished to them under subsection (1) above; and where a document transmitted to them under that subsection for their inspection relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of it, the Commissioners may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.

(4) No person properly having the custody of documents relating only to an exempt charity shall be required under subsection (1) above to transmit to the Commissioners any of those documents, or to furnish any copy of or extract from any of them.

(5) The rights conferred by subsection (2) above shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

[[F14]10 Disclosure of information to Commission

(1) Any relevant public authority may disclose information to the Commission if the disclosure is made for the purpose of enabling or assisting the Commission to discharge any of its functions.

(2) But Revenue and Customs information may be disclosed under subsection (1) only if it relates to an institution, undertaking or body falling within one (or more) of the following paragraphs—

(a) a charity;

(b) an institution which is established for charitable, benevolent or philanthropic purposes;

(c) an institution by or in respect of which a claim for exemption has at any time been made under section 505(1) of the Income and Corporation Taxes Act 1988;

(d) a subsidiary undertaking of a charity;

(e) a body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales.

(3) In subsection (2)(d) above "subsidiary undertaking of a charity" means an undertaking (as defined by section 259(1) of the Companies Act 1985) in relation to which—

(a) a charity is (or is to be treated as) a parent undertaking in accordance with the provisions of section 258 of, and Schedule 10A to, the Companies Act 1985, or

(b) two or more charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions.

(4) For the purposes of the references to a parent undertaking—

(a) in subsection (3) above, and

(b) in section 258 of, and Schedule 10A to, the Companies Act 1985 as they apply for the purposes of that subsection,

"undertaking" includes a charity which is not an undertaking as defined by section 259(1) of that Act.

Textual Amendments

F14 Ss. 10-10C substituted for s. 10 (27.2.2007 except for the insertion of s. 10B and references to s. 10B, 8.11.2006 for specified purposes, 1.6.2010 for the insertion of s. 10B for specified purposes, 1.8.2011 for the insertion of s. 10B for further specified purposes) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 104** (with Sch. 10 para. 20); S.I. 2007/309, art. 2, Sch. (with art. 5); S.I. 2010/503, art. 2, Sch. 1 (with Sch. 2); S.I. 2011/1728, art. 2, Sch. 1 (with Sch. 2)

10A Disclosure of information by Commission

(1) Subject to subsections (2) and (3) below, the Commission may disclose to any relevant public authority any information received by the Commission in connection with any of the Commission's functions—

(a) if the disclosure is made for the purpose of enabling or assisting the relevant public authority to discharge any of its functions, or

(b) if the information so disclosed is otherwise relevant to the discharge of any of the functions of the relevant public authority.

(2) In the case of information disclosed to the Commission under section 10(1) above, the Commission's power to disclose the information under subsection (1) above is exercisable subject to any express restriction subject to which the information was disclosed to the Commission.

(3) Subsection (2) above does not apply in relation to Revenue and Customs information disclosed to the Commission under section 10(1) above; but any such information may not be further disclosed (whether under subsection (1) above or otherwise) except with the consent of the Commissioners for Her Majesty's Revenue and Customs.

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(4) Any responsible person who discloses information in contravention of subsection (3) above is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(5) It is a defence for a responsible person charged with an offence under subsection (4) above of disclosing information to prove that he reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.

(6) In the application of this section to Scotland or Northern Ireland, the reference to 12 months in subsection (4) is to be read as a reference to 6 months.

(7) In this section "responsible person" means a person who is or was—

(a) a member of the Commission,

(b) a member of the staff of the Commission,

(c) a person acting on behalf of the Commission or a member of the staff of the Commission, or

(d) a member of a committee established by the Commission.

Textual Amendments

F14 Ss. 10-10C substituted for s. 10 (27.2.2007 except for the insertion of s. 10B and references to s. 10B, 8.11.2006 for specified purposes, 1.6.2010 for the insertion of s. 10B for specified purposes, 1.8.2011 for the insertion of s. 10B for further specified purposes) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 104** (with Sch. 10 para. 20); S.I. 2007/309, art. 2, Sch. (with art. 5); S.I. 2010/503, art. 2, Sch. 1 (with Sch. 2); S.I. 2011/1728, art. 2, Sch. 1 (with Sch. 2)

10B Disclosure to and by principal regulators of exempt charities

(1) Sections 10 and 10A above apply with the modifications in subsections (2) to (4) below in relation to the disclosure of information to or by the principal regulator of an exempt charity.

(2) References in those sections to the Commission or to any of its functions are to be read as references to the principal regulator of an exempt charity or to any of the functions of that body or person as principal regulator in relation to the charity.

(3) Section 10 above has effect as if for subsections (2) and (3) there were substituted—

"(2) But Revenue and Customs information may be disclosed under subsection (1) only if it relates to—

(a) the exempt charity in relation to which the principal regulator has functions as such, or

(b) a subsidiary undertaking of the exempt charity.

(3) In subsection (2)(b) above "subsidiary undertaking of the exempt charity" means an undertaking (as defined by section 259(1) of the Companies Act 1985) in relation to which—

(a) the exempt charity is (or is to be treated as) a parent undertaking in accordance with the provisions of section 258 of, and Schedule 10A to, the Companies Act 1985, or

(b) the exempt charity and one or more other charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions."

(4) Section 10A above has effect as if for the definition of "responsible person" in subsection (7) there were substituted a definition specified by regulations under section 13(4)(b) of the Charities Act 2006 (regulations prescribing principal regulators).

(5) Regulations under section 13(4)(b) of that Act may also make such amendments or other modifications of any enactment as the **[**[F15]Minister**]** considers appropriate for securing that any disclosure provisions that would otherwise apply in relation to the principal regulator of an exempt charity do not apply in relation to that body or person in its or his capacity as principal regulator.

(6) In subsection (5) above "disclosure provisions" means provisions having effect for authorising, or otherwise in connection with, the disclosure of information by or to the principal regulator concerned.

Textual Amendments

F14 Ss. 10-10C substituted for s. 10 (27.2.2007 except for the insertion of s. 10B and references to s. 10B, 8.11.2006 for specified purposes, 1.6.2010 for the insertion of s. 10B for specified purposes, 1.8.2011 for the insertion of s. 10B for further specified purposes) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 104** (with Sch. 10 para. 20); S.I. 2007/309, art. 2, Sch. (with art. 5); S.I. 2010/503, art. 2, Sch. 1 (with Sch. 2); S.I. 2011/1728, art. 2, Sch. 1 (with Sch. 2)

F15 Word in s. 10B(5) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(h)**

10C Disclosure of information: supplementary

(1) In sections 10 and 10A above "relevant public authority" means—

(a) any government department (including a Northern Ireland department),

(b) any local authority,

(c) any constable, and

(d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(2) In section 10A above "relevant public authority" also includes any body or person within subsection (1)(d) above in a country or territory outside the United Kingdom.

(3) In sections 10 to 10B above and this section—

"enactment" has the same meaning as in the Charities Act 2006;

"Revenue and Customs information" means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005.

(4) Nothing in sections 10 and 10A above (or in those sections as applied by section 10B(1) to (4) above) authorises the making of a disclosure which—

(a) contravenes the Data Protection Act 1998, or

(b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.**]**

Textual Amendments

F14 Ss. 10-10C substituted for s. 10 (27.2.2007 except for the insertion of s. 10B and references to s. 10B, 8.11.2006 for specified purposes, 1.6.2010 for the insertion of s. 10B for specified purposes, 1.8.2011 for the insertion of s. 10B for further specified purposes) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 104** (with Sch. 10 para. 20); S.I. 2007/309, art. 2, Sch. (with art. 5); S.I. 2010/503, art. 2, Sch. 1 (with Sch. 2); S.I. 2011/1728, art. 2, Sch. 1 (with Sch. 2)

11 Supply of false or misleading information to Commissioners, etc.

(1) Any person who knowingly or recklessly provides the Commissioners with information which is false or misleading in a material particular shall be guilty of an offence if the information—

(a) is provided in purported compliance with a requirement imposed by or under this Act; or

(b) is provided otherwise than as mentioned in paragraph (a) above but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Commissioners for the purpose of discharging their functions under this Act.

(2) Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under this Act, to produce to the Commissioners shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(4) In this section references to the Commissioners include references to any person conducting an inquiry under section 8 above.

[F16]12 . . . . . .

Textual Amendments

F16 S. 12 repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, **art. 2(1)**

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

PART IV

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

Extended powers of court and variation of charters

13 Occasions for applying property cy-près.

(1) Subject to subsection (2) below, the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows—

(a) where the original purposes, in whole or in part—

(i) have been as far as may be fulfilled; or

(ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or

(b) where the original purposes provide a use for part only of the property available by virtue of the gift; or

(c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or

(d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

(i) been adequately provided for by other means; or

(ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or

(iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.

(2) Subsection (1) above shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près except in so far as those conditions require a failure of the original purposes.

(3) References in the foregoing subsections to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in Schedule 3 to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.

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(5) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

14 Application cy-près of gifts of donors unknown or disclaiming.

(1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where it belongs—

(a) to a donor who after—

(i) the prescribed advertisements and inquiries have been published and made, and

(ii) the prescribed period beginning with the publication of those advertisements has expired,

cannot be identified or cannot be found; or

(b) to a donor who has executed a disclaimer in the prescribed form of his right to have the property returned.

(2) Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees shall not be liable to any person in respect of the property if no claim by him to be interested in it is received by them before the expiry of the period mentioned in subsection (1)(a)(ii) above.

(3) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—

(a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or

(b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(4) The court may by order direct that property not falling within subsection (3) above shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified where it appears to the court either—

(a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or

(b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(5) Where property is applied cy-près by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (3) or (4) above—

(a) the scheme shall specify the total amount of that property; and

(b) the donor of any part of that amount shall be entitled, if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part,

less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and

(c) the scheme may include directions as to the provision to be made for meeting any such claim.

(6) Where—

(a) any sum is, in accordance with any such directions, set aside for meeting any such claims, but

(b) the aggregate amount of any such claims actually made exceeds the relevant amount,

then, if the Commissioners so direct, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in paragraph (b) above; and for this purpose "the relevant amount" means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors' gifts.

(7) For the purposes of this section, charitable purposes shall be deemed to "fail" where any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors.

(8) In this section "prescribed" means prescribed by regulations made by the Commissioners; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (1)(a) above, make provision as to the form and content of such advertisements as well as the manner in which they are to be published.

(9) Any regulations made by the Commissioners under this section shall be published by the Commissioners in such manner as they think fit.

(10) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

(11) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

15 Charities governed by charter, or by or under statute.

(1) Where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, a scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the cy-près application of any such property) may be made by the court under the court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter, but shall be so framed that the scheme, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect.

(2) Where under the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or under powers conferred by this Act or by any Northern Ireland legislation relating to charities, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the

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scheme, to amend any Royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in like manner as the charter it amends.

(3) The jurisdiction of the court with respect to charities shall not be excluded or restricted in the case of a charity of any description mentioned in Schedule 4 to this Act by the operation of the enactments or instruments there mentioned in relation to that description, and a scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and may also make any such provision as is authorised by that Schedule.

Extent Information

E1 S. 15 extends to England and Wales; s. 15(2) extends also to Northern Ireland, see s. 100(4)

Powers of Commissioners to make schemes and act for protection of charities etc.

16 Concurrent jurisdiction with High Court for certain purposes.

(1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes—

(a) establishing a scheme for the administration of a charity;

(b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;

(c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.

(2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) above and without any further order of the court.

(3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.

(4) Subject to the following subsections, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except—

(a) on the application of the charity; or

(b) on an order of the court under subsection (2) above; or

(c) in the case of a charity other than an exempt charity, on the application of the Attorney General.

(5) In the case of a charity which is not an exempt charity and whose income from all sources does not in aggregate exceed £500 a year, the Commissioners may exercise their jurisdiction under this section on the application—
   (a) of any one or more of the charity trustees; or
   (b) of any person interested in the charity; or
   (c) of any two or more inhabitants of the area of the charity if it is a local charity.

(6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so and the Commissioners have given the charity trustees an opportunity to make representations to them, the Commissioners may proceed as if an application for a scheme had been made by the charity but the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.

(7) Where—
   (a) a charity cannot apply to the Commissioners for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but
   (b) such an application is made by such number of the charity trustees as the Commissioners consider appropriate in the circumstances of the case,

   the Commissioners may nevertheless proceed as if the application were an application made by the charity.

(8) The Commissioners may on the application of any charity trustee or trustee for a charity exercise their jurisdiction under this section for the purpose of discharging him from his trusteeship.

(9) Before exercising any jurisdiction under this section otherwise than on an order of the court, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom or who is party or privy to an application for the exercise of the jurisdiction; and any such notice may be given by post, and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

(10) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.

(11) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.

(12) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order (unless he is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity).

(13) No appeal shall be brought under subsection (12) above except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of one of the judges of the High Court attached to the Chancery Division.

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(14) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (12) above as a charity trustee, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area and the council of any parish or (in Wales) any community comprising the area or any part of it.

(15) If the **[**[F17]Minister**]** thinks it expedient to do so—

(a) in consequence of changes in the value of money, or

(b) with a view to increasing the number of charities in respect of which the Commissioners may exercise their jurisdiction under this section in accordance with subsection (5) above,

he may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

Textual Amendments

F17 Word in s. 16(15) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(i)**

Modifications etc. (not altering text)

C7 S. 16(3)(9)(11)-(14) applied (1.8.1993) by 1987 c. 3, **s. 5(8)** (as substituted (1.8.1993) by ss. 98, 99(1), Sch. 6 para. 23(1) of this Act)

C8 S. 16(4) excluded (1.4.1997) by 1996 c. 14, s. 120, **Sch. 5**, Pt. II paras. 6, 8 (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

17 Further powers to make schemes or alter application of charitable property.

(1) Where it appears to the Commissioners that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of Parliament establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by them apart from this section, or that it is for any reason proper for the scheme to be subject to parliamentary review, then (subject to subsection (6) below) the Commissioners may settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by the Commissioners under this section may be given effect by order of the **[**[F18]Minister**]**, and a draft of the order shall be laid before Parliament.

(3) Without prejudice to the operation of section 6 of the [M6]Statutory Instruments Act 1946 in other cases, in the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act of Parliament, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.

(4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section 16 above.

(5) Where subsection (3) above applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.

(6) The Commissioners shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section 16 above; but on any application for a scheme, or in a case where they act by virtue of subsection (6) or (7) of that section, the Commissioners may proceed under this section or that section as appears to them appropriate.

(7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or the Commissioners be defrayed out of any moneys applicable for the purposes of a charity but this subsection shall not apply in the case of an exempt charity.

(8) Where the Commissioners are satisfied—

(a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and

(b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and

(c) that it is for any reason not yet desirable to make such a scheme;

then the Commissioners may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity.

(9) An order under subsection (8) above shall not extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years.

Textual Amendments

F18 Word in s. 17(2) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(j)**

Modifications etc. (not altering text)

C9 S. 17(1)-(5)(7) applied (1.8.1993) by 1987 c. 3, **s. 5(8)** (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 23(1) of this Act).

Marginal Citations

M6 1946 c. 36.

18 Power to act for protection of charities.

(1) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are satisfied—

(a) that there is or has been any misconduct or mismanagement in the administration of the charity; or

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(b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commissioners may of their own motion do one or more of the following things—

(i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);

(ii) by order appoint such number of additional charity trustees as they consider necessary for the proper administration of the charity;

(iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;

(iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioners;

(v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;

(vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioners;

(vii) by order appoint (in accordance with section 19 below) a receiver and manager in respect of the property and affairs of the charity.

(2) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are satisfied—

(a) that there is or has been any misconduct or mismanagement in the administration of the charity; and

(b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commissioners may of their own motion do either or both of the following things—

(i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;

(ii) by order establish a scheme for the administration of the charity.

(3) The references in subsection (1) or (2) above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(4) The Commissioners may also remove a charity trustee by order made of their own motion—

(a) where, within the last five years, the trustee—

(i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or

(ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;

(b) where the trustee is a corporation in liquidation;

(c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the [M7]Mental Health Act 1983;

(d) where the trustee has not acted, and will not declare his willingness or unwillingness to act;

(e) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.

(5) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—

(a) in place of a charity trustee removed by them under this section or otherwise;

(b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

(c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;

(d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.

(6) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section 16 above.

(7) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 16 above.

(8) Subject to subsection (9) below, subsections (11) to (13) of section 16 above shall apply to orders under this section as they apply to orders under that section.

(9) The requirement to obtain any such certificate or leave as is mentioned in section 16(13) above shall not apply to—

(a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity's property and affairs, or

(b) an appeal by a person against an order under subsection (2)(i) or (4)(a) above removing him from his office or employment.

(10) Subsection (14) of section 16 above shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.

(11) The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

or employment for a period of more than twelve months; but (without prejudice to the generality of section 89(1) below), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

(12) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1) above, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

(13) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).

(14) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(15) Subsection (14) above shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) above (whether proceedings in respect of the contravention are brought against him under subsection (14) above or not).

(16) This section shall not apply to an exempt charity.

Marginal Citations

M7 1983 c. 20.

19 Supplementary provisions relating to receiver and manager appointed for a charity.

(1) The Commissioners may under section 18(1)(vii) above appoint to be receiver and manager in respect of the property and affairs of a charity such person (other than an officer or employee of theirs) as they think fit.

(2) Without prejudice to the generality of section 89(1) below, any order made by the Commissioners under section 18(1)(vii) above may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by him under the supervision of the Commissioners.

(3) In connection with the discharge of those functions any such order may provide—

(a) for the receiver and manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;

(b) for any powers or duties exercisable or falling to be performed by the receiver and manager by virtue of paragraph (a) above to be exercisable or performed by him to the exclusion of those trustees.

(4) Where a person has been appointed receiver and manager by any such order—

(a) section 29 below shall apply to him and to his functions as a person so appointed as it applies to a charity trustee of the charity concerned and to his duties as such; and

(b) the Commissioners may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.

(5) The High Court may on an application under subsection (4)(b) above—

(a) give such directions, or

(b) make such orders declaring the rights of any persons (whether before the court or not),

as it thinks just; and the costs of any such application shall be paid by the charity concerned.

(6) Regulations made by the **[**[F19]Minister**]** may make provision with respect to—

(a) the appointment and removal of persons appointed in accordance with this section;

(b) the remuneration of such persons out of the income of the charities concerned;

(c) the making of reports to the Commissioners by such persons.

(7) Regulations under subsection (6) above may, in particular, authorise the Commissioners—

(a) to require security for the due discharge of his functions to be given by a person so appointed;

(b) to determine the amount of such a person's remuneration;

(c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

Textual Amendments

F19 Word in s. 19(6) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(k)**

20 Publicity for proceedings under ss. 16 to 18.

(1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the **[**[F20]Minister**]** for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity, other than on ecclesiastical charity, in a parish or (in Wales) a community, a draft of the scheme has been communicated to the parish or community council or, in the case of a parish not having a council, to the chairman of the parish meeting.

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(2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme but this subsection shall not apply in the case of—

(a) an order under section 18(1)(ii) above; or

(b) an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.

(3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or employee of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

(4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either without modification or with such modifications as appear to them to be desirable.

(5) Where the Commissioners make an order which is subject to appeal under subsection (12) of section 16 above the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.

(6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.

(7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.

(8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

Textual Amendments

F20 Word in s. 20(1) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(l)**

Modifications etc. (not altering text)

C10 S. 20 applied (1.8.1993) by 1987 c. 3, **s. 5(8)** (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 23(1) of this Act).

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Property vested in official custodian

21 Entrusting charity property to official custodian, and termination of trust.

(1) The court may by order—

(a) vest in the official custodian any land held by or in trust for a charity;

(b) authorise or require the persons in whom any such land is vested to transfer it to him; or

(c) appoint any person to transfer any such land to him;

but this subsection does not apply to any interest in land by way of mortgage or other security.

(2) Where property is vested in the official custodian in trust for a charity, the court may make an order discharging him from the trusteeship as respects all or any of that property.

(3) Where the official custodian is discharged from his trusteeship of any property, or the trusts on which he holds any property come to an end, the court may make such vesting orders and give such directions as may seem to the court to be necessary or expedient in consequence.

(4) No person shall be liable for any loss occasioned by his acting in conformity with an order under this section or by his giving effect to anything done in pursuance of such an order, or be excused from so doing by reason of the order having been in any respect improperly obtained.

22 Supplementary provisions as to property vested in official custodian.

(1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, he shall not exercise any powers of management, but he shall as trustee of any property have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a corporation appointed custodian trustee under section 4 of the [M8]Public Trustee Act 1906 except that he shall have no power to charge fees.

(2) Subject to subsection (3) below, where any land is vested in the official custodian in trust for a charity, the charity trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.

(3) If any land is so vested in the official custodian by virtue of an order under section 18 above, the power conferred on the charity trustees by subsection (2) above shall not be exercisable by them in relation to any transaction affecting the land, unless the transaction is authorised by order of the court or of the Commissioners.

(4) Where any land is vested in the official custodian in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land being vested in him shall be enforceable by or against the charity trustees as if the land were vested in them.

(5) In relation to a corporate charity, subsections (2), (3) and (4) above shall apply with the substitution of references to the charity for references to the charity trustees.

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(6) Subsections (2), (3) and (4) above shall not authorise any charity trustees or charity to impose any personal liability on the official custodian.

(7) Where the official custodian is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees without thereby incurring any liability.

Marginal Citations
M8 1906 c. 55.

23 Divestment in the case of land subject to Reverter of Sites Act 1987.

(1) Where—
(a) any land is vested in the official custodian in trust for a charity, and
(b) it appears to the Commissioners that section 1 of the [M9]Reverter of Sites Act 1987 (right of reverter replaced by **[**[F21]trust**]**) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances,

the jurisdiction which, under section 16 above, is exercisable by the Commissioners for the purpose of discharging a trustee for a charity may, at any time before section 1 of that Act ("the 1987 Act") operates in relation to the land, be exercised by them of their own motion for the purpose of—
(i) making an order discharging the official custodian from his trusteeship of the land, and
(ii) making such vesting orders and giving such directions as appear to them to be necessary or expedient in consequence.

(2) Where—
(a) section 1 of the 1987 Act has operated in relation to any land which, immediately before the time when that section so operated, was vested in the official custodian in trust for a charity, and
(b) the land remains vested in him but on the trust arising under that section,

the court or the Commissioners (of their own motion) may—
(i) make an order discharging the official custodian from his trusteeship of the land, and
(ii) (subject to the following provisions of this section) make such vesting orders and give such directions as appear to it or them to be necessary or expedient in consequence.

(3) Where any order discharging the official custodian from his trusteeship of any land—
(a) is made by the court under section 21(2) above, or by the Commissioners under section 16 above, on the grounds that section 1 of the 1987 Act will, or is likely to, operate in relation to the land, or
(b) is made by the court or the Commissioners under subsection (2) above,

the persons in whom the land is to be vested on the discharge of the official custodian shall be the relevant charity trustees (as defined in subsection (4) below), unless the court or (as the case may be) the Commissioners is or are satisfied that it would be appropriate for it to be vested in some other persons.

(4) In subsection (3) above "the relevant charity trustees" means—

(a) in relation to an order made as mentioned in paragraph (a) of that subsection, the charity trustees of the charity in trust for which the land is vested in the official custodian immediately before the time when the order takes effect, or

(b) in relation to an order made under subsection (2) above, the charity trustees of the charity in trust for which the land was vested in the official custodian immediately before the time when section 1 of the 1987 Act operated in relation to the land.

(5) Where—

(a) section 1 of the 1987 Act has operated in relation to any such land as is mentioned in subsection (2)(a) above, and

(b) the land remains vested in the official custodian as mentioned in subsection (2)(b) above,

then (subject to subsection (6) below), all the powers, duties and liabilities that would, apart from this section, be those of the official custodian as **[**[F21]trustee**]** of the land shall instead be those of the charity trustees of the charity concerned; and those trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.

(6) Subsection (5) above shall not be taken to require or authorise those trustees to sell the land at a time when it remains vested in the official custodian.

(7) Where—

(a) the official custodian has been discharged from his trusteeship of any land by an order under subsection (2) above, and

(b) the land has, in accordance with subsection (3) above, been vested in the charity trustees concerned or (as the case may be) in any persons other than those trustees,

the land shall be held by those trustees, or (as the case may be) by those persons, as **[**[F21]trustees**]**on the terms of the trust arising under section 1 of the 1987 Act.

(8) The official custodian shall not be liable to any person in respect of any loss or misapplication of any land vested in him in accordance with that section unless it is occasioned by or through any wilful neglect or default of his or of any person acting for him; but the Consolidated Fund shall be liable to make good to any person any sums for which the official custodian may be liable by reason of any such neglect or default.

(9) In this section any reference to section 1 of the 1987 Act operating in relation to any land is a reference to a **[**[F21]trust**]** arising in relation to the land under that section.

Textual Amendments

F21 Words in s. 23(1)(b)(5)(7)(9) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 26(a)-(d)** (with s. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**

Marginal Citations

M9 1987 c. 15.

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Establishment of common investment or deposit funds

24 Schemes to establish common investment funds.

(1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as "common investment schemes") for the establishment of common investment funds under trusts which provide—

(a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and

(b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.

(2) The court or the Commissioners may make a common investment scheme on the application of any two or more charities.

(3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.

(4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision—

(a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee of or trustee for a participating charity;

(b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;

(c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;

(d) for enabling money to be borrowed temporarily for the purpose of meeting payments to be made out of the funds;

(e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;

(f) for regulating the accounts and information to be supplied to participating charities.

(5) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme; and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making

of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.

(6) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.

(7) The powers of investment of every charity shall include power to participate in common investment schemes unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.

(8) A common investment fund shall be deemed for all purposes to be a charity; and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.

(9) Subsection (8) above shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charity.

Modifications etc. (not altering text)

C11 S. 24 excluded (6.2.2000) by 1999 c. 16, s. 122(4), **Sch. 19 Pt. IV para. 15(a)**

25 Schemes to establish common deposit funds.

(1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as "common deposit schemes") for the establishment of common deposit funds under trusts which provide—

(a) for sums to be deposited by or on behalf of a charity participating in the scheme and invested under the control of trustees appointed to manage the fund; and

(b) for any such charity to be entitled (subject to the provisions of the scheme) to repayment of any sums so deposited and to interest thereon at a rate determined under the scheme.

(2) Subject to subsection (3) below, the following provisions of section 24 above, namely—

(a) subsections (2) to (4), and

(b) subsections (6) to (9),

shall have effect in relation to common deposit schemes and common deposit funds as they have effect in relation to common investment schemes and common investment funds.

(3) In its application in accordance with subsection (2) above, subsection (4) of that section shall have effect with the substitution for paragraphs (b) and (c) of the following paragraphs—

"(b) for regulating as to time, amount or otherwise the right to repayment of sums deposited in the fund;

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(c) for authorising a part of the income for any year to be credited to a reserve account maintained for the purpose of counteracting any losses accruing to the fund, and generally for regulating the manner in which the rate of interest on deposits is to be determined from time to time;".

Modifications etc. (not altering text)
C12 S. 25 excluded (6.2.2000) by 1993 c. 10, s. 122(4), **Sch. 19 Pt. IV para. 15(b)**

Additional powers of Commissioners

26 Power to authorise dealings with charity property etc.

(1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they 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) above) 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 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) above, 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 any act notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below or 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 shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity or shall extend or alter the purposes of the charity.

(6) The Acts referred to in subsection (5) above as the disabling Acts are the [M10]Ecclesiastical Leases Act 1571, the [M11]Ecclesiastical Leases Act 1572, the [M12]Ecclesiastical Leases Act 1575 and the [M13]Ecclesiastical Leases Act 1836.

(7) An order under this section shall not confer any authority in relation to a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect under the Union of Benefices Measures 1923 to 1952, the Reorganisation Areas Measures 1944 and 1954, the [M14]Pastoral Measure 1968 or the [M15]Pastoral Measure 1983, the reference to a building being taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

Marginal Citations

M10 1571 c. 10.
M11 1572 c. 11.
M12 1575 c. 11.
M13 1836 c. 20.
M14 1968 No.1.
M15 1983 No.1.

27 Power to authorise ex gratia payments etc.

(1) Subject to subsection (3) below, the Commissioners 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 section) 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 Commissioners by subsection (1) above shall be exercisable by them 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 Commissioners, in such circumstances as are specified in the directions—

(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 Commissioners for them to exercise that power in a case where they are not precluded from doing so by any such directions, but

(b) they consider that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by them,

they shall refer the application to the Attorney General.

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

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

28 Power to give directions about dormant bank accounts of charities.

(1) Where the Commissioners—

(a) are 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) are unable, after making reasonable inquiries, to locate that charity or any of its trustees,

they may give a direction under subsection (2) below.

(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) below; 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.

(3) The Commissioners may specify in a direction under subsection (2) above such other charity or charities as they consider appropriate, having regard, in a case where the purposes of the relevant charity are known to them, to those purposes and to the purposes of the other charity or charities; but the Commissioners shall not so specify any charity unless they have received from the charity trustees written 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 Commissioners have been informed as mentioned in subsection (1)(a) above by any relevant institution, and

(b) before any transfer is made by the institution in pursuance of a direction under subsection (2) above, 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 Commissioners; and, if it appears to the Commissioners that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) above 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 a complete discharge of the institution in respect of that amount.

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(7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commissioners 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 five years immediately preceding the date when the Commissioners are informed as mentioned in paragraph (a) of subsection (1) above;

(b) a "relevant institution" means—

(i) the Bank of England;

[[F22](ii) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;

(iii) 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; or

(iv) such other person who may lawfully accept deposits in the United Kingdom as may be prescribed by the **[**[F23]Minister**].]**

(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).

[[F24](8A) Sub-paragraphs (ii) to (iv) of the definition of "relevant institution" in subsection (8)(b) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]**

(9) For the purpose of determining the matters in respect of which any of the powers conferred by section 8 or 9 above may be exercised it shall be assumed that the Commissioners have 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 Commissioners under this section, be required under section 8(3)(a) above to furnish any statements, or answer any questions 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) above but would not be such accounts if sub-paragraph (i) of that provision were omitted.

(10) Subsection (1) above shall not apply to any account held in the name of or on behalf of an exempt charity.

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Textual Amendments

F22 S. 28(8)(b)(ii)-(iv) substituted (1.12.2001) for s. 28(8)(b)(ii)-(v) by S.I. 2001/3649, **arts. 1**, 339(2)

F23 Word in s. 28(8)(b) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(m)**

F24 S. 28(8A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 339(3)

29 Power to advise charity trustees.

(1) The Commissioners may on the written application of any charity trustee give him their opinion or advice on any matter affecting the performance of his duties as such.

(2) A charity trustee or trustee for a charity acting in accordance with the opinion or advice of the Commissioners given under this section with respect to the charity shall be deemed, as regards his responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—

(a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or

(b) the decision of the court has been obtained on the matter or proceedings are pending to obtain one.

30 Powers for preservation of charity documents.

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

(2) The Commissioners 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 Commissioners deposit them with the Commissioners for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.

(3) Where a document is enrolled by the Commissioners or is for the time being deposited with them under this section, evidence of its contents may be given by means of a copy certified by any officer of the Commissioners generally or specially authorised by them 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 **[**[F25]Minister**]** may make provision for such documents deposited with the Commissioners 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) above shall apply to any document transmitted to the Commissioners under section 9 above and kept by them under subsection (3) of that section, as if the document had been deposited with them for safe keeping under this section.

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Textual Amendments

F25 Word in s. 30(4) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(n)**

31 Power to order taxation of solicitor's bill.

(1) The Commissioners may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, shall be taxed, together with the costs of the taxation, by a taxing officer in such division of the High Court as may be specified in the order, or by the taxing officer of any other court having jurisdiction to order the taxation of the bill.

(2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the taxing officer shall have the same powers and duties, and the costs of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are taxed.

(3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill unless the Commissioners are of opinion that it contains exorbitant charges; and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the High Court by reason either of an agreement as to his remuneration or the lapse of time since payment of the bill.

Legal proceedings relating to charities

32 Proceedings by Commissioners.

(1) Subject to subsection (2) below, the Commissioners may exercise the same powers with respect to—
   (a) the taking of legal proceedings with reference to charities or the property or affairs of charities, or
   (b) the compromise of claims with a view to avoiding or ending such proceedings,

   as are exercisable by the Attorney General acting ex officio.

(2) Subsection (1) above does not apply to the power of the Attorney General under section 63(1) below to present a petition for the winding up of a charity.

(3) The practice and procedure to be followed in relation to any proceedings taken by the Commissioners under subsection (1) above shall be the same in all respects (and in particular as regards costs) as if they were proceedings taken by the Attorney General acting ex officio.

(4) No rule of law or practice shall be taken to require the Attorney General to be a party to any such proceedings.

(5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

33 Proceedings by other persons.

(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity if it is a local charity, but not by any other person.

(2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioners.

(3) The Commissioners shall not, without special reasons, authorise the taking of charity proceedings where in their opinion the case can be dealt with by them under the powers of this Act other than those conferred by section 32 above.

(4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.

(5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.

(6) Nothing in the foregoing subsections shall apply to the taking of proceedings by the Attorney General, with or without a relator, or to the taking of proceedings by the Commissioners in accordance with section 32 above.

(7) Where it appears to the Commissioners, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney General, the Commissioners shall so inform the Attorney General, and send him such statements and particulars as they think necessary to explain the matter.

(8) In this section "charity proceedings" means proceedings in any court in England or Wales brought under the court's jurisdiction with respect to charities, or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

34 Report of s. 8 inquiry to be evidence in certain proceedings.

(1) A copy of the report of the person conducting an inquiry under section 8 above shall, if certified by the Commissioners to be a true copy, be admissible in any proceedings to which this section applies—
   (a) as evidence of any fact stated in the report; and
   (b) as evidence of the opinion of that person as to any matter referred to in it.

(2) This section applies to—
   (a) any legal proceedings instituted by the Commissioners under this Part of this Act; and
   (b) any legal proceedings instituted by the Attorney General in respect of a charity.

(3) A document purporting to be a certificate issued for the purposes of subsection (1) above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

Meaning of "trust corporation"

35 Application of provisions to trust corporations appointed under s. 16 or 18.

(1) In the definition of "trust corporation" contained in the following provisions—

(a) section 117(xxx) of the [M16]Settled Land Act 1925,

(b) section 68(18) of the [M17]Trustee Act 1925,

(c) section 205(xxviii) of the [M18]Law of Property Act 1925,

(d) section 55(xxvi) of the [M19]Administration of Estates Act 1925, and

(e) section 128 of the [M20]Supreme Court Act 1981,

the reference to a corporation appointed by the court in any particular case to be a trustee includes a reference to a corporation appointed by the Commissioners under this Act to be a trustee.

(2) This section shall be deemed always to have had effect; but the reference to section 128 of the Supreme Court Act 1981 shall, in relation to any time before 1st January 1982, be construed as a reference to section 175(1) of the [M21]Supreme Court of Judicature (Consolidation) Act 1925.

Commencement Information

I1 As from Royal Assent, this section shall be deemed to always have had effect.

Marginal Citations

M16 1925 c. 18.
M17 1925 c. 19.
M18 1925 c. 20.
M19 1925 c. 23.
M20 1981 c. 54.
M21 1925 c. 49.

PART V

CHARITY LAND

36 Restrictions on dispositions.

(1) Subject to the following provisions of this section and section 40 below, no land held by or in trust for a charity shall be sold, leased or otherwise disposed of without an order of the court or of the Commissioners.

(2) Subsection (1) above shall not apply to a disposition of such land if—

(a) the disposition is made to a person who is not—

(i) a connected person (as defined in Schedule 5 to this Act), or

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(ii) a trustee for, or nominee of, a connected person; and

(b) the requirements of subsection (3) or (5) below have been complied with in relation to it.

(3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5) below, the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—

(a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;

(b) advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report (unless he has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and

(c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(4) For the purposes of subsection (3) above a person is a qualified surveyor if—

(a) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the **[**[F26]Minister**]**; and

(b) he is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

(5) Where the proposed disposition is the granting of a lease for a term ending not more than seven years after it is granted (other than one granted wholly or partly in consideration of a fine), the charity trustees must, before entering into an agreement for the lease—

(a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and

(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(6) Where—

(a) any land is held by or in trust for a charity, and

(b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,

then (subject to subsections (7) and (8) below and without prejudice to the operation of the preceding provisions of this section) the land shall not be sold, leased or otherwise disposed of unless the charity trustees have previously—

(i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and

(ii) taken into consideration any representations made to them within that time about the proposed disposition.

(7) Subsection (6) above shall not apply to any such disposition of land as is there mentioned if—

(a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or

(b) the disposition is the granting of a lease for a term ending not more than two years after it is granted (other than one granted wholly or partly in consideration of a fine).

(8) The Commissioners may direct—

(a) that subsection (6) above shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or

(b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,

if, on an application made to them in writing by or on behalf of the charity or charities in question, the Commissioners are satisfied that it would be in the interests of the charity or charities for them to give the direction.

(9) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—

(a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established; or

(b) to any disposition of land held by or in trust for a charity which—

(i) is made to another charity otherwise than for the best price that can reasonably be obtained, and

(ii) is authorised to be so made by the trusts of the first-mentioned charity; or

(c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—

(i) is granted otherwise than for the best rent that can reasonably be obtained; and

(ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

(10) Nothing in this section applies—

(a) to any disposition of land held by or in trust for an exempt charity;

(b) to any disposition of land by way of mortgage or other security; or

(c) to any disposition of an advowson.

(11) In this section “land” means land in England or Wales.

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Textual Amendments

F26 Word in s. 36(4)(a) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(o)**

37 Supplementary provisions relating to dispositions.

(1) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

(i) that the land is held by or in trust for a charity,

(ii) whether the charity is an exempt charity and whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (9) of section 36 above, and

(iii) if it is not an exempt charity and the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.

(2) Where any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, the charity trustees shall certify in the instrument by which the disposition is effected—

(a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.

(3) Where subsection (2) above has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, but

(b) subsection (2) above has not been complied with in relation to the disposition,

then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition shall be valid whether or not—

(i) the disposition has been sanctioned by an order of the court or of the Commissioners, or

(ii) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.

(5) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

(i) that the land will, as a result of the disposition, be held by or in trust for a charity,

(ii) whether the charity is an exempt charity, and

(iii) if it is not an exempt charity, that the restrictions on disposition imposed by section 36 above will apply to the land (subject to subsection (9) of that section).

[F27](6) . . . . . .

[[F28](7) Where the disposition to be effected by any such instrument as is mentioned in subsection (1)(b) or (5)(b) above will be—

(a) a registrable disposition, or

(b) a disposition which triggers the requirement of registration,

the statement which, by virtue of subsection (1) or (5) above, is to be contained in the instrument shall be in such form as may be prescribed by land registration rules.**]**

[[F28](8) Where the registrar approves an application for registration of—

(a) a disposition of registered land, or

(b) a person's title under a disposition of unregistered land,

and the instrument effecting the disposition contains a statement complying with subsections (5) and (7) above, he shall enter in the register a restriction reflecting the limitation under section 36 above on subsequent disposal.**]**

(9) Where—

(a) any such restriction is entered in the register in respect of any land, and

(b) the charity by or in trust for which the land is held becomes an exempt charity,

the charity trustees shall apply to the registrar for **[**[F29]the removal of the entry**]**; and on receiving any application duly made under this subsection the registrar shall **[**[F30]remove the entry**]**.

(10) Where—

(a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or

(b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees shall apply to the registrar for such a restriction as is mentioned in subsection (8) above to be entered in the register in respect of the land; and on receiving any application duly made under this subsection the registrar shall enter such a restriction in the register in respect of the land.

(11) In this section—

(a) references to a disposition of land do not include references to—

(i) a disposition of land by way of mortgage or other security,

(ii) any disposition of an advowson, or

(iii) any release of a rentcharge falling within section 40(1) below; and

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(b) "land" means land in England or Wales;

and subsections (7) to (10) above shall be construed as one with the **[**[F31]Land Registration Act 2002**]**.

Textual Amendments

F27 S. 37(6) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with s. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F28 S. 37(7)(8) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(2)** (with s. 129); S.I. 2003/1725, art. 2(1)

F29 Words in s. 37(9) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(3)(a)** (with s. 129); S.I. 2003/1725, art. 2(1)

F30 Words in s. 37(9) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(3)(b)** (with s. 129); S.I. 2003/1725, art. 2(1)

F31 Words in s. 37(11) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(4)** (with s. 129); S.I. 2003/1725, art. 2(1)

38 Restrictions on mortgaging.

(1) Subject to subsection (2) below, no mortgage of land held by or in trust for a charity shall be granted without an order of the court or of the Commissioners.

(2) Subsection (1) above shall not apply to a mortgage of any such land by way of security for the repayment of a loan where the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the matters mentioned in subsection (3) below.

(3) Those matters are—

(a) whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;

(b) whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and

(c) the ability of the charity to repay on those terms the sum proposed to be borrowed.

(4) For the purposes of subsection (2) above proper advice is the advice of a person—

(a) who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters; and

(b) who has no financial interest in the making of the loan in question;

and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of his employment as an officer or employee of the charity or of the charity trustees.

(5) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 36(9)(a) above.

(6) In this section—

"land" means land in England or Wales;

"mortgage" includes a charge.

(7) Nothing in this section applies to an exempt charity.

39 Supplementary provisions relating to mortgaging.

(1) Any mortgage of land held by or in trust for a charity shall state—

(a) that the land is held by or in trust for a charity,

(b) whether the charity is an exempt charity and whether the mortgage is one falling within subsection (5) of section 38 above, and

(c) if it is not an exempt charity and the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply;

and where the mortgage will be a registered disposition any such statement shall be in such form as may be prescribed **[**[F32]by land registration rules**]**.

[[F33](1A) Where any such mortgage will be one to which section 4(1)(g) of the Land Registration Act 2002 applies—

(a) the statement required by subsection (1) above shall be in such form as may be prescribed by land registration rules; and

(b) if the charity is not an exempt charity, the mortgage shall also contain a statement, in such form as may be prescribed by land registration rules, that the restrictions on disposition imposed by section 36 above apply to the land (subject to subsection (9) of that section).

(1B) Where—

(a) the registrar approves an application for registration of a person's title to land in connection with such a mortgage as is mentioned in subsection (1A) above,

(b) the mortgage contains statements complying with subsections (1) and (1A) above, and

(c) the charity is not an exempt charity,

the registrar shall enter in the register a restriction reflecting the limitation under section 36 above on subsequent disposal.

(1C) Section 37(9) above shall apply in relation to any restriction entered under subsection (1B) as it applies in relation to any restriction entered under section 37(8).**]**

(2) Where subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—

(a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.

(3) Where subsection (2) above has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, but

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(b) subsection (2) above has not been complied with in relation to the mortgage,

then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—

(i) the mortgage has been sanctioned by an order of the court or of the Commissioners, or

(ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

[F34](5) . . . . . .

(6) In this section—

"mortgage" includes a charge, and "mortgagee" shall be construed accordingly;

"land" means land in England or Wales;

[[F35]and subsections (1) to (1B) above shall be construed as one with the Land Registration Act 2002**]**.

Textual Amendments

F32 Words in s. 39(1) inserted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(5)** (with s. 129); S.I. 2003/1725, art. 2(1)

F33 S. 39(1A)-(1C) substituted for s. 39(1A)(1B) (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(6)** (with s. 129); S.I. 2003/1725, art. 2(1)

F34 S. 39(5) repealed (1.1.1997) by 1996 c. 47, s.,25(2), Sch. 4 (with s. 24(2), 25(3)(4)(5); S.I. 1996/2974, **art. 2**

F35 Words in s. 39(6) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 29(7)** (with s. 129); S.I. 2003/1725, art. 2(1)

40 Release of charity rentcharges.

(1) Section 36(1) above shall not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than ten times the annual amount of the rentcharge.

(2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £500, any costs incurred by the charity in connection with proving its title to the rentcharge shall be recoverable by the charity from the person or persons in whose favour the rentcharge is being released.

(3) Neither section 36(1) nor subsection (2) above applies where a rentcharge which a charity is entitled to receive is redeemed under sections 8 to 10 of the [M22]Rentcharges Act 1977.

(4) The **[**[F36]Minister**]** may by order amend subsection (2) above by substituting a different sum for the sum for the time being specified there.

Textual Amendments

F36 Word in s. 40(4) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(p)**

Marginal Citations

M22 1977 c. 30.

PART VI

CHARITY ACCOUNTS, REPORTS AND RETURNS

Modifications etc. (not altering text)

C13 Pt. VI (ss. 41-48) modified (1.1.1999) by 1998 No. 1, **s. 3(3)**; Archbishops Instrument dated 14.10.1998

Commencement Information

I2 Pt. VI (ss. 41-48) wholly in force at 1.3.1996; Pt. VI (ss. 41-48) not in force at Royal Assent see s. 99(2); Pt. VI (ss. 41-48) in force for certain purposes at 15.10.1995 by S.I. 1995/2695, **art. 3** (with art. 4); Pt. VI (ss. 41-48) in force for all other purposes at 1.3.1996 by S.I. 1995/2695, **art. 2** (with art. 4)

41 Duty to keep accounting records.

(1) The charity trustees of a charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to—

(a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time, and

(b) enable the trustees to ensure that, where any statements of accounts are prepared by them under section 42(1) below, those statements of accounts comply with the requirements of regulations under that provision.

(2) The accounting records shall in particular contain—

(a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and

(b) a record of the assets and liabilities of the charity.

(3) The charity trustees of a charity shall preserve any accounting records made for the purposes of this section in respect of the charity for at least six years from the end of the financial year of the charity in which they are made.

(4) Where a charity ceases to exist within the period of six years mentioned in subsection (3) above as it applies to any accounting records, the obligation to preserve those records in accordance with that subsection shall continue to be discharged by the last charity trustees of the charity, unless the Commissioners consent in writing to the records being destroyed or otherwise disposed of.

(5) Nothing in this section applies to a charity which is a company.

42 Annual statements of accounts.

(1) The charity trustees of a charity shall (subject to subsection (3) below) prepare in respect of each financial year of the charity a statement of accounts complying with

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such requirements as to its form and contents as may be prescribed by regulations made by the **[**[F37]Minister**]** .

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—

(a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;

(b) as to any information to be provided by way of notes to the accounts;

and regulations under that subsection may also make provision for determining the financial years of a charity for the purposes of this Act and any regulations made under it.

(3) Where a charity's gross income in any financial year does not exceed **[**[F38]£100,000**]**, the charity trustees may, in respect of that year, elect to prepare the following, namely—

(a) a receipts and payments account, and

(b) a statement of assets and liabilities,

instead of a statement of accounts under subsection (1) above.

(4) The charity trustees of a charity shall preserve—

(a) any statement of accounts prepared by them under subsection (1) above, or

(b) any account and statement prepared by them under subsection (3) above,

for at least six years from the end of the financial year to which any such statement relates or (as the case may be) to which any such account and statement relate.

(5) Subsection (4) of section 41 above shall apply in relation to the preservation of any such statement or account and statement as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being read as references to subsection (4) above).

(6) The **[**[F37]Minister**]** may by order amend subsection (3) above by substituting a different sum for the sum for the time being specified there.

(7) Nothing in this section applies to a charity which is a company.

Textual Amendments

F37 Word in s. 42 substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(q)**

F38 Figure in s. 42(3) substituted (1.3.1996) by S.I. 1995/2696, **art. 2(3)**

43 Annual audit or examination of charity accounts.

(1) Subsection (2) below applies to a financial year of a charity ("the relevant year") if the charity's gross income or total expenditure in any of the following, namely—

(a) the relevant year,

(b) the financial year of the charity immediately preceding the relevant year (if any), and

(c) the financial year of the charity immediately preceding the year specified in paragraph (b) above (if any),

exceeds **[**[F39]£250,000**]**.

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(2) If this subsection applies to a financial year of a charity, the accounts of the charity for that year shall be audited by a person who—

(a) is, in accordance with section 25 of the [M23]Companies Act 1989 (eligibility for appointment), eligible for appointment as a company auditor, or

(b) is a member of a body for the time being specified in regulations under section 44 below and is under the rules of that body eligible for appointment as auditor of the charity.

(3) If subsection (2) above does not apply to a financial year of a charity **[**[F40]and its gross income or total expenditure in that year exceeds £10,000**]**, then (subject to subsection (4) below) the accounts of the charity for that year shall, at the election of the charity trustees, either—

(a) be examined by an independent examiner, that is to say an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts, or

(b) be audited by such a person as is mentioned in subsection (2) above.

(4) Where it appears to the Commissioners—

(a) that subsection (2), or (as the case may be) subsection (3) above, has not been complied with in relation to a financial year of a charity within ten months from the end of that year, or

(b) that, although subsection (2) above does not apply to a financial year of a charity, it would nevertheless be desirable for the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection,

the Commissioners may by order require the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection.

(5) If the Commissioners make an order under subsection (4) above with respect to a charity, then unless—

(a) the order is made by virtue of paragraph (b) of that subsection, and

(b) the charity trustees themselves appoint an auditor in accordance with the order,

the auditor shall be a person appointed by the Commissioners.

(6) The expenses of any audit carried out by an auditor appointed by the Commissioners under subsection (5) above, including the auditor's remuneration, shall be recoverable by the Commissioners—

(a) from the charity trustees of the charity concerned, who shall be personally liable, jointly and severally, for those expenses; or

(b) to the extent that it appears to the Commissioners not to be practical to seek recovery of those expenses in accordance with paragraph (a) above, from the funds of the charity.

(7) The Commissioners may—

(a) give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner;

(b) give such directions as they think appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(a) above;

and any such guidance or directions may either be of general application or apply to a particular charity only.

(8) The **[**[F41]Minister**]** may by order amend subsection (1) **[**[F42]or (3)**]** above by substituting a different sum for the sum for the time being specified there.

(9) Nothing in this section applies to a charity which is a company.

[[F43](10) Nothing in this section applies in relation to a financial year of a charity where, at any time in the year, a charity is an English National Health Service charity or Welsh National Health Service charity (as defined in sections 43A and 43B respectively).**]**

Textual Amendments

F39 Figure in s. 43(1) substituted (1.3.1996) by S.I. 1995/2696, **art. 2(3)**

F40 Words in s. 43(3) inserted (3.11.1994) by 1994 c. 40, **ss. 28(2)**, 82(3)(b)

F41 Word in s. 43(8) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(r)**

F42 Words in s. 43(8) inserted (3.11.1994) by 1994 c. 40, **ss. 28(3)**, 82(3)(b)

F43 S. 43(10) inserted (E.W.) (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(2)**

Marginal Citations

M23 1989 c. 40.

[[F44]43A Annual audit or examination of English National Health Service charity accounts

(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is an English National Health Service charity.

(2) In any case where the criterion set out in subsection (1) of section 43 is met in respect of a financial year of an English National Health Service charity, the accounts of the charity for that financial year shall be audited by a person appointed by the Audit Commission.

(3) In any other case, the accounts of the charity for that financial year shall, at the election of the Audit Commission, be—

(a) audited by a person appointed by the Audit Commission; or

(b) examined by a person so appointed.

(4) Section 3 of the Audit Commission Act 1998 (c. 18) applies in relation to any appointment under subsection (2) or (3)(a).

(5) The Commissioners may give such directions as they think appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(b); and any such directions may either be of general application or apply to a particular charity only.

(6) The Comptroller and Auditor General may at any time examine and inspect—

(a) the accounts of the charity for the financial year;

(b) any records relating to those accounts; and

(c) any report of a person appointed under subsection (2) or (3) to audit or examine those accounts.

(7) In this section—

"Audit Commission" means the Audit Commission for Local Authorities and the National Health Service in England and Wales; and

"English National Health Service charity" means a charitable trust, the trustees of which are—

(a) a Strategic Health Authority;

(b) a Primary Care Trust;

(c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England;

(d) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c. 19), or special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 (c. 32) and section 95(1) of the National Health Service Act 1977 (c. 49), for a National Health Service trust falling within paragraph (c); or

(e) trustees for a Primary Care Trust appointed in pursuance of section 96B of the National Health Service Act 1977.

Textual Amendments

F44 Ss. 43A, 43B inserted (E.W.) (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(3)**

43B Annual audit or examination of Welsh National Health Service charity accounts

(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is a Welsh National Health Service charity.

(2) In any case where the criterion set out in subsection (1) of section 43 is met in respect of a financial year of a Welsh National Health Service charity, the accounts of the charity for that financial year shall be audited by the Auditor General for Wales.

(3) In any other case, the accounts of the charity for that financial year shall, at the election of the Auditor General for Wales, be audited or examined by the Auditor General for Wales.

(4) In this section—

"Welsh National Health Service charity" means a charitable trust, the trustees of which are—

(a) a Local Health Board;

(b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales; or

(c) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c. 19), or special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 (c. 32) and section 95(1) of the National Health Service Act 1977 (c. 49), for a National Health Service trust falling within paragraph (b).**]**

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Textual Amendments

F44 Ss. 43A, 43B inserted (E.W.) (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(3)**

44 Supplementary provisions relating to audits etc.

(1) The **[**[F45]Minister**]** may by regulations make provision—

(a) specifying one or more bodies for the purposes of section 43(2)(b) above;

(b) with respect to the duties of an auditor carrying out an audit under section 43 above, including provision with respect to the making by him of a report on—

(i) the statement of accounts prepared for the financial year in question under section 42(1) above, or

(ii) the account and statement so prepared under section 42(3) above,

as the case may be;

(c) with respect to the making by an independent examiner of a report in respect of an examination carried out by him under section 43 above;

(d) conferring on such an auditor or on an independent examiner a right of access with respect to books, documents and other records (however kept) which relate to the charity concerned;

(e) entitling such an auditor or an independent examiner to require, in the case of a charity, information and explanations from past or present charity trustees or trustees for the charity, or from past or present officers or employees of the charity;

(f) enabling the Commissioners, in circumstances specified in the regulations, to dispense with the requirements of section 43(2) or (3) above in the case of a particular charity or in the case of any particular financial year of a charity.

(2) If any person fails to afford an auditor or an independent examiner any facility to which he is entitled by virtue of subsection (1)(d) or (e) above, the Commissioners may by order give—

(a) to that person, or

(b) to the charity trustees for the time being of the charity concerned,

such directions as the Commissioners think appropriate for securing that the default is made good.

(3) Section 727 of the [M24]Companies Act 1985 (power of court to grant relief in certain cases) shall have effect in relation to an auditor or independent examiner appointed by a charity in pursuance of section 43 above as it has effect in relation to a person employed as auditor by a company within the meaning of that Act.

Textual Amendments

F45 Word in s. 44(1) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(s)**

Marginal Citations

M24 1985 c. 6.

45 Annual reports.

(1) The charity trustees of a charity shall prepare in respect of each financial year of the charity an annual report containing—

(a) such a report by the trustees on the activities of the charity during that year, and

(b) such other information relating to the charity or to its trustees or officers,

as may be prescribed by regulations made by the **[**[F46]Minister**]** .

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—

(a) for any such report as is mentioned in paragraph (a) of that subsection to be prepared in accordance with such principles as are specified or referred to in the regulations;

(b) enabling the Commissioners to dispense with any requirement prescribed by virtue of subsection (1)(b) above in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

(3) **[**[F47]Where in any financial year of a charity its gross income or total expenditure exceeds £10,000, the annual report required to be prepared under this section in respect of that year**]** shall be transmitted to the Commissioners by the charity trustees—

(a) within ten months from the end of that year, or

(b) within such longer period as the Commissioners may for any special reason allow in the case of that report.

[[F48](3A) Where in any financial year of a charity neither its gross income nor its total expenditure exceeds £10,000, the annual report required to be prepared under this section in respect of that year shall, if the Commissioners so request, be transmitted to them by the charity trustees—

(a) in the case of a request made before the end of seven months from the end of the financial year to which the report relates, within ten months from the end of that year, and

(b) in the case of a request not so made, within three months from the date of the request,

or, in either case, within such longer period as the Commissioners may for any special reason allow in the case of that report.**]**

(4) Subject to subsection (5) below, **[**[F49]any annual report transmitted to the Commissioners under this section**]**shall have attached to it the statement of accounts prepared for the financial year in question under section 42(1) above or (as the case may be) the account and statement so prepared under section 42(3) above, together with—

(a) where the accounts of the charity for that year have been audited under section 43 **[**[F50], 43A or 43B**]** above, a copy of the report made by the auditor on that statement of accounts or (as the case may be) on that account and statement;

(b) where the accounts of the charity for that year have been examined under section 43 **[**[F51], 43A or 43B**]** above, a copy of the report made by the **[**[F52]person carrying out the examination**]**

(5) Subsection (4) above does not apply to a charity which is a company, and any annual report transmitted by the charity trustees of such a charity under **[**[F53]this section**]** shall instead have attached to it a copy of the charity's annual accounts prepared for the

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financial year in question under Part VII of the [M25]Companies Act 1985, together with a copy of **[**[F54]any auditors' report or report made for the purposes of section 249A(2) of that Act**]** on those accounts.

(6) Any annual report transmitted to the Commissioners under **[**[F53]this section**]**, together with the documents attached to it, shall be kept by the Commissioners for such period as they think fit.

[[F55](7) The charity trustees of a charity shall preserve, for at least six years from the end of the financial year to which it relates, any annual report prepared by them under subsection (1) above which they have not been required to transmit to the Commissioners.

(8) Subsection (4) of section 41 above shall apply in relation to the preservation of any such annual report as it applies in relation to the preservation of any accounting records (the references in subsection (3) of that section being read as references to subsection (7) above).

(9) The **[**[F46]Minister**]** may by order amend subsection (3) or (3A) above by substituting a different sum for the sum for the time being specified there.**]**

Textual Amendments

F46 Word in s. 45 substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(t)**

F47 Words in s. 45(3) substituted (3.11.1994) by 1994 c. 40, **ss. 29(1)**, 82(3)(b)

F48 S. 45(3A) inserted (3.11.1994) by 1994 c. 40, **ss. 29(2)**, 82(3)(b)

F49 Words in s. 45(4) substituted (3.11.1994) by 1994 c. 40, **ss. 29(3)**, 82(3)(b)

F50 Words in s. 45(4)(a) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(4)(a)**

F51 Words in s. 45(4)(b) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(4)(a)**

F52 Words in s. 45(4)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(4)(b)**

F53 Words in s. 45(5)(6) substituted (3.11.1994) by 1994 c. 40, **ss. 29(4)(5)**, 82(3)(b)

F54 Words in s. 45(5) substituted (11.8.1994) by S.I. 1994/1935 reg. 4, Sch. 1 Pt. II para. 6

F55 S. 45(7)-(9) inserted (3.11.1994) by 1994 c. 40, **ss. 29(6)**, 82(3)(b)

Marginal Citations

M25 1985 c. 6.

46 Special provision as respects accounts and annual reports of exempt and other excepted charities.

(1) Nothing in sections 41 to 45 above applies to any exempt charity; but the charity trustees of an exempt charity shall keep proper books of account with respect to the affairs of the charity, and if not required by or under the authority of any other Act to prepare periodical statements of account shall prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating

to a period of not more than fifteen months and a balance sheet relating to the end of that period.

(2) The books of accounts and statements of account relating to an exempt charity shall be preserved for a period of six years at least unless the charity ceases to exist and the Commissioners consent in writing to their being destroyed or otherwise disposed of.

(3) Nothing in **[**[F56]section 43, 44 or 45**]** above applies to any charity which—
- (a) falls within section 3(5)(c) above, and
- (b) is not registered.

(4) Except in accordance with subsection (7) below, nothing in section 45 above applies to any charity (other than an exempt charity or a charity which falls within section 3(5)(c) above) which—
- (a) is excepted by section 3(5) above, and
- (b) is not registered.

(5) If requested to do so by the Commissioners, the charity trustees of any such charity as is mentioned in subsection (4) above shall prepare an annual report in respect of such financial year of the charity as is specified in the Commissioners' request.

(6) Any report prepared under subsection (5) above shall contain—
- (a) such a report by the charity trustees on the activities of the charity during the year in question, and
- (b) such other information relating to the charity or to its trustees or officers,

as may be prescribed by regulations made under section 45(1) above in relation to annual reports prepared under that provision.

(7) Subsections (3) to (6) of section 45 **[**[F57](as originally enacted)**]** above shall apply to any report required to be prepared under subsection (5) above as if it were an annual report required to be prepared under subsection (1) of that section.

(8) Any reference in this section to a charity which falls within section 3(5)(c) above includes a reference to a charity which falls within that provision but is also excepted from registration by section 3(5)(b) above.

Textual Amendments

F56 Words in s. 46(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074), arts. 1(2), **3(5)**

F57 Words in s. 46(7) inserted (3.11.1994) by 1994 c. 40, **ss. 29(7)**, 82(3)(b)

47 Public inspection of annual reports etc.

(1) Any annual report or other document kept by the Commissioners in pursuance of section 45(6) above shall be open to public inspection at all reasonable times—
- (a) during the period for which it is so kept; or
- (b) if the Commissioners so determine, during such lesser period as they may specify.

(2) Where any person—

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(a) requests the charity trustees of a charity in writing to provide him with a copy of the charity's most recent accounts, and

(b) pays them such reasonable fee (if any) as they may require in respect of the costs of complying with the request,

those trustees shall comply with the request within the period of two months beginning with the date on which it is made.

(3) In subsection (2) above the reference to a charity's most recent accounts is—

[F58](a) . . . . . .

(b) in the case of **[**[F59]a charity other than one falling within paragraph (c) or (d) below**]**, a reference to the statement of accounts or account and statement prepared in pursuance of section 42(1) or (3) above in respect of the last financial year of the charity in respect of which a statement of accounts or account and statement has or have been so prepared;

[[F60](c) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under Part VII of the Companies Act 1985 in relation to which any of the following conditions is satisfied—

(i) they have been audited

(ii) a report required for the purposes of section 249A(2) of that Act has been made in respect of them; or

(iii) they relate to a year in respect of which the company is exempt from audit by virtue of section 249A(1) of that Act; and**]**

(d) in the case of an exempt charity, a reference to the accounts of the charity most recently audited in pursuance of any statutory or other requirement or, if its accounts are not required to be audited, the accounts most recently prepared in respect of the charity.

Textual Amendments

F58 S. 47(3)(a) repealed (3.11.1994) by 1994 c. 40, ss. 39, 81, 82(3)(b), Sch. 11, para. 12(a), **Sch. 17**

F59 Words in s. 47(3)(b) substituted (3.11.1994) by ss. 39, 82(3)(b), Sch. 11 para. 12(b)

F60 S. 47(3)(c) substituted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. II para. 7**

48 Annual returns by registered charities.

(1) **[**[F61]Subject to subsection (1A) below,**]**Every registered charity shall prepare in respect of each of its financial years an annual return in such form, and containing such information, as may be prescribed by regulations made by the Commissioners.

[[F62](1A) Subsection (1) above shall not apply in relation to any financial year of a charity in which neither the gross income nor the total expenditure of the charity exceeds £10,000.**]**

(2) Any such return shall be transmitted to the Commissioners by the date by which the charity trustees are, by virtue of section 45(3) above, required to transmit to them the annual report required to be prepared in respect of the financial year in question.

(3) The Commissioners may dispense with the requirements of subsection (1) above in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

[[F63](4) The **[**[F64]Minister**]** may by order amend subsection (1A) above by substituting a different sum for the sum for the time being specified there.**]**

Textual Amendments

F61 Words in s. 48(1) inserted (3.11.1994) by 1994 c. 40, **ss. 30(2)**, 82(3)(b)

F62 S. 48(1A) inserted (3.11.1994) by 1994 c. 40, **ss. 30(3)**, 82(3)(b)

F63 S. 48(4) inserted (3.11.1994) by 1994 c. 40, **ss. 30(4)**, 82(3)(b)

F64 Word in s. 48(4) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(u)**

49 Offences.

Any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed—

(a) by section 45(3) **[**[F65]or (3A)**]** above (taken with section 45(4) or (5), as the case may require), or

(b) by section 47(2) or 48(2) above,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Textual Amendments

F65 Words in s. 49(a) inserted (3.11.1994) by 1994 c. 40, **ss. 29(8)**, 82(3)(b)

PART VII

INCORPORATION OF CHARITY TRUSTEES

50 Incorporation of trustees of a charity.

(1) Where—

(a) the trustees of a charity, in accordance with section 52 below, apply to the Commissioners for a certificate of incorporation of the trustees as a body corporate, and

(b) the Commissioners consider that the incorporation of the trustees would be in the interests of the charity,

the Commissioners may grant such a certificate, subject to such conditions or directions as they think fit to insert in it.

(2) The Commissioners shall not, however, grant such a certificate in a case where the charity appears to them to be required to be registered under section 3 above but is not so registered.

(3) On the grant of such a certificate—

(a) the trustees of the charity shall become a body corporate by such name as is specified in the certificate; and

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(b) (without prejudice to the operation of section 54 below) any relevant rights or liabilities of those trustees shall become rights or liabilities of that body.

(4) After their incorporation the trustees—

(a) may sue and be sued in their corporate name; and

(b) shall have the same powers, and be subject to the same restrictions and limitations, as respects the holding, acquisition and disposal of property for or in connection with the purposes of the charity as they had or were subject to while unincorporated;

and any relevant legal proceedings that might have been continued or commenced by or against the trustees may be continued or commenced by or against them in their corporate name.

(5) A body incorporated under this section need not have a common seal.

(6) In this section—

"relevant rights or liabilities" means rights or liabilities in connection with any property vesting in the body in question under section 51 below; and

"relevant legal proceedings" means legal proceedings in connection with any such property.

51 Estate to vest in body corporate.

The certificate of incorporation shall vest in the body corporate all real and personal estate, of whatever nature or tenure, belonging to or held by any person or persons in trust for the charity, and thereupon any person or persons in whose name or names any stocks, funds or securities are standing in trust for the charity, shall transfer them into the name of the body corporate, except that the foregoing provisions shall not apply to property vested in the official custodian.

52 Applications for incorporation.

(1) Every application to the Commissioners for a certificate of incorporation under this Part of this Act shall—

(a) be in writing and signed by the trustees of the charity concerned; and

(b) be accompanied by such documents or information as the Commissioners may require for the purpose of the application.

(2) The Commissioners may require—

(a) any statement contained in any such application, or

(b) any document or information supplied under subsection (1)(b) above,

to be verified in such manner as they may specify.

53 Nomination of trustees, and filling up vacancies.

(1) Before a certificate of incorporation is granted under this Part of this Act, trustees of the charity must have been effectually appointed to the satisfaction of the Commissioners.

(2) Where a certificate of incorporation is granted vacancies in the number of the trustees of the charity shall from time to time be filled up so far as required by the constitution or settlement of the charity, or by any conditions or directions in the certificate, by such legal means as would have been available for the appointment of new trustees of

the charity if no certificate of incorporation had been granted, or otherwise as required by such conditions or directions.

54 Liability of trustees and others, notwithstanding incorporation.

After a certificate of incorporation has been granted under this Part of this Act all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected.

55 Certificate to be evidence of compliance with requirements for incorporation.

A certificate of incorporation granted under this Part of this Act shall be conclusive evidence that all the preliminary requirements for incorporation under this Part of this Act have been complied with, and the date of incorporation mentioned in the certificate shall be deemed to be the date at which incorporation has taken place.

56 Power of Commissioners to amend certificate of incorporation.

(1) The Commissioners may amend a certificate of incorporation either on the application of the incorporated body to which it relates or of their own motion.

(2) Before making any such amendment of their own motion, the Commissioners shall by notice in writing—
  (a) inform the trustees of the relevant charity of their proposals, and
  (b) invite those trustees to make representations to them within a time specified in the notice, being not less than one month from the date of the notice.

(3) The Commissioners shall take into consideration any representations made by those trustees within the time so specified, and may then (without further notice) proceed with their proposals either without modification or with such modifications as appear to them to be desirable.

(4) The Commissioners may amend a certificate of incorporation either—
  (a) by making an order specifying the amendment; or
  (b) by issuing a new certificate of incorporation taking account of the amendment.

57 Records of applications and certificates.

(1) The Commissioners shall keep a record of all applications for, and certificates of, incorporation under this Part of this Act and shall preserve all documents sent to them under this Part of this Act.

(2) Any person may inspect such documents, under the direction of the Commissioners, and any person may require a copy or extract of any such document to be certified by a certificate signed by the secretary of the Commissioners.

58 Enforcement of orders and directions.

All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the charity, and

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section 88 below shall apply to any trustee who fails to perform or observe any such condition or direction as it applies to a person guilty of disobedience to any such order of the Commissioners as is mentioned in that section.

59 Gifts to charity before incorporation to have same effect afterwards.

After the incorporation of the trustees of any charity under this Part of this Act every donation, gift and disposition of property, real or personal, lawfully made before the incorporation but not having actually taken effect, or thereafter lawfully made, by deed, will or otherwise to or in favour of the charity, or the trustees of the charity, or otherwise for the purposes of the charity, shall take effect as if made to or in favour of the incorporated body or otherwise for the like purposes.

60 Execution of documents by incorporated body.

(1) This section has effect as respects the execution of documents by an incorporated body.

(2) If an incorporated body has a common seal, a document may be executed by the body by the affixing of its common seal.

(3) Whether or not it has a common seal, a document may be executed by an incorporated body either—
   (a) by being signed by a majority of the trustees of the relevant charity and expressed (in whatever form of words) to be executed by the body; or
   (b) by being executed in pursuance of an authority given under subsection (4) below.

(4) For the purposes of subsection (3)(b) above the trustees of the relevant charity in the case of an incorporated body may, subject to the trusts of the charity, confer on any two or more of their number—
   (a) a general authority, or
   (b) an authority limited in such manner as the trustees think fit,

   to execute in the name and on behalf of the body documents for giving effect to transactions to which the body is a party.

(5) An authority under subsection (4) above—
   (a) shall suffice for any document if it is given in writing or by resolution of a meeting of the trustees of the relevant charity, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
   (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
   (c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the trustees of the relevant charity, have effect as a continuing authority given by the trustees from time to time of the charity and exercisable by such trustees.

(6) In any authority under subsection (4) above to execute a document in the name and on behalf of an incorporated body there shall, unless the contrary intention appears, be implied authority also to execute it for the body in the name and on behalf of the official custodian or of any other person, in any case in which the trustees could do so.

(7) A document duly executed by an incorporated body which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(8) In favour of a purchaser a document shall be deemed to have been duly executed by such a body if it purports to be signed—

(a) by a majority of the trustees of the relevant charity, or

(b) by such of the trustees of the relevant charity as are authorised by the trustees of that charity to execute it in the name and on behalf of the body,

and, where the document makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

For this purpose "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

61 Power of Commissioners to dissolve incorporated body.

(1) Where the Commissioners are satisfied—

(a) that an incorporated body has no assets or does not operate, or

(b) that the relevant charity in the case of an incorporated body has ceased to exist, or

(c) that the institution previously constituting, or treated by them as constituting, any such charity has ceased to be, or (as the case may be) was not at the time of the body's incorporation, a charity, or

(d) that the purposes of the relevant charity in the case of an incorporated body have been achieved so far as is possible or are in practice incapable of being achieved,

they may of their own motion make an order dissolving the body as from such date as is specified in the order.

(2) Where the Commissioners are satisfied, on the application of the trustees of the relevant charity in the case of an incorporated body, that it would be in the interests of the charity for that body to be dissolved, the Commissioners may make an order dissolving the body as from such date as is specified in the order.

(3) Subject to subsection (4) below, an order made under this section with respect to an incorporated body shall have the effect of vesting in the trustees of the relevant charity, in trust for that charity, all property for the time being vested—

(a) in the body, or

(b) in any other person (apart from the official custodian),

in trust for that charity.

(4) If the Commissioners so direct in the order—

(a) all or any specified part of that property shall, instead of vesting in the trustees of the relevant charity, vest—

(i) in a specified person as trustee for, or nominee of, that charity, or

(ii) in such persons (other than the trustees of the relevant charity) as may be specified;

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(b) any specified investments, or any specified class or description of investments, held by any person in trust for the relevant charity shall be transferred—

(i) to the trustees of that charity, or

(ii) to any such person or persons as is or are mentioned in paragraph (a) (i) or (ii) above;

and for this purpose "specified" means specified by the Commissioners in the order.

(5) Where an order to which this subsection applies is made with respect to an incorporated body—

(a) any rights or liabilities of the body shall become rights or liabilities of the trustees of the relevant charity; and

(b) any legal proceedings that might have been continued or commenced by or against the body may be continued or commenced by or against those trustees.

(6) Subsection (5) above applies to any order under this section by virtue of which—

(a) any property vested as mentioned in subsection (3) above is vested—

(i) in the trustees of the relevant charity, or

(ii) in any person as trustee for, or nominee of, that charity; or

(b) any investments held by any person in trust for the relevant charity are required to be transferred—

(i) to the trustees of that charity, or

(ii) to any person as trustee for, or nominee of, that charity.

(7) Any order made by the Commissioners under this section may be varied or revoked by a further order so made.

62 Interpretation of Part VII.

In this Part of this Act—

"incorporated body" means a body incorporated under section 50 above;

"the relevant charity", in relation to an incorporated body, means the charity the trustees of which have been incorporated as that body;

"the trustees", in relation to a charity, means the charity trustees.

PART VIII

CHARITABLE COMPANIES

63 Winding up.

(1) Where a charity may be wound up by the High Court under the [M26]Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.

(2) Where a charity may be so wound up by the High Court, such a petition may also be presented by the Commissioners if, at any time after they have instituted an inquiry

under section 8 above with respect to the charity, they are satisfied as mentioned in section 18(1)(a) or (b) above.

(3) Where a charitable company is dissolved, the Commissioners may make an application under section 651 of the [M27]Companies Act 1985 (power of court to declare dissolution of company void) for an order to be made under that section with respect to the company; and for this purpose subsection (1) of that section shall have effect in relation to a charitable company as if the reference to the liquidator of the company included a reference to the Commissioners.

(4) Where a charitable company's name has been struck off the register of companies under section 652 of the Companies Act 1985 (power of registrar to strike defunct company off register), the Commissioners may make an application under section 653(2) of that Act (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose section 653(2) shall have effect in relation to a charitable company as if the reference to any such person aggrieved as is there mentioned included a reference to the Commissioners.

(5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

(6) In this section "charitable company" means a company which is a charity.

Marginal Citations

M26 1986 c. 45.

M27 1985 c. 6.

64 Alteration of objects clause.

(1) Where a charity is a company or other body corporate having 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 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 as aforesaid.

(2) Where a charity is a company, any alteration by it—

(a) of the objects clause in its memorandum of association, or

(b) of any other provision in its memorandum of association, or any provision in its articles of association, which is a provision directing or restricting the manner in which property of the company may be used or applied,

is ineffective without the prior written consent of the Commissioners.

(3) Where a company has made any such alteration in accordance with subsection (2) above and—

(a) in connection with the alteration is required by virtue of—

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(i) section 6(1) of the Companies Act 1985 (delivery of documents following alteration of objects), or

(ii) that provision as applied by section 17(3) of that Act (alteration of condition in memorandum which could have been contained in articles),

to deliver to the registrar of companies a printed copy of its memorandum, as altered, or

(b) is required by virtue of section 380(1) of that Act (registration etc. of resolutions and agreements) to forward to the registrar a printed or other copy of the special resolution effecting the alteration,

the copy so delivered or forwarded by the company shall be accompanied by a copy of the Commissioner's consent.

(4) Section 6(3) of that Act (offences) shall apply to any default by a company in complying with subsection (3) above as it applies to any such default as is mentioned in that provision.

65 Invalidity of certain transactions.

(1) Sections 35 and 35A of the [M28]Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—

(a) gives full consideration in money or money's worth in relation to the act in question, and

(b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of subsection (1) above the burden of proving—

(a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or

(b) that a person knew that the company was a charity,

lies on the person making that allegation.

(4) Where a company is a charity, the ratification of an act under section 35(3) of the Companies Act 1985, or the ratification of a transaction to which section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commissioners.

Marginal Citations

M28 1985 c. 6.

66 Requirement of consent of Commissioners to certain acts.

(1) Where a company is a charity—

(a) any approval given by the company for the purposes of any of the provisions of the [M29]Companies Act 1985 specified in subsection (2) below, and

(b) any affirmation by it for the purposes of section 322(2)(c) of that Act (affirmation of voidable arrangements under which assets are acquired by or from a director or person connected with him),

is ineffective without the prior written consent of the Commissioners.

(2) The provisions of the Companies Act 1985 referred to in subsection (1)(a) above are—

(a) section 312 (payment to director in respect of loss of office or retirement);

(b) section 313(1) (payment to director in respect of loss of office or retirement made in connection with transfer of undertaking or property of company);

(c) section 319(3) (incorporation in director's service contract of term whereby his employment will or may continue for a period of more than five years);

(d) section 320(1) (arrangement whereby assets are acquired by or from director or person connected with him);

(e) section 337(3)(a) (provision of funds to meet certain expenses incurred by director).

Marginal Citations

M29 1985 c. 6.

67 Name to appear on correspondence etc.

Section 30(7) of the Companies Act 1985 (exemption from requirements relating to publication of name etc.) shall not, in its application to any company which is a charity, have the effect of exempting the company from the requirements of section 349(1) of that Act (company's name to appear in its correspondence etc.)

68 Status to appear on correspondence etc.

(1) Where a company is a charity and its name does not include the word "charity" or the word "charitable"**[**[F66]then, subject to subsection (1A)**]**, the fact that the company is a charity shall be stated [F67]. . . in legible characters—

(a) in all business letters of the company,

(b) in all its notices and other official publications,

(c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the company,

(d) in all conveyances purporting to be executed by the company, and

(e) in all bills rendered by it and in all its invoices, receipts, and letters of credit.

[[F68](1A) Where a company's name includes the word "elusen" or the word "elusennol" (the Welsh equivalents of the words "charity" and "charitable"), subsection (1) above shall not apply in relation to any document which is wholly in Welsh.

(1B) The statement required by subsection (1) above shall be in English, except that, in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the word "elusen" or the word "elusennol".**]**

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(2) In subsection (1)(d) above "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Subsections (2) to (4) of section 349 of the [M30]Companies Act 1985 (offences in connection with failure to include required particulars in business letters etc.) shall apply in relation to a contravention of subsection (1) above, taking the reference in subsection (3)(b) of that section to a bill of parcels as a reference to any such bill as is mentioned in subsection (1)(e) above.

Textual Amendments

F66 Words in s. 68(1) inserted (21.12.1993) by 1993 c. 38, **ss. 33(2)(a)**, 36(1)

F67 Words in s. 68(1) repealed (21.12.1993) by 1993 c. 38, ss. 33(2)(b), 35(1), 36(1), **Sch.2**

F68 S. 68(1A)(1B) inserted (21.12.1993) by 1993 c. 38, **ss. 33(3)**, 36(1)

Marginal Citations

M30 1985 c. 6.

69 Investigation of accounts.

(1) In the case of a charity which is a company the Commissioners may by order require that the condition and accounts of the charity for such period as they think fit shall be investigated and audited by an auditor appointed by them, being a person eligible for appointment as a company auditor under section 25 of the [M31]Companies Act 1989.

(2) An auditor acting under subsection (1) above—

(a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;

(b) shall be entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the charity such information and explanation as he thinks necessary for the performance of his duties;

(c) shall at the conclusion or during the progress of the audit make such reports to the Commissioners about the audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity trustees.

(3) The expenses of any audit under subsection (1) above, including the remuneration of the auditor, shall be paid by the Commissioners.

(4) If any person fails to afford an auditor any facility to which he is entitled under subsection (2) above the Commissioners may by order give to that person or to the charity trustees for the time being such directions as the Commissioners think appropriate for securing that the default is made good.

Marginal Citations

M31 1989 c. 40.

PART IX

MISCELLANEOUS

Powers of investment

[F69]70 Relaxation of restrictions on wider-range investments.

. . . . . .

Textual Amendments

F69 S. 70 repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(1), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; s. 70 repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

[F70]71 Extension of powers of investment.

. . . . . .

Textual Amendments

F70 S. 71 repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(1), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; s. 71 repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

Disqualification for acting as charity trustee

72 Persons disqualified for being trustees of a charity.

(1) Subject to the following provisions of this section, a person shall be disqualified for being a charity trustee or trustee for a charity if—

(a) he has been convicted of any offence involving dishonesty or deception;

(b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged **[**[F71]or he is the subject of a bankruptcy restrictions order or an interim order**]**;

(c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

(d) he has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the Commissioners under section 18(2)(i) above, or

(ii) by the Commissioners under section 20(1A)(i) of the [M32]Charities Act 1960 (power to act for protection of charities) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the [M33]Charities Act 1992), or

(iii) by the High Court,

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on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;

(e) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities) **[**[F72]or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)**]**, from being concerned in the management or control of any body;

(f) he is subject to a disqualification order **[**[F73]or disqualification undertaking**]** under the [M34]Company Directors Disqualification Act 1986 **[**[F73]to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989**][**[F74]or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002**]** or to an order made under section 429(2)(b) of the [M35]Insolvency Act 1986 (failure to pay under county court administration order).

(2) In subsection (1) above—

(a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the [M36]Rehabilitation of Offenders Act 1974;

(b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration **[**[F75]or the making of a bankruptcy restrictions order or an interim order**]** occurred before or after the commencement of that subsection;

(c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and

(d) paragraphs (d) to (f) apply in relation to orders made and removals effected before or after the commencement of that subsection.

(3) Where (apart from this subsection) a person is disqualified under subsection (1)(b) above for being a charity trustee or trustee for any charity which is a company, he shall not be so disqualified if leave has been granted under section 11 of the [M37]Company Directors Disqualification Act 1986 (undischarged bankrupts) for him to act as director of the charity; and similarly a person shall not be disqualified under subsection (1)(f) above for being a charity trustee or trustee for such a charity if—

[[F76](a) in the case of a person subject to a disqualification order or disqualification undertaking under the [M38]Company Directors Disqualification Act 1986, leave for the purposes of section 1(1)(a) or 1A(1)(a) of that Act has been granted for him to act as director of the charity,

(aa) in the case of a person subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 **[**[F77]or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002**]**, leave has been granted by the High Court in Northern Ireland for him to act as director of the charity**]**

(b) in the case of a person subject to an order under section 429(2)(b) of the [M39]Insolvency Act 1986, leave has been granted by the court which made the order for him to so act.

(4) The Commissioners may, on the application of any person disqualified under subsection (1) above, waive his disqualification either generally or in relation to a

particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—

(a) the person concerned is for the time being prohibited, by virtue of—

(i) a disqualification order **[**[F78]or disqualification undertaking**]** under the Company Directors Disqualification Act 1986, or

(ii) section 11(1) **[**[F79]12(2)**[**[F80],12A or 12B**]]** of that Act (undischarged bankrupts; failure to pay under county court administration order **[**[F81]Northern Irish disqualification orders**][**[F82]; Northern Irish disqualification undertakings**]**),

from acting as director of the charity; and

(b) leave has not been granted for him to act as director of any other company.

(5) Any waiver under subsection (4) above shall be notified in writing to the person concerned.

(6) For the purposes of this section the Commissioners shall keep, in such manner as they think fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) above either—

(a) by an order of the Commissioners made before or after the commencement of subsection (1) above, or

(b) by an order of the High Court made after the commencement of section 45(1) of the [M40]Charities Act 1992;

and, where any person is so removed from office by an order of the High Court, the court shall notify the Commissioners of his removal.

(7) The entries in the register kept under subsection (6) above shall be available for public inspection in legible form at all reasonable times.

Textual Amendments

F71 Words in s. 72(1)(b) inserted (29.6.2006) by Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 4(a)**

F72 Words in s. 72(1)(e) inserted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(2)**

F73 Words in s. 72(1)(f) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(a)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

F74 Words in s. 72(1)(f) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(a)**

F75 Words in s. 72(2)(b) inserted (29.6.2006) by Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 4(b)**

F76 S. 72(3)(a)(aa) substituted (2.4.2001) for s. 72(3)(a) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

F77 Words in s. 72(3)(aa) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(b)**

F78 Words in s. 72(4)(a)(i) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(i)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

F79 Words in s. 72(4)(a)(ii) substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(ii)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

F80 Words in s. 72(4)(a)(ii) substituted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(c)**

F81 Words in s. 72(4)(a)(ii) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 18(c)(ii)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

F82 Words in s. 72(4)(a)(ii) inserted (with application in accordance with art. 1(2) of the amending S.I.) by Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 5(c)**

Marginal Citations

M32 1960 c. 58.
M33 1992 c. 41.
M34 1986 c. 46.
M35 1986 c. 45.
M36 1974 c. 53.
M37 1986 c. 46.
M38 1986 c. 46.
M39 1986 c. 45.
M40 1992 c. 41.

73 Person acting as charity trustee while disqualified.

(1) Subject to subsection (2) below, any person who acts as a charity trustee or trustee for a charity while he is disqualified for being such a trustee by virtue of section 72 above shall be guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(2) Subsection (1) above shall not apply where—

(a) the charity concerned is a company; and

(b) the disqualified person is disqualified by virtue only of paragraph (b) or (f) of section 72(1) above.

(3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 72 above shall not be invalid by reason only of that disqualification.

(4) Where the Commissioners are satisfied—

(a) that any person has acted as charity trustee or trustee for a charity (other than an exempt charity) while disqualified for being such a trustee by virtue of section 72 above, and

(b) that, while so acting, he has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with his acting as charity trustee or trustee for the charity,

they may by order direct him to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by them) of any such benefit.

(5) Subsection (4) above does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity.

Small charities

VALID FROM 27/02/2007

74 Power to transfer all property, modify objects etc.

(1) This section applies to a charity if—
- (a) its gross income in its last financial year did not exceed £5,000, and
- (b) it does not hold any land on trusts which stipulate that the land is to be used for the purposes, or any particular purposes, of the charity,

and it is neither an exempt charity nor a charitable company.

(2) Subject to the following provisions of this section, the charity trustees of a charity to which this section applies may resolve for the purposes of this section—
- (a) that all the property of the charity should be transferred to such other charity as is specified in the resolution, being either a registered charity or a charity which is not required to be registered;
- (b) that all the property of the charity should be divided, in such manner as is specified in the resolution, between such two or more other charities as are so specified, being in each case either a registered charity or a charity which is not required to be registered;
- (c) that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with such other purposes, being in law charitable, as are specified in the resolution;
- (d) that any provision of the trusts of the charity—
  - (i) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
  - (ii) regulating the procedure to be followed in any respect in connection with its administration,

  should be modified in such manner as is specified in the resolution.

(3) Any resolution passed under subsection (2) above must be passed by a majority of not less than two-thirds of such charity trustees as vote on the resolution.

(4) The charity trustees of a charity to which this section applies ("the transferor charity") shall not have power to pass a resolution under subsection (2)(a) or (b) above unless they are satisfied—
- (a) that the existing purposes of the transferor charity have ceased to be conducive to a suitable and effective application of the charity's resources; and
- (b) that the purposes of the charity or charities specified in the resolution are as similar in character to the purposes of the transferor charity as is reasonably practicable;

and before passing the resolution they must have received from the charity trustees of the charity, or (as the case may be) of each of the charities, specified in the resolution

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

written confirmation that those trustees are willing to accept a transfer of property under this section.

(5) The charity trustees of any such charity shall not have power to pass a resolution under subsection (2)(c) above unless they are satisfied—

(a) that the existing purposes of the charity (or, as the case may be, such of them as it is proposed to replace) have ceased to be conducive to a suitable and effective application of the charity's resources; and

(b) that the purposes specified in the resolution are as similar in character to those existing purposes as is practical in the circumstances.

(6) Where charity trustees have passed a resolution under subsection (2) above, they shall—

(a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and

(b) send a copy of the resolution to the Commissioners, together with a statement of their reasons for passing it.

(7) The Commissioners may, when considering the resolution, require the charity trustees to provide additional information or explanation—

(a) as to the circumstances in and by reference to which they have determined to act under this section, or

(b) relating to their compliance with this section in connection with the resolution;

and the Commissioners shall take into account any representations made to them by persons appearing to them to be interested in the charity where those representations are made within the period of six weeks beginning with the date when the Commissioners receive a copy of the resolution by virtue of subsection (6)(b) above.

(8) Where the Commissioners have so received a copy of a resolution from any charity trustees and it appears to them that the trustees have complied with this section in connection with the resolution, the Commissioners shall, within the period of three months beginning with the date when they receive the copy of the resolution, notify the trustees in writing either—

(a) that the Commissioners concur with the resolution; or

(b) that they do not concur with it.

(9) Where the Commissioners so notify their concurrence with the resolution, then—

(a) if the resolution was passed under subsection (2)(a) or (b) above, the charity trustees shall arrange for all the property of the transferor charity to be transferred in accordance with the resolution and on terms that any property so transferred—

(i) shall be held and applied by the charity to which it is transferred ("the transferee charity") for the purposes of that charity, but

(ii) shall, as property of the transferee charity, nevertheless be subject to any restrictions on expenditure to which it is subject as property of the transferor charity,

and those trustees shall arrange for it to be so transferred by such date as may be specified in the notification; and

(b) if the resolution was passed under subsection (2)(c) or (d) above, the trusts of the charity shall be deemed, as from such date as may be specified in

the notification, to have been modified in accordance with the terms of the resolution.

(10) For the purpose of enabling any property to be transferred to a charity under this section, the Commissioners shall have power, at the request of the charity trustees of that charity, to make orders vesting any property of the transferor charity—

(a) in the charity trustees of the first-mentioned charity or in any trustee for that charity, or

(b) in any other person nominated by those charity trustees to hold the property in trust for that charity.

(11) The **[**[F83]Minister**]** may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

(12) In this section—

(a) "charitable company" means a charity which is a company or other body corporate; and

(b) references to the transfer of property to a charity are references to its transfer—

(i) to the charity trustees, or

(ii) to any trustee for the charity, or

(iii) to a person nominated by the charity trustees to hold it in trust for the charity,

as the charity trustees may determine.

Textual Amendments

F83 Word in s. 74(11) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(v)**

75 Power to spend capital.

(1) This section applies to a charity if—

(a) it has a permanent endowment which does not consist of or comprise any land, and

(b) its gross income in its last financial year did not exceed £1,000,

and it is neither an exempt charity nor a charitable company.

(2) Where the charity trustees of a charity to which this section applies are of the opinion that the property of the charity is too small, in relation to its purposes, for any useful purpose to be achieved by the expenditure of income alone, they may resolve for the purposes of this section that the charity ought to be freed from the restrictions with respect to expenditure of capital to which its permanent endowment is subject.

(3) Any resolution passed under subsection (2) above must be passed by a majority of not less than two-thirds of such charity trustees as vote on the resolution.

(4) Before passing such a resolution the charity trustees must consider whether any reasonable possibility exists of effecting a transfer or division of all the charity's property under section 74 above (disregarding any such transfer or division as would, in their opinion, impose on the charity an unacceptable burden of costs).

Status: *Point in time view as at 13/12/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(5) Where charity trustees have passed a resolution under subsection (2) above, they shall—

(a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and

(b) send a copy of the resolution to the Commissioners, together with a statement of their reasons for passing it.

(6) The Commissioners may, when considering the resolution, require the charity trustees to provide additional information or explanation—

(a) as to the circumstances in and by reference to which they have determined to act under this section, or

(b) relating to their compliance with this section in connection with the resolution;

and the Commissioners shall take into account any representations made to them by persons appearing to them to be interested in the charity where those representations are made within the period of six weeks beginning with the date when the Commissioners receive a copy of the resolution by virtue of subsection (5)(b) above.

(7) Where the Commissioners have so received a copy of a resolution from any charity trustees and it appears to them that the trustees have complied with this section in connection with the resolution, the Commissioners shall, within the period of three months beginning with the date when they receive the copy of the resolution, notify the trustees in writing either—

(a) that the Commissioners concur with the resolution; or

(b) that they do not concur with it.

(8) Where the Commissioners so notify their concurrence with the resolution, the charity trustees shall have, as from such date as may be specified in the notification, power by virtue of this section to expend any property of the charity without regard to any such restrictions as are mentioned in subsection (2) above.

(9) The **[**[F84]Minister**]** may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

(10) In this section "charitable company" means a charity which is a company or other body corporate.

Textual Amendments

F84 Word in s. 75(9) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(w)**

Local charities

76 Local authority's index of local charities.

(1) The council of a county **[**[F85]or county borough**]** or of a district or London borough and the Common Council of the City of London may maintain an index of local charities or of any class of local charities in the council's area, and may publish information contained in the index, or summaries or extracts taken from it.

(2) A council proposing to establish or maintaining under this section an index of local charities or of any class of local charities shall, on request, be supplied by the Commissioners free of charge with copies of such entries in the register of charities as are relevant to the index or with particulars of any changes in the entries of which copies have been supplied before; and the Commissioners may arrange that they will without further request supply a council with particulars of any such changes.

(3) An index maintained under this section shall be open to public inspection at all reasonable times.

(4) A council may employ any voluntary organisation as their agent for the purposes of this section, on such terms and within such limits (if any) or in such cases as they may agree; and for this purpose "voluntary organisation" means any body of which the activities are carried on otherwise than for profit, not being a public or local authority.

(5) A joint board discharging any of a council's functions shall have the same powers under this section as the council as respects local charities in the council's area which are established for purposes similar or complementary to any services provided by the board.

Textual Amendments

F85 Words in s. 76(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(1)** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

Modifications etc. (not altering text)

C14 Ss. 76-78 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 15** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

77 Reviews of local charities by local authority.

(1) The council of a county **[**[F86]or county borough**]**or of a district or London borough and the Common Council of the City of London may, subject to the following provisions of this section, initiate, and carry out in co-operation with the charity trustees, a review of the working of any group of local charities with the same or similar purposes in the council's area, and may make to the Commissioners such report on the review and such recommendations arising from it as the council after consultation with the trustees think fit.

(2) A council having power to initiate reviews under this section may co-operate with other persons in any review by them of the working of local charities in the council's area (with or without other charities), or may join with other persons in initiating and carrying out such a review.

(3) No review initiated by a council under this section shall extend to any charity without the consent of the charity trustees, nor to any ecclesiastical charity.

(4) No review initiated under this section by the council of a district shall extend to the working in any county of a local charity established for purposes similar or complementary to any services provided by county councils unless the review so extends with the consent of the council of that county.

[[F87](4A) Subsection (4) above does not apply in relation to Wales.**]**

(5) Subsections (4) and (5) of section 76 above shall apply for the purposes of this section as they apply for the purposes of that section.

Textual Amendments

F86 Words in s. 77(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F87 S. 77(4A) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

Modifications etc. (not altering text)

C15 Ss. 76-78 extended (with modifications) (19.9.1995) by 1995 c. 48, ss. 70, 125(2), **Sch. 9 para. 15** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

78 Co-operation between charities, and between charities and local authorities.

(1) Any local council and any joint board discharging any functions of such a council—

(a) may make, with any charity established for purposes similar or complementary to services provided by the council or board, arrangements for co-ordinating the activities of the council or board and those of the charity in the interests of persons who may benefit from those services or from the charity; and

(b) shall be at liberty to disclose to any such charity in the interests of those persons any information obtained in connection with the services provided by the council or board, whether or not arrangements have been made with the charity under this subsection.

In this subsection "local council" means **[**[F88], in relation to England,**]** the council of a county, or of a district, London borough, **[**[F89]or parish**]**, and includes also the Common Council of the City of London and the Council of the Isles of Scilly **[**[F90]and, in relation to Wales, the council of a county, county borough or community**]**.

(2) Charity trustees shall, notwithstanding anything in the trusts of the charity, have power by virtue of this subsection to do all or any of the following things, where it appears to them likely to promote or make more effective the work of the charity, and may defray the expense of so doing out of any income or money applicable as income of the charity, that is to say—

(a) they may co-operate in any review undertaken under section 77 above or otherwise of the working of charities or any class of charities;

(b) they may make arrangements with an authority acting under subsection (1) above or with another charity for co-ordinating their activities and those of the authority or of the other charity;

(c) they may publish information of other charities with a view to bringing them to the notice of those for whose benefit they are intended.

Textual Amendments

F88 Words in s. 78(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F89 Words in s. 78(1) substituted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(b)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F90 Words in s. 78(1) added (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(3)(c)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

Modifications etc. (not altering text)

C16 S. 78 extended (with modifications) (19.9.1995) by 1995 c. 48, ss. 70, 125(2), **Sch. 9 para. 15** (with Sch. 8 para. 7)

79 Parochial charities.

(1) Where trustees hold any property for the purposes of a public recreation ground, or of allotments (whether under inclosure Acts or otherwise), for the benefit of inhabitants of a parish having a parish council, or for other charitable purposes connected with such a parish, except for an ecclesiastical charity, they may with the approval of the Commissioners and with the consent of the parish council transfer the property to the parish council or to persons appointed by the parish council; and the council or their appointees shall hold the property on the same trusts and subject to the same conditions as the trustees did.

This subsection shall apply to property held for any public purposes as it applies to property held for charitable purposes.

(2) Where the charity trustees of a parochial charity in a parish, not being an ecclesiastical charity nor a charity founded within the preceding forty years, do not include persons elected by the local government electors, ratepayers or inhabitants of the parish or appointed by the parish council or parish meeting, the parish council or parish meeting may appoint additional charity trustees, to such number as the Commissioners may allow; and if there is a sole charity trustee not elected or appointed as aforesaid of any such charity, the number of the charity trustees may, with the approval of the Commissioners, be increased to three of whom one may be nominated by the person holding the office of the sole trustee and one by the parish council or parish meeting.

(3) Where, under the trusts of a charity other than an ecclesiastical charity, the inhabitants of a rural parish (whether in vestry or not) or a select vestry were formerly (in 1894) entitled to appoint charity trustees for, or trustees or beneficiaries of, the charity, then—

(a) in a parish having a parish council, the appointment shall be made by the parish council or, in the case of beneficiaries, by persons appointed by the parish council; and

(b) in a parish not having a parish council, the appointment shall be made by the parish meeting.

(4) Where overseers as such or, except in the case of an ecclesiastical charity, churchwardens as such were formerly (in 1894) charity trustees of or trustees for a parochial charity in a rural parish, either alone or jointly with other persons, then instead of the former overseer or church warden trustees there shall be trustees (to a number not greater than that of the former overseer or churchwarden trustees) appointed by the parish council or, if there is no parish council, by the parish meeting.

(5) Where, outside Greater London (other than the outer London boroughs), overseers of a parish as such were formerly (in 1927) charity trustees of or trustees for any charity, either alone or jointly with other persons, then instead of the former overseer trustees there shall be trustees (to a number not greater than that of the former overseer trustees) appointed by the parish council or, if there is no parish council, by the parish meeting.

(6) In the case of an urban parish existing immediately before the passing of the [M41]Local Government Act 1972 which after 1st April 1974 is not comprised in a parish, the power of appointment under subsection (5) above shall be exercisable by the district council.

(7) In the application of the foregoing provisions of this section to Wales—

(a) for references in subsections (1) and (2) to a parish or a parish council there shall be substituted respectively references to a community or a community council;

(b) for references in subsections (3)(a) and (b) to a parish, a parish council or a parish meeting there shall be substituted respectively references to a community, a community council or the **[**[F91]council of the county or (as the case may be) county borough**]**;

(c) for references in subsections (4) and (5) to a parish council or a parish meeting there shall be substituted respectively references to a community council or the **[**[F91]council of the county or (as the case may be) county borough**]**.

(8) Any appointment of a charity trustee or trustee for a charity which is made by virtue of this section shall be for a term of four years, and a retiring trustee shall be eligible for re-appointment but—

(a) on an appointment under subsection (2) above, where no previous appointments have been made by virtue of that subsection or of the corresponding provision of the [M42]Local Government Act 1894 or the [M43]Charities Act 1960, and more than one trustee is appointed, half of those appointed (or as nearly as may be) shall be appointed for a term of two years; and

(b) an appointment made to fill a casual vacancy shall be for the remainder of the term of the previous appointment.

[[F92](9) This section shall not affect the trusteeship, control or management of any **[**[F93]foundation or voluntary school within the meaning of the School Standards and Framework Act 1998.**]]**

(10) The provisions of this section shall not extend to the Isles of Scilly, and shall have effect subject to any order (including any future order) made under any enactment relating to local government with respect to local government areas or the powers of local authorities.

(11) In this section the expression "formerly (in 1894)" relates to the period immediately before the passing of the Local Government Act 1894, and the expression "formerly (in 1927)" to the period immediately before 1st April 1927; and the word "former" shall be construed accordingly.

Textual Amendments

F91 Words in s. 79(b)(c) substituted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(4)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F92 S. 79(9) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 119** (with s. 1(4), Sch. 39)

F93 Words in s. 79(9) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 49** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

Marginal Citations

M41 1972 c. 70.
M42 1894 c. 73.
M43 1960 c. 58.

Scottish charities

80 Supervision by Commissioners of certain Scottish charities.

(1) The following provisions of this Act, namely—

(a) sections 8 and 9,

(b) section 18 (except subsection (2)(ii)), and

(c) section 19,

shall have effect in relation to any recognised body which is managed or controlled wholly or mainly in or from England or Wales as they have effect in relation to a charity.

(2) Where—

(a) a recognised body is managed or controlled wholly or mainly in or from Scotland, but

(b) any person in England and Wales holds any property on behalf of the body or of any person concerned in its management or control,

then, if the Commissioners are satisfied as to the matters mentioned in subsection (3) below, they may make an order requiring the person holding the property not to part with it without their approval.

(3) The matters referred to in subsection (2) above are—

(a) that there has been any misconduct or mismanagement in the administration of the body; and

(b) that it is necessary or desirable to make an order under that subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body;

and the reference in that subsection to the Commissioners being satisfied as to those matters is a reference to their being so satisfied on the basis of such information as may be supplied to them by the **[**[F94]Scottish Charity Regulator**]**.

(4) Where—

(a) any person in England and Wales holds any property on behalf of a recognised body or of any person concerned in the management or control of such a body, and

(b) the Commissioners are satisfied (whether on the basis of such information as may be supplied to them by the **[**[F95]Scottish Charity Regulator**]** or otherwise)—

(i) that there has been any misconduct or mismanagement in the administration of the body, and

(ii) that it is necessary or desirable to make an order under this subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body,

the Commissioners may by order vest the property in such recognised body or charity as is specified in the order in accordance with subsection (5) below, or require any persons in whom the property is vested to transfer it to any such body or charity, or appoint any person to transfer the property to any such body or charity.

(5) The Commissioners may specify in an order under subsection (4) above such other recognised body or such charity as they consider appropriate, being a body or charity whose purposes are, in the opinion of the Commissioners, as similar in character to those of the body referred to in paragraph (a) of that subsection as is reasonably practicable; but the Commissioners shall not so specify any body or charity unless they have received—

(a) from the persons concerned in the management or control of the body, or

(b) from the charity trustees of the charity,

as the case may be, written confirmation that they are willing to accept the property.

(6) In this section "recognised body" **[**[F96]means a body entered in the Scottish Charity Register**]**.

Textual Amendments

F94 Words in s. 80(3) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(a)**

F95 Words in s. 80(4)(b) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(a)**

F96 Words in s. 80(6) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 6(3)(b)**

Modifications etc. (not altering text)

C17 S. 80: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, **Sch.** (with art. 7)

Administrative provisions about charities

PROSPECTIVE

81 Manner of giving notice of charity meetings, etc.

. . . . . .

82 Manner of executing instruments.

(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.

(2) An authority under subsection (1) above—

(a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;

(b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;

(c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the charity trustees, have effect as a continuing authority given by the charity trustees from time to time of the charity and exercisable by such trustees.

(3) In any authority under this section to execute a deed or instrument in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority also to execute it for them in the name and on behalf of the official custodian or of any other person, in any case in which the charity trustees could do so.

(4) Where a deed or instrument purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.

(5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

83 Transfer and evidence of title to property vested in trustees.

(1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting and is attested by two persons present at the meeting.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) above, if executed as a deed, shall have the like operation under section 40 of the [M44]Trustee Act 1925 (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees) as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1) above, then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of the [M45]Charities Act 1960.

(5) This section shall apply in relation to any institution to which the [M46]Literary and Scientific Institutions Act 1854 applies as it applies in relation to a charity.

Marginal Citations

M44 1925 c. 19.

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M45 1960 c. 58.
M46 1854 c. 112.

PART X

SUPPLEMENTARY

84 Supply by Commissioners of copies of documents open to public inspection.

The Commissioners shall, at the request of any person, furnish him with copies of, or extracts from, any document in their possession which is for the time being open to inspection under Parts II to VI of this Act.

85 Fees and other amounts payable to Commissioners.

(1) The **[**[F97]Minister**]** may by regulations require the payment to the Commissioners of such fees as may be prescribed by the regulations in respect of—

(a) the discharge by the Commissioners of such functions under the enactments relating to charities as may be so prescribed;

(b) the inspection of the register of charities or of other material kept by them under those enactments, or the furnishing of copies of or extracts from documents so kept.

(2) Regulations under this section may—

(a) confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee;

(b) provide for the remission or refunding of a prescribed fee (in whole or in part) in circumstances prescribed by the regulations.

(3) Any regulations under this section which require the payment of a fee in respect of any matter for which no fee was previously payable shall not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.

(4) The Commissioners may impose charges of such amounts as they consider reasonable in respect of the supply of any publications produced by them.

(5) Any fees and other payments received by the Commissioners by virtue of this section shall be paid into the Consolidated Fund.

Textual Amendments

F97 Word in s. 85(1) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(x)**

86 Regulations and orders.

(1) Any regulations or order of the **[**[F98]Minister**]** under this Act—

(a) shall be made by statutory instrument; and

(b) (subject to subsection (2) below) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Subsection (1)(b) above does not apply—

(a) to an order under section 17(2), [F99]... or 99(2); **[**[F100]or**]**

[F101](b) . . . . . .

(c) to any regulations to which section 85(3) applies.

(3) Any regulations of the **[**[F98]Minister**]** or the Commissioners and any order of the **[**[F98]Minister**]** under this Act may make—

(a) different provision for different cases; and

(b) such supplemental, incidental, consequential or transitional provision or savings as the **[**[F98]Minister**]** or, as the case may be, the Commissioners consider appropriate.

(4) Before making any regulations under section 42, 44 or 45 above the **[**[F98]Minister**]** shall consult such persons or bodies of persons as he considers appropriate.

Textual Amendments

F98 Word in s. 86 substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(y)**

F99 Word in s. 86(2)(a) repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(2)(a), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; same word repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

F100 Word in s. 86(2)(a) inserted (E.W.) (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. I para. 2(2)(b)** (with s. 35); S.I. 2001/49, **art. 2**

F101 S. 86(2)(b) repealed (E.W.) (1.2.2001) by Trustee Act 2000 (c. 29), s. 40(1)(3), Sch. 2 Pt. I para. 2(3), **Sch. 4 Pt. I** (with s. 35); S.I. 2001/49, **art. 2**; s. 86(2)(b) repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), **Sch. 1**

87 Enforcement of requirements by order of Commissioners.

(1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2) below) the Commissioners may by order give him such directions as they consider appropriate for securing that the default is made good.

(2) Subsection (1) above does not apply to any such requirement if—

(a) a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty; or

(b) the requirement is imposed—

(i) by an order of the Commissioners to which section 88 below applies, or

(ii) by a direction of the Commissioners to which that section applies by virtue of section 90(2) below.

88 Enforcement of orders of Commissioners.

A person guilty of disobedience—

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(a) to an order of the Commissioners under section 9(1), 44(2), 61, 73 or 80 above; or

(b) to an order of the Commissioners under section 16 or 18 above requiring a transfer of property or payment to be called for or made; or

(c) to an order of the Commissioners requiring a default under this Act to be made good;

may on the application of the Commissioners to the High Court be dealt with as for disobedience to an order of the High Court.

89 Other provisions as to orders of Commissioners.

(1) Any order made by the Commissioners under this Act may include such incidental or supplementary provisions as the Commissioners think expedient for carrying into effect the objects of the order, and where the Commissioners exercise any jurisdiction to make such an order on an application or reference to them, they may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion.

(2) Where the Commissioners make an order under this Act, then (without prejudice to the requirements of this Act where the order is subject to appeal) they may themselves give such public notice as they think fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity affected by the order.

(3) The Commissioners at any time within twelve months after they have made an order under any provision of this Act other than section 61 if they are satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act, may with or without any application or reference to them discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.

(4) Except for the purposes of subsection (3) above or of an appeal under this Act, an order made by the Commissioners under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

Modifications etc. (not altering text)

C18 S. 89(1)(2)(4) applied (1.8.1993) by 1992 c. 41, **s. 72(5)** (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 29(7) of this Act).

90 Directions of the Commissioners.

(1) Any direction given by the Commissioners under any provision contained in this Act—

(a) may be varied or revoked by a further direction given under that provision; and

(b) shall be given in writing.

(2) Sections 88 and 89(1), (2) and (4) above shall apply to any such directions as they apply to an order of the Commissioners.

(3) In subsection (1) above the reference to the Commissioners includes, in relation to a direction under subsection (3) of section 8 above, a reference to any person conducting an inquiry under that section.

(4) Nothing in this section shall be read as applying to any directions contained in an order made by the Commissioners under section 87(1) above.

91 Service of orders and directions.

(1) This section applies to any order or direction made or given by the Commissioners under this Act.

(2) An order or direction to which this section applies may be served on a person (other than a body corporate)—
   (a) by delivering it to that person;
   (b) by leaving it at his last known address in the United Kingdom; or
   (c) by sending it by post to him at that address.

(3) An order or direction to which this section applies may be served on a body corporate by delivering it or sending it by post—
   (a) to the registered or principal office of the body in the United Kingdom, or
   (b) if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities (as the case may be).

(4) Any such order or direction may also be served on a person (including a body corporate) by sending it by post to that person at an address notified by that person to the Commissioners for the purposes of this subsection.

(5) In this section any reference to the Commissioners includes, in relation to a direction given under subsection (3) of section 8 above, a reference to any person conducting an inquiry under that section.

92 Appeals from Commissioners.

(1) Provision shall be made by rules of court for regulating appeals to the High Court under this Act against orders or decisions of the Commissioners.

(2) On such an appeal the Attorney General shall be entitled to appear and be heard, and such other persons as the rules allow or as the court may direct.

93 Miscellaneous provisions as to evidence.

(1) Where, in any proceedings to recover or compel payment of any rentcharge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rentcharge or other periodical payment has at any time been paid for twelve consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income, and no proof of its origin shall be necessary.

(2) In any proceedings, the following documents, that is to say,—

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(a) the printed copies of the reports of the Commissioners for enquiring concerning charities, 1818 to 1837, who were appointed under the Act 58 Geo. 3. c. 91 and subsequent Acts; and

(b) the printed copies of the reports which were made for various counties and county boroughs to the Charity Commissioners by their assistant commissioners and presented to the House of Commons as returns to orders of various dates beginning with 8th December 1890, and ending with 9th September 1909,

shall be admissible as evidence of the documents and facts stated in them.

(3) Evidence of any order, certificate or other document issued by the Commissioners may be given by means of a copy retained by them, or taken from a copy so retained, and certified to be a true copy by any officer of the Commissioners generally or specially authorised by them 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.

94 Restriction on institution of proceedings for certain offences.

(1) No proceedings for an offence under this Act to which this section applies shall be instituted except by or with the consent of the Director of Public Prosecutions.

(2) This section applies to any offence under—

(a) section 5;

(b) section 11;

(c) section 18(14);

(d) section 49; or

(e) section 73(1).

95 Offences by bodies corporate.

Where any offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In relation to a body corporate whose affairs are managed by its members, "director" means a member of the body corporate.

96 Construction of references to a "charity" or to particular classes of charity.

(1) In this Act, except in so far as the context otherwise requires—

"charity" means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities;

"ecclesiastical charity" has the same meaning as in the [M47]Local Government Act 1894;

"exempt charity" means (subject to section 24(8) above) a charity comprised in Schedule 2 to this Act;

"local charity" means, in relation to any area, a charity established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of that area or of part of it;

"parochial charity" means, in relation to any parish or (in Wales) community, a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to inhabitants of the parish or community, or of a single ancient ecclesiastical parish which included that parish or community or part of it, or of an area consisting of that parish or community with not more than four neighbouring parishes or communities.

(2) The expression "charity" is not in this Act applicable—

(a) to any ecclesiastical corporation (that is to say, any corporation in the Church of England, whether sole or aggregate, which is established for spiritual purposes) in respect of the corporate property of the corporation, except to a corporation aggregate having some purposes which are not ecclesiastical in respect of its corporate property held for those purposes; or

(b) to any Diocesan Board of Finance **[**[F102](or any subsidiary thereof)**]** within the meaning of the [M48]Endowments and Glebe Measure 1976 for any diocese in respect of the diocesan glebe land of that diocese within the meaning of that Measure; or

(c) to any trust of property for purposes for which the property has been consecrated.

(3) A charity shall be deemed for the purposes of this Act 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 Act "permanent endowment" means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.

(4) References in this Act to a charity whose income from all sources does not in aggregate amount to more than a specified amount shall be construed—

(a) by reference to the gross revenues of the charity, or

(b) if the Commissioners so determine, by reference to the amount which they estimate to be the likely amount of those revenues,

but without (in either case) bringing into account anything for the yearly value of land occupied by the charity apart from the pecuniary income (if any) received from that land; and any question as to the application of any such reference to a charity shall be determined by the Commissioners, whose decision shall be final.

(5) The Commissioners may direct that for all or any of the purposes of this Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity.

[[F103](6) The Commissioners may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees shall be treated as a single charity.**]**

Textual Amendments

F102 Words in s. 96(2)(b) inserted (1.1.2001) by Church of England (Miscellaneous Provisions) Measure 2000 (No. 1), **s. 11**; Instrument dated 28.7.2000 made by the Archbishops of Canterbury and York

F103 S. 96(6) inserted (8.11.1995) by 1995 c. 48, **s. 1**

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Modifications etc. (not altering text)

C19 S. 96(2) modified (8.11.2006) by Charities Act 2006 (c. 50), **s. 78(2)**(3)79(1)(d)

Marginal Citations

M47 1894 c. 73.

M48 1976 No. 4.

97 General interpretation.

(1) In this Act, except in so far as the context otherwise requires—

"charitable purposes" means purposes which are exclusively charitable according to the law of England and Wales;

"charity trustees" means the persons having the general control and management of the administration of a charity;

"the Commissioners" means the Charity Commissioners for England and Wales;

"company" means a company formed and registered under the [M49]Companies Act 1985 or to which the provisions of that Act apply as they apply to such a company;

"the court" means the High Court and, within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court;

"financial year"—

(a) in relation to a charity which is a company, shall be construed in accordance with section 223 of the Companies Act 1985; and

(b) in relation to any other charity, shall be construed in accordance with regulations made by virtue of section 42(2) above;

but this definition is subject to the transitional provisions in section 99(4) below and Part II of Schedule 8 to this Act;

"gross income", in relation to charity, means its gross recorded income from all sources including special trusts;

"independent examiner", in relation to a charity, means such a person as is mentioned in section 43(3)(a) above;

"institution" includes any trust or undertaking;

[[F104]"members", in relation to a charity with a body of members distinct from the charity trustees, means any of those members;**]**

[[F104]"the Minister" means the Minister for the Cabinet Office;**]**

"the official custodian" means the official custodian for charities;

"permanent endowment" shall be construed in accordance with section 96(3) above;

[[F104]"principal regulator", in relation to an exempt charity, means the charity's principal regulator within the meaning of section 13 of the Charities Act 2006;**]**

"the register" means the register of charities kept under section 3 above and "registered" shall be construed accordingly;

"special trust" means property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property but a special trust shall not, by itself, constitute a charity for the purposes of Part VI of this Act;

[[F104]"the Tribunal" means the Charity Tribunal;**]**

"trusts" in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning.

(2) In this Act, except in so far as the context otherwise requires, "document" includes information recorded in any form, and, in relation to information recorded otherwise than in legible form—

(a) any reference to its production shall be construed as a reference to the furnishing of a copy of it in legible form; and

(b) any reference to the furnishing of a copy of, or extract from, it shall accordingly be construed as a reference to the furnishing of a copy of, or extract from, it in legible form.

(3) No vesting or transfer of any property in pursuance of any provision of Part IV or IX of this Act shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Textual Amendments

F104 Words in s. 97(1) inserted (8.11.2006) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 174(d)**

Marginal Citations

M49 1985 c. 6.

98 Consequential amendments and repeals.

(1) The enactments mentioned in Schedule 6 to this Act shall be amended as provided in that Schedule.

(2) The enactments mentioned in Schedule 7 to this Act are hereby repealed to the extent specified in the third column of the Schedule.

[F105]99 Commencement and transitional provisions.

. . . . . .

Textual Amendments

F105 S. 99 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 17** Group 4

100 Short title and extent.

(1) This Act may be cited as the Charities Act 1993.

(2) Subject to subsection (3) to (6) below, this Act extends only to England and Wales.

(3) Section 10 above and this section extend to the whole of the United Kingdom.

(4) Section 15(2) extends also to Northern Ireland.

(5) **[**[F106]Sections 70 and 71 and so much of section 86 as relates to those sections extend also to Scotland.**]**

(6) The amendments in Schedule 6 and the repeals in Schedule 7 have the same extent as the enactments to which they refer and section 98 above extends accordingly.

Textual Amendments

F106 S. 100(5) repealed (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **sch. 3 para. 9**; S.S.I. 2005/644, art. 2(1), sch. 1

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SCHEDULES

SCHEDULE 1

Section 1.

CONSTITUTION ETC. OF CHARITY COMMISSIONERS

1 (1) There shall be a Chief Charity Commissioner and two other commissioners.

(2) Two at least of the commissioners shall be persons who have a seven year general qualification within the meaning of section 71 of the [M50]Courts and Legal Services Act 1990.

(3) The chief commissioner and the other commissioners shall be appointed by the **[**[F107]Minister**]**, and shall be deemed for all purposes to be employed in the civil service of the Crown.

(4) There may be paid to each of the commissioners such salary and allowances as the **[**[F107]Minister**]** may with the approval of the Treasury determine.

(5) If at any time it appears to the **[**[F107]Minister**]** that there should be more than three commissioners, he may with the approval of the Treasury appoint not more than two additional commissioners.

Textual Amendments

F107 Word in Sch. 1 para. 1 substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(z)**

Marginal Citations

M50 1990 c. 41.

2 (1) The chief commissioner may, with the approval of the Treasury as to number and conditions of service, appoint such assistant commissioners and other officers and such employees as he thinks necessary for the proper discharge of the functions of the Commissioners and of the official custodian.

(2) There may be paid to officers and employees so appointed such salaries or remuneration as the Treasury may determine.

3 (1) The Commissioners may use an official seal for the authentication of documents, and their seal shall be officially and judicially noticed.

(2) The [M51]Documentary Evidence Act 1868, as amended by the [M52]Documentary Evidence Act 1882, shall have effect as if in the Schedule to the Act of 1868 the Commissioners were included in the first column and any commissioner or assistant commissioner and any officer authorised to act on behalf of the Commissioners were mentioned in the second column.

(3) The Commissioners shall have power to regulate their own procedure and, subject to any such regulations and to any directions of the chief commissioner, any one

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commissioner or any assistant commissioner may act for and in the name of the Commissioners.

(4) Where the Commissioners act as a board, then—

(a) if not more than four commissioners hold office for the time being, the quorum shall be two commissioners (of whom at least one must be a person having a qualification such as is mentioned in paragraph 1(2) above); and

(b) if five commissioners so hold office, the quorum shall be three commissioners (of whom at least one must be a person having such a qualification);

and in the case of an equality of votes the chief commissioner or in his absence the commissioner presiding shall have a second or casting vote.

(5) The Commissioners shall have power to act notwithstanding any vacancy in their number.

(6) It is hereby declared that the power of a commissioner or assistant commissioner to act for and in the name of the Commissioners in accordance with sub-paragraph (3) above may, in particular, be exercised in relation to functions of the Commissioners under sections 8, 18, 19 and 63 of this Act, including functions under sections 8,18 and 19 as applied by section 80(1).

Marginal Citations

M51 1868 c. 37.

M52 1882 c. 9.

4 Legal proceedings may be instituted by or against the Commissioners by the name of the Charity Commissioners for England and Wales, and shall not abate or be affected by any change in the persons who are the commissioners.

SCHEDULE 2

Sections 3 and 96.

EXEMPT CHARITIES

Modifications etc. (not altering text)

C20 Sch. 2 applied (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**
Sch. 2 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**

The following institutions, so far as they are charities, are exempt charities within the meaning of this Act, that is to say—

(a) any institution which, if the [M53]Charities Act 1960 had not been passed, would be exempted from the powers and jurisdiction, under the Charitable Trusts Acts 1853 to 1939, of the Commissioners or Minister of Education (apart from any power of the Commissioners or Minister to apply those Acts in whole or in part to charities otherwise exempt) by the terms of any enactment not contained in those Acts other than section 9 of the [M54]Places of Worship Registration Act 1855;

(b) the universities of Oxford, Cambridge, London, Durham and Newcastle, the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle, Queen

Mary and Westfield College in the University of London and the colleges of Winchester and Eton;

(c) any university, university college, or institution connected with a university or university college, which Her Majesty declares by Order in Council to be an exempt charity for the purposes of this Act;

F108(d) . . . . . .

[F109(da) theQualifications and Curriculum Authority;]

F110(e) . . . . . .

[F111(f) the Qualifications, Curriculum and Assessment Authority for Wales;]

F110(g) . . . . . .

F112(h) . . . . . .

(i) a successor company to a higher education corporation (within the meaning of section 129(5) of the M55Education Reform Act 1988) at a time when an institution conducted by the company is for the time being designated under that section;

F112(j) . . . . . .

(k) the Board of Trustees of the Victoria and Albert Museum;

(l) the Board of Trustees of the Science Museum;

(m) the Board of Trustees of the Armouries;

(n) the Board of Trustees of the Royal Botanic Gardens, Kew;

(o) the Board of Trustees of the National Museums and Galleries on Merseyside;

(p) the trustees of the British Museum and the trustees of the Natural History Museum;

(q) the Board of Trustees of the National Gallery;

(r) the Board of Trustees of the Tate Gallery ;

(s) the Board of Trustees of the National Portrait Gallery;

(t) the Board of Trustees of the Wallace Collection;

(u) the Trustees of the Imperial War Museum;

(v) the Trustees of the National Maritime Museum;

(w) any institution which is administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of or in connection with, the last-mentioned institution;

(x) the Church Commissioners and any institution which is administered by them;

(y) any registered society within the meaning of the M56Industrial and Provident Societies Act 1965 and any registered society or branch within the meaning of the M57Friendly Societies Act 1974;

(z) the Board of Governors of the Museum of London;

(za) the British Library Board.

[F113(zb) the National Lottery Charities Board.]

Textual Amendments

F108 Sch. 2 para. (d) repealed (1.9.1999) by 1998 c. 31, s. 140(3), **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

F109 Sch. 2 para. (da) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 7(a)**; S.I. 1997/1468, art. 2(3), **Sch. 1 Pt. III** (with Sch. 2 Pt. II para. 5)

F110 Sch. 2 paras. (e)(g) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), Sch. 38 Pt. I, **Sch. 39** (with s. 1(4), Sch. 39)

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

F111 Sch. 2 para. (f) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 7(b)**; S.I. 1997/1468, art. 2(3), **Sch. 1 Pt. II**
F112 Sch. 2 paras. (h)(j) repealed (1.1.1999) by 1998 c. 30, s. 44(2), **Sch. 4** (with s. 42(8)); S.I. 1998/3237, **art. 2(2)**
F113 Sch. 2 para. (zb) inserted (21.12.1993) by 1993 c. 39, s. 37, **Sch. 5 para. 12**; S.I. 1993/2632, **art. 3**

Marginal Citations
M53 1960 c. 58.
M54 1855 c. 81.
M55 1988 c. 40.
M56 1965 c. 12.
M57 1974 c. 46.

Textual Amendments
F108 Sch. 2 para. (d) repealed (1.9.1999) by 1998 c. 31, s. 140(3), **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
F109 Sch. 2 para. (da) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 7(a)**; S.I. 1997/1468, art. 2(3), **Sch. 1 Pt. III** (with Sch. 2 Pt. II para. 5)
F110 Sch. 2 paras. (e)(g) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), Sch. 38 Pt. I, **Sch. 39** (with s. 1(4), Sch. 39)
F111 Sch. 2 para. (f) substituted (1.10.1997) by 1997 c. 44, s. 57(1), **Sch. 7 para. 7(b)**; S.I. 1997/1468, art. 2(3), **Sch. 1 Pt. II**
F112 Sch. 2 paras. (h)(j) repealed (1.1.1999) by 1998 c. 30, s. 44(2), **Sch. 4** (with s. 42(8)); S.I. 1998/3237, **art. 2(2)**
F113 Sch. 2 para. (zb) inserted (21.12.1993) by 1993 c. 39, s. 37, **Sch. 5 para. 12**; S.I. 1993/2632, **art. 3**

Marginal Citations
M53 1960 c. 58.
M54 1855 c. 81.
M55 1988 c. 40.
M56 1965 c. 12.
M57 1974 c. 46.

SCHEDULE 3

Section 13.

ENLARGEMENT OF AREAS OF LOCAL CHARITIES

Existing area	Permissible enlargement
1. Greater London	Any area comprising Greater London.
2. Any area in Greater London and not in, or partly in, the City of London.	(i) Any area in Greater London and not in, or partly in, the City of London; (ii) the area of Greater London exclusive of the City of London; (iii) any area comprising the area of Greater London, exclusive of the City of London; (iv) any area partly in Greater London and partly in any adjacent parish or parishes (civil

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	or ecclesiastical), and not partly in the City of London.
3. A district	Any area comprising the district
[F114 3A. A Welsh county or county borough]	[F114 Any area comprising that county or county borough]
4. Any area in a district	(i) Any area in the district; (ii) the district; (iii) any area comprising the district; (iv) any area partly in the district and partly in any adjacent district [F115 or in any adjacent Welsh county or county borough]
[F116 4A . Any area in a Welsh county or county borough]	[F116 (i) Any area in the county or county borough ;] [F116 (ii) the county or county borough ;] [F116 (iii) any area comprising the county or county borough ;] [F116 (iv) any area partly in the county or county borough and partly in any adjacent Welsh county or county borough or in any adjacent district .]
5. A parish (civil or ecclesiastical), or two or more parishes, or an area in a parish, or partly in each of two or more parishes.	Any area not extending beyond the parish or parishes comprising or adjacent to the area in column 1.
6. In Wales, a community, or two or more communities, or an area in a community, or partly in each of two or more communities.	Any area not extending beyond the community or communities comprising or adjacent to the area in column 1.

Textual Amendments

F114 Sch. 3 para. 3A inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(5)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F115 Words in Sch. 3 para. 4(iv) added (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(6)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F116 Sch. 3 para. 4A inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 101(6)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

SCHEDULE 4

Section 15.

COURT'S JURISDICTION OVER CERTAIN CHARITIES GOVERNED BY OR UNDER STATUTE

1 The court may by virtue of section 15(3) of this Act exercise its jurisdiction with respect to charities—

(a) in relation to charities established or regulated by any provision of the [M58]Seamen's Fund Winding-up Act 1851 which is repealed by the [M59]Charities Act 1960;

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(b) in relation to charities established or regulated by schemes under the Endowed Schools Act 1869 to 1948, or section 75 of the [M60]Elementary Education Act 1870 or by schemes given effect under section 2 of the [M61]Education Act 1973 **[**[F117]or section 554 of the Education Act 1996**]**;

[F118](c) . . . . . .

(d) in relation to fuel allotments, that is to say, land which, by any enactment relating to inclosure or any instrument having effect under such an enactment, is vested in trustees upon trust that the land or the rents and profits of the land shall be used for the purpose of providing poor persons with fuel;

(e) in relation to charities established or regulated by any provision of the [M62]Municipal Corporations Act 1883 which is repealed by the Charities Act 1960 or by any scheme having effect under any such provision;

(f) in relation to charities regulated by schemes under the [M63]London Government Act 1899;

(g) in relation to charities established or regulated by orders or regulations under section 2 of the [M64]Regimental Charitable Funds Act 1935;

(h) in relation to charities regulated by section 79 of this Act, or by any such order as is mentioned in that section.

Textual Amendments

F117 Words in Sch. 4 para. 1(b) added (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 121** (with s. 1(4), Sch. 39)

F118 Sch. 4 para. 1(c) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. III**

Marginal Citations

M58 1851 c. 102.
M59 1960 c. 58.
M60 1870 c. 75.
M61 1973 c. 16.
M62 1883 c. 18.
M63 1899 c. 14.
M64 1935 c. 11.

2 Notwithstanding anything in section 19 of the [M65]Commons Act 1876 a scheme for the administration of a fuel allotment (within the meaning of the foregoing paragraph) may provide—

(a) for the sale or letting of the allotment or any part thereof, for the discharge of the land sold or let from any restrictions as to the use thereof imposed by or under any enactment relating to inclosure and for the application of the sums payable to the trustees of the allotment in respect of the sale or lease; or

(b) for the exchange of the allotment or any part thereof for other land, for the discharge as aforesaid of the land given in exchange by the said trustees, and for the application of any money payable to the said trustees for equality of exchange; or

(c) for the use of the allotment or any part thereof for any purposes specified in the scheme.

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Marginal Citations

M65 1876 c. 56.

SCHEDULE 5

Section 36(2).

MEANING OF "CONNECTED PERSON" FOR PURPOSES OF SECTION 36(2)

1 In section 36(2) of this Act "connected person", in relation to a charity, means—

(a) a charity trustee or trustee for the charity;

(b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity);

(c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor;

(d) an officer, agent or employee of the charity;

(e) the spouse **[**[F119]or civil partner**]** of any person falling within any of sub-paragraphs (a) to (d) above;

(f) an institution which is controlled—

(i) by any person falling within any of sub-paragraphs (a) to (e) above, or

(ii) by two or more such persons taken together; or

(g) a body corporate in which—

(i) any connected person falling within any of sub-paragraphs (a) to (f) above has a substantial interest, or

(ii) two or more such persons, taken together, have a substantial interest.

Textual Amendments

F119 Words in Sch. 5 para. 1 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 147**; S.I. 2005/3175, art. 2(2)

2 (1) In paragraph 1(c) above "child" includes a stepchild and an illegitimate child.

(2) For the purposes of paragraph 1(e) above a person living with another as that person's husband or wife shall be treated as that person's spouse.

3 For the purposes of paragraph 1(f) above a person controls an institution if he is able to secure that the affairs of the institution are conducted in accordance with his wishes.

4 (1) For the purposes of paragraph 1(g) above any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question—

(a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or

(b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

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(2) The rules set out in Part I of Schedule 13 to the [M66]Companies Act 1985 (rules for interpretation of certain provisions of that Act) shall apply for the purposes of sub-paragraph (1) above as they apply for the purposes of section 346(4) of that Act ("connected persons" etc).

(3) In this paragraph "equity share capital" and "share" have the same meaning as in that Act.

Marginal Citations

M66 1985 c. 6.

SCHEDULE 6

Section 98(1).

CONSEQUENTIAL AMENDMENTS

The Places of Worship Registration Act 1855 (c.81)

1 (1) Section 9 of the Places of Worship Registration Act 1855 shall be amended as follows.

(2) For "subsection (4) of section four of the Charities Act 1960" there shall be substituted " subsection (5) of section 3 of the Charities Act 1993 ".

(3) At the end there shall be added—

"(2) Section 89 of the said Act of 1993 (provisions as to orders under that Act) shall apply to any order under paragraph (b) above as it applies to orders under that Act."

The Open Spaces Act 1906 (c.25)

2 At the end of section 4 of the Open Spaces Act 1906 there shall be added—

"(4) Section 89 of the Charities Act 1993 (provisions as to orders under that Act) shall apply to any order of the Charity Commissioners under this section as it applies to orders made by them under that Act."

The New Parishes Measure 1943 (No. 1)

3 (1) The New Parishes Measure 1943 shall be amended as follows.

(2) In subsection (1)(b) of section 14 for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

(3) At the end of that section there shall be added—

"(4) Section 89 of the Charities Act 1993 (provisions as to orders under that Act) shall apply to any order under section (1)(b) above as it applies to orders under that Act."

(4) In section 31 for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

The Clergy Pensions Measure 1961 (No. 3)

4 In section 33 of the Clergy Pensions Measure 1961 for "section 32 of the Charities Act 1992" and "the Charities Act 1960" there shall be substituted respectively " section 36 of the Charities Act 1993 " and " that Act ".

The Finance Act 1963 (c.25)

F120 5 . . . . . .

Textual Amendments

F120 Sch. 6 para. 5 repealed (27.7.1997 with effect in relation to instruments executed on or after 6.2.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. V(5)** Note 1

The Cathedrals Measure 1963 (No. 2)

6 (1) The Cathedrals Measure 1963 shall be amended as follows.

(2) In section 20(2)(iii) for "section 32 of the Charities Act 1992" there shall be substituted " section 36 of the Charities Act 1993 ".

(3) In section 51 for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

The Incumbents and Churchwardens (Trusts) Measure 1964 (No.2)

7 In section 1 of the Incumbents and Churchwardens (Trusts) Measure 1964 for "subsection (3) of section forty-five of the Charities Act 1960" there shall be substituted " section 96(3) of the Charities Act 1993 ".

The Leasehold Reform Act 1967 (c.88)

8 In section 23(4) of the Leasehold Reform Act 1967 for "section 32 of the Charities Act 1992" there shall be substituted " section 36 of the Charities Act 1993 ".

The Greater London Council (General Powers) Act 1968 (c.xxxix)

9 In section 43 of the Greater London Council(General Powers) Act 1968, in the definition of "night cafeg", for "section 4 of the Charities Act 1960" and "subsection (4) thereof" there shall be substituted respectively " section 3 of the Charities Act 1993 " and " subsection (5) thereof ".

The Redundant Churches and other Religious Buildings Act 1969 (c.22)

10 (1) The Redundant Churches and other Religious Buildings Act 1969 shall be amended as follows.

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(2) In subsection (6) of section 4 for "section 18 of the Charities Act 1960" there shall be substituted " section 16 of the Charities Act 1993 ".

(3) In subsection (7) of that section for "subsection (4) of section 18 of that Act" there shall be substituted " subsection (4) of section 16 of that Act ".

(4) In subsection (8) of that section for "section 18 of the Charities Act 1960" and (where next occurring) "section 18" there shall be substituted respectively " section 16 of the Charities Act 1993 " and " section 16 " and for "section 21" there shall be substituted " section 20 ".

(5) In subsection (13) of that section for "sections 45 and 46 of the Charities Act 1960" there shall be substituted " sections 96 and 97 of the Charities Act 1993 ".

(6) In section 7(2) for "the Charities Act 1960" and "section 23" there shall be substituted respectively " the Charities Act 1993 " and " section 26 ".

The Sharing of Church Buildings Act 1969 (c.38)

11 (1) The Sharing of Church Buildings Act 1969 shall be amended as follows.

(2) In section 2(4) for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

(3) In subsection (1) of section 8 for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

(4) In subsection (2) of that section for "section 45(2) of the Charities Act 1960" there shall be substituted " section 96(2) of the Charities Act 1993 ".

(5) In subsection (3) of that section for "Section 32 of the Charities Act 1992" there shall be substituted " Section 36 of the Charities Act 1993 ".

The Local Government Act 1972 (c.70)

12 (1) The Local Government Act 1972 shall be amended as follows.

(2) In sections 11(3)(c) and 29(3)(c) for "section 37 of the Charities Act 1960" there shall be substituted " section 79 of the Charities Act 1993 ".

(3) In sections 123(6) and 127(4) for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

(4) In section 131(3) for "section 32 of the Charities Act 1992" and "section 32(9)(a) of that Act" there shall be substituted respectively " section 36 of the Charities Act 1993 " and " section 36(9)(a) of that Act ".

The Fire Precautions (Loans) Act 1973 (c.11)

13 In section 1(7) of the Fire Precautions (Loans) Act 1973 for "Section 34 of the Charities Act 1992" there shall be substituted " Section 38 of the Charities Act 1993 ".

The Theatres Trust Act 1976 (c.27)

14 In section 2(2)(d) of the Theatres Trust Act 1976 for "sections 32 and 34 of the Charities Act 1992" there shall be substituted " sections 36 and 38 of the Charities Act 1993 ".

The Interpretation Act 1978 (c.30)

15 In Schedule 1 to the Interpretation Act 1978, in the definition of "Charity Commissioners" for "section 1 of the Charities Act 1960" there shall be substituted " section 1 of the Charities Act 1993 ".

The Reserve Forces Act 1980 (c.9)

F121 16 . . . . . .

Textual Amendments

F121 Sch. 6 para. 16 repealed (1.4.1997) by 1996 c. 14, s. 131(2), **Sch. 11**; (with s.. 72(5)); S.I. 1997/305, **art. 2(1)**

The Disused Burial Grounds (Amendment) Act 1981 (c.18)

17 In section 6 of the Disused Burial Grounds (Amendment) Act 1981 for "section 13(5) of the Charities Act 1960" there shall be substituted " section 13(5) of the Charities Act 1993 ".

The Pastoral Measure 1983 (No. 1)

18 (1) The Pastoral Measure 1983 shall be amended as follows.

(2) In section 55(1) for "the Charities Act 1960" and "section 45(2)(b)" there shall be substituted " the Charities Act 1993 " and " section 96(2)(c) ".

(3) In section 63(3) for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ".

(4) In section 87(1) for "section 45 of the Charities Act 1960" there shall be substituted " section 96 of the Charities Act 1993 ".

(5) In paragraphs 11(6) and 16(1)(e) of Schedule 3 for "section 18 of the Charities Act 1960" there shall be substituted " section 16 of the Charities Act 1993 ".

The Rates Act 1984 (c.33)

19 In section 3(9) of the Rates Act 1984 for "section 4 of the Charities Act 1960" there shall be substituted " section 3 of the Charities Act 1993 ".

The Companies Act 1985 (c.6)

20 (1) The Companies Act 1985 shall be amended as follows.

(2) In sections 35(4) and 35A(6) for "section 30B(1) of the Charities Act 1960" there shall be substituted " section 65(1) of the Charities Act 1993 ".

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(3) In section 209(1)(c) and paragraph 11(b) of Schedule 13 after "the Charities Act 1960" there shall be inserted " or section 24 or 25 of the Charities Act 1993 ".

The Housing Associations Act 1985 (c.69)

21 (1) The Housing Associations Act 1985 shall be amended as follows.

(2) In section 10(1) for "sections 32 and 34 of the Charities Act 1992" there shall be substituted " sections 36 and 38 of the Charities Act 1993 ".

[[F122](3) In section 26(2) for the words from "section 8" onwards there shall be substituted "sections 41 to 45 of the Charities Act 1993 (charity accounts)".**]**

(4) In section 35(2)(c) for "section 32 of the Charities Act 1992" there shall be substituted " section 36 of the Charities Act 1993 ".

(5) In section 38—

(a) in paragraph (a) for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 ";

[F123](b) . . . . . .

Textual Amendments

F122 Sch. 6 para. 21(3) repealed (E.W.) (1.10.1996) by 1996 c. 52, s. 227, **Sch. 19 Pt. I**; S.I. 1996/2402, **art. 3(a)**

F123 Sch. 6 para. 21(5)(b) repealed (1.10.1996) by S.I. 1996/2325, art. 4(1)-(3), **Sch. 1 Pt. I**

Commencement Information

I3 Sch. 6 para. 21 wholly in force at 1.3.1996; Sch. 6 para. 21(1)(2)(4)(5) in force at 1.8.1993, see s. 99(2); Sch. 6 para. 21(3) in force at 1.3.1996 by S.I. 1995/2695, **art. 2**

The Financial Services Act 1986 (c.60)

22 In section 45(1)(j) of the Financial Services Act 1986 after "the Charities Act 1960" there shall be inserted " , section 24 or 25 of the Charities Act 1993 ".

The Coal Industry Act 1987 (c.3)

23 (1) In section 5 of the Coal Industry Act 1987 for subsection (8) there shall be substituted—

"(8) Sections 16(3), (9), (11) to (14), 17(1) to (5) and (7) and 20 of the Charities Act 1993 shall apply in relation to the powers of the Charity Commissioners and the making of schemes under this section as they apply in relation to their powers and the making of schemes under that Act and sections 89, 91 and 92 of that Act shall apply to orders and decisions under this section as they apply to orders and decisions under that Act."

(2) In subsection (8A) of that section for "section 29" (in both places) there shall be substituted " section 17 ".

The Reverter of Sites Act 1987 (c.15)

24 In section 4(4) of the Reverter of Sites Act 1987 for "sections 40, 40A and 42 of the Charities Act 1960" there shall be substituted " sections 89, 91 and 92 of the Charities Act 1993 ".

The Income and Corporation Taxes Act 1988 (c.1)

25 In Schedule 20 to the Income and Corporation Taxes Act 1988—

(a) in paragraph 3 after "the Charities Act 1960" there shall be inserted " , section 24 of the Charities Act 1993 ";

(b) in paragraph 3A after "the Charities Act 1960" there shall be inserted " or section 25 of the Charities Act 1993 ".

The Courts and Legal Services Act 1990 (c.41)

26 In Schedule 11 to the Courts and Legal Services Act 1990, in the reference to a Charity Commissioner, for "under the First Schedule to the Charities Act 1960" there shall be substituted " as provided in Schedule 1 to the Charities Act 1993 ".

The London Local Authorities Act 1990 (c.vii)

F124 27 . . . . . .

Textual Amendments

F124 Sch. 6 para. 27 repealed (24.11.2005) by Licensing Act 2003 (c. 17), s. 201(2), **Sch. 7** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2) (with art. 4)

The London Local Authorities Act 1991 (c.xiii)

28 In section 4 of the London Local Authorities Act 1991, in the definition of "establishment for special treatment", for "section 4 of the Charities Act 1960" and "subsection (4) of that section" there shall be substituted respectively " section 3 of the Charities Act 1993 " and " subsection (5) of that section ".

The Charities Act 1992 (c.41)

29 (1) The Charities Act 1992 shall be amended as follows.

(2) In section 29(2)(b) after "Act" there shall be inserted " or section 18 of the Charities Act 1993 ".

(3) In section 30(1)(b) after "Act" there shall be inserted " or section 22(1) of the Charities Act 1993 ".

(4) In section 30(3)(a) after "Act" there shall be inserted " or section 18 of the Charities Act 1993 ".

(5) In section 58(1), in the definition of "charity" for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 " and in the definition of "company" for the words after "section" there shall be substituted " 97 of the Charities Act 1993 ".

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Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(6) In section 63(2) for "section 4 of the Charities Act 1960" there shall be substituted " section 3 of the Charities Act 1993 ".

(7) In section 72 for subsection (5) there shall be substituted—

"(5) Section 89(1), (2) and (4) of the Charities Act 1993 (provisions as to orders made by the Commissioners) shall apply to an order made by them under this section as it applies to an order made by them under that Act.

(6) In this section "charity" and "charitable purposes" have the same meaning as in that Act."

(8) In section 74 after subsection (3) there shall be inserted—

"(3A) Any person who knowingly or recklessly provides the Commissioners with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided in circumstances in which he intends, or could reasonably be expected to know, that it would be used by them for the purpose of discharging their functions under section 72.

(3B) A person guilty of an offence under subsection (3A) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction or indictment, to imprisonment for a term not exceeding two years or to a fine, or both."

Other amendments

30 In the following provisions for "the Charities Act 1960" there shall be substituted " the Charities Act 1993 "

Textual Amendments

F125 Words in Sch. 6 para. 30 repealed (17.12.1996) by 1996 c. 53, s. 147, **Sch. 3 Pt. I**; S.I. 1996/2842, **art. 3**

Marginal Citations

M67 1973 c. 32
M68 1974 c. 39
M69 1976 c. 80
M70 1977 c. 42
M71 1977 c. 49
M72 1978 No. 1
M73 1979 c. 46
M74 1984 c. xxvii
M75 1985 c. 51
M76 1985 c. 68
M77 1987 c. 31
M78 1988 c. 40
M79 1988 c. 48
M80 1988 c. 50
M81 1988 c. xxiii
M82 1988 c. xxiv

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SCHEDULE 7

Section 98(2).

REPEALS

Chapter	Short title	Extent of repeal
35 & 36 Vic. c.24.	The Charitable Trustees Incorporation Act 1872.	The whole Act so far as unrepealed.
10 & 11 Geo.5. c.16.	The Imperial War Museum Act 1920.	Section 5.
24 &25 Geo.5. c.43.	The National Maritime Museum Act 1934.	Section 7.
8 & 9 Eliz.2 c.58.	The Charities Act 1960	The whole Act so far as unrepealed except— section 28(9) section 35(6) section 38(3) to (5) section 39(2) sections 48 and 49 Schedule 6.
1963 c.33.	The London Government Act 1963.	Section 81(9)(b) and (c).
1963 c.xi.	The Universities of Durham and Newcastle-upon-Tyne Act 1963.	Section 10.
1965 c.17.	The Museum of London Act 1965.	Section 11.
1972 c.54.	The British Library Act 1972.	Section 4(2).
1972 c.70.	The Local Government Act 1972.	Section 210(9).
1973 c.16.	The Education Act 1973.	In section 2(7) the words from “but” onwards. In Schedule 1, paragraph 1(1) and (3).
1976 No.4.	The Endowments and Glebe Measure 1976.	Section 44.
1983 c.47.	The National Heritage Act 1983.	In Schedule 5, paragraph 4.
1985 c.9.	The Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2 the entry relating to the Charities Act 1960.
1985 c.20.	The Charities Act 1985.	Section 1.
1986 c.60.	The Financial Services Act 1986.	In Schedule 16, paragraph 1.

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1988 c.40.	The Education Reform Act 1988.	In Schedule 12, paragraphs 9, 10, 63 and 64.
1989 c.40.	The Companies Act 1989.	Section 111.
1989 c.xiii.	The Queen Mary and Westfield College Act 1989.	Section 10.
1990 c.41.	The Courts and Legal Services Act 1990.	In Schedule 10, paragraph 14.
1992 c. 13.	The Further and Higher Education Act 1992.	In Schedule 8, paragraph 69.
1992 c.41.	The Charities Act 1992.	The whole of Part I except— section 1(1) and (4) sections 29 and 30 section 36 sections 49 and 50 Section 75(b). Section 76(1)(a). In section 77, subsections (2)(a), (b) and (c) and in subsection (4) the figures 20, 22 and 23. Section 79(4) and (5). Schedules 1 to 4. In Schedule 6, paragraph 13(2). In Schedule 7, the entries relating to section 8 of the Charities Act 1960 and (so far as not in force at the date specified in section 99(1) of this Act) the Charities Act 1985.
1992 c.44.	The Museums and Galleries Act 1992.	In Schedule 8, paragraphs 4 and 10. In Schedule 9, the entry relating to the Charities Act 1960.

[F126]SCHEDULE 8

Section 99(3), (4).

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Textual Amendments

F126 Sch. 8 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 17** Group 4

TABLE OF DERIVATIONS

Note: The following abbreviations are used in this Table—

1872	The Charitable Trustees Incorporation Act 1872 (c.24)
1960	The Charities Act 1960 (c.58)
1992	The Charities Act 1992 (c.41)

Section of 1993 Act	Derivation
1	1960 s.1; 1992 Sch.3, para.1.
2	1960 s.3.
3	1960 ss.4, 43(1), 45(6); 1992 s.2, Sch.1
4	1960 ss.5, 43(1).
5	1992 s.3.
6	1992 s.4.
7	1992 s.5.
8	1960 s.6; 1992 s.6.
9	1960 s.7; 1992 s.7.
10	1992 s.52.
11	1992 s.54.
12	1992 s.53.
13	1960 s.13.
14	1960 s.14; 1992 s.15.
15	1960 s.15; Northern Ireland (Temporary Provisions) Act 1972 (c.22) s.1(3); Northern Ireland Constitution Act 1973 (c.36) Sch.5, para.1; Northern Ireland Act 1974 (c.28) Sch.1, para.1(7).
16	1960 s.18; Local Government Act 1972 (c.70) s.179(1)(4); 1992 s.13, Sch.3, para.6.
17	1960 s.19; 1992 Sch.3, para.7.
18	1960 s.20; 1992 s.8, Sch.1.

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19	1960 ss.20A, 43(1); 1992 s.9.
20	1960 s.21; Local Government Act 1972 (c.70) s.179(1)(4); 1992 Sch.3, para.8.
21	1960 s.16; 1992 Sch.3, para.4.
22	1960 s.17; 1992 Sch.3, para.5.
23	1992 s.31.
24	1960 s.22.
25	1960 s.22A; 1992 s.16.
26	1960 s.23.
27	1960 s.23A; 1992 s.17.
28	1992 s.18; Banking Coordination (Second Council Directive) Regulations 1992 (S.I.1992/3218) Sch.10, para.33.
29	1960 s.24.
30	1960 ss.25, 43(1).
31	1960 s.26.
32	1960 s.26A; 1992 s.28.
33	1960 s.28(1) to (8); 1992 Sch.3, para.10.
34	1960 s.28A; 1992 s.11.
35	1960 s.21A; 1992 s.14.
36	1992 s.32.
37	1992 s.33.
38	1992 s.34.
39	1992 s.35.
40	1992 s.37(1) to (4).
41	1992 s.19.
42	1992 s.20.
43	1992 s.21.
44	1992 s.22.
45	1992 s.23.
46	1960 s.32(1)(2); 1992 s.24, Sch.3, para.13.
47	1992 s.25.
48	1992 s.26.
49	1992 s.27.
50	1872 s.1; 1992 Sch.4, para.1.
51	1872 s.2; 1992 Sch.4, para.2.

52	1872 s.3; 1992 Sch.4, para.3.
53	1872 s.4; 1992 Sch.4, para.4.
54	1872 s.5; 1992 Sch.4, para.5.
55	1872 s.6.
56	1872 s.6A; 1992 Sch.4, para.6.
57	1872 s.7; 1992 Sch.4, para.7.
58	1872 s.8; 1992 Sch.4, para.8.
59	1872 s.10.
60	1872 s.12; 1992 Sch.4, para.9 (part).
61	1872 s.12A; 1992 Sch.4, para.9 (part).
62	1872 s.14; 1992 Sch.4, para.10.
63	1960 s.30; Companies Act 1989 (c.40) s.111(1); 1992 s.10.
64	1960 s.30A; Companies Act 1989 (c.40) s. 111(1); 1992 s.40.
65	1960 s.30B; Companies Act 1989 (c.40) s.111(1).
66	1960 s.30BA; 1992 s.41.
67	1960 s.30BB; 1992 s.42.
68	1960 s.30C; Companies Act 1989 (c.40) s.111(1); 1992 Sch.3, para.11.
69	1960 s.8; 1992 Sch.3, para.2; Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991 (S.I. 1991/1997).
70	1992 s.38.
71	1992 s.39.
72	1992 s.45.
73	1992 s.46.
74	1992 s.43.
75	1992 s.44.
76	1960 s.10; London Government Act 1963 (c.33) s.81(9)(b); Local Government Act 1972 (c.70) s.210(9)(a).
77	1960 s.11; London Government Act 1963 (c.33) s.81(9)(b); Local Government Act 1972 (c.70) s.210(9)(b).

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78	1960 s.12; Local Government Act 1972 (c.70) ss.179(1)(4), 210(9)(c).
79	1960 s.37; London Government Act 1963 (c.33) s.4(4); Local Government Act 1972 (c.70) ss.179(1)(4), 210(9)(e); Education Reform Act 1988 (c.40) Sch.12, para.9.
80	1992 s.12.
81	1960 s.33.
82	1960 s.34; 1992 Sch.3, para.14.
83	1960 s.35.
84	1960 s.9; 1992 s.25(2), Sch.3, para.3.
85	1992 s.51.
86	1960 ss.4(8B), 18(14), 43(2A)(3); Education Act 1973 (c.16) Sch.1 para.1(1); 1992 ss.2(7), 13(6), 77, Sch.3, para.17.
87	1992 s.56(1)(2)(6).
88	1960 s.41; 1992 s.56(3)(6), Sch.3, para.16.
89	1960 s.40; 1992 s.56(4)(5)(6).
90	1992 s.57.
91	1960 s.40A; 1992 s.76, Sch.3, para.15.
92	1960 s.42.
93	1960 s.36.
94	1992 s.55.
95	1992 s.75.
96	1960 s.45(1) to (5); Local Government Act 1972 (c.70) s.179(1)(4); 1992 s.1(2), Sch.3, para.18; Endowments and Glebe Measure 1976 (No.4) s.44.
97	1960 ss.16(5) (part), 46; Companies Act 1989 (c.40) s.111(2); 1992 s.1(1) to (4).
98	
99	
100	1960 s.49(2)(c); 1992 s.79(3)(4)(5).
Sch.1	1960 Sch.1; Courts and Legal Services Act 1990 (c.41) Sch.10, para.14; 1992 s.12(1), Sch.3, paras.20, 21.
Sch.2	
para.(a)	1960 Sch.2, para.(a).
para.(b)	1960 Sch.2, para.(b); Universities of Durham and Newcastle-upon-Tyne Act 1963 (c.xi)

	s.18; Queen Mary and Westfield College Act 1989 (c.xiii) s.10.
para.(c)	1960 Sch.2, para.(c).
paras.(d) to (i)	Education Reform Act 1988 (c.40) Sch.12, paras.10, 63, 64.
para.(j)	Further and Higher Education Act 1992 (c.13) Sch.8, para.69.
paras.(k) to (n)	1960 Sch.2, paras.(ca) to (cd); National Heritage Act 1983 (c.47) Sch.5 para.4.
para.(o)	Local Government Reorganisation (Miscellaneous Provisions) Order 1990. (S.I. 1990/1765) art.3(1)(b).
para.(p)	1960 Sch.2, para.(d); Museums and Galleries Act 1992 (c.44) Sch.8, para.4.
paras.(q) to (t)	1960 Sch.2, paras.(ce) to (ch); Museums and Galleries Act 1992 (c.44) Sch.8, para.10.
para.(u)	Imperial War Museum Act 1920 (c.16) s.5.
para.(v)	National Maritime Museum Act 1934 (c.43) s.7.
para.(w)	1960 Sch.2 para.(e); Education Reform Act 1988 (c.40) Sch.12 paras.10, 63, 64; Further and Higher Education Act 1992 (c.13) Sch.8, para.69.
para.(x)(y)	1960 Sch.2 paras.(f)(g).
para.(z)	1960 Sch.2, para.(h); Museum of London Act 1965 (c.17) s.11.
para.(za)	1960 Sch.2 para.(i); British Library Act 1972 (c.54) s.4(2).
Sch.3	1960 Sch.3; London Government Act 1963 (c.33) s.81(9)(c); Local Government Act 1972 (c.70) ss.179(1)(4), 210(9)(f).
Sch.4	1960 Sch.4; Education Act 1973 (c.16) s.2(7).
Sch.5	1992 Sch.2.
Sch.6	1960 s.40(5) (as to paras.1(3), 2, 3(3)) and 1992 ss.54(1)(b)(3), 56(4)(5) (as to para.29 (7)(8)).
Sch.7	
Sch.8	

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Changes to legislation:
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