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)**

C7 Act: power to amend conferred (27.2.2007) by Charities Act 2006 (c. 50), **ss. 76**, 79(2); S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

PART I

THE [F1CHARITY COMMISSION] AND THE OFFICIAL CUSTODIAN FOR CHARITIES

Textual Amendments

F1 Words in Pt. I heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 97**; S.I. 2007/309, art. 2, Sch.

F2 1 The Charity Commisioners.

. . . . . .

Textual Amendments

F2 S. 1 repealed (27.2.2007) by Charities Act 2006 (c. 50), ss. 6(6), 79(2), **Sch. 9**; S.I. 2007/309, art. 2, Sch.

[F3 1A The Charity Commission

(1) There shall be a body corporate to be known as the Charity Commission for England and Wales (in this Act referred to as "the Commission").

(2) In Welsh the Commission shall be known as "Comisiwn Elusennau Cymru a Lloegr".

(3) The functions of the Commission shall be performed on behalf of the Crown.

(4) In the exercise of its functions the Commission shall not be subject to the direction or control of any Minister of the Crown or other government department.

(5) But subsection (4) above does not affect—
  (a) any provision made by or under any enactment;
  (b) any administrative controls exercised over the Commission's expenditure by the Treasury.

(6) The provisions of Schedule 1A to this Act shall have effect with respect to the Commission.]

Textual Amendments

F3 S. 1A inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 6(1)**, 79(2); S.I. 2007/309, art. 2, Sch.

[F4 1B The Commission's objectives

(1) The Commission has the objectives set out in subsection (2).

(2) The objectives are—
  (1) The public confidence objective.
  (2) The public benefit objective.
  (3) The compliance objective.
  (4) The charitable resources objective.

(5) The accountability objective.

(3) Those objectives are defined as follows—

(1) The public confidence objective is to increase public trust and confidence in charities.

(2) The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

(3) The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

(4) The charitable resources objective is to promote the effective use of charitable resources.

(5) The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

(4) In this section "the public benefit requirement" means the requirement in section 2(1)(b) of the Charities Act 2006 that a purpose falling within section 2(2) of that Act must be for the public benefit if it is to be a charitable purpose.

Textual Amendments

F4 Ss. 1B-1E inserted (27.2.2007 except for the insertion of ss. 1C(2) for specified purposes, 1C(5), 1E(3), 18.3.2008 for the insertion of s. 1E(3)) by Charities Act 2006 (c. 50), **ss. 7**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

1C The Commission's general functions

(1) The Commission has the general functions set out in subsection (2).

(2) The general functions are—

(1) Determining whether institutions are or are not charities.

(2) Encouraging and facilitating the better administration of charities.

(3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.

(4) Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.

(5) Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.

(6) Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives.

(3) The Commission's fifth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under section 3 below.

(4) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(5) In this section "public charitable collection" and "public collections certificate" have the same meanings as in Chapter 1 of Part 3 of the Charities Act 2006.

Textual Amendments

F4 Ss. 1B-1E inserted (27.2.2007 except for the insertion of ss. 1C(2) for specified purposes, 1C(5), 1E(3), 18.3.2008 for the insertion of s. 1E(3)) by Charities Act 2006 (c. 50), **ss. 7**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

1D The Commission's general duties

(1) The Commission has the general duties set out in subsection (2).

(2) The general duties are—

(1) So far as is reasonably practicable the Commission must, in performing its functions, act in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

(2) So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—

(a) all forms of charitable giving, and

(b) voluntary participation in charity work.

(3) In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.

(4) In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).

(5) In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.

(6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Textual Amendments

F4 Ss. 1B-1E inserted (27.2.2007 except for the insertion of ss. 1C(2) for specified purposes, 1C(5), 1E(3), 18.3.2008 for the insertion of s. 1E(3)) by Charities Act 2006 (c. 50), **ss. 7**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

1E The Commission's incidental powers

(1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2) However, nothing in this Act authorises the Commission—

(a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or

(b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not affect the operation of section 19A or 19B below (power of Commission to give directions as to action to be taken or as to application of charity property).**]**

Textual Amendments

F4 Ss. 1B-1E inserted (27.2.2007 except for the insertion of ss. 1C(2) for specified purposes, 1C(5), 1E(3), 18.3.2008 for the insertion of s. 1E(3)) by Charities Act 2006 (c. 50), **ss. 7**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

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.

[[F5](2) Such individual as the Commission 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 **[**[F6]Commission**]**, and his expenses (except those re-imbursed to him or recovered by him as trustee for any charity) shall be defrayed by the **[**[F6]Commission**]**.

(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 **[**[F7]member of the staff of the Commission**]** generally or specially authorised **[**[F8]by it**]** 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 [F9]...

[[F10](8) The Comptroller and Auditor General shall send to the Commission a copy of the accounts as certified by him together with his report on them.

(9) The Commission shall publish and lay before Parliament a copy of the documents sent to it under subsection (8) above.**]**

Textual Amendments

F5 S. 2(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 98(2)** (with Sch. 10 para. 19); S.I. 2007/309, art. 2, Sch.

F6 Words in s. 2(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 98(3)**; S.I. 2007/309, art. 2, Sch.

F7 Words in s. 2(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 98(4)(a)**; S.I. 2007/309, art. 2, Sch.

F8 Words in s. 2(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 98(4)(b)**; S.I. 2007/309, art. 2, Sch.

F9 Words in s. 2(7) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 98(5), **Sch. 9**; S.I. 2007/309, art. 2, Sch. (with art. 4)

F10 S. 2(8)(9) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 98(6)**; S.I. 2007/309, art. 2, Sch. (with art. 4)

F11[F11PART 1A

THE CHARITY TRIBUNAL

Textual Amendments

F11 Pt. 1A inserted (27.2.2007 for the insertion of ss. 2B(1)-(4)(8)(9), 2C(5)(b) for specified purposes, 18.3.2008 in so far as not already in force) by Charities Act 2006 (c. 50), **ss. 8(1)**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch. (with art. 3)

2A The Charity Tribunal

(1) There shall be a tribunal to be known as the Charity Tribunal (in this Act referred to as "the Tribunal").

(2) In Welsh the Tribunal shall be known as "Tribiwnlys Elusennau".

(3) The provisions of Schedule 1B to this Act shall have effect with respect to the constitution of the Tribunal and other matters relating to it.

(4) The Tribunal shall have jurisdiction to hear and determine—

(a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission, and

(b) such matters as may be referred to the Tribunal in accordance with Schedule 1D to this Act by the Commission or the Attorney General.

(5) Such appeals, applications and matters shall be heard and determined by the Tribunal in accordance with those Schedules, or any such enactment, taken with section 2B below and rules made under that section.

2B Practice and procedure

(1) The Lord Chancellor may make rules—

(a) regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it;
(b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.

(2) Rules under subsection (1)(a) above may, in particular, make provision—
(a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);
(b) specifying the period following the Commission's final decision, direction or order within which such appeals or applications may be made;
(c) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission;
(d) specifying the manner in which appeals, applications or references to the Tribunal are to be made.

(3) Rules under subsection (1)(b) above may, in particular, make provision—
(a) for the President or a legal member of the Tribunal (see paragraph 1(2)(b) of Schedule 1B to this Act) to determine preliminary, interlocutory or ancillary matters;
(b) for matters to be determined without an oral hearing in specified circumstances;
(c) for the Tribunal to deal with urgent cases expeditiously;
(d) about the disclosure of documents;
(e) about evidence;
(f) about the admission of members of the public to proceedings;
(g) about the representation of parties to proceedings;
(h) about the withdrawal of appeals, applications or references;
(i) about the recording and promulgation of decisions;
(j) about the award of costs.

(4) Rules under subsection (1)(a) or (b) above may confer a discretion on—
(a) the Tribunal,
(b) a member of the Tribunal, or
(c) any other person.

(5) The Tribunal may award costs only in accordance with subsections (6) and (7) below.

(6) If the Tribunal considers that any party to proceedings before it has acted vexatiously, frivolously or unreasonably, the Tribunal may order that party to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.

(7) If the Tribunal considers that a decision, direction or order of the Commission which is the subject of proceedings before it was unreasonable, the Tribunal may order the Commission to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.

(8) Rules of the Lord Chancellor under this section—
(a) shall be made by statutory instrument, and
(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(9) Section 86(3) below applies in relation to rules of the Lord Chancellor under this section as it applies in relation to regulations and orders of the Minister under this Act.

2C Appeal from Tribunal

(1) A party to proceedings before the Tribunal may appeal to the High Court against a decision of the Tribunal.

(2) Subject to subsection (3) below, an appeal may be brought under this section against a decision of the Tribunal only on a point of law.

(3) In the case of an appeal under this section against a decision of the Tribunal which determines a question referred to it by the Commission or the Attorney General, the High Court—
  (a) shall consider afresh the question referred to the Tribunal, and
  (b) may take into account evidence which was not available to the Tribunal.

(4) An appeal under this section may be brought only with the permission of—
  (a) the Tribunal, or
  (b) if the Tribunal refuses permission, the High Court.

(5) For the purposes of subsection (1) above—
  (a) the Commission and the Attorney General are to be treated as parties to all proceedings before the Tribunal, and
  (b) rules under section 2B(1) above may include provision as to who else is to be treated as being (or not being) a party to proceedings before the Tribunal.

2D Intervention by Attorney General

(1) This section applies to any proceedings—
  (a) before the Tribunal, or
  (b) on an appeal from the Tribunal,

  to which the Attorney General is not a party.

(2) The Tribunal or, in the case of an appeal from the Tribunal, the court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General.

(3) A direction under subsection (2) may be made by the Tribunal or court—
  (a) of its own motion, or
  (b) on the application of any party to the proceedings.

(4) The Attorney General may—
  (a) intervene in the proceedings in such manner as he thinks necessary or expedient, and
  (b) argue before the Tribunal or court any question in relation to the proceedings which the Tribunal or court considers it necessary to have fully argued.

(5) Subsection (4) applies whether or not the Tribunal or court has given a direction under subsection (2).**]**

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

PART II

REGISTRATION AND NAMES OF CHARITIES

Registration of charities

[F12]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;
- **[**[F13](c) any charity whose gross income does not exceed £5,000;**]**

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

[[F14](5A) In subsection (5) above, paragraph (a) shall be read as referring also to—
- (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.**]**

[[F15](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 **[**[F16]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.**]**

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(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 **[**[F16]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 **[**[F16]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 **[**[F16]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 **[**[F16]Minister**]**,

and which complies with any conditions of the exception.

[F17(13A) In this section any reference to a charity's "gross income" shall be construed, in relation to a particular time —

(a) as a reference to the charity's gross income in its financial year immediately preceding that time, or

(b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity's gross income in such financial year of the charity as is specified in the determination.]

(14) In this section "registered place of worship" means any land or building falling within section 9 of the M1Places of Worship Registration Act 1855 (that is to say, the land and buildings which if the M2Charities 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 M3Charitable Trusts Act 1853), and for the purposes of this subsection "building" includes part of a building.

Textual Amendments

F12 Ss. 3-3B substituted for s. 3 (27.2.2007 for the insertion of ss. 3A(2)(c)(4)(b)(5), 3B(2)(b) for specified purposes, 31.1.2009 in so far as not already in force except for the insertion of s. 3A(6)) by Charities Act 2006 (c. 50), **ss. 9**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

F13 S. 3(5)(c) substituted (23.4.2007) by The Charities Act 2006 (Interim changes in threshold for registration of small charities) Order 2007 (S.I. 2007/789), arts. 1, **2(2)**

F14 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**

F15 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**

F16 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)**

F17 S. 3(13A) inserted (23.4.2007) by The Charities Act 2006 (Interim changes in threshold for registration of small charities) Order 2007 (S.I. 2007/789), arts. 1, **2(3)**

Marginal Citations

M1 1855 c. 81.

M2 1960 c. 58.

M3 1853 c. 137.

[F12 3A Registration of charities

(1) Every charity must be registered in the register of charities unless subsection (2) below applies to it.

(2) The following are not required to be registered—

(a) any exempt charity (see Schedule 2 to this Act);

(b) any charity which for the time being—

(i) is permanently or temporarily excepted by order of the Commission, and

(ii) complies with any conditions of the exception,

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and whose gross income does not exceed £100,000;

(c) any charity which for the time being—

(i) is, or is of a description, permanently or temporarily excepted by regulations made by the **[**[F18]Minister**]**, and

(ii) complies with any conditions of the exception,

and whose gross income does not exceed £100,000; and

(d) any charity whose gross income does not exceed £5,000.

(3) For the purposes of subsection (2)(b) above—

(a) any order made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day has effect as from that day as if made under subsection (2)(b) (and may be varied or revoked accordingly); and

(b) no order may be made under subsection (2)(b) so as to except on or after the appointed day any charity that was not excepted immediately before that day.

(4) For the purposes of subsection (2)(c) above—

(a) any regulations made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day have effect as from that day as if made under subsection (2)(c) (and may be varied or revoked accordingly);

(b) such regulations shall be made under subsection (2)(c) as are necessary to secure that all of the formerly specified institutions are excepted under that provision (subject to compliance with any conditions of the exception and the financial limit mentioned in that provision); but

(c) otherwise no regulations may be made under subsection (2)(c) so as to except on or after the appointed day any description of charities that was not excepted immediately before that day.

(5) In subsection (4)(b) above "formerly specified institutions" means—

(a) any institution falling within section 3(5B)(a) or (b) of this Act as in force immediately before the appointed day (certain educational institutions); or

(b) any institution ceasing to be an exempt charity by virtue of section 11 of the Charities Act 2006 or any order made under that section.

(6) A charity within—

(a) subsection (2)(b) or (c) above, or

(b) subsection (2)(d) above,

must, if it so requests, be registered in the register of charities.

(7) The Minister may by order amend—

(a) subsection (2)(b) and (c) above, or

(b) subsection (2)(d) above,

by substituting a different sum for the sum for the time being specified there.

(8) The Minister may only make an order under subsection (7) above—

(a) so far as it amends subsection (2)(b) and (c), if he considers it expedient to so with a view to reducing the scope of the exception provided by those provisions;

(b) so far as it amends subsection (2)(d), if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception provided by that provision,

and no order may be made by him under subsection (7)(a) unless a copy of a report under section 73 of the Charities Act 2006 (report on operation of that Act) has been laid before Parliament in accordance with that section.

(9) In this section "the appointed day" means the day on which subsections (1) to (5) above come into force by virtue of an order under section 79 of the Charities Act 2006 relating to section 9 of that Act (registration of charities).

(10) In this section any reference to a charity's "gross income" shall be construed, in relation to a particular time—

(a) as a reference to the charity's gross income in its financial year immediately preceding that time, or

(b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity's gross income in such financial year of the charity as is specified in the determination.

(11) The following provisions of this section—

(a) subsection (2)(b) and (c),

(b) subsections (3) to (5), and

(c) subsections (6)(a), (7)(a), (8)(a) and (9),

shall cease to have effect on such day as the Minister may by order appoint for the purposes of this subsection.

Textual Amendments

F12 Ss. 3-3B substituted for s. 3 (27.2.2007 for the insertion of ss. 3A(2)(c)(4)(b)(5), 3B(2)(b) for specified purposes, 31.1.2009 in so far as not already in force except for the insertion of s. 3A(6)) by Charities Act 2006 (c. 50), **ss. 9**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

F18 Words in s. 3A(2)(c) substituted (13.12.2006) by The Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(d)**

3B Duties of trustees in connection with registration

(1) Where a charity required to be registered by virtue of section 3A(1) above is not registered, it is the duty of the charity trustees—

(a) to apply to the Commission for the charity to be registered, and

(b) to supply the Commission with the required documents and information.

(2) The "required documents and information" are—

(a) copies of the charity's trusts or (if they are not set out in any extant document) particulars of them,

(b) such other documents or information as may be prescribed by regulations made by the Minister, and

(c) such other documents or information as the Commission may require for the purposes of the application.

(3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees)—

(a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and

(b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts.

(4) Nothing in subsection (3) above requires a person—

(a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court,

(b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or

(c) if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document.

(5) Where a copy of a document relating to a registered charity—

(a) is not required to be supplied to the Commission as the result of subsection (4) above, but

(b) is in the possession of the Commission,

a copy of the document shall be open to inspection under section 3(10) above as if supplied to the Commission under this section.**]**

Textual Amendments

F12 Ss. 3-3B substituted for s. 3 (27.2.2007 for the insertion of ss. 3A(2)(c)(4)(b)(5), 3B(2)(b) for specified purposes, 31.1.2009 in so far as not already in force except for the insertion of s. 3A(6)) by Charities Act 2006 (c. 50), **ss. 9**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

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 **[**[F19]the Commission**]** in the register, or apply **[**[F20]to the Commission**]** for it to be removed from the register; and provision may be made by regulations made by the **[**[F21]Minister**]** as to the manner in which any such objection or application is to be made, prosecuted or dealt with.

[F22](3) . . . . . .

(4) If there is an appeal to the **[**[F23]Tribunal**]** against any decision of **[**[F24]the Commission**]** to enter an institution in the register, or not to remove an institution from the register, then until **[**[F25]the Commission is**]** satisfied whether the decision of **[**[F24]the Commission**]** 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 **[**[F26]Schedule 1C to this Act**]** above, be considered afresh by **[**[F27]the Commission**]** and shall not be concluded by that decision, if it appears to **[**[F27]the Commission**]** that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision[F28]....

Textual Amendments

F19 Words in s. 4(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(2)(a)**; S.I. 2007/309, art. 2, Sch.

F20 Words in s. 4(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(2)(b)**; S.I. 2007/309, art. 2, Sch.

F21 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)**

F22 S. 4(3) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 99(3), **Sch. 9** (with Sch. 10 para. 18); S.I. 2008/751, art. 2, Sch. (with art. 4)

F23 Words in s. 4(4) substituted (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(4)(a)** (with Sch. 10 para. 18); S.I. 2008/751, art. 2, Sch. (with art. 4)

F24 Words in s. 4(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(4)(b)**; S.I. 2007/309, art. 2, Sch.

F25 Words in s. 4(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(4)(c)**; S.I. 2007/309, art. 2, Sch.

F26 Words in s. 4(5) substituted (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(5)(a)**; S.I. 2008/751, art. 2, Sch. (with art. 4)

F27 Words in s. 4(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(5)(b)**; S.I. 2007/309, art. 2, Sch.

F28 Words in s. 4(5) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 99(5)(c)**; S.I. 2008/751, art. 2, Sch. (with art. 4)

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 **[**[F29]£10,000**]**.

(2) Where this section applies to a registered charity, the fact that it is a registered charity shall be stated [F30]. . . 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.

[F31]**[**(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 **[**[F32]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 **[**[F33]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 **[**[F34]Minister**]** may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

Textual Amendments

F29 Figure in s. 5(1) substituted (1.12.1995) by S.I. 1995/2696, **art. 2(2)**

F30 Words in s. 5(2) repealed (21.12.1993) by 1993 c. 38, ss. 32(2), 35(1), 36(1), **Sch. 2**

F31 S. 5(2A) inserted (21.12.1993) by 1993 c. 38, **ss. 32(3)**, 36(1)

F32 Words in s. 5(4) substituted (21.12.1993) by 1993 c. 38, **ss. 32(4)**, 36(1)

F33 Words in s. 5(5) substituted (21.12.1993) by 1993 c. 38, **ss. 32(5)**, 36(1)

F34 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 [F35Commission] to require charity's name to be changed.

(1) Where this subsection applies to a charity, the **[**[F36]Commission**]** 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 **[**[F36]Commission**]**.

(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 **[**[F36]Commission**]** 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 **[**[F36]Commission**]** 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 **[**[F37]Minister**]** and the inclusion in its name of that word or expression is in the opinion of the **[**[F36]Commission**]** 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 **[**[F36]Commission**]** 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 **[**[F36]Commission**]** offensive;

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 **[**[F36]Commission**]** 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

F35 Word in s. 6 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 100(2)**; S.I. 2007/309, art. 2, Sch.

F36 Words in s. 6 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 100(2)**; S.I. 2007/309, art. 2, Sch.

F37 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.

[[F38](2) Where a resolution of the directors is passed in accordance with subsection (1), the company must give notice of the change to the registrar of companies.**]**

(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.

Textual Amendments

F38 S. 7(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 78** (with art. 12)

PART III

[F39INFORMATION POWERS]

Textual Amendments

F39 Pt. III heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 101**; S.I. 2007/309, art. 2, Sch.

8 General power to institute inquiries.

(1) **[**[F40]The Commission**]** 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) **[**[F41]The Commission**]** may either conduct such an inquiry **[**[F42]itself**]** or appoint a person to conduct it and make a report **[**[F43]to the Commission**]**.

(3) For the purposes of any such inquiry **[**[F44]the Commission, or a person appointed by the Commission**]** 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) **[**[F45]The Commission**]** 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, **[**[F46]the Commission**]** may either—

(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as **[**[F47]the Commission thinks**]** fit, to be printed and published, or

(b) publish any such report or statement in some other way which is calculated in **[**[F48]the Commission's opinion**]** to bring it to the attention of persons who may wish to make representations **[**[F49]to the Commission**]** 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 **[**[F50]the Commission**]** in connection with inquiries under this section into local charities in the council's area.

Textual Amendments

F40 Words in s. 8(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(2)**; S.I. 2007/309, art. 2, Sch.

F41 Words in s. 8(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(3)(a)**; S.I. 2007/309, art. 2, Sch.

F42 Word in s. 8(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(3)(b)**; S.I. 2007/309, art. 2, Sch.

F43 Words in s. 8(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(3)(c)**; S.I. 2007/309, art. 2, Sch.

F44 Words in s. 8(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(4)**; S.I. 2007/309, art. 2, Sch.

F45 Words in s. 8(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(5)**; S.I. 2007/309, art. 2, Sch.

F46 Words in s. 8(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(6)(a)**; S.I. 2007/309, art. 2, Sch.

F47 Words in s. 8(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(6)(b)**; S.I. 2007/309, art. 2, Sch.

F48 Words in s. 8(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(6)(c)**; S.I. 2007/309, art. 2, Sch.

F49 Words in s. 8(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(6)(d)**; S.I. 2007/309, art. 2, Sch.

F50 Words in s. 8(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 102(7)**; S.I. 2007/309, art. 2, Sch.

9 Power to call for documents and search records.

(1) **[**[F51]The Commission**]** may by order—

(a) require any person to **[**[F52]furnish the Commission**]** with any information in his possession which relates to any charity and is relevant to the discharge of **[**[F53]the Commission's 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 **[**[F53]the Commission's functions**]** or of the functions of the official custodian—

(i) to **[**[F52]furnish the Commission**]** 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 **[**[F54]the Commission for its**]** inspection.

(2) Any **[**[F55]member of the staff of the Commission, if so authorised by it**]**, 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 **[**[F56]the Commission**]** or of the official custodian.

(3) **[**[F57]The Commission**]** shall be entitled without payment to keep any copy or extract furnished **[**[F58]to it**]** under subsection (1) above; and where a document transmitted **[**[F59]to the Commission**]** under that subsection for **[**[F60]it to inspect**]** relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of it, **[**[F61]the Commission**]** 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.

[[F62](6) In subsection (2) the reference to a member of the staff of the Commission includes the official custodian even if he is not a member of the staff of the Commission.**]**

Textual Amendments

F51 Words in s. 9(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(2)(a)**; S.I. 2007/309, art. 2, Sch.

F52 Words in s. 9(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(2)(b)**; S.I. 2007/309, art. 2, Sch.

F53 Words in s. 9(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(2)(c)**; S.I. 2007/309, art. 2, Sch.

F54 Words in s. 9(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(2)(d)**; S.I. 2007/309, art. 2, Sch.

F55 Words in s. 9(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(3)(a)**; S.I. 2007/309, art. 2, Sch.

F56 Words in s. 9(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(3)(b)**; S.I. 2007/309, art. 2, Sch.

F57 Words in s. 9(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(4)(a)**; S.I. 2007/309, art. 2, Sch.

F58 Words in s. 9(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(4)(b)**; S.I. 2007/309, art. 2, Sch.

F59 Words in s. 9(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(4)(c)**; S.I. 2007/309, art. 2, Sch.

F60 Words in s. 9(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(4)(d)**; S.I. 2007/309, art. 2, Sch.

F61 Words in s. 9(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(4)(e)**; S.I. 2007/309, art. 2, Sch.

F62 S. 9(6) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 103(5)**; S.I. 2007/309, art. 2, Sch.

[F63 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

F63 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.

(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

F63 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 **[**[F64]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

F63 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)

F64 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

F63 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 [F65Commission] , etc.

(1) Any person who knowingly or recklessly provides the **[**F66Commission**]** 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 **[**F66Commission**]** for the purpose of discharging **[**F67its 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 **[**F66Commission**]** 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 **[**[F66]Commission**]** include references to any person conducting an inquiry under section 8 above.

Textual Amendments

F65 Words in s. 11 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 105(2)**; S.I. 2007/309, art. 2, Sch.

F66 Words in s. 11 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 105(2)**; S.I. 2007/309, art. 2, Sch.

F67 Words in s. 11(1)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 105(3)**; S.I. 2007/309, art. 2, Sch.

[F68]12 . . . . . .

Textual Amendments

F68 S. 12 repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, **art. 2(1)**

PART IV

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT **[**[F69]AND COMMISSION**]**

Textual Amendments

F69 Words in Pt. IV heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 106**; S.I. 2007/309, art. 2, Sch.

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

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

end can suitably, regard being had to **[**[F70]the appropriate considerations**]** , 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 **[**[F71]the appropriate considerations**]** , 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 **[**[F72]the appropriate considerations**]** .

[[F73](1A) In subsection (1) above "the appropriate considerations" means—

(a) (on the one hand) the spirit of the gift concerned, and

(b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.**]**

(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.

(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.

Textual Amendments

F70 Words in s. 13(1)(c) substituted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)

F71 Words in s. 13(1)(d) substituted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)

F72 Words in s. 13(1)(e)(iii) substituted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)

F73 S. 13(1A) inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 15(3)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)

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 **[**[F74]or the Commission**]** 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 **[**[F74]or the Commission**]** 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—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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 **[**[F75]the Commission so directs**]**, 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 **[**[F76]the Commission**]**; 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 **[**[F77]the Commission**]** under this section shall be published by **[**[F77]the Commission**]** in such manner as **[**[F78]it thinks 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.

Textual Amendments

F74 Words in s. 14(4) inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 16(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 6)

F75 Words in s. 14(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 107(2)**; S.I. 2007/309, art. 2, Sch.

F76 Words in s. 14(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 107(3)**; S.I. 2007/309, art. 2, Sch.

F77 Words in s. 14(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 107(4)(a)**; S.I. 2007/309, art. 2, Sch.

F78 Words in s. 14(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 107(4)(b)**; S.I. 2007/309, art. 2, Sch.

[[F79]**14A Application cy-près of gifts made in response to certain solicitations**

(1) This section applies to property given—

(a) for specific charitable purposes, and

(b) in response to a solicitation within subsection (2) below.

(2) A solicitation is within this subsection if—

(a) it is made for specific charitable purposes, and

(b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift.

(3) A "relevant declaration" is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, he wishes the trustees holding the property to give him the opportunity to request the return of the property in question (or a sum equal to its value at the time of the making of the gift).

(4) Subsections (5) and (6) below apply if—

(a) a person has given property as mentioned in subsection (1) above,

(b) the specific charitable purposes fail, and

(c) the donor has made a relevant declaration.

(5) The trustees holding the property must take the prescribed steps for the purpose of—

(a) informing the donor of the failure of the purposes,

(b) enquiring whether he wishes to request the return of the property (or a sum equal to its value), and

(c) if within the prescribed period he makes such a request, returning the property (or such a sum) to him.

(6) If those trustees have taken all appropriate prescribed steps but—

(a) they have failed to find the donor, or

(b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value),

section 14(1) above shall apply to the property as if it belonged to a donor within paragraph (b) of that subsection (application of property where donor has disclaimed right to return of property).

(7) If—

(a) a person has given property as mentioned in subsection (1) above,

(b) the specific charitable purposes fail, and

(c) the donor has not made a relevant declaration,

section 14(1) above shall similarly apply to the property as if it belonged to a donor within paragraph (b) of that subsection.

(8) For the purposes of this section—

(a) "solicitation" means a solicitation made in any manner and however communicated to the persons to whom it is addressed,

(b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and

(c) where any appeal consists of both solicitations that are accompanied by statements within subsection (2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless he proves otherwise.

(9) In this section "prescribed" means prescribed by regulations made by the Commission, and any such regulations shall be published by the Commission in such manner as it thinks fit.

(10) Subsections (7) and (10) of section 14 shall apply for the purposes of this section as they apply for the purposes of section 14.**]**

Textual Amendments

F79 S. 14A inserted (27.2.2007 for specified purposes, 18.3.2008 in so far as not already in force) by Charities Act 2006 (c. 50), **ss. 17**, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch. (with art. 7)

[F80 14B Cy-près schemes

(1) The power of the court or the Commission to make schemes for the application of property cy-près shall be exercised in accordance with this section.

(2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied—

(a) for such charitable purposes, and

(b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,

as it considers appropriate, having regard to the matters set out in subsection (3).

(3) The matters are—

(a) the spirit of the original gift,

(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and

(c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

The "relevant charity" means the charity by or on behalf of which the property is to be applied under the scheme.

(4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes.

(5) In this section references to property given include the property for the time being representing the property originally given or property derived from it.

(6) In this section references to the transfer of property to a charity are references to its transfer—

(a) to the charity, or

(b) to the charity trustees, or

(c) to any trustee for the charity, or

(d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the scheme may provide.**]**

Textual Amendments

F80 S. 14B inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 18**, 79(2) (with Sch. 10 para. 3); S.I. 2008/751, art. 2, Sch.

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 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)

[F81 Powers of Commission] to make schemes and act for protection of charities etc.

Textual Amendments

F81 Words in s. 16 cross-heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 108**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

16 Concurrent jurisdiction with High Court for certain purposes.

(1) Subject to the provisions of this Act, **[**[F82]the Commission**]** 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 **[**[F83]the Commission for it**]** 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 **[**[F84]the Commission**]** as if prepared under subsection (1) above and without any further order of the court.

(3) **[**[F85]The Commission**]** 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, **[**[F86]the Commission shall not exercise its**]** 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 **[**[F87]gross income does not**]** exceed £500 a year, **[**[F88]the Commission may exercise its**]** 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, **[**[F89]the Commission is**]** 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 **[**[F90]the Commission has**]** given the charity trustees an opportunity to make representations to them, **[**[F91]the Commission**]** may proceed as if an application for a scheme had been made by the charity but **[**[F91]the Commission**]** shall not have power in a case where **[**[F92]it acts**]** 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 **[**[F93]the Commission**]** 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 **[**[F94]the Commission considers**]** appropriate in the circumstances of the case,

[[F93]the Commission**]** may nevertheless proceed as if the application were an application made by the charity.

(8) **[**[F95]The Commission**]** may on the application of any charity trustee or trustee for a charity exercise **[**[F96]its 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, **[**[F97]the Commission shall give notice of its**]** 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) **[**[F98]The Commission shall not exercise its**]** 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, **[**[F99]the Commission**]** may consider more fit to be adjudicated on by the court.

[F100](11) . . . . . .

[F100](12) . . . . . .

[F100](13) . . . . . .

[F100](14) . . . . . .

(15) If the **[**[F101]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 **[**[F102]the Commission may exercise its**]** 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

F82 Words in s. 16(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(2)**; S.I. 2007/309, art. 2, Sch.

F83 Words in s. 16(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(3)(a)**; S.I. 2007/309, art. 2, Sch.

F84 Words in s. 16(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(3)(b)**; S.I. 2007/309, art. 2, Sch.

F85 Words in s. 16(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(4)**; S.I. 2007/309, art. 2, Sch.

F86 Words in s. 16(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(5)**; S.I. 2007/309, art. 2, Sch.

F87 Words in s. 16(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(6)(a)**; S.I. 2007/309, art. 2, Sch.

F88 Words in s. 16(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(6)(b)**; S.I. 2007/309, art. 2, Sch.

F89 Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(a)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

F90 Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(b)**; S.I. 2007/309, art. 2, Sch.

F91 Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(c)**; S.I. 2007/309, art. 2, Sch.

F92 Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(d)**; S.I. 2007/309, art. 2, Sch.

F93 Words in s. 16(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(8)(a)**; S.I. 2007/309, art. 2, Sch.

F94 Words in s. 16(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(8)(b)**; S.I. 2007/309, art. 2, Sch.

F95 Words in s. 16(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(9)(a)**; S.I. 2007/309, art. 2, Sch.

F96 Words in s. 16(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(9)(b)**; S.I. 2007/309, art. 2, Sch.

F97 Words in s. 16(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(10)**; S.I. 2007/309, art. 2, Sch.

F98 Words in s. 16(10) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(11)(a)**; S.I. 2007/309, art. 2, Sch.

F99 Words in s. 16(10) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(11)(b)**; S.I. 2007/309, art. 2, Sch.

F100 S. 16(11)-(14) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 109(12), **Sch. 9**; S.I. 2008/751, art. 2, Sch. (with art. 4)

F101 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)**

F102 Words in s. 16(15)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(13)**; S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C8 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)

C9 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)**

C10 S. 16(12) modified (temp.) (31.1.2007) by The Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007 (S.I. 2007/309), **art. 13**

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

(1) Where it appears to **[**[F103]the Commission**]** 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 **[**[F104]by the Commission**]** 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) **[**[F103]the Commission**]** may settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by **[**[F105]the Commission**]** under this section may be given effect by order of the **[**[F106]Minister**]**, and a draft of the order shall be laid before Parliament.

(3) Without prejudice to the operation of section 6 of the [M5]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 **[**[F107]the Commission**]** as if it were a scheme brought into effect by order of **[**[F107]the Commission**]** 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 **[**[F108]Commission**]** shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required **[**[F109]if the Commission was**]** proceeding (without an order of the court) under section 16 above; but on any application for a scheme, or in a case where **[**[F110]it acts**]** by virtue of subsection (6) or (7) of that section, the **[**[F108]Commission**]** may proceed under this section or that section as appears **[**[F111]to it**]** 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 **[**[F112]the Commission**]** 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 **[**[F113]the Commission is**]** 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 **[**[F114]the Commission**]** 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

F103 Words in s. 17(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(2)(a)**; S.I. 2007/309, art. 2, Sch.

F104 Words in s. 17(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(2)(b)**; S.I. 2007/309, art. 2, Sch.

F105 Words in s. 17(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(3)**; S.I. 2007/309, art. 2, Sch.

F106 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)**

F107 Words in s. 17(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(4)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

F108 Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(a)**; S.I. 2007/309, art. 2, Sch.

F109 Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(b)**; S.I. 2007/309, art. 2, Sch.

F110 Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(c)**; S.I. 2007/309, art. 2, Sch.

F111 Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(d)**; S.I. 2007/309, art. 2, Sch.

F112 Words in s. 17(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(6)**; S.I. 2007/309, art. 2, Sch.

F113 Words in s. 17(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(7)(a)**; S.I. 2007/309, art. 2, Sch.

F114 Words in s. 17(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(7)(b)**; S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C11 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

M5 1946 c. 36.

18 Power to act for protection of charities.

(1) Where, at any time **[**[F115]after it has**]** instituted an inquiry under section 8 above with respect to any charity, **[**[F116]the Commission is**]** satisfied—

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

(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,

[[F117]the Commission may of its**]** 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 **[**[F118]as it considers**]** 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 **[**[F119]the Commission**]**;

(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 **[**[F119]the Commission**]**;

(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 **[**[F119]the Commission**]**;

(vii) by order appoint (in accordance with section 19 below) **[**[F120]an interim manager, who shall act as receiver**]** and manager in respect of the property and affairs of the charity.

(2) Where, at any time after **[**[F121]it has**]** instituted an inquiry under section 8 above with respect to any charity, **[**[F122]the Commission is**]** 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,

[[F123]the Commission may of its**]** 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) **[**[F124]The Commission**]** may also remove a charity trustee by order made of **[**[F125]its 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 [M6]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) **[**[F126]The Commission may by order made of its**]** own motion appoint a person to be a charity trustee—

(a) in place of a charity trustee **[**[F127]removed by the Commission**]** 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;

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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)*

(c) where there is a single charity trustee, not being a corporation aggregate, and **[**[F128]the Commission is of**]** opinion that it is necessary to increase the number for the proper administration of the charity;

(d) where **[**[F128]the Commission is 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 **[**[F129]the Commission**]** under this section to remove or appoint charity trustees of **[**[F130]its 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 **[**[F129]the Commission**]** could make on the removal or appointment of a charity trustee **[**[F131]by it**]** 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.

[F132](8) . . . . . .

[F132](9) . . . . . .

[F132](10) . . . . . .

(11) The power of **[**[F133]the Commission**]** 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 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, **[**[F134]the Commission**]** shall give notice of **[**[F135]its 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) **[**[F136]The Commission**]** shall, at such intervals as **[**[F137]it thinks fit**]**, review any order made **[**[F138]by it**]** under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears **[**[F139]to the Commission**]** that it would be appropriate to discharge the order in whole or in part, **[**[F140]the Commission 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.

Textual Amendments

F115 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(a)**; S.I. 2007/309, art. 2, Sch.

F116 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(b)**; S.I. 2007/309, art. 2, Sch.

F117 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(c)**; S.I. 2007/309, art. 2, Sch.

F118 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(d)**; S.I. 2007/309, art. 2, Sch.

F119 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(e)**; S.I. 2007/309, art. 2, Sch.

F120 Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2)(f)**; S.I. 2007/309, art. 2, Sch.

F121 Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3)(a)**; S.I. 2007/309, art. 2, Sch.

F122 Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3)(b)**; S.I. 2007/309, art. 2, Sch.

F123 Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3)(c)**; S.I. 2007/309, art. 2, Sch.

F124 Words in s. 18(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(4)(a)**; S.I. 2007/309, art. 2, Sch.

F125 Words in s. 18(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(4)(b)**; S.I. 2007/309, art. 2, Sch.

F126 Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5)(a)**; S.I. 2007/309, art. 2, Sch.

F127 Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5)(b)**; S.I. 2007/309, art. 2, Sch.

F128 Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5)(c)**; S.I. 2007/309, art. 2, Sch.

F129 Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6)(a)**; S.I. 2007/309, art. 2, Sch.

F130 Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6)(b)**; S.I. 2007/309, art. 2, Sch.

F131 Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6)(c)**; S.I. 2007/309, art. 2, Sch.

F132 S. 18(8)-(10) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 111(7), **Sch. 9**; S.I. 2008/751, art. 2, Sch. (with art. 4)

F133 Words in s. 18(11) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(8)**; S.I. 2007/309, art. 2, Sch.

F134 Words in s. 18(12) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(9)(a)**; S.I. 2007/309, art. 2, Sch.

F135 Words in s. 18(12) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(9)(b)**; S.I. 2007/309, art. 2, Sch.

F136 Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10)(a)**; S.I. 2007/309, art. 2, Sch.

F137 Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10)(b)**; S.I. 2007/309, art. 2, Sch.

F138 Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10)(c)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

F139 Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10)(d)**; S.I. 2007/309, art. 2, Sch.

F140 Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10)(e)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M6 1983 c. 20.

[F141 18A Power to suspend or remove trustees etc. from membership of charity

(1) This section applies where the Commission makes—

(a) an order under section 18(1) above suspending from his office or employment any trustee, charity trustee, officer, agent or employee of a charity, or

(b) an order under section 18(2) above removing from his office or employment any officer, agent or employee of a charity,

and the trustee, charity trustee, officer, agent or employee (as the case may be) is a member of the charity.

(2) If the order suspends the person in question from his office or employment, the Commission may also make an order suspending his membership of the charity for the period for which he is suspended from his office or employment.

(3) If the order removes the person in question from his office or employment, the Commission may also make an order—

(a) terminating his membership of the charity, and

(b) prohibiting him from resuming his membership of the charity without the Commission's consent.

(4) If an application for the Commission's consent under subsection (3)(b) above is made five years or more after the order was made, the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.**]**

Textual Amendments

F141 S. 18A inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 19**, 79(2) (with Sch. 10 para. 4); S.I. 2008/751, art. 2, Sch.

19 Supplementary provisions relating to [F142 interim manager] appointed for a charity.

[F143 (1) The Commission may under section 18(1)(vii) above appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.**]**

(2) Without prejudice to the generality of section 89(1) below, any order made by **[F144** the Commission**]** under section 18(1)(vii) above may make provision with respect to the functions to be discharged by the **[F145** interim manager**]** appointed by the order; and those functions shall be discharged by him under the supervision of **[F144** the Commission**]**.

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

(a) for the **[**[F146]interim 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 **[**[F146]interim 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 **[**[F147]interim 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) **[**[F148]the Commission**]** 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 **[**[F149]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 **[**[F150]the Commission**]** by such persons.

(7) Regulations under subsection (6) above may, in particular, authorise **[**[F150]the Commission**]**—

(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

F142 Words in s. 19 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(7)**; S.I. 2007/309, art. 2, Sch.

F143 S. 19(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(2)**; S.I. 2007/309, art. 2, Sch.

F144 Words in s. 19(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(3)(a)**; S.I. 2007/309, art. 2, Sch.

F145 Words in s. 19(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(3)(b)**; S.I. 2007/309, art. 2, Sch.

F146 Words in s. 19(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(4)**; S.I. 2007/309, art. 2, Sch.

F147 Words in s. 19(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(5)(a)**; S.I. 2007/309, art. 2, Sch.

F148 Words in s. 19(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(5)(b)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

F149 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)**

F150 Words in s. 19(6)(c) and (7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(6)**; S.I. 2007/309, art. 2, Sch.

[F151 19A Power to give specific directions for protection of charity

(1) This section applies where, at any time after the Commission has instituted an inquiry under section 8 above with respect to any charity, it is satisfied as mentioned in section 18(1)(a) or (b) above.

(2) The Commission may by order direct—
- (a) the charity trustees,
- (b) any trustee for the charity,
- (c) any officer or employee of the charity, or
- (d) (if a body corporate) the charity itself,

to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.

(3) An order under this section—
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but
- (b) may not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.

(4) Anything done by a person or body under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.

(5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.]

Textual Amendments

F151 S. 19A inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 20**, 79(2) (with Sch. 10 para. 5); S.I. 2008/751, art. 2, Sch.

[F152 19B Power to direct application of charity property

(1) This section applies where the Commission is satisfied—
- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity, and
- (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.

(2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.

(3) An order under this section—

(a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but

(b) may not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity.

(4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a) above.

(5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.**]**

Textual Amendments

F152 S. 19B inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 21**, 79(2); S.I. 2008/751, art. 2, Sch.

[[F153]19C Copy of order under section 18, 18A, 19A or 19B, and Commission's reasons, to be sent to charity

(1) Where the Commission makes an order under section 18, 18A, 19A or 19B, it must send the documents mentioned in subsection (2) below—

(a) to the charity concerned (if a body corporate), or

(b) (if not) to each of the charity trustees.

(2) The documents are—

(a) a copy of the order, and

(b) a statement of the Commission's reasons for making it.

(3) The documents must be sent to the charity or charity trustees as soon as practicable after the making of the order.

(4) The Commission need not, however, comply with subsection (3) above in relation to the documents, or (as the case may be) the statement of its reasons, if it considers that to do so—

(a) would prejudice any inquiry or investigation, or

(b) would not be in the interests of the charity;

but, once the Commission considers that this is no longer the case, it must send the documents, or (as the case may be) the statement, to the charity or charity trustees as soon as practicable.

(5) Nothing in this section requires any document to be sent to a person who cannot be found or who has no known address in the United Kingdom.

(6) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, that person in the same way as an order made by the Commission under this Act could be served on him in accordance with section 91 below.**]**

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Textual Amendments

F153 S. 19C inserted (27.2.2007 for specified purposes, 18.3.2008 in so far as not already in force) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 113**; S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

[F154 20 Publicity relating to schemes

(1) The Commission may not—

(a) make any order under this Act to establish a scheme for the administration of a charity, or

(b) submit such a scheme to the court or the Minister for an order giving it effect,

unless, before doing so, the Commission has complied with the publicity requirements in subsection (2) below.

This is subject to any disapplication of those requirements under subsection (4) below.

(2) The publicity requirements are—

(a) that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice; and

(b) that, in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish or in a community in Wales, the Commission must communicate a draft of the scheme to the parish or community council (or, where a parish has no council, to the chairman of the parish meeting).

(3) The time when any such notice is given or any such communication takes place is to be decided by the Commission.

(4) The Commission may determine that either or both of the publicity requirements is or are not to apply in relation to a particular scheme if it is satisfied that—

(a) by reason of the nature of the scheme, or

(b) for any other reason,

compliance with the requirement or requirements is unnecessary.

(5) Where the Commission gives public notice of any proposals under this section, the Commission—

(a) must take into account any representations made to it within the period specified in the notice, and

(b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(6) Where the Commission makes an order under this Act to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times—

(a) at the Commission's office, and

(b) if the charity is a local charity, at some convenient place in the area of the charity.

Paragraph (b) does not apply if the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally.

(7) Any public notice of any proposals which is to be given under this section—

(a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and

(b) is to be given in such manner as the Commission thinks sufficient and appropriate.

Textual Amendments

F154 Ss. 20, 20A substituted (27.2.2007) for s. 20 by Charities Act 2006 (c. 50), **ss. 22**, 79(2); S.I. 2007/309, art. 2, Sch.

20A Publicity for orders relating to trustees or other individuals

(1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than—

(a) an order relating to the official custodian, or

(b) an order under section 18(1)(ii) above,

unless, before doing so, the Commission has complied with the publicity requirement in subsection (2) below.

This is subject to any disapplication of that requirement under subsection (4) below.

(2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(3) The time when any such notice is given is to be decided by the Commission.

(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.

(5) Before the Commission makes an order under this Act to remove without his consent—

(a) a charity trustee or trustee for a charity, or

(b) an officer, agent or employee of a charity,

the Commission must give him not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.

This does not apply if the person cannot be found or has no known address in the United Kingdom.

(6) Where the Commission gives notice of any proposals under this section, the Commission—

(a) must take into account any representations made to it within the period specified in the notice, and

(b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(7) Any notice of any proposals which is to be given under this section—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and

(b) (in the case of a public notice) is to be given in such manner as the Commission thinks sufficient and appropriate.

(8) Any notice to be given under subsection (5)—

(a) may be given by post, and

(b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.**]**

Textual Amendments

F154 Ss. 20, 20A substituted (27.2.2007) for s. 20 by Charities Act 2006 (c. 50), **ss. 22**, 79(2); S.I. 2007/309, art. 2, Sch.

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 [M7]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 **[**[F155]the Commission**]**.

(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.

(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.

Textual Amendments

F155 Words in s. 22(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 114**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M7 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 **[**[F156]the Commission**]** that section 1 of the [M8]Reverter of Sites Act 1987 (right of reverter replaced by **[**[F157]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 **[**[F156]the Commission**]** 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 **[**[F158]by the Commission of its 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 **[**[F159]appear to the Commission**]** to be necessary or expedient in consequence.

(2) Where—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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 **[**[F160]the Commission (of its 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 [F161]... 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 **[**[F162]the Commission**]** 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 **[**[F162]the Commission**]** 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) **[**[F163]the Commission is**]** 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 **[**[F157]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 **[**[F157]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 **[**[F157]trust**]** arising in relation to the land under that section.

Textual Amendments

F156 Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(a)**; S.I. 2007/309, art. 2, Sch.

F157 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**

F158 Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(b)**; S.I. 2007/309, art. 2, Sch.

F159 Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(c)**; S.I. 2007/309, art. 2, Sch.

F160 Words in s. 23(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(3)(a)**; S.I. 2007/309, art. 2, **Sch.**

F161 Words in s. 23(2) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 115(3)(b), **Sch. 9**; S.I. 2007/309, art. 2, Sch.

F162 Words in s. 23(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(4)(a)**; S.I. 2007/309, art. 2, Sch.

F163 Words in s. 23(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(4)(b)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M8 1987 c. 15.

Establishment of common investment or deposit funds

24 Schemes to establish common investment funds.

(1) The court or **[**[F164]the Commission**]** 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 **[**[F164]the Commission**]** may make a common investment scheme on the application of any two or more charities.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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.

[[F165](3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(3B) In this section "appropriate body" means—

(a) a Scottish recognised body, or

(b) a Northern Ireland charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A) above, "charity" includes an appropriate body.

"The relevant provisions" are subsections (1) and (4) to (6) and (in relation only to a charity within paragraph (b)) subsection (7).**]**

(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.

Textual Amendments

F164 Words in s. 24(1)(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 116**; S.I. 2007/309, art. 2, Sch.

F165 S. 24(3A)(3B) inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(1)**, 79(2); S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C12 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 **[**[F166]the Commission**]** 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) **[**[F167]subsections (2), (3) and (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—

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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)*

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

(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;".

[[F168](4) A common deposit scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(5) In this section "appropriate body" means—

(a) a Scottish recognised body, or

(b) a Northern Ireland charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4) above, "charity" includes an appropriate body.

(6) "The relevant provisions" are—

(a) subsection (1) above, and

(b) subsections (4) and (6) of section 24 above, as they apply in accordance with subsections (2) and (3) above, and

(c) (in relation only to a charity within subsection (5)(b) above) subsection (7) of that section, as it so applies.**]**

Textual Amendments

F166 Words in s. 25(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 117**; S.I. 2007/309, art. 2, Sch.

F167 Words in s. 25(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(2)**, 79(2); S.I. 2007/309, art. 2, Sch.

F168 S. 25(4)-(6) added (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(3)**, 79(2); S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C13 S. 25 excluded (6.2.2000) by 1993 c. 10, s. 122(4), **Sch. 19 Pt. IV para. 15(b)**

[[F169]25A Meaning of "Scottish recognised body" and "Northern Ireland charity" in sections 24 and 25

(1) In sections 24 and 25 above "Scottish recognised body" means a body—

(a) established under the law of Scotland, or

(b) managed or controlled wholly or mainly in or from Scotland,

to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under section 505 of the Income and Corporation Taxes Act 1988 **[**[F170]or Part 10 of the Income Tax Act 2007**]** in respect of income of the body which is applicable and applied to charitable purposes only.

(2) In those sections "Northern Ireland charity" means an institution—

(a) which is a charity under the law of Northern Ireland, and

(b) to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under section 505 of the Income and Corporation Taxes Act 1988 **[**[F171]or Part 10 of the Income Tax Act 2007**]** in respect of income of the institution which is applicable and applied to charitable purposes only.**]**

Textual Amendments

F169 S. 25A inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(4)**, 79(2); S.I. 2007/309, art. 2, Sch.

F170 Words in s. 25A(1) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 353** (with Sch. 2)

F171 Words in s. 25A(2) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 353** (with Sch. 2)

[[F172]*Additional powers of Commission**]***

Textual Amendments

F172 S. 26 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 118**; S.I. 2007/309, art. 2, Sch.

26 Power to authorise dealings with charity property etc.

(1) Subject to the provisions of this section, where it appears to **[**[F173]the Commission**]** that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, **[**[F174]the Commission may**]** by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1) 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.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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.

[[F175](5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).**]**

(6) The Acts referred to in subsection (5) above as the disabling Acts are the [M9]Ecclesiastical Leases Act 1571, the [M10]Ecclesiastical Leases Act 1572, the [M11]Ecclesiastical Leases Act 1575 and the [M12]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 [M13]Pastoral Measure 1968 or the [M14]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.

Textual Amendments

F173 Words in s. 26(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 119(a)**; S.I. 2007/309, art. 2, Sch.

F174 Words in s. 26(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 119(b)**; S.I. 2007/309, art. 2, Sch.

F175 S. 26(5A) inserted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 181(4)**, 1300(2); S.I. 2007/2194, art. 2(1)(d) (with arts. 712Sch. 1 para. 9) (which transitional provisions in Sch. 1 are revoked (1.10.2008) by S.I. 2007/3495, art. 10(2)(b))

Marginal Citations

M9 1571 c. 10.
M10 1572 c. 11.
M11 1575 c. 11.
M12 1836 c. 20.
M13 1968 No.1.
M14 1983 No.1.

27 Power to authorise ex gratia payments etc.

(1) Subject to subsection (3) below, **[**[F176]the Commission**]** may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—

(a) to make any application of property of the charity, or

(b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,

in a case where the charity trustees—

(i) (apart from this 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 **[**[F177]the Commission**]** by subsection (1) above shall be exercisable **[**[F178]by the Commission**]** under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require **[**[F177]the Commission**]**, 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 **[**[F179]the Commission for it**]** to exercise that power in a case where **[**[F180]it is not**]** precluded from doing so by any such directions, but

(b) **[**[F181]the Commission considers**]** that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than **[**[F182]by the Commission**]**,

[[F183]the Commission shall**]** refer the application to the Attorney General.

(4) It is hereby declared that where, in the case of any application made **[**[F184]to the Commission**]** as mentioned in subsection (3)(a) above, **[**[F185]the Commission determines**]** 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.

Textual Amendments

F176 Words in s. 27(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(2)**; S.I. 2007/309, art. 2, Sch.

F177 Words in s. 27(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(3)(a)**; S.I. 2007/309, art. 2, Sch.

F178 Words in s. 27(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(3)(b)**; S.I. 2007/309, art. 2, Sch.

F179 Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(4)(a)**; S.I. 2007/309, art. 2, Sch.

F180 Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(4)(b)**; S.I. 2007/309, art. 2, Sch.

F181 Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(4)(c)**; S.I. 2007/309, art. 2, Sch.

F182 Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(4)(d)**; S.I. 2007/309, art. 2, Sch.

F183 Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(4)(e)**; S.I. 2007/309, art. 2, Sch.

F184 Words in s. 27(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(5)(a)**; S.I. 2007/309, art. 2, Sch.

F185 Words in s. 27(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 120(5)(b)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
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 **[**[F186]the Commission**]** —

(a) **[**[F187]is informed**]** by a relevant institution—

(i) that it holds one or more accounts in the name of or on behalf of a particular charity ("the relevant charity"), and

(ii) that the account, or (if it so holds two or more accounts) each of the accounts, is dormant, and

(b) **[**[F188]is unable**]**, after making reasonable inquiries, to locate that charity or any of its trustees,

[[F189]it 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 **[**[F190]Commission**]** may specify in a direction under subsection (2) above such other charity or charities as **[**[F191]it considers**]** appropriate, having regard, in a case where the purposes of the relevant charity are known **[**[F192]to the Commission**]**, to those purposes and to the purposes of the other charity or charities; but the **[**[F190]Commission**]** shall not so specify any charity unless **[**[F193]it has 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) **[**[F194]the Commission has 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 **[**[F195]the Commission**]** ; and, if it appears to **[**[F195]the Commission**]** that the account or accounts in question is or are no longer dormant, **[**[F196]it shall revoke**]** any direction under subsection (2) above which has previously been given **[**[F197]by it**]** 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.

(7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to **[**[F198]the Commission**]** for the purpose of enabling **[**[F199]the Commission to discharge its 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 **[**[F200]the Commission is informed**]** as mentioned in paragraph (a) of subsection (1) above;

(b) a "relevant institution" means—

(i) the Bank of England;

[[F201](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 **[**[F202]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).

[[F203](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 **[**[F204]the Commission has**]** no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of **[**[F205]the Commission**]** 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 01/04/2008. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F186 Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(a)**; S.I. 2007/309, art. 2, Sch.

F187 Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(b)**; S.I. 2007/309, art. 2, Sch.

F188 Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(c)**; S.I. 2007/309, art. 2, Sch.

F189 Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(d)**; S.I. 2007/309, art. 2, Sch.

F190 Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(a)**; S.I. 2007/309, art. 2, Sch.

F191 Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(b)**; S.I. 2007/309, art. 2, Sch.

F192 Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(c)**; S.I. 2007/309, art. 2, Sch.

F193 Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(d)**; S.I. 2007/309, art. 2, Sch.

F194 Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(a)**; S.I. 2007/309, art. 2, Sch.

F195 Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(b)**; S.I. 2007/309, art. 2, Sch.

F196 Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(c)**; S.I. 2007/309, art. 2, Sch.

F197 Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(d)**; S.I. 2007/309, art. 2, Sch.

F198 Words in s. 28(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(5)(a)**; S.I. 2007/309, art. 2, Sch.

F199 Words in s. 28(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(5)(b)**; S.I. 2007/309, art. 2, Sch.

F200 Words in s. 28(8)(a) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(6)**; S.I. 2007/309, art. 2, Sch.

F201 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)

F202 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)**

F203 S. 28(8A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 339(3)

F204 Words in s. 28(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(7)(a)**; S.I. 2007/309, art. 2, Sch.

F205 Words in s. 28(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(7)(b)**; S.I. 2007/309, art. 2, Sch.

[F206 29 Power to give advice and guidance

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

(a) relating to the performance of any duties of his, as such a trustee, in relation to the charity concerned, or

(b) otherwise relating to the proper administration of the charity.

(2) A charity trustee or trustee for a charity who acts in accordance with any opinion or advice given by the Commission under subsection (1) above (whether to him or to

another trustee) is to be taken, as regards his responsibility for so acting, to have acted in accordance with his trust.

(3) But subsection (2) above does not apply to a person if, when so acting, either—
  (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or
  (b) a decision of the court or the Tribunal has been obtained on the matter or proceedings are pending to obtain one.

(4) The Commission may, in connection with its second general function mentioned in section 1C(2) above, give such advice or guidance with respect to the administration of charities as it considers appropriate.

(5) Any advice or guidance so given may relate to—
  (a) charities generally,
  (b) any class of charities, or
  (c) any particular charity,

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

Textual Amendments
F206 S. 29 substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 24**, 79(2); S.I. 2007/309, art. 2, Sch.

[[F207]29A Power to determine membership of charity

(1) The Commission may—
  (a) on the application of a charity, or
  (b) at any time after the institution of an inquiry under section 8 above with respect to a charity,

determine who are the members of the charity.

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

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

Textual Amendments
F207 S. 29A inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 25**, 79(2); S.I. 2007/309, art. 2, Sch.

30 Powers for preservation of charity documents.

(1) **[**[F208]The Commission**]** may provide books in which any deed, will or other document relating to a charity may be enrolled.

(2) The **[**[F209]Commission**]** may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the **[**[F209]Commission**]** deposit them with the **[**[F209]Commission**]** for safe

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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)*

keeping, except in the case of documents required by some other enactment to be kept elsewhere.

(3) Where a document is enrolled by **[**[F210]the Commission**]** or is for the time being deposited **[**[F211]with the Commission**]** under this section, evidence of its contents may be given by means of a copy certified by any **[**[F212]member of the staff of the Commission generally or specially authorised by the Commission**]** to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.

(4) Regulations made by the **[**[F213]Minister**]** may make provision for such documents deposited with **[**[F214]the Commission**]** under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.

(5) Subsections (3) and (4) above shall apply to any document transmitted to **[**[F215]the Commission**]** under section 9 above and kept **[**[F216]by the Commission**]** under subsection (3) of that section, as if the document had been deposited **[**[F217]with the Commission**]** for safe keeping under this section.

Textual Amendments

F208 Words in s. 30(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(2)**; S.I. 2007/309, art. 2, Sch.

F209 Words in s. 30(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(3)**; S.I. 2007/309, art. 2, Sch.

F210 Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(4)(a)**; S.I. 2007/309, art. 2, Sch.

F211 Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(4)(b)**; S.I. 2007/309, art. 2, Sch.

F212 Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(4)(c)**; S.I. 2007/309, art. 2, Sch.

F213 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)**

F214 Words in s. 30(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(5)**; S.I. 2007/309, art. 2, Sch.

F215 Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(6)(a)**; S.I. 2007/309, art. 2, Sch.

F216 Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(6)(b)**; S.I. 2007/309, art. 2, Sch.

F217 Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 122(6)(c)**; S.I. 2007/309, art. 2, Sch.

31 Power to order taxation of solicitor's bill.

(1) **[**[F218]The Commission**]** 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 **[**[F219]the Commission is**]** 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.

Textual Amendments

F218 Words in s. 31(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 123(2)**; S.I. 2007/309, art. 2, Sch.

F219 Words in s. 31(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 123(3)**; S.I. 2007/309, art. 2, Sch.

[[F220]**31A Power to enter premises**

(1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by a member of the Commission's staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) below is satisfied.

(2) The conditions are—

(a) that an inquiry has been instituted under section 8 above;

(b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or furnished under section 9(1) above; and

(c) that, if the Commission were to make an order requiring the document or information to be so produced or furnished—

(i) the order would not be complied with, or

(ii) the document or information would be removed, tampered with, concealed or destroyed.

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

(a) to enter and search the premises specified in it;

(b) to take such other persons with him as the Commission considers are needed to assist him in doing anything that he is authorised to do under the warrant;

(c) to take possession of any documents which appear to fall within subsection (2)(b) above, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;

(d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;

(e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);

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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)*

(f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;

(g) to require any such person to give him such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (e) above.

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

(5) The member of the Commission's staff who is authorised under such a warrant ("the authorised person") must, if required to do so, produce—

(a) the warrant, and

(b) documentary evidence that he is a member of the Commission's staff,

for inspection by the occupier of the premises or anyone acting on his behalf.

(6) The authorised person must make a written record of—

(a) the date and time of his entry on the premises;

(b) the number of persons (if any) who accompanied him onto the premises, and the names of any such persons;

(c) the period for which he (and any such persons) remained on the premises;

(d) what he (and any such persons) did while on the premises; and

(e) any document or device of which he took possession while there.

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

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

(a) the requirements of subsection (6), and

(b) any requirement made under subsection (7) before he leaves the premises.

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

(a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 8 above, or

(b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry,

as the case may be.

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

(a) to the person from whose possession it was taken, or

(b) to any of the charity trustees of the charity to which it belonged or related.

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

(a) to imprisonment for a term not exceeding 51 weeks, or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.**]**

Textual Amendments

F220 S. 31A inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 26(1)**, 79(2) (with Sch. 10 para. 6); S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C14 S. 31A(3) power of seizure extended by 2001 c. 16, Sch. 1 para. 56A (as inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 26(2)**, 79(2); S.I. 2007/309, art. 2, Sch.)

C15 S. 31A(11) modified (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 10 para. 6**; S.I. 2007/309, art. 2, Sch.

Legal proceedings relating to charities

32 Proceedings by [F221Commission]

(1) Subject to subsection (2) below, **[**F222the Commission**]** 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 **[**F223the Commission**]** 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 **[**F224the Commission**]** by virtue of this section shall be exercisable **[**F225by the Commission of its own**]** motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

Textual Amendments

F221 Words in s. 32 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 124(4)**; S.I. 2007/309, art. 2, Sch.

F222 Words in s. 32(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 124(2)**; S.I. 2007/309, art. 2, Sch.

F223 Words in s. 32(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 124(2)**; S.I. 2007/309, art. 2, Sch.

F224 Words in s. 32(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 124(3)(a)**; S.I. 2007/309, art. 2, Sch.

F225 Words in s. 32(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 124(3)(b)**; S.I. 2007/309, art. 2, Sch.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
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 **[**[F226]the Commission**]**.

(3) **[**[F227]The Commission**]** shall not, without special reasons, authorise the taking of charity proceedings where in **[**[F228]its opinion**]** the case can be dealt with **[**[F229]by the Commission**]** 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 **[**[F230]the Commission**]**, 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 **[**[F230]the Commission**]** in accordance with section 32 above.

(7) Where it appears to **[**[F231]the Commission**]**, 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, **[**[F231]the Commission**]** shall so inform the Attorney General, and send him such statements and particulars as **[**[F232]the Commission thinks**]** 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.

Textual Amendments

F226 Words in s. 33(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(2)**; S.I. 2007/309, art. 2, Sch.

F227 Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(3)(a)**; S.I. 2007/309, art. 2, Sch.

F228 Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(3)(b)**; S.I. 2007/309, art. 2, Sch.

F229 Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(3)(c)**; S.I. 2007/309, art. 2, Sch.

F230 Words in s. 33(5)(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(4)**; S.I. 2007/309, art. 2, Sch.

F231 Words in s. 33(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(5)(a)**; S.I. 2007/309, art. 2, Sch.

F232 Words in s. 33(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 125(5)(b)**; S.I. 2007/309, art. 2, Sch.

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 **[**[F233]the Commission**]** 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 **[**[F233]the Commission**]** 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.

Textual Amendments

F233 Words in s. 34(1)(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 126**; S.I. 2007/309, art. 2, Sch.

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 [M15]Settled Land Act 1925,

(b) section 68(18) of the [M16]Trustee Act 1925,

(c) section 205(xxviii) of the [M17]Law of Property Act 1925,

(d) section 55(xxvi) of the [M18]Administration of Estates Act 1925, and

(e) section 128 of the [M19]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 **[**[F234]the Commission**]** 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 [M20]Supreme Court of Judicature (Consolidation) Act 1925.

Textual Amendments

F234 Words in s. 35(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 127**; S.I. 2007/309, art. 2, Sch.

Commencement Information

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

Marginal Citations

M15 1925 c. 18.
M16 1925 c. 19.
M17 1925 c. 20.
M18 1925 c. 23.
M19 1981 c. 54.
M20 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 **[**[F235]conveyed, transferred**]**, leased or otherwise disposed of without an order of the court or of **[**[F236]the Commission**]**.

(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

(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, **[**[F237]the requirements mentioned in subsection (2)(b) above are that**]** 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 **[**[F238]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), **[**[F239]the requirements mentioned in subsection (2)(b) above are that**]** 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 **[**[F240]conveyed, transferred**]**, leased or otherwise disposed of unless the charity trustees have **[**[F241]before the relevant time**]**—

(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.

[[F242](6A) In subsection (6) above "the relevant time" means—

(a) where the charity trustees enter into an agreement for the sale, or (as the case may be) for the lease or other disposition, the time when they enter into that agreement, and

(b) in any other case, the time of the 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) **[**[F243]The Commission**]** 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, **[**[F244]the Commission is satisfied**]** that it would be in the interests of the charity or charities **[**[F245]for the Commission**]** 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.

Textual Amendments

F235 Words in s. 36(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(2)(a)**; S.I. 2007/309, art. 2, Sch.

F236 Words in s. 36(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(2)(b)**; S.I. 2007/309, art. 2, Sch.

F237 Words in s. 36(3) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(3)**; S.I. 2007/309, art. 2, Sch.

F238 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)**

F239 Words in s. 36(5) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(4)**; S.I. 2007/309, art. 2, Sch.

F240 Words in s. 36(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(5)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))

F241 Words in s. 36(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(5)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))

F242 S. 36(6A) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(6)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))

F243 Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(a)**; S.I. 2007/309, art. 2, Sch.

F244 Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(b)**; S.I. 2007/309, art. 2, Sch.

F245 Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(c)**; S.I. 2007/309, art. 2, Sch.

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 **[**[F246]conveyed, transferred**]**, 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 **[**[F247]the Commission**]** (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 **[**[F246]conveyed, transferred**]**, 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 **[**[F247]the Commission**]**, or

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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)*

(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).

[F248](6) . . . . . .

[[F249](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.**]**

[[F249](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 **[**[F250]the removal of the entry**]**; and on receiving any application duly made under this subsection the registrar shall **[**[F251]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
(b) "land" means land in England or Wales;

and subsections (7) to (10) above shall be construed as one with the **[**[F252]Land Registration Act 2002**]**.

Textual Amendments

F246 Words in s. 37(2)(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 129(a)**; S.I. 2007/309, art. 2, Sch.; S.I. 2007/309, art. 2, Sch.

F247 Words in s. 37(2)(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 129(b)**; S.I. 2007/309, art. 2, Sch.; S.I. 2007/309, art. 2, Sch.

F248 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**

F249 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)

F250 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)

F251 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)

F252 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 **[**[F253]the Commission**]**.

[[F254](2) Subsection (1) above shall not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (3A) below (as the case may be).

(3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—
(a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant;
(b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
(c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.

(3A) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.

(3B) Subsection (3) or (as the case may be) subsection (3A) above applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—

(a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or

(b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(3C) Subsection (3D) below applies where—

(a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2) above, and

(b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(3D) In such a case, the charity trustees must not after that date enter into any transaction involving—

(a) the payment of any such sums, or

(b) the undertaking of any such obligations,

unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (3A) above (as the case may be).**]**

(4) For the purposes of **[**[F255]this section**]** 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 **[**[F256]relation to the loan, grant or other transaction in connection with which his advice is given**]**;

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.

Textual Amendments

F253 Words in s. 38(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 130**; S.I. 2007/309, art. 2, Sch.

F254 S. 38(2)-(3D) substituted for s. 38(2) (27.2.2007) by Charities Act 2006 (c. 50), **ss. 27(2)**, 79(2); S.I. 2007/309, art. 2, Sch.

F255 Words in s. 38(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 27(3)(a)**, 79(2); S.I. 2007/309, art. 2, Sch.

F256 Words in s. 38(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 27(3)(b)**, 79(2); S.I. 2007/309, art. 2, Sch.

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 **[**[F257]by land registration rules**]**.

[[F258](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 **[**[F259]the Commission**]** (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

(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 **[**[F260]the Commission**]**, 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.

[[F261](4A) Where subsection (3D) of section 38 above applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in relation to any transaction falling within that subsection that they have obtained and considered such advice as is mentioned in that subsection.

(4B) Where subsection (4A) above has been complied with in relation to any transaction, then, in favour of a person who (whether under the mortgage or afterwards) has acquired or 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.**]**

[F262](5) . . . . . .

(6) In this section—

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

"land" means land in England or Wales;

[[F263]and subsections (1) to (1B) above shall be construed as one with the Land Registration Act 2002**]**.

Textual Amendments

F257 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)

F258 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)

F259 Words in s. 39(2)(a) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 131(2)**; S.I. 2007/309, art. 2, Sch.

F260 Words in s. 39(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 131(2)**; S.I. 2007/309, art. 2, Sch.

F261 S. 39(4A)(4B) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 131(3)**; S.I. 2007/309, art. 2, Sch.

F262 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**

F263 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 [M21]Rentcharges Act 1977.

(4) The **[**[F264]Minister**]** may by order amend subsection (2) above by substituting a different sum for the sum for the time being specified there.

Textual Amendments

F264 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

M21 1977 c. 30.

PART VI

CHARITY ACCOUNTS, REPORTS AND RETURNS

Modifications etc. (not altering text)

C16 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

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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 **[**[F265]the Commission consents**]** in writing to the records being destroyed or otherwise disposed of.

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

Textual Amendments

F265 Words in s. 41(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 132**; S.I. 2007/309, art. 2, Sch.

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 such requirements as to its form and contents as may be prescribed by regulations made by the **[**[F266]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.

[[F267](2A) Such regulations may, however, not impose on the charity trustees of a charity that is a charitable trust created by any person ("the settlor") any requirement to disclose, in any statement of accounts prepared by them under subsection (1) —

(a) the identities of recipients of grants made out of the funds of the charity, or

(b) the amounts of any individual grants so made,

if the disclosure would fall to be made at a time when the settlor or any spouse or civil partner of his was still alive.**]**

(3) Where a charity's gross income in any financial year does not exceed **[**[F268]£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 **[**[F266]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.

[[F269](8) Provisions about the preparation of accounts in respect of groups consisting of certain charities and their subsidiary undertakings, and about other matters relating to such groups, are contained in Schedule 5A to this Act (see section 49A below).**]**

Textual Amendments

F266 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)**

F267 S. 42(2A) inserted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 133(2)**; S.I. 2008/945, art. 2, Sch. 1 (with art. 7)

F268 Figure in s. 42(3) substituted (1.3.1996) by S.I. 1995/2696, **art. 2(3)**

F269 S. 42(8) added (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 133(3)**; S.I. 2008/945, art. 2, Sch. 1

43 Annual audit or examination of charity accounts.

[[F270](1) Subsection (2) below applies to a financial year of a charity if—

(a) the charity's gross income in that year exceeds £500,000; or

(b) the charity's gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.

"The accounts threshold" means £100,000 or such other sum as is for the time being specified in section 42(3) above.**]**

(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—

[[F271](a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the **[**[F272]accounts of the charity were required to be audited in accordance with Part 7 of the Companies Act 1985**]** , 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 **[**[F273]but its gross income in that year exceeds £10,000,**]** the accounts of the charity for that year shall, at the election of the charity trustees, either—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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.

[[F274]This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.**]**

[[F275](3A) If subsection (3) above applies to the accounts of a charity for a year and the charity's gross income in that year exceeds £250,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is—

[[F276](a) a member of one of the bodies listed in subsection (3B) below; or

(b) a Fellow of the Association of Charity Independent Examiners.**]**

[F276](c)**]** . . . . . .

[[F277](3B) The bodies referred to in subsection (3A)(a) above are—

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Institute of Chartered Accountants in Ireland;

(d) the Association of Chartered Certified Accountants;

(e) the Association of Authorised Public Accountants;

(f) the Association of Accounting Technicians;

(g) the Association of International Accountants;

(h) the Chartered Institute of Management Accountants;

(i) the Institute of Chartered Secretaries and Administrators;

(j) the Chartered Institute of Public Finance and Accountancy.**]**

(4) Where it appears to **[**[F278]the Commission**]**—

(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,

[[F278]the Commission**]** 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 **[**[F279]the Commission makes**]** 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 **[**[F280]the Commission**]**.

(6) The expenses of any audit carried out by an auditor appointed by **[**[F281]the Commission**]** under subsection (5) above, including the auditor's remuneration, shall be recoverable by **[**[F281]the Commission**]**—

(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 **[**[F281]the Commission**]** not to be practical to seek recovery of those expenses in accordance with paragraph (a) above, from the funds of the charity.

(7) **[**[F282]The Commission**]** 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 **[**[F283]it thinks**]** 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.

[[F284](8) The Minister may by order—

(a) amend subsection (1)(a) or (b), (3) or (3A) above by substituting a different sum for any sum for the time being specified there;

(b) amend subsection (3A) by adding or removing a description of person to or from the list in that subsection or by varying any entry for the time being included in that list.**]**

[[F285](c) amend subsection (3B) by adding or removing a body to or from the list in that subsection or by varying any entry for the time being included in that list.**]**

[[F286](9) Nothing in this section applies in relation to the accounts of a charity for a financial year if those accounts are required to be audited in accordance with Part 7 of the Companies Act 1985.**]**

[[F287](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

F270 S. 43(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(2)**, 79(2); S.I. 2007/309, art. 2, Sch.

F271 S. 43(2)(a) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(3)**, 79(2); S.I. 2007/309, art. 2, Sch.

F272 Words in s. 43(2)(a) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **2(2)**

F273 Words in s. 43(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(4)(a)**, 79(2); S.I. 2007/309, art. 2, Sch.

F274 Words in s. 43(3) inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(4)(b)**, 79(2); S.I. 2007/309, art. 2, Sch.

F275 S. 43(3A) inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(5)**, 79(2); S.I. 2007/309, art. 2, Sch.

F276 S. 43(3A)(a)(b) substituted for (a)(b)(c)(with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **2(3)**

F277 S. 43(3B) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **2(4)**

F278 Words in s. 43(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(2)**; S.I. 2007/309, art. 2, Sch.

F279 Words in s. 43(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(3)(a)**; S.I. 2007/309, art. 2, Sch.

F280 Words in s. 43(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(3)(b)**; S.I. 2007/309, art. 2, Sch.

F281 Words in s. 43(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(4)**; S.I. 2007/309, art. 2, Sch.

F282 Words in s. 43(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(5)(a)**; S.I. 2007/309, art. 2, Sch.

F283 Words in s. 43(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 134(5)(b)**; S.I. 2007/309, art. 2, Sch.

F284 S. 43(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 28(6)**, 79(2); S.I. 2007/309, art. 2, Sch.

F285 S. 43(8)(c) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **2(5)**

F286 S. 43(9) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **2(6)**

F287 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)**

[F288 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 [F289 paragraph (a) or (b) of section 43(1) is satisfied in relation to] 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) [F290 The Commission] may give such directions as [F291 it thinks] 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 [F292]...; 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) **[**[F293]trustees appointed in pursuance of paragraph 10 of Schedule 4 to the National Health Service Act 2006 for a National Health Service trust falling within paragraph (c);

(da) special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973, section 95(1) of the National Health Service Act 1977 and section 212(1) of the National Health Service Act 2006 for such a National Health Service trust, or**]**

(e) trustees for a Primary Care Trust appointed in pursuance of **[**[F294]paragraph 12 of Schedule 3 to the National Health Service Act 2006**]**

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Textual Amendments

F288 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)**

F289 Words in s. 43A(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 135(2)**; S.I. 2007/309, art. 2, Sch. (with art. 7)

F290 Words in s. 43A(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 135(3)(a)**; S.I. 2007/309, art. 2, Sch.

F291 Words in s. 43A(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 135(3)(b)**; S.I. 2007/309, art. 2, Sch.

F292 Words in s. 43A(7) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), Sch. 9 para. 1(2)(i), **Sch. 18 Pt. 9**; S.I. 2008/172, art. 4(a)(n)(i)

F293 Words in s. 43A(7) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 161(a)** (with Sch. 3 Pt. 1)

F294 Words in s. 43A(7) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 161(b)** (with Sch. 3 Pt. 1)

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 **[**[F295]paragraph (a) or (b) of section 43(1) is satisfied in relation to**]** 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—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

"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;

(c) **[**[F296] trustees appointed in pursuance of paragraph 10 of Schedule 3 to the National Health Service (Wales) Act 2006 for a National Health Service trust falling within paragraph (b); or

(d) special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973, section 95(1) of the National Health Service Act 1977 and section 160(1) of the National Health Service (Wales) Act 2006 for such a National Health Service trust.**]**

[F297]**[** (5) References in this Act to an auditor or an examiner have effect in relation to this section as references to the Auditor General for Wales acting under this section as an auditor or examiner.**]]**

Textual Amendments

F288 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)**

F295 Words in s. 43B(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 136(2)**; S.I. 2007/309, art. 2, Sch. (with art. 8)

F296 Words in s. 43B(4) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 162** (with Sch. 3 Pt. 1)

F297 S. 43B(5) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 136(3)**; S.I. 2007/309, art. 2, Sch.

44 Supplementary provisions relating to audits etc.

(1) The **[**[F298]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**[**[F299], 43A or 43B**]** 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,**[**[F300]or

(iii) the accounts so prepared under section 226 of the Companies Act 1985 (duty to prepare individual accounts),**]**

as the case may be;

[[F301](c) with respect to the making of a report—

(i) by an independent examiner in respect of an examination carried out by him under section 43 above; or

(ii) by an examiner in respect of an examination carried out by him under section 43A or 43B above;**]**

(d) conferring on such an auditor or on an independent examiner **[**[F302]or 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 **[**[F302]or 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 **[**[F303]the Commission**]**, 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 **[**[F304]or examiner**]** any facility to which he is entitled by virtue of subsection (1)(d) or (e) above, **[**[F305]the Commission**]** 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 **[**[F306]the Commission thinks**]** appropriate for securing that the default is made good.

[F307](3) . . . . . .

Textual Amendments

F298 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)**

F299 Words in s. 44(1)(b) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(2)(a)**; S.I. 2007/309, art. 2, Sch.

F300 S. 44(1)(b)(iii) and word inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(2), **3**

F301 S. 44(1)(c) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(2)(b)**; S.I. 2007/309, art. 2, Sch.

F302 Words in s. 44(1)(d)(e) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(2)(c)**; S.I. 2007/309, art. 2, Sch.

F303 Words in s. 44(1)(f) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(2)(d)**; S.I. 2007/309, art. 2, Sch.

F304 Words in s. 44(2) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(3)(a)**; S.I. 2007/309, art. 2, Sch.

F305 Words in s. 44(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(3)(b)**; S.I. 2007/309, art. 2, Sch.

F306 Words in s. 44(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 137(3)(c)**; S.I. 2007/309, art. 2, Sch.

F307 S. 44(3) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 137(4), **Sch. 9**; S.I. 2007/309, art. 2, Sch.

[[F308]44A Duty of auditors etc. to report matters to Commission**]**

(1) This section applies to—

(a) a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above,

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(b) a person acting as an auditor or examiner appointed under section 43A(2) or (3) above, and

(c) the Auditor General for Wales acting under section 43B(2) or (3) above.

(2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter—

(a) which relates to the activities or affairs of the charity or of any connected institution or body, and

(b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under section 8 or 18 above,

he must immediately make a written report on the matter to the Commission.

(3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter—

(a) which does not appear to him to be one that he is required to report under subsection (2) above, but

(b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

he may make a report on the matter to the Commission.

(4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity.

(5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.

(6) In this section "connected institution or body", in relation to a charity, means—

(a) an institution which is controlled by, or

(b) a body corporate in which a substantial interest is held by,

the charity or any one or more of the charity trustees acting in his or their capacity as such.

(7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.**]**

Textual Amendments

F308 S. 44A inserted (1.4.2008) by Charities Act 2006 (c. 50), **ss. 29(1)**, 79(2) (with Sch. 10 para. 8); S.I. 2008/945, art. 2, Sch. 1

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 **[**[F309]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 **[**[F310]the Commission**]** 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) **[**[F311]Where **[**[F312]a charity's gross income in any financial year**]** exceeds £10,000, **[**[F313]a copy of**]** the annual report required to be prepared under this section in respect of that year**]** shall be transmitted to **[**[F314]the Commission**]** by the charity trustees—

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

(b) within such longer period as **[**[F314]the Commission**]** may for any special reason allow in the case of that report.

[[F315](3A) Where **[**[F316]a charity's gross income in any financial year does not exceed**]** £10,000, **[**[F317]a copy of**]** the annual report required to be prepared under this section in respect of that year shall, if **[**[F318]the Commission so requests, be transmitted to it**]** 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 **[**[F319]the Commission**]** may for any special reason allow in the case of that report.**]**

(4) Subject to subsection (5) below, **[**[F320]any **[**[F321]copy of an annual report transmitted to the Commission**]** under this section**]** shall have attached to it **[**[F322]a copy of**]** the statement of accounts prepared for the financial year in question under section 42(1) above or (as the case may be) **[**[F322]a copy of**]** 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**[**[F323], 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**[**[F324], 43A or 43B**]** above, a copy of the report made by the **[**[F325]person carrying out the examination**]**

(5) Subsection (4) above does not apply to a charity which is a company, and any **[**[F326]copy of an**]** annual report transmitted by the charity trustees of such a charity under **[**[F327]this section**]** shall instead have attached to it a copy of the charity's annual accounts prepared for the financial year in question under Part VII of the [M22]Companies Act 1985, together with

[[F328](a) where the accounts of the charity for that year have been audited under that Part of that Act, a copy of the report made by the auditor on those accounts;

(b) where the accounts of the charity for that year have been audited under section 43 above, a copy of the report made by the auditor on those accounts;

(c) where the accounts of the charity for that year have been examined under that section, a copy of the report made by the person carrying out the examination.**]**

(6) Any **[**[F329]copy of an**]** annual report transmitted to **[**[F330]the Commission**]** under **[**[F327]this section**]**, together with the documents attached to it, shall be kept by **[**[F330]the Commission**]** for such period as **[**[F331]it thinks fit**]**.

[[F332](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 **[**[F333]of which they have not been required to transmit a copy to the Commission.**]**

(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 **[**[F334]to subsection (3)**]** of that section being read as references to subsection (7) above).

(9) The **[**[F309]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

F309 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)**

F310 Words in s. 45(2)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(2)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F311 Words in s. 45(3) substituted (3.11.1994) by 1994 c. 40, **ss. 29(1)**, 82(3)(b)

F312 Words in s. 45(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(3)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F313 Words in s. 45(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(3)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F314 Words in s. 45(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(3)(c)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F315 S. 45(3A) inserted (3.11.1994) by 1994 c. 40, **ss. 29(2)**, 82(3)(b)

F316 Words in s. 45(3A) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(4)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F317 Words in s. 45(3A) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(4)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F318 Words in s. 45(3A) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(4)(c)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F319 Words in s. 45(3A) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(4)(d)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F320 Words in s. 45(4) substituted (3.11.1994) by 1994 c. 40, **ss. 29(3)**, 82(3)(b)

F321 Words in s. 45(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(5)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F322 Words in s. 45(4) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(5)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F323 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)**

F324 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)**

F325 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)**

F326 Words in s. 45(5) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(6)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F327 Words in s. 45(5)(6) substituted (3.11.1994) by 1994 c. 40, **ss. 29(4)(5)**, 82(3)(b)

F328 Words in s. 45(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **4**

F329 Words in s. 45(6) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(7)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F330 Words in s. 45(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(7)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F331 Words in s. 45(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(7)(c)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F332 S. 45(7)-(9) inserted (3.11.1994) by 1994 c. 40, **ss. 29(6)**, 82(3)(b)

F333 Words in s. 45(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(8)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

F334 Words in s. 45(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 138(9)**; S.I. 2007/309, art. 2, Sch. (with art. 9)

Marginal Citations

M22 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 **[**[F335]the Commission consents**]** in writing to their being destroyed or otherwise disposed of.

(3) Nothing in **[**[F336]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 **[**[F337]the Commission**]**, 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 **[**[F338]the Commission's request**]**.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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.

[[F339](7) The following provisions of section 45 above shall apply in relation 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—

(a) subsection (3), with the omission of the words preceding "a copy of the annual report", and

(b) subsections (4) to (6).**]**

(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

F335 Words in s. 46(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 139(2)**; S.I. 2007/309, art. 2, Sch.

F336 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)**

F337 Words in s. 46(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 139(5)(a)**; S.I. 2007/309, art. 2, Sch.

F338 Words in s. 46(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 139(5)(b)**; S.I. 2007/309, art. 2, Sch.

F339 S. 46(7) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 139(6)**; S.I. 2008/945, art. 2, Sch. 1 (with art. 8)

47 Public inspection of annual reports etc.

(1) **[**[F340]Any document kept by the Commission**]** 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 **[**[F341]the Commission so determines**]**, during such lesser period as **[**[F342]it may**]** specify.

(2) Where any person—

(a) requests the charity trustees of a charity in writing to provide him with a copy of the charity's most recent accounts **[**[F343]or (if subsection (4) below applies) of its most recent annual report**]**, 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—

[F344](a) . . . . . .

(b) in the case of **[**[F345]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;

[[F346](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

[[F347](ii) they have been examined by an independent examiner under section 43(3)(a) above;**]**

(iii) they relate to a year in respect of which the company is exempt from audit **[**[F348]under Part 7 of the Companies Act 1985 and neither section 43(2) nor section 43(3) above applied to them;**]** 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.

[[F349](4) This subsection applies if an annual report has been prepared in respect of any financial year of a charity in pursuance of section 45(1) or 46(5) above.

(5) In subsection (2) above the reference to a charity's most recent annual report is a reference to the annual report prepared in pursuance of section 45(1) or 46(5) in respect of the last financial year of the charity in respect of which an annual report has been so prepared.**]**

Textual Amendments

F340 Words in s. 47(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 140(2)(a)**; S.I. 2007/309, art. 2, Sch.

F341 Words in s. 47(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 140(2)(b)**; S.I. 2007/309, art. 2, Sch.

F342 Words in s. 47(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 140(2)(c)**; S.I. 2007/309, art. 2, Sch.

F343 Words in s. 47(2)(a) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 140(3)**; S.I. 2007/309, art. 2, Sch.

F344 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**

F345 Words in s. 47(3)(b) substituted (3.11.1994) by ss. 39, 82(3)(b), Sch. 11 para. 12(b)

F346 S. 47(3)(c) substituted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. II para. 7**

F347 S. 47(3)(c)(ii) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **5(a)**

F348 Words in s. 47(3)(c)(iii) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **5(b)**

F349 S. 47(4)(5) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 140(4)**; S.I. 2007/309, art. 2, Sch.

48 Annual returns by registered charities.

(1) **[**[F350]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 **[**[F351]the Commission**]**.

[[F352](1A) Subsection (1) above shall not apply in relation to any financial year of a charity in which **[**[F353]the charity's gross income does not exceed**]** £10,000.**]**

(2) Any such return shall be transmitted to **[**[F354]the Commission**]** by the date by which the charity trustees are, by virtue of section 45(3) above, required to transmit **[**[F355]to the Commission**]** the annual report required to be prepared in respect of the financial year in question.

(3) **[**[F356]The Commission**]** 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.

[[F357](4) The **[**[F358]Minister**]** may by order amend subsection (1A) above by substituting a different sum for the sum for the time being specified there.**]**

Textual Amendments

F350 Words in s. 48(1) inserted (3.11.1994) by 1994 c. 40, **ss. 30(2)**, 82(3)(b)

F351 Words in s. 48(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 141(2)**; S.I. 2007/309, art. 2, Sch.

F352 S. 48(1A) inserted (3.11.1994) by 1994 c. 40, **ss. 30(3)**, 82(3)(b)

F353 Words in s. 48(1A) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 141(3)**; S.I. 2007/309, art. 2, Sch. (with art. 10)

F354 Words in s. 48(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 141(4)(a)**; S.I. 2007/309, art. 2, Sch.

F355 Words in s. 48(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 141(4)(b)**; S.I. 2007/309, art. 2, Sch.

F356 Words in s. 48(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 141(5)**; S.I. 2007/309, art. 2, Sch.

F357 S. 48(4) inserted (3.11.1994) by 1994 c. 40, **ss. 30(4)**, 82(3)(b)

F358 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)**

[[F359]49 Offences

(1) If any requirement imposed—

(a) by section 45(3) or (3A) above (taken with section 45(3B), (4) and (5), as applicable), or

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

is not complied with, each person who immediately before the date for compliance specified in the section in question was a charity trustee of the charity shall be guilty of an offence and liable on summary conviction to the penalty mentioned in subsection (2).

(2) The penalty is—

(a) a fine not exceeding level 4 on the standard scale, and

(b) for continued contravention, a daily default fine not exceeding 10% of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable steps for securing that the requirement in question would be complied with in time.**]**

Textual Amendments

F359 S. 49 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 142**; S.I. 2007/309, art. 2, Sch. (with art. 11)

[F360 49A Group accounts

The provisions of Schedule 5A to this Act shall have effect with respect to—

(a) the preparation and auditing of accounts in respect of groups consisting of parent charities and their subsidiary undertakings (within the meaning of that Schedule), and

(b) other matters relating to such groups.**]**

Textual Amendments

F360 S. 49A inserted (1.4.2008) by Charities Act 2006 (c. 50), **ss. 30(1)**, 79(2); S.I. 2008/945, art. 2, Sch. 1

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 **[**F361the Commission**]** for a certificate of incorporation of the trustees as a body corporate, and

(b) **[**F362the Commission considers**]** that the incorporation of the trustees would be in the interests of the charity,

[F361the Commission**]** may grant such a certificate, subject to such conditions or directions as **[**F363the Commission thinks fit**]** to insert in it.

(2) **[**F364The Commission**]** shall not, however, grant such a certificate in a case where the charity appears **[**F365to the Commission**]** 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

(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.

Textual Amendments

F361 Words in s. 50(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 143(2)(a)**; S.I. 2007/309, art. 2, Sch.

F362 Words in s. 50(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 143(2)(b)**; S.I. 2007/309, art. 2, Sch.

F363 Words in s. 50(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 143(2)(c)**; S.I. 2007/309, art. 2, Sch.

F364 Words in s. 50(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 143(3)(a)**; S.I. 2007/309, art. 2, Sch.

F365 Words in s. 50(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 143(3)(b)**; S.I. 2007/309, art. 2, Sch.

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 **[**[F366]the Commission**]** 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 **[**[F366]the Commission**]** may require for the purpose of the application.

(2) **[**[F367]The Commission**]** 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 **[**[F368]it may specify**]**.

Textual Amendments

F366 Words in s. 52(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 144(2)**; S.I. 2007/309, art. 2, Sch.

F367 Words in s. 52(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 144(3)(a)**; S.I. 2007/309, art. 2, Sch.

F368 Words in s. 52(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 144(3)(b)**; S.I. 2007/309, art. 2, Sch.

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 **[**[F369]the Commission**]**.

(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.

Textual Amendments

F369 Words in s. 53(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 145**; S.I. 2007/309, art. 2, Sch.

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.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

56 Power of [F370Commission] to amend certificate of incorporation.

(1) [F371The Commission] may amend a certificate of incorporation either on the application of the incorporated body to which it relates or [F372of the Commission's own motion].

(2) Before making any such amendment [F373of its own motion, the Commission] shall by notice in writing—

(a) inform the trustees of the relevant charity of [F374its proposals], and

(b) invite those trustees to make representations [F375to it] within a time specified in the notice, being not less than one month from the date of the notice.

(3) [F376The Commission] shall take into consideration any representations made by those trustees within the time so specified, and may then (without further notice) proceed with [F377its proposals] either without modification or with such modifications as appear [F378to it] to be desirable.

(4) [F379The Commission] 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.

Textual Amendments

F370 Words in s. 56 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(6)**; S.I. 2007/309, art. 2, Sch.

F371 Words in s. 56(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(2)(a)**; S.I. 2007/309, art. 2, Sch.

F372 Words in s. 56(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(2)(b)**; S.I. 2007/309, art. 2, Sch.

F373 Words in s. 56(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(3)(a)**; S.I. 2007/309, art. 2, Sch.

F374 Words in s. 56(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(3)(b)**; S.I. 2007/309, art. 2, Sch.

F375 Words in s. 56(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(3)(c)**; S.I. 2007/309, art. 2, Sch.

F376 Words in s. 56(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(4)(a)**; S.I. 2007/309, art. 2, Sch.

F377 Words in s. 56(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(4)(b)**; S.I. 2007/309, art. 2, Sch.

F378 Words in s. 56(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(4)(c)**; S.I. 2007/309, art. 2, Sch.

F379 Words in s. 56(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 146(5)**; S.I. 2007/309, art. 2, Sch.

57 Records of applications and certificates.

(1) [F380The Commission] shall keep a record of all applications for, and certificates of, incorporation under this Part of this Act and shall preserve all documents sent [F381to it] under this Part of this Act.

(2) Any person may inspect such documents, under the direction of [F382the Commission], and any person may require a copy or extract of any such document to be certified by a certificate signed by [F383a member of the staff of the Commission].

Textual Amendments

F380 Words in s. 57(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 147(2)(a)**; S.I. 2007/309, art. 2, Sch.

F381 Words in s. 57(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 147(2)(b)**; S.I. 2007/309, art. 2, Sch.

F382 Words in s. 57(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 147(3)(a)**; S.I. 2007/309, art. 2, Sch.

F383 Words in s. 57(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 147(3)(b)**; S.I. 2007/309, art. 2, Sch.

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 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 **[**[F384]the Commission**]** as is mentioned in that section.

Textual Amendments

F384 Words in s. 58 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 148**; S.I. 2007/309, art. 2, Sch.

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

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(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 [F385Commission] to dissolve incorporated body.

(1) Where [F386the Commission is] 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 [F387treated by the Commission] 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,

[[F388]the Commission may of its own motion**]** make an order dissolving the body as from such date as is specified in the order.

(2) Where **[**[F389]the Commission is**]** 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, **[**[F390]the Commission**]** 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 **[**[F391]the Commission so directs**]** 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;

(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 **[**[F392]the Commission**]** 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.

[F393](7) . . . . . .

Textual Amendments

F385 Words in s. 61 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(6)**; S.I. 2007/309, art. 2, Sch.

F386 Words in s. 61(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(2)(a)**; S.I. 2007/309, art. 2, Sch.

F387 Words in s. 61(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(2)(b)**; S.I. 2007/309, art. 2, Sch.

F388 Words in s. 61(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(2)(c)**; S.I. 2007/309, art. 2, Sch.

F389 Words in s. 61(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(3)(a)**; S.I. 2007/309, art. 2, Sch.

F390 Words in s. 61(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(3)(b)**; S.I. 2007/309, art. 2, Sch.

F391 Words in s. 61(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(4)(a)**; S.I. 2007/309, art. 2, Sch.

F392 Words in s. 61(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 149(4)(b)**; S.I. 2007/309, art. 2, Sch.

F393 S. 61(7) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 149(5), **Sch. 9**; S.I. 2007/309, art. 2, Sch.

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 [M23]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 **[**[F394]the Commission**]** if, at any time after **[**[F395]it has instituted**]** an inquiry under section 8 above with respect to the charity, **[**[F396]it is satisfied**]** as mentioned in section 18(1)(a) or (b) above.

(3) Where a charitable company is dissolved, **[**[F397]the Commission**]** may make an application under section 651 of the [M24]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 **[**[F397]the Commission**]**.

(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), **[**[F398]the Commission**]** 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 **[**[F398]the Commission**]**.

(5) The powers exercisable by **[**[F399]the Commission**]** by virtue of this section shall be exercisable **[**[F400]by the Commission of its 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.

Textual Amendments

F394 Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(a)**; S.I. 2007/309, art. 2, Sch.

F395 Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(b)**; S.I. 2007/309, art. 2, Sch.

F396 Words in s. 63(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(2)(c)**; S.I. 2007/309, art. 2, Sch.

F397 Words in s. 63(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(3)**; S.I. 2007/309, art. 2, Sch.

F398 Words in s. 63(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(4)**; S.I. 2007/309, art. 2, Sch.

F399 Words in s. 63(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(5)(a)**; S.I. 2007/309, art. 2, Sch.

F400 Words in s. 63(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 150(5)(b)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M23 1986 c. 45.

M24 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.

[[F401](2) Where a charity is a company, any regulated alteration by the company—

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

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

(2A) The following are "regulated alterations"—

(a) any alteration of the objects clause in the company's memorandum of association,

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

(c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(2B) For the purposes of subsection (2A) above—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section; and

(b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(5) and (6) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.**]**

(3) Where a company has made **[**[F402]a regulated alteration**]** in accordance with subsection (2) above and—

(a) in connection with the alteration is required by virtue of—

(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

[[F403](b) is required by section 30 of the Companies Act 2006 (copies of resolutions affecting a company's constitution) to forward to the registrar a copy of the special resolution effecting the alteration,**]**

the copy so delivered or forwarded by the company shall be accompanied by a copy of **[**[F404]the Commission'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.

Textual Amendments

F401 S. 64(2)-(2B) substituted for s. 64(2) (18.3.2008) by Charities Act 2006 (c. 50), **ss. 31(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 8)

F402 Words in s. 64(3) substituted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 31(3)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 8)

F403 S. 64(3)(b) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 79** (with art. 12)

F404 Words in s. 64(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 151**; S.I. 2007/309, art. 2, Sch.

65 Invalidity of certain transactions.

(1) Sections 35 and 35A of the [M25]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 **[**[F405]the Commission**]**.

Textual Amendments

F405 Words in s. 65(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 152**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M25 1985 c. 6.

[[F406]66 Consent of Commission required for approval etc by members of charitable companies

(1) Where a company is a charity—

(a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2) below, and

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

is ineffective without the prior written consent of the Commission.

(2) The provisions are—

(a) section 188 (directors' long-term service contracts);

(b) section 190 (substantial property transactions with directors etc);

(c) section 197, 198 or 200 (loans and quasi-loans to directors etc);
(d) section 201 (credit transactions for benefit of directors etc);
(e) section 203 (related arrangements);
(f) section 217 (payments to directors for loss of office);
(g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

Textual Amendments

F406 Ss. 66, 66A substituted (1.10.2007) for s. 66 by Companies Act 2006 (c. 46), **ss. 226**, 1300(2); S.I. 2007/2194, art. 2(1)(d) (with arts. 712)

66A Consent of Commission required for certain acts of charitable company

(1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.

(2) This section applies to an act that—
(a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but
(b) would require such approval but for an exemption in the provision in question that disapplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate.

(3) The reference to a listed provision is a reference to a provision listed in section 66(2) above.

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

Textual Amendments

F406 Ss. 66, 66A substituted (1.10.2007) for s. 66 by Companies Act 2006 (c. 46), **ss. 226**, 1300(2); S.I. 2007/2194, art. 2(1)(d) (with arts. 712)

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"**[**[F407]then, subject to subsection (1A)**]**, the fact that the company is a charity shall be stated [F408]. . . 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.

[F409][(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".]

(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 [M26]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

F407 Words in s. 68(1) inserted (21.12.1993) by 1993 c. 38, **ss. 33(2)(a)**, 36(1)

F408 Words in s. 68(1) repealed (21.12.1993) by 1993 c. 38, ss. 33(2)(b), 35(1), 36(1), **Sch.2**

F409 S. 68(1A)(1B) inserted (21.12.1993) by 1993 c. 38, **ss. 33(3)**, 36(1)

Marginal Citations

M26 1985 c. 6.

[F410 68A Duty of charity's auditors etc. to report matters to Commission

(1) Section 44A(2) to (7) above shall apply in relation to a person [F411 acting as an auditor of a charitable company appointed under Chapter 2 of Part 16 of the Companies Act 2006 (appointment of auditors) as they apply] in relation to a person such as is mentioned in section 44A(1).

(2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting in the capacity mentioned in subsection (1) of this section.

(3) In this section "charitable company" means a charity which is a company.]

Textual Amendments

F410 S. 68A inserted (1.4.2008) by Charities Act 2006 (c. 50), **ss. 33**, 79(2) (with Sch. 10 para. 10); S.I. 2008/945, art. 2, Sch. 1

F411 Words in s. 68A(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **6**

69 Investigation of accounts.

(1) In the case of a charity which is a company **[**[F412]the Commission**]** may by order require that the condition and **[**[F413]relevant**]** accounts of the charity for such period as **[**[F414]the Commission thinks fit**]** shall be investigated and audited by an auditor appointed **[**[F415]by the Commission**]**, being a person eligible for appointment as a company auditor under section 25 of the [M27]Companies Act 1989.

[[F416](1A) "Relevant accounts" means accounts required to be audited under Part 7 of the Companies Act 1985.**]**

(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 **[**[F417]the Commission**]** 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 **[**[F418]the Commission**]**.

(4) If any person fails to afford an auditor any facility to which he is entitled under subsection (2) above **[**[F419]the Commission**]** may by order give to that person or to the charity trustees for the time being such directions as **[**[F420]the Commission thinks**]** appropriate for securing that the default is made good.

Textual Amendments

F412 Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(a)**; S.I. 2007/309, art. 2, Sch.

F413 Words in s. 69(1) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **7(2)**

F414 Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(b)**; S.I. 2007/309, art. 2, Sch.

F415 Words in s. 69(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(2)(c)**; S.I. 2007/309, art. 2, Sch.

F416 S. 69(1A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **7(3)**

F417 Words in s. 69(2)(c) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(3)**; S.I. 2007/309, art. 2, Sch.

F418 Words in s. 69(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(3)**; S.I. 2007/309, art. 2, Sch.

F419 Words in s. 69(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(4)(a)**; S.I. 2007/309, art. 2, Sch.

F420 Words in s. 69(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 154(4)(b)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M27 1989 c. 40.

[F421 PART 8A

CHARITABLE INCORPORATED ORGANISATIONS

Textual Amendments

F421 Pt. 8A inserted (27.2.2007 for the insertion of ss. 69B(3)(5), 69E(2)(b), 69G(5)(d), 69H(4), 69J, 69N, 69Q for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 7 para. 1**; S.I. 2007/309, art. 2, Sch.

Nature and constitution

69A Charitable incorporated organisations

(1) In this Act, a charitable incorporated organisation is referred to as a "CIO".

(2) A CIO shall be a body corporate.

(3) A CIO shall have a constitution.

(4) A CIO shall have a principal office, which shall be in England or in Wales.

(5) A CIO shall have one or more members.

(6) The members may be either—
- (a) not liable to contribute to the assets of the CIO if it is wound up, or
- (b) liable to do so up to a maximum amount each.

69B Constitution

(1) A CIO's constitution shall state—
- (a) its name,
- (b) its purposes,
- (c) whether its principal office is in England or in Wales, and
- (d) whether or not its members are liable to contribute to its assets if it is wound up, and (if they are) up to what amount.

(2) A CIO's constitution shall make provision—
- (a) about who is eligible for membership, and how a person becomes a member,
- (b) about the appointment of one or more persons who are to be charity trustees of the CIO, and about any conditions of eligibility for appointment, and
- (c) containing directions about the application of property of the CIO on its dissolution.

(3) A CIO's constitution shall also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Minister.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(4) A CIO's constitution—
  (a) shall be in English if its principal office is in England,
  (b) may be in English or in Welsh if its principal office is in Wales.

(5) A CIO's constitution shall be in the form specified in regulations made by the Commission, or as near to that form as the circumstances admit.

(6) Subject to anything in a CIO's constitution: a charity trustee of the CIO may, but need not, be a member of it; a member of the CIO may, but need not, be one of its charity trustees; and those who are members of the CIO and those who are its charity trustees may, but need not, be identical.

69C Name and status

(1) The name of a CIO shall appear in legible characters—
  (a) in all business letters of the CIO,
  (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 CIO,
  (d) in all conveyances purporting to be executed by the CIO, and
  (e) in all bills rendered by it and in all its invoices, receipts, and letters of credit.

(2) In subsection (1)(d), "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Subsection (5) applies if the name of a CIO does not include—
  (a) "charitable incorporated organisation", or
  (b) "CIO", with or without full stops after each letter, or
  (c) a Welsh equivalent mentioned in subsection (4) (but this option applies only if the CIO's constitution is in Welsh),

  and it is irrelevant, in any such case, whether or not capital letters are used.

(4) The Welsh equivalents referred to in subsection (3)(c) are—
  (a) "sefydliad elusennol corfforedig", or
  (b) "SEC", with or without full stops after each letter.

(5) If this subsection applies, the fact that a CIO is a CIO shall be stated in legible characters in all the documents mentioned in subsection (1).

(6) The statement required by subsection (5) shall be in English, except that in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh.

69D Offences connected with name and status

(1) A charity trustee of a CIO or a person on the CIO's behalf who issues or authorises the issue of any document referred to in paragraph (a), (b), (d) or (e) of section 69C(1) above which fails to comply with the requirements of section 69C(1), (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A charity trustee of a CIO or a person on the CIO's behalf who signs or authorises to be signed on behalf of the CIO any document referred to in paragraph (c) of

section 69C(1) above which fails to comply with the requirements of section 69C(1), (5) or (6)—

(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and

(b) is personally liable to the holder of the bill of exchange (etc.) for the amount of it, unless it is duly paid by the CIO.

(3) A person who holds any body out as being a CIO when it is not (however he does this) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he believed on reasonable grounds that the body was a CIO.

Registration

69E Application for registration

(1) Any one or more persons ("the applicants") may apply to the Commission for a CIO to be constituted and for its registration as a charity.

(2) The applicants shall supply the Commission with—

(a) a copy of the proposed constitution of the CIO,

(b) such other documents or information as may be prescribed by regulations made by the Minister, and

(c) such other documents or information as the Commission may require for the purposes of the application.

(3) The Commission shall refuse such an application if—

(a) it is not satisfied that the CIO would be a charity at the time it would be registered, or

(b) the CIO's proposed constitution does not comply with one or more of the requirements of section 69B above and any regulations made under that section.

(4) The Commission may refuse such an application if—

(a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not), or

(b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 6(2) above (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on).

69F Effect of registration

(1) If the Commission grants an application under section 69E above it shall register the CIO to which the application relates as a charity in the register of charities.

(2) Upon the registration of the CIO in the register of charities, it becomes by virtue of the registration a body corporate—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(a) whose constitution is that proposed in the application,
(b) whose name is that specified in the constitution, and
(c) whose first member is, or first members are, the applicants referred to in section 69E above.

(3) All property for the time being vested in the applicants (or, if more than one, any of them) on trust for the charitable purposes of the CIO (when incorporated) shall by virtue of this subsection become vested in the CIO upon its registration.

(4) The entry relating to the charity's registration in the register of charities shall include—
(a) the date of the charity's registration, and
(b) a note saying that it is constituted as a CIO.

(5) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

Conversion, amalgamation and transfer

69G Conversion of charitable company or registered industrial and provident society

(1) The following may apply to the Commission to be converted into a CIO, and for the CIO's registration as a charity, in accordance with this section—
(a) a charitable company,
(b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965.

(2) But such an application may not be made by—
(a) a company or registered society having a share capital if any of the shares are not fully paid up, or
(b) an exempt charity.

(3) Such an application is referred to in this section and sections 69H and 69I below as an “application for conversion”.

(4) The Commission shall notify the following of any application for conversion—
(a) the appropriate registrar, and
(b) such other persons (if any) as the Commission thinks appropriate in the particular case.

(5) The company or registered society shall supply the Commission with—
(a) a copy of a resolution of the company or registered society that it be converted into a CIO,
(b) a copy of the proposed constitution of the CIO,
(c) a copy of a resolution of the company or registered society adopting the proposed constitution of the CIO,
(d) such other documents or information as may be prescribed by regulations made by the Minister, and
(e) such other documents or information as the Commission may require for the purposes of the application.

(6) The resolution referred to in subsection (5)(a) shall be—
(a) a special resolution of the company or registered society, or

(b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.

F422 **[** (6A) In the case of a company, Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution) does not apply to such a resolution.**]**

(7) In the case of a registered society, "special resolution" has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965.

(8) In the case of a company limited by guarantee which makes an application for conversion (whether or not it also has a share capital), the proposed constitution of the CIO shall (unless subsection (10) applies) provide for the CIO's members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable.

(9) That amount shall not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up.

(10) If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less, the guarantee shall be extinguished on the conversion of the company into a CIO, and the requirements of subsections (8) and (9) do not apply.

(11) In subsection (4), and in sections 69H and 69I below, "the appropriate registrar" means—

(a) in the case of an application for conversion by a charitable company, the registrar of companies,

(b) in the case of an application for conversion by a registered society, the Financial Services Authority.

(12) In this section, "charitable company" means a company which is a charity.

Textual Amendments

F422 S. 69G(6A) inserted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 81** (with art. 12)

69H Conversion: consideration of application

(1) The Commission shall consult those to whom it has given notice of an application for conversion under section 69G(4) above about whether the application should be granted.

(2) The Commission shall refuse an application for conversion if—

(a) it is not satisfied that the CIO would be a charity at the time it would be registered,

(b) the CIO's proposed constitution does not comply with one or more of the requirements of section 69B above and any regulations made under that section, or

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(c) in the case of an application for conversion made by a company limited by guarantee, the CIO's proposed constitution does not comply with the requirements of subsections (8) and (9) of section 69G above.

(3) The Commission may refuse an application for conversion if—

(a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not),

(b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 6(2) above (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on), or

(c) having considered any representations received from those whom it has consulted under subsection (1), the Commission considers (having regard to any regulations made under subsection (4)) that it would not be appropriate to grant the application.

(4) The Minister may make provision in regulations about circumstances in which it would not be appropriate to grant an application for conversion.

(5) If the Commission refuses an application for conversion, it shall so notify the appropriate registrar (see section 69G(11) above).

69I Conversion: supplementary

(1) If the Commission grants an application for conversion, it shall—

(a) register the CIO to which the application related in the register of charities, and

(b) send to the appropriate registrar (see section 69G(11) above) a copy of each of the resolutions of the converting company or registered society referred to in section 69G(5)(a) and (c) above, and a copy of the entry in the register relating to the CIO.

(2) The registration of the CIO in the register shall be provisional only until the appropriate registrar cancels the registration of the company or registered society as required by subsection (3)(b).

(3) The appropriate registrar shall—

(a) register the documents sent to him under subsection (1)(b), and

(b) cancel the registration of the company in the register of companies, or of the society in the register of friendly societies,

and shall notify the Commission that he has done so.

(4) When the appropriate registrar cancels the registration of the company or of the registered society, the company or registered society is thereupon converted into a CIO, being a body corporate—

(a) whose constitution is that proposed in the application for conversion,

(b) whose name is that specified in the constitution, and

(c) whose first members are the members of the converting company or society immediately before the moment of conversion.

(5) If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall by virtue of this

subsection be cancelled, and no former holder of any cancelled share shall have any right in respect of it after its cancellation.

(6) Subsection (5) does not affect any right which accrued in respect of a share before its cancellation.

(7) The entry relating to the charity's registration in the register shall include—

(a) a note that it is constituted as a CIO,

(b) the date on which it became so constituted, and

(c) a note of the name of the company or society which was converted into the CIO,

but the matters mentioned in paragraphs (a) and (b) are to be included only when the appropriate registrar has notified the Commission as required by subsection (3).

(8) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

(9) The conversion of a charitable company or of a registered society into a CIO does not affect, in particular, any liability to which the company or registered society was subject by virtue of its being a charitable company or registered society.

69J Conversion of community interest company

(1) The Minister may by regulations make provision for the conversion of a community interest company into a CIO, and for the CIO's registration as a charity.

(2) The regulations may, in particular, apply, or apply with modifications specified in the regulations, or disapply, anything in sections 53 to 55 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 or in sections 69G to 69I above.

69K Amalgamation of CIOs

(1) Any two or more CIOs (“the old CIOs”) may, in accordance with this section, apply to the Commission to be amalgamated, and for the incorporation and registration as a charity of a new CIO (“the new CIO”) as their successor.

(2) Such an application is referred to in this section and section 69L below as an “application for amalgamation”.

(3) Subsections (2) to (4) of section 69E above apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, but in those subsections—

(a) “the applicants” shall be construed as meaning the old CIOs, and

(b) references to the CIO are to the new CIO.

(4) In addition to the documents and information referred to in section 69E(2) above, the old CIOs shall supply the Commission with—

(a) a copy of a resolution of each of the old CIOs approving the proposed amalgamation, and

(b) a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO.

(5) The resolutions referred to in subsection (4) must have been passed—

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(a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or

(b) unanimously by the CIO's members, otherwise than at a general meeting.

(6) The date of passing of such a resolution is—

(a) the date of the general meeting at which it was passed, or

(b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 of Schedule 5B to this Act deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).

(7) Each old CIO shall—

(a) give notice of the proposed amalgamation in the way (or ways) that in the opinion of its charity trustees will make it most likely to come to the attention of those who would be affected by the amalgamation, and

(b) send a copy of the notice to the Commission.

(8) The notice shall invite any person who considers that he would be affected by the proposed amalgamation to make written representations to the Commission not later than a date determined by the Commission and specified in the notice.

(9) In addition to being required to refuse it on one of the grounds mentioned in section 69E(3) above as applied by subsection (3) of this section, the Commission shall refuse an application for amalgamation if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes.

(10) The Commission may refuse an application for amalgamation if it is not satisfied that the provision in the constitution of the new CIO about the matters mentioned in subsection (11) is the same, or substantially the same, as the provision about those matters in the constitutions of each of the old CIOs.

(11) The matters are—

(a) the purposes of the CIO,

(b) the application of property of the CIO on its dissolution, and

(c) authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.

(12) For the purposes of subsection (11)(c)—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section, and

(b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 73B(5) and (6) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.

69L Amalgamation: supplementary

(1) If the Commission grants an application for amalgamation, it shall register the new CIO in the register of charities.

(2) Upon the registration of the new CIO it thereupon becomes by virtue of the registration a body corporate—

(a) whose constitution is that proposed in the application for amalgamation,
(b) whose name is that specified in the constitution, and
(c) whose first members are the members of the old CIOs immediately before the new CIO was registered.

(3) Upon the registration of the new CIO—
(a) all the property, rights and liabilities of each of the old CIOs shall become by virtue of this subsection the property, rights and liabilities of the new CIO, and
(b) each of the old CIOs shall be dissolved.

(4) Any gift which—
(a) is expressed as a gift to one of the old CIOs, and
(b) takes effect on or after the date of registration of the new CIO,
takes effect as a gift to the new CIO.

(5) The entry relating to the registration in the register of the charity constituted as the new CIO shall include—
(a) a note that it is constituted as a CIO,
(b) the date of the charity's registration, and
(c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs.

(6) A copy of the entry in the register shall be sent to the charity at the principal office of the new CIO.

69M Transfer of CIO's undertaking

(1) A CIO may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution.

(2) Where a CIO has passed such a resolution, it shall send to the Commission—
(a) a copy of the resolution, and
(b) a copy of a resolution of the transferee CIO agreeing to the transfer to it.

(3) Subsections (5) and (6) of section 69K above apply to the resolutions referred to in subsections (1) and (2)(b) as they apply to the resolutions referred to in section 69K(4).

(4) Having received the copy resolutions referred to in subsection (2), the Commission—
(a) may direct the transferor CIO to give public notice of its resolution in such manner as is specified in the direction, and
(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO.

(5) The resolution shall not take effect until confirmed by the Commission.

(6) The Commission shall refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor CIO.

(7) The Commission may refuse to confirm the resolution if it is not satisfied that the provision in the constitution of the transferee CIO about the matters mentioned in

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

section 69K(11) above is the same, or substantially the same, as the provision about those matters in the constitution of the transferor CIO.

(8) If the Commission does not notify the transferor CIO within the relevant period that it is either confirming or refusing to confirm the resolution, the resolution is to be treated as confirmed by the Commission on the day after the end of that period.

(9) Subject to subsection (10), "the relevant period" means—
- (a) in a case where the Commission directs the transferor CIO under subsection (4) to give public notice of its resolution, the period of six months beginning with the date when that notice is given, or
- (b) in any other case, the period of six months beginning with the date when both of the copy resolutions referred to in subsection (2) have been received by the Commission.

(10) The Commission may at any time within the period of six months mentioned in subsection (9)(a) or (b) give the transferor CIO a notice extending the relevant period by such period (not exceeding six months) as is specified in the notice.

(11) A notice under subsection (10) must set out the Commission's reasons for the extension.

(12) If the resolution is confirmed (or treated as confirmed) by the Commission—
- (a) all the property, rights and liabilities of the transferor CIO shall become by virtue of this subsection the property, rights and liabilities of the transferee CIO in accordance with the resolution, and
- (b) the transferor CIO shall be dissolved.

(13) Any gift which—
- (a) is expressed as a gift to the transferor CIO, and
- (b) takes effect on or after the date on which the resolution is confirmed (or treated as confirmed),

takes effect as a gift to the transferee CIO.

Winding up, insolvency and dissolution

69N Regulations about winding up, insolvency and dissolution

(1) The Minister may by regulations make provision about—
- (a) the winding up of CIOs,
- (b) their insolvency,
- (c) their dissolution, and
- (d) their revival and restoration to the register following dissolution.

(2) The regulations may, in particular, make provision—
- (a) about the transfer on the dissolution of a CIO of its property and rights (including property and rights held on trust for the CIO) to the official custodian or another person or body,
- (b) requiring any person in whose name any stocks, funds or securities are standing in trust for a CIO to transfer them into the name of the official custodian or another person or body,

(c) about the disclaiming, by the official custodian or other transferee of a CIO's property, of title to any of that property,
(d) about the application of a CIO's property cy-près,
(e) about circumstances in which charity trustees may be personally liable for contributions to the assets of a CIO or for its debts,
(f) about the reversal on a CIO's revival of anything done on its dissolution.

(3) The regulations may—
(a) apply any enactment which would not otherwise apply, either without modification or with modifications specified in the regulations,
(b) disapply, or modify (in ways specified in the regulations) the application of, any enactment which would otherwise apply.

(4) In subsection (3), "enactment" includes a provision of subordinate legislation within the meaning of the Interpretation Act 1978.

Miscellaneous

69O Power to transfer all property of unincorporated charity to one or more CIOs

Section 74 below (power to transfer all property of unincorporated charity) applies with the omission of paragraph (a) of subsection (1) in relation to a resolution by the charity trustees of a charity to transfer all its property to a CIO or to divide its property between two or more CIOs.

69P Further provision about CIOs

The provisions of Schedule 5B to this Act shall have effect with respect to CIOs.

69Q Regulations

(1) The Minister may by regulations make further provision about applications for registration of CIOs, the administration of CIOs, the conversion of charitable companies, registered societies and community interest companies into CIOs, the amalgamation of CIOs, and in relation to CIOs generally.

(2) The regulations may, in particular, make provision about—
(a) the execution of deeds and documents,
(b) the electronic communication of messages or documents relevant to a CIO or to any dealing with the Commission in relation to one,
(c) the maintenance of registers of members and of charity trustees,
(d) the maintenance of other registers (for example, a register of charges over the CIO's assets).

(3) The regulations may, in relation to charities constituted as CIOs—
(a) disapply any of sections 3 to 4 above,
(b) modify the application of any of those sections in ways specified in the regulations.

(4) Subsections (3) and (4) of section 69N above apply for the purposes of this section as they apply for the purposes of that.**]**

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

PART IX

MISCELLANEOUS

Powers of investment

[F423]70 Relaxation of restrictions on wider-range investments.

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Textual Amendments

F423 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**

[F424]71 Extension of powers of investment.

. . . . . .

Textual Amendments

F424 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**

[F425 Charity trustees]

Textual Amendments

F425 S. 72 cross-heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 155**; S.I. 2007/309, art. 2, Sch.

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 **[**[F426]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 **[**[F427]Commission or**]** Commissioners under section 18(2)(i) above, or

(ii) by the Commissioners under section 20(1A)(i) of the [M28]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 [M29]Charities Act 1992), or

(iii) by the High Court,

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) **[**[F428]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 **[**[F429]or disqualification undertaking**]** under the [M30]Company Directors Disqualification Act 1986 **[**[F429]to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989**][**[F430]or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002**]** or to an order made under section 429(2)(b) of the [M31]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 [M32]Rehabilitation of Offenders Act 1974;

(b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration **[**[F431]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 [M33]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—

[[F432](a) in the case of a person subject to a disqualification order or disqualification undertaking under the [M34]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 **[**[F433]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 [M35]Insolvency Act 1986, leave has been granted by the court which made the order for him to so act.

(4) **[**[F434]The Commission**]** 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 **[**[F435]or disqualification undertaking**]** under the Company Directors Disqualification Act 1986, or

(ii) section 11(1) **[**[F436]12(2)**[**[F437],12A or 12B**]]** of that Act (undischarged bankrupts; failure to pay under county court administration order **[**[F438]Northern Irish disqualification orders**][**[F439]; 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.

[[F440](4A) If—

(a) a person disqualified under subsection (1)(d) or (e) makes an application under subsection (4) above five years or more after the date on which his disqualification took effect, and

(b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.**]**

(5) Any waiver under subsection (4) above shall be notified in writing to the person concerned.

(6) For the purposes of this section **[**[F441]the Commission**]** shall keep, in such manner as **[**[F442]it thinks 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 **[**[F443]the Commission or**]** the High Court made after the commencement of section 45(1) of the [M36]Charities Act 1992;

and, where any person is so removed from office by an order of the High Court, the court shall notify **[**[F444]the Commission**]** 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.

[[F445](8) In this section "the Commissioners" means the Charity Commissioners for England and Wales.**]**

Textual Amendments

F426 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)**

F427 Words in s. 72(1)(d)(i) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(2)**; S.I. 2007/309, art. 2, Sch.

F428 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)**

F429 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)

F430 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)**

F431 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)**

F432 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)

F433 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)**

F434 Words in s. 72(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(3)**; S.I. 2007/309, art. 2, Sch.

F435 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)

F436 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)

F437 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)**

F438 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)

F439 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)**

F440 S. 72(4A) inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 35**, 79(2) (with Sch. 10 para. 11); S.I. 2007/309, art. 2, Sch.

F441 Words in s. 72(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(4)(a)**; S.I. 2007/309, art. 2, Sch.

F442 Words in s. 72(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(4)(b)**; S.I. 2007/309, art. 2, Sch.

F443 Words in s. 72(6) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(4)(c)**; S.I. 2007/309, art. 2, Sch.

F444 Words in s. 72(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(4)(d)**; S.I. 2007/309, art. 2, Sch.

F445 S. 72(8) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 156(5)**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M28 1960 c. 58.
M29 1992 c. 41.
M30 1986 c. 46.
M31 1986 c. 45.
M32 1974 c. 53.
M33 1986 c. 46.
M34 1986 c. 46.
M35 1986 c. 45.
M36 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 **[**[F446]the Commission is**]** 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,

[[F447]the Commission 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 **[**[F448](as determined by the Commission)**]** 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.

Textual Amendments

F446 Words in s. 73(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 157(a)**; S.I. 2007/309, art. 2, Sch.

F447 Words in s. 73(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 157(b)**; S.I. 2007/309, art. 2, Sch.

F448 Words in s. 73(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 157(c)**; S.I. 2007/309, art. 2, Sch.

[[F449]73A Remuneration of trustees etc. providing services to charity

(1) This section applies to remuneration for services provided by a person to or on behalf of a charity where—

(a) he is a charity trustee or trustee for the charity, or

(b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7) below.

(2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services ("the relevant person") is entitled to receive the remuneration out of the funds of the charity.

(3) Condition A is that the amount or maximum amount of the remuneration—

(a) is set out in an agreement in writing between—

(i) the charity or its charity trustees (as the case may be), and

(ii) the relevant person,

under which the relevant person is to provide the services in question to or on behalf of the charity, and

(b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.

(4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.

(5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—

(a) a person in respect of whom an agreement within subsection (3) above is in force, or

(b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or

(c) a person connected with a person falling within paragraph (a) or (b) above,

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

(6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.

(7) Nothing in this section applies to—

(a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or

(b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).

(8) The provisions or orders within this subsection are—

(a) any provision contained in the trusts of the charity,

(b) any order of the court or the Commission,

(c) any statutory provision contained in or having effect under an Act of Parliament other than this section.

(9) Section 73B below applies for the purposes of this section.

Textual Amendments

F449 Ss. 73A - 73B inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 36**, 79(2) (with Sch. 10 para. 12); S.I. 2008/751, art. 2, Sch.

73B Supplementary provisions for purposes of section 73A

(1) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.

(2) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).

(3) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.

(4) In section 73A—

"benefit" means a direct or indirect benefit of any nature;

"maximum amount", in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;

"remuneration" includes any benefit in kind (and "amount" accordingly includes monetary value);

"services", in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.

(5) For the purposes of section 73A the following persons are "connected" with a charity trustee or trustee for a charity—

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

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

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

(d) an institution which is controlled—

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

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

(e) a body corporate in which—

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

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

(6) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (5) above as they apply for the purposes of provisions of that Schedule.**]**

Textual Amendments

F449 Ss. 73A - 73B inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 36**, 79(2) (with Sch. 10 para. 12); S.I. 2008/751, art. 2, Sch.

[F450 73C Disqualification of trustee receiving remuneration under section 73A

(1) This section applies to any charity trustee or trustee for a charity—

(a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or

(b) who is connected with a person who is or would be so entitled.

(2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.

(3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.

(4) Where the Commission is satisfied—

(a) that a person ("the disqualified trustee") has done any act which he was disqualified from doing by virtue of subsection (2) above, and

(b) that the disqualified trustee or a person connected with him has received or is to receive from the charity any remuneration under the agreement in question,

it may make an order under subsection (5) or (6) below (as appropriate).

(5) An order under this subsection is one requiring the disqualified trustee—

(a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b) above;

(b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.

(6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b) above.

(7) If the Commission makes an order under subsection (5) or (6) above, the disqualified trustee or (as the case may be) connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires him to reimburse to the charity or (as the case may be) as it directs is not to be paid to him.

(8) Subsections (4) to (6) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.**]**

Textual Amendments

F450 S. 73C inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 37**, 79(2); S.I. 2008/751, art. 2, Sch.

[[F451]73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty

(1) This section applies to a person who is or has been—

(a) a charity trustee or trustee for a charity,

(b) a person appointed to audit a charity's accounts (whether appointed under an enactment or otherwise), or

(c) an independent examiner, reporting accountant or other person appointed to examine or report on a charity's accounts (whether appointed under an enactment or otherwise).

(2) If the Commission considers—

(a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but

(b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,

the Commission may make an order relieving him wholly or partly from any such liability.

(3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.

(4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.

(5) For the purposes of this section and section 73E below—

(a) subsection (1)(b) above is to be read as including a reference to the Auditor General for Wales acting as auditor under section 43B above, and

(b) subsection (1)(c) above is to be read as including a reference to the Auditor General for Wales acting as examiner under that section;

and in subsection (1)(b) and (c) any reference to a charity's accounts is to be read as including any group accounts prepared by the charity trustees of a charity.

(6) This section does not affect the operation of—

(a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees),

(b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or

(c) section 73E below (which extends section 727 to auditors etc. of charities which are not companies).

Textual Amendments

F451 Ss. 73D, 73E inserted (27.2.2007 for specified purposes, 1.4.2008 for specified purposes) by Charities Act 2006 (c. 50), **ss. 38**, 79(2) (with Sch. 10 para. 13); S.I. 2007/309, art. 2, Sch.; S.I. 2008/945, art. 2, Sch. 1

73E Court's power to grant relief to apply to all auditors etc. of charities which are not companies

(1) Section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor by a company.

(2) This section applies to—

(a) a person acting in a capacity within section 73D(1)(b) or (c) above in a case where, apart from this section, section 727 would not apply in relation to him as a person so acting, and

(b) a charity trustee of a CIO.”]

Textual Amendments

F451 Ss. 73D, 73E inserted (27.2.2007 for specified purposes, 1.4.2008 for specified purposes) by Charities Act 2006 (c. 50), **ss. 38**, 79(2) (with Sch. 10 para. 13); S.I. 2007/309, art. 2, Sch.; S.I. 2008/945, art. 2, Sch. 1

[F452 73F Trustees' indemnity insurance

(1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—

(a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or

(b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.

(2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—

(a) any liability incurred by him to pay—

(i) a fine imposed in criminal proceedings, or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);

(b) any liability incurred by him in defending any criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or

(c) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not.

(3) For the purposes of subsection (2)(b) above—

(a) the reference to any such conviction is a reference to one that has become final;

(b) a conviction becomes final—

(i) if not appealed against, at the end of the period for bringing an appeal, or

(ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and

(c) an appeal is disposed of—

(i) if it is determined and the period for bringing any further appeal has ended, or

(ii) if it is abandoned or otherwise ceases to have effect.

(4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.

(5) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision.

(6) The Minister may by order make such amendments of subsections (2) and (3) above as he considers appropriate.

(7) No order may be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(8) This section—

(a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but

(b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.**]**

Textual Amendments

F452 S. 73F inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 39**, 79(2); S.I. 2007/309, art. 2, Sch.

[F453 Miscellaneous powers o charities]

Textual Amendments

F453 S. 74 cross-heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 158**; S.I. 2007/309, art. 2, Sch.

[F454 74 Power to transfer all property of unincorporated charity

(1) This section applies to a charity if—

(a) its gross income in its last financial year did not exceed £10,000,

(b) it does not hold any designated land, and

(c) it is not a company or other body corporate.

"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

(2) The charity trustees of such a charity may resolve for the purposes of this section—

(a) that all the property of the charity should be transferred to another charity specified in the resolution, or

(b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.

(3) Any charity so specified may be either a registered charity or a charity which is not required to be registered.

(4) But the charity trustees of a charity ("the transferor charity") do not have power to pass a resolution under subsection (2) above unless they are satisfied—

(a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and

(b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.

(5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.

(6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

(7) Having received the copy of the resolution, the Commission—

(a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(9) Subject to the provisions of section 74A below, a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

(10) Where such a resolution has taken effect, the charity trustees must 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—

(a) is to be held by the charity to which it is transferred ("the transferee charity") in accordance with subsection (11) below, but

(b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity;

and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.

(11) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.

But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property.

(12) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—

(a) in the transferee charity, in its charity trustees or in any trustee for that charity, or

(b) in any other person nominated by those charity trustees to hold property in trust for that charity.

(13) The Minister may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

(14) In this section references to the transfer of property to a charity are references to its transfer—

(a) to the charity, or

(b) to the charity trustees, or

(c) to any trustee for the charity, or

(d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the charity trustees may determine.

(15) Where a charity has a permanent endowment, this section has effect in accordance with section 74B.

Textual Amendments

F454 Ss. 74-74B substituted for s. 74 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 40**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 9)

74A Resolution not to take effect or to take effect at later date

(1) This section deals with circumstances in which a resolution under section 74(2) above either—

(a) does not take effect under section 74(9) above, or

(b) takes effect at a time later than that mentioned in section 74(9).

(2) A resolution does not take effect under section 74(9) above if before the end of—

(a) the period of 60 days mentioned in section 74(9) ("the 60-day period"), or

(b) that period as modified by subsection (3) or (4) below,

the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.

"On procedural grounds" means on the grounds that any obligation imposed on the charity trustees by or under section 74 above has not been complied with in connection with the resolution.

(3) If under section 74(7) above the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—

(a) as from the date on which the direction is given to the charity trustees, and

(b) until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.

(4) If under section 74(8) above the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—

(a) as from the date on which the direction is given to the charity trustees, and

(b) until the date on which the information or explanations is or are provided to the Commission.

(5) Subsection (6) below applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (3) and (4) above exceeds 120 days.

(6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

Textual Amendments

F454 Ss. 74-74B substituted for s. 74 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 40**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 9)

74B Transfer where charity has permanent endowment

(1) This section provides for the operation of section 74 above where a charity within section 74(1) has a permanent endowment (whether or not the charity's trusts contain provision for the termination of the charity).

(2) In such a case section 74 applies as follows—

(a) if the charity has both a permanent endowment and other property ("unrestricted property")—

(i) a resolution under section 74(2) must relate to both its permanent endowment and its unrestricted property, and

(ii) that section applies in relation to its unrestricted property in accordance with subsection (3) below and in relation to its permanent endowment in accordance with subsections (4) to (11) below;

(b) if all of the property of the charity is comprised in its permanent endowment, that section applies in relation to its permanent endowment in accordance with subsections (4) to (11) below.

(3) Section 74 applies in relation to unrestricted property of the charity as if references in that section to all or any of the property of the charity were references to all or any of its unrestricted property.

(4) Section 74 applies in relation to the permanent endowment of the charity with the following modifications.

(5) References in that section to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.

(6) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.

(7) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied—

(a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and

(b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.

(8) In the case of a transfer to which subsection (7) above applies, the resolution under section 74(2) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take

account of such guidance as may be given by the Commission for the purposes of this section.

(9) The requirement in section 74(11) shall apply in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of any such guidance.

(10) Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.

(11) For the purposes of sections 74 and 74A above, any reference to any obligation imposed on the charity trustees by or under section 74 includes a reference to any obligation imposed on them by virtue of any of subsections (6) to (8) above.

(12) Section 74(14) applies for the purposes of this section as it applies for the purposes of section 74.**]**

Textual Amendments

F454 Ss. 74-74B substituted for s. 74 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 40**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 9)

[[F455]74C Power to replace purposes of unincorporated charity

(1) This section applies to a charity if—

(a) its gross income in its last financial year did not exceed £10,000,

(b) it does not hold any designated land, and

(c) it is not a company or other body corporate.

"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

(2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.

(3) The other purposes so specified must be charitable purposes.

(4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) above unless they are satisfied—

(a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and

(b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.

(5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.

(6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

(7) Having received the copy of the resolution, the Commission—

(a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(9) Subject to the provisions of section 74A above (as they apply in accordance with subsection (10) below), a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

(10) Section 74A above applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 74 above, except that any reference to section 74(7), (8) or (9) is to be read as a reference to subsection (7), (8) or (9) above.

(11) As from the time when a resolution takes effect under subsection (9) above, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.

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

Textual Amendments

F455 S. 74C inserted (18.3.2008) by Charities Act 2006 (c. 50), **ss. 41**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 9)

[[F456]74D Power to modify powers or procedures of unincorporated charity

(1) This section applies to any charity which is not a company or other body corporate.

(2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—

(a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or

(b) 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) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.

(4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body either—

(a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or

(b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.

(5) Where—

(a) the charity trustees have passed a resolution under subsection (2), and

(b) (if subsection (4) applies) a further resolution has been passed under that subsection,

the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.

(6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution under subsection (2), or (if later) the date when any such further resolution was passed under subsection (4).**]**

Textual Amendments

F456 S. 74D inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 42**, 79(2); S.I. 2007/309, art. 2, Sch.

[[F457]75 Power of unincorporated charities to spend capital: general

(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.

(2) But this section does not apply to a fund if section 75A below (power of larger charities to spend capital given for particular purpose) applies to it.

(3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) Once the charity trustees have passed a resolution under subsection (3) above, the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.

(6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

(7) In this section "available endowment fund", in relation to a charity, means—

(a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or

(b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

Textual Amendments

F457 Ss. 75-75B substituted for s. 75 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 43**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 10)

75A Power of larger unincorporated charities to spend capital given for particular purpose

(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—

(a) the capital of the fund consists entirely of property given—

(i) by a particular individual,

(ii) by a particular institution (by way of grant or otherwise), or

(iii) by two or more individuals or institutions in pursuit of a common purpose, and

(b) the financial condition in subsection (2) below is met.

(2) The financial condition in this subsection is met if—

(a) the relevant charity's gross income in its last financial year exceeded £1,000, and

(b) the market value of the endowment fund exceeds £10,000.

(3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) The charity trustees—

(a) must send a copy of any resolution under subsection (3) above to the Commission, together with a statement of their reasons for passing it, and

(b) may not implement the resolution except in accordance with the following provisions of this section.

(6) Having received the copy of the resolution the Commission may—

(a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(8) When considering whether to concur with the resolution the Commission must take into account—

(a) any evidence available to it as to the wishes of the donor or donors mentioned in subsection (1)(a) above, and

(b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).

(9) The Commission must not concur with the resolution unless it is satisfied—

(a) that its implementation would accord with the spirit of the gift or gifts mentioned in subsection (1)(a) above (even though it would be inconsistent with the restrictions mentioned in subsection (3) above), and

(b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution.

(10) Before the end of the period of three months beginning with the relevant date, the Commission must notify the charity trustees in writing either—

(a) that the Commission concurs with the resolution, or

(b) that it does not concur with it.

(11) In subsection (10) "the relevant date" means—

(a) in a case where the Commission directs the charity trustees under subsection (6) above to give public notice of the resolution, the date when that notice is given, and

(b) in any other case, the date on which the Commission receives the copy of the resolution in accordance with subsection (5) above.

(12) Where—

(a) the charity trustees are notified by the Commission that it concurs with the resolution, or

(b) the period of three months mentioned in subsection (10) above has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (3).

(13) The Minister may by order amend subsection (2) above by substituting a different sum for any sum specified there.

(14) In this section—

(a) "available endowment fund" has the same meaning as in section 75 above,

(b) "market value", in relation to an endowment fund, means—

(i) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or

(ii) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose, and

(c) the reference in subsection (1) to the giving of property by an individual includes his giving it under his will.

Textual Amendments

F457 Ss. 75-75B substituted for s. 75 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 43**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 10)

75B Power to spend capital subject to special trusts

(1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity ("the relevant charity") for the purposes of this section.

(2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(3) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—

(a) by a particular individual,

(b) by a particular institution (by way of grant or otherwise), or

(c) by two or more individuals or institutions in pursuit of a common purpose,

subsections (5) to (11) of section 75A above apply in relation to the resolution and that gift or gifts as they apply in relation to a resolution under section 75A(3) and the gift or gifts mentioned in section 75A(1)(a).

(5) Where—

(a) the charity trustees have passed a resolution under subsection (2) above, and

(b) (in a case where section 75A(5) to (11) above apply in accordance with subsection (4) above) either—

(i) the charity trustees are notified by the Commission that it concurs with the resolution, or

(ii) the period of three months mentioned in section 75A(10) has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (2).

(6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

(7) The Minister may by order amend subsection (4) above by substituting a different sum for the sum specified there.

(8) In this section—

(a) "available endowment fund" has the same meaning as in section 75 above,

(b) "market value" has the same meaning as in section 75A above, and

(c) the reference in subsection (4) to the giving of property by an individual includes his giving it under his will.**]**

Textual Amendments

F457 Ss. 75-75B substituted for s. 75 (18.3.2008) by Charities Act 2006 (c. 50), **ss. 43**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 10)

[F458 Mergers

Textual Amendments

F458 Ss. 75C-75F inserted (28.11.2007 except for the insertion of s. 75C(11)) by Charities Act 2006 (c. 50), **ss. 44**, 79(2) (with Sch. 10 para. 14); S.I. 2007/3286, art. 2, Sch. 1

75C Register of charity mergers

(1) The Commission shall establish and maintain a register of charity mergers.

(2) The register shall be kept by the Commission in such manner as it thinks fit.

(3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with subsections (6) to (9) and such procedures as it may determine.

(4) In this section "relevant charity merger" means—

(a) a merger of two or more charities in connection with which one of them ("the transferee") has transferred to it all the property of the other or others, each of which (a "transferor") ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee, or

(b) a merger of two or more charities ("transferors") in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity ("the transferee").

(5) In the case of a merger involving the transfer of property of any charity which has both a permanent endowment and other property ("unrestricted property") and whose trusts do not contain provision for the termination of the charity, subsection (4)(a) or (b) applies in relation to any such charity as if—

(a) the reference to all of its property were a reference to all of its unrestricted property, and

(b) any reference to its ceasing to exist were omitted.

(6) A notification under subsection (3) above may be given in respect of a relevant charity merger at any time after—

(a) the transfer of property involved in the merger has taken place, or

(b) (if more than one transfer of property is so involved) the last of those transfers has taken place.

(7) If a vesting declaration is made in connection with a relevant charity merger, a notification under subsection (3) above must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (6) above has taken place.

(8) A notification under subsection (3) is to be given by the charity trustees of the transferee and must—

(a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place;

(b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities; and

(c) in the case of a notification required by subsection (7), set out the matters mentioned in subsection (9).

(9) The matters are—

(a) the fact that the vesting declaration in question has been made;

(b) the date when the declaration was made; and

(c) the date on which the vesting of title under the declaration took place by virtue of section 75E(2) below.

(10) In this section and section 75D—

(a) any reference to a transfer of property includes a transfer effected by a vesting declaration; and

(b) "vesting declaration" means a declaration to which section 75E(2) below applies.

(11) Nothing in this section or section 75E or 75F applies in a case where section 69K (amalgamation of CIOs) or 69M (transfer of CIO's undertaking) applies.

75D Register of charity mergers: supplementary

(1) Subsection (2) applies to the entry to be made in the register in respect of a relevant charity merger, as required by section 75C(3) above.

(2) The entry must—

(a) specify the date when the transfer or transfers of property involved in the merger took place,

(b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 75C(9) above, and

(c) contain such other particulars of the merger as the Commission thinks fit.

(3) The register shall be open to public inspection at all reasonable times.

(4) Where any information contained in the register is not in documentary form, subsection (3) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

(5) In this section—

"the register" means the register of charity mergers;

"relevant charity merger" has the same meaning as in section 75C.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

75E Pre-merger vesting declarations

(1) Subsection (2) below applies to a declaration which—

(a) is made by deed for the purposes of this section by the charity trustees of the transferor,

(b) is made in connection with a relevant charity merger, and

(c) is to the effect that (subject to subsections (3) and (4)) all of the transferor's property is to vest in the transferee on such date as is specified in the declaration ("the specified date").

(2) The declaration operates on the specified date to vest the legal title to all of the transferor's property in the transferee, without the need for any further document transferring it.

This is subject to subsections (3) and (4).

(3) Subsection (2) does not apply to—

(a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock);

(b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor's interest without the consent of some other person, unless that consent has been obtained before the specified date; or

(c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment.

(4) In its application to registered land within the meaning of the Land Registration Act 2002, subsection (2) has effect subject to section 27 of that Act (dispositions required to be registered).

(5) In this section "relevant charity merger" has the same meaning as in section 75C.

(6) In this section—

(a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 75C above, and

(b) any reference to all of the transferor's property, where the transferor is a charity within section 75C(5), is a reference to all of the transferor's unrestricted property (within the meaning of that provision).

(7) In this section any reference to the transferee, in relation to a relevant charity merger, is a reference to—

(a) the transferee (within the meaning of section 75C above), if it is a company or other body corporate, and

(b) otherwise, to the charity trustees of the transferee (within the meaning of that section).

75F Effect of registering charity merger on gifts to transferor

(1) This section applies where a relevant charity merger is registered in the register of charity mergers.

(2) Any gift which—

(a) is expressed as a gift to the transferor, and

(b) takes effect on or after the date of registration of the merger,

takes effect as a gift to the transferee, unless it is an excluded gift.

(3) A gift is an "excluded gift" if—

(a) the transferor is a charity within section 75C(5), and

(b) the gift is intended to be held subject to the trusts on which the whole or part of the charity's permanent endowment is held.

(4) In this section—

"relevant charity merger" has the same meaning as in section 75C; and

"transferor" and "transferee" have the same meanings as in section 75E.**]**

Local charities

76 Local authority's index of local charities.

(1) The council of a county **[**[F459]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 **[**[F460]the Commission**]** 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 **[**[F460]the Commission**]** may arrange that **[**[F461]it 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

F459 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**

F460 Words in s. 76(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 159(a)**; S.I. 2007/309, art. 2, Sch.

F461 Words in s. 76(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 159(b)**; S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C17 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 **[**[F462]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 **[**[F463]the Commission**]** 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.

[[F464](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

F462 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**

F463 Words in s. 77(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 160**; S.I. 2007/309, art. 2, Sch.

F464 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)

C18 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 **[**[F465], in relation to England,**]** the council of a county, or of a district, London borough, **[**[F466]or parish**]**, and includes also the Common Council of the City of London and the Council of the Isles of Scilly **[**[F467]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

F465 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**

F466 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**

F467 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)

C19 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 **[**[F468]the Commission**]** 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 **[**[F469]the Commission**]** 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 **[**[F469]the Commission**]**, 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 [M37]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 **[**[F470]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 **[**[F470]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 [M38]Local Government Act 1894 or the [M39]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.

[[F471](9) This section shall not affect the trusteeship, control or management of any **[**[F472]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

F468 Words in s. 79(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 161(2)**; S.I. 2007/309, art. 2, Sch.

F469 Words in s. 79(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 161(3)**; S.I. 2007/309, art. 2, Sch.

F470 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**

F471 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)

F472 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

M37 1972 c. 70.

M38 1894 c. 73.

M39 1960 c. 58.

Scottish charities

80 Supervision by [F473]Commission] of certain Scottish charities.

(1) The following provisions of this Act, namely—

(a) sections 8 and 9,

(b) section 18 (except subsection (2)(ii)),

[[F474](c) sections 19 to 19C, and

(d) section 31A,**]**

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

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 **[**[F475]the Commission is satisfied**]** as to the matters mentioned in subsection (3) below, **[**[F476]it may make**]** an order requiring the person holding the property not to part with it without **[**[F477]the Commission's 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 **[**[F478]the Commission**]** being satisfied as to those matters is a reference to **[**[F479]the Commission being**]** so satisfied on the basis of such information as may be **[**[F480]supplied to it**]** by the **[**[F481]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) **[**[F482]the Commission is satisfied**]** (whether on the basis of such information as may be **[**[F483]supplied to it**]** by the **[**[F484]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,

[[F485]the Commission**]** 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 **[**[F486]Commission**]** may specify in an order under subsection (4) above such other recognised body or such charity as **[**[F487]it considers**]** appropriate, being a body or charity whose purposes are, in the opinion of the **[**[F486]Commission**]**, as similar in character to those of the body referred to in paragraph (a) of that subsection as is reasonably practicable; but the **[**[F486]Commission**]** shall not so specify any body or charity unless **[**[F488]it has 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" **[**[F489]means a body entered in the Scottish Charity Register**]**.

Textual Amendments

F473 Word in s. 80 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(7)**; S.I. 2007/309, art. 2, Sch.

F474 S. 80(1)(c)(d) substituted for s. 80(1)(c) (27.2.2007 for specified purposes, 18.3.2008 in so far as not already in force) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(2)**; S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

F475 Words in s. 80(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(3)(a)**; S.I. 2007/309, art. 2, Sch.

F476 Words in s. 80(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(3)(b)**; S.I. 2007/309, art. 2, Sch.

F477 Words in s. 80(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(3)(c)**; S.I. 2007/309, art. 2, Sch.

F478 Words in s. 80(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(4)(a)**; S.I. 2007/309, art. 2, Sch.

F479 Words in s. 80(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(4)(b)**; S.I. 2007/309, art. 2, Sch.

F480 Words in s. 80(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(4)(c)**; S.I. 2007/309, art. 2, Sch.

F481 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)**

F482 Words in s. 80(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(5)(a)**; S.I. 2007/309, art. 2, Sch.

F483 Words in s. 80(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(5)(b)**; S.I. 2007/309, art. 2, Sch.

F484 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)**

F485 Words in s. 80(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(5)(c)**; S.I. 2007/309, art. 2, Sch.

F486 Words in s. 80(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(6)(a)**; S.I. 2007/309, art. 2, Sch.

F487 Words in s. 80(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(6)(b)**; S.I. 2007/309, art. 2, Sch.

F488 Words in s. 80(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 162(6)(c)**; S.I. 2007/309, art. 2, Sch.

F489 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)

C20 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)

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

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 [M40]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 [M41]Charities Act 1960.

(5) This section shall apply in relation to any institution to which the [M42]Literary and Scientific Institutions Act 1854 applies as it applies in relation to a charity.

Marginal Citations

M40 1925 c. 19.
M41 1960 c. 58.
M42 1854 c. 112.

[[F452]PART X

SUPPLEMENTARY

84 Supply by [[F490]Commission] of copies of documents open to public inspection.

[[F491]The Commission**]** shall, at the request of any person, furnish him with copies of, or extracts from, any document in **[**[F492]the Commission's possession**]** which is for the time being open to inspection under Parts II to VI of this Act**[**[F493]or section 75D**]**.

Textual Amendments

F490 Word in s. 84 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 163(5)**; S.I. 2007/309, art. 2, Sch.
F491 Words in s. 84 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 163(2)**; S.I. 2007/309, art. 2, Sch.
F492 Words in s. 84 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 163(3)**; S.I. 2007/309, art. 2, Sch.
F493 Words in s. 84 added (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 163(4)**; S.I. 2008/751, art. 2, Sch.

85 Fees and other amounts payable to [[F494]Commission]

(1) The **[**[F495]Minister**]** may by regulations require the payment to **[**[F496]the Commission**]** of such fees as may be prescribed by the regulations in respect of—

(a) the discharge by the **[**[F496]the Commission**]** 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 **[**[F497]kept by the Commission**]** 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) **[**[F498]The Commission**]** may impose charges of such amounts as **[**[F499]it considers**]** reasonable in respect of the supply of any publications produced **[**[F500]by it**]**.

(5) Any fees and other payments received by **[**[F501]the Commission**]** by virtue of this section shall be paid into the Consolidated Fund.

Textual Amendments

F494 Word in s. 85 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(5)**; S.I. 2007/309, art. 2, Sch.

F495 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)**

F496 Words in s. 85(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(2)(a)**; S.I. 2007/309, art. 2, Sch.

F497 Words in s. 85(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(2)(b)**; S.I. 2007/309, art. 2, Sch.

F498 Words in s. 85(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(3)(a)**; S.I. 2007/309, art. 2, Sch.

F499 Words in s. 85(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(3)(b)**; S.I. 2007/309, art. 2, Sch.

F500 Words in s. 85(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(3)(c)**; S.I. 2007/309, art. 2, Sch.

F501 Words in s. 85(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 164(4)**; S.I. 2007/309, art. 2, Sch.

86 Regulations and orders.

(1) Any regulations or order of the **[**[F502]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), **[**[F503]73F(6)**]**[F504]... or 99(2) **[**[F505]or paragraph 6 of Schedule 1C**]** ; **[**[F506]or**]**

[F507](aa) [to regulations under section 69N above; and no regulations shall be made under that section unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament; or]

[F508](b) . . . . . .

(c) to any regulations to which section 85(3) applies.

(3) Any regulations of the [[F502]Minister] or [[F509]the Commission] and any order of the [[F502]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 [[F502]Minister] or, as the case may be, [[F510]the Commission considers] appropriate.

(4) Before making any regulations under section 42, 44[[F511], 45, 69N or 69Q] above [[F512]or Schedule 5A,] the [[F502]Minister] shall consult such persons or bodies of persons as he considers appropriate.

Textual Amendments

F502 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)**

F503 Word in s. 86(2)(a) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 165(2)(a)**; S.I. 2007/309, art. 2, Sch.

F504 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**

F505 Words in s. 86(2)(a) inserted (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 165(2)(b)**; S.I. 2008/751, art. 2, Sch.

F506 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**

F507 S. 86(2)(aa) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 7 para. 6(a)**; S.I. 2007/309, art. 2, Sch.

F508 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**

F509 Word in s. 86(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 165(3)(a)**; S.I. 2007/309, art. 2, Sch.

F510 Word in s. 86(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 165(3)(b)**; S.I. 2007/309, art. 2, Sch.

F511 Words in s. 86(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 7 para. 6(b)**; S.I. 2007/309, art. 2, Sch.

F512 Words in s. 86(4) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 165(4)**; S.I. 2007/309, art. 2, Sch.

87 Enforcement of requirements by order of [[F513]Commission] .

(1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2) below) [[F514]the Commission] may by order give him such directions as [[F515]it considers] 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 **[**[F516]the Commission**]** to which section 88 below applies, or

(ii) by a direction of **[**[F516]the Commission**]** to which that section applies by virtue of section 90(2) below.

Textual Amendments

F513 Word in s. 87 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 166(4)**; S.I. 2007/309, art. 2, Sch.

F514 Words in s. 87(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 166(2)(a)**; S.I. 2007/309, art. 2, Sch.

F515 Words in s. 87(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 166(2)(b)**; S.I. 2007/309, art. 2, Sch.

F516 Words in s. 87(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 166(3)**; S.I. 2007/309, art. 2, Sch.

88 Enforcement of orders of [[F517]Commission]

A person guilty of disobedience—

[[F518](a) to an order of the Commission under section 9(1), 19A, 19B, 44(2), 61, 73, 73C or 80 above; or**]**

(b) to an order of **[**[F519]the Commission**]** 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 **[**[F519]the Commission**]** requiring a default under this Act to be made good;

may on the application of **[**[F520]the Commission to**]** the High Court be dealt with as for disobedience to an order of the High Court.

Textual Amendments

F517 Word in s. 88 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 167(5)**; S.I. 2007/309, art. 2, Sch.

F518 S. 88(a) substituted (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 167(2)**; S.I. 2008/751, art. 2, Sch.

F519 Words in s. 88(b)(c) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 167(3)**; S.I. 2007/309, art. 2, Sch.

F520 Words in s. 88 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 167(4)**; S.I. 2007/309, art. 2, Sch.

89 Other provisions as to orders of [[F521]Commission]

(1) Any order made by **[**[F522]the Commission**]** under this Act may include such incidental or supplementary provisions as **[**[F523]the Commission thinks**]** expedient for carrying into effect the objects of the order, and where **[**[F524]the Commission exercises**]** any jurisdiction to make such an order on an application or reference **[**[F525]to it, it may**]** insert

any such provisions in the order notwithstanding that the application or reference does not propose their insertion.

(2) Where **[**[F526]the Commission makes**]** an order under this Act, then (without prejudice to the requirements of this Act where the order is subject to appeal) **[**[F527]the Commission may itself**]** give such public notice as **[**[F528]it thinks 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) **[**[F529]The Commission**]** at any time within twelve months after **[**[F530]it has**]** made an order under any provision of this Act other than section 61 if **[**[F531]it is**]** 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 **[**[F532]to it**]** 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 **[**[F533]the Commission**]** 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.

[F534]**[** (5) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made.**]**

Textual Amendments

F521 Word in s. 89 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(7)**; S.I. 2007/309, art. 2, Sch.

F522 Words in s. 89(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(2)(a)**; S.I. 2007/309, art. 2, Sch.

F523 Words in s. 89(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(2)(b)**; S.I. 2007/309, art. 2, Sch.

F524 Words in s. 89(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(2)(c)**; S.I. 2007/309, art. 2, Sch.

F525 Words in s. 89(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(2)(d)**; S.I. 2007/309, art. 2, Sch.

F526 Words in s. 89(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(3)(a)**; S.I. 2007/309, art. 2, Sch.

F527 Words in s. 89(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(3)(b)**; S.I. 2007/309, art. 2, Sch.

F528 Words in s. 89(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(3)(c)**; S.I. 2007/309, art. 2, Sch.

F529 Words in s. 89(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(4)(a)**; S.I. 2007/309, art. 2, Sch.

F530 Words in s. 89(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(4)(b)**; S.I. 2007/309, art. 2, Sch.

F531 Words in s. 89(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(4)(c)**; S.I. 2007/309, art. 2, Sch.

F532 Words in s. 89(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(4)(d)**; S.I. 2007/309, art. 2, Sch.

F533 Words in s. 89(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(5)**; S.I. 2007/309, art. 2, Sch.

F534 S. 89(5) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 168(6)**; S.I. 2007/309, art. 2, Sch.

Modifications etc. (not altering text)

C21 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 [F535the Commission]

(1) Any direction given by **[**F535the Commission**]** 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 **[**F535the Commission**]**.

(3) In subsection (1) above the reference to the **[**F535the Commission**]** 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 **[**F535the Commission**]** under section 87(1) above.

Textual Amendments

F535 Words in s. 90 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 169**; S.I. 2007/309, art. 2, Sch.

91 Service of orders and directions.

(1) This section applies to any order or direction made or given by **[**F536the Commission**]** 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 **[**F537the Commission**]** for the purposes of this subsection.

(5) In this section any reference to **[**F538the Commission**]** 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.

Textual Amendments

F536 Words in s. 91(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 170**; S.I. 2007/309, art. 2, Sch.

F537 Words in s. 91(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 170**; S.I. 2007/309, art. 2, Sch.

F538 Words in s. 91(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 170**; S.I. 2007/309, art. 2, Sch.

[F539]92 Appeals from Commissioners.

. . . . . .

Textual Amendments

F539 S. 92 repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 171, **Sch. 9**; S.I. 2008/751, art. 2, Sch. (with art. 4)

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,—

(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.

[[F540](3) Evidence of any order, certificate or other document issued by the Commission may be given by means of a copy which it retained, or which is taken from a copy so retained, and evidence of an entry in any register kept by it may be given by means of a copy of the entry, if (in each case) the copy is certified in accordance with subsection (4).

(4) The copy shall be certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for that purpose.

(5) 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.

(6) In subsection (3) above "the Commission" includes the Charity Commissioners for England and Wales.**]**

Textual Amendments

F540 S. 93(3)-(6) substituted for s. 93(3) (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 172**; S.I. 2007/309, art. 2, Sch.

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—

[[F541]"charity" has the meaning given by section 1(1) of the Charities Act 2006;**]**

"ecclesiastical charity" has the same meaning as in the [M43]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 **[**[F542](or any subsidiary thereof)**]** within the meaning of the [M44]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.

[F543](4) . . . . . .

(5) **[**[F544]The Commission**]** 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.

[F545](6) **[** **[**[F544]The Commission**]** 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

F541 Words in s. 96(1) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 173(2)**; S.I. 2008/945, art. 2, Sch. 1

F542 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

F543 S. 96(4) repealed (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 173(3)(b), **Sch. 9**; S.I. 2008/945, art. 2, Sch. 1

F544 Words in s. 96(5)(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 173(4)**; S.I. 2007/309, art. 2, Sch.

F545 S. 96(6) inserted (8.11.1995) by 1995 c. 48, **s. 1**

Modifications etc. (not altering text)

C22 S. 96(2) modified (8.11.2006) by Charities Act 2006 (c. 50), **s. 78(2)**(3)79(1)(d)

Marginal Citations

M43 1894 c. 73.

M44 1976 No. 4.

97 General interpretation.

(1) In this Act, except in so far as the context otherwise requires—

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

"charitable purposes" means purposes which are exclusively **[**[F546]charitable purposes as defined by section 2(1) of the Charities Act 2006;**]** ;

"charity trustees" means the persons having the general control and management of the administration of a charity;

[[F547]"the Commission" means the Charity Commission;**]**

"company" means a company formed and registered under the [M45]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" **[**[F548]means an institution whether incorporated or not, and**]** includes any trust or undertaking;

[[F549]"members", in relation to a charity with a body of members distinct from the charity trustees, means any of those members;**]**

[[F549]"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;

[[F549]"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;

[[F549]"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 **[**[F550]Part 4, 7, 8A or 9**]** of this Act shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Textual Amendments

F546 Words in s. 97(1) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 174(a)**; S.I. 2008/945, art. 2, Sch. 1

F547 Words in s. 97(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 174(b)**; S.I. 2007/309, art. 2, Sch.

F548 Words in s. 97(1) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 174(c)**; S.I. 2007/309, art. 2, Sch.

F549 Words in s. 97(1) inserted (8.11.2006) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 174(d)**

F550 Words in s. 97(3) substituted (27.2.2007 for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 175**; S.I. 2007/309, art. 2, Sch.

Marginal Citations

M45 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.

[F551]99 Commencement and transitional provisions.

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Textual Amendments

F551 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) **[**[F552]Sections 10 to 10C**]** above and this section extend to the whole of the United Kingdom.

(4) Section 15(2) **[**[F553]and sections 24 to 25A extend**]** also to Northern Ireland.

[[F554](5) 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

F552 Words in s. 100(3) substituted (27.2.2007 for specified purposes, 1.6.2010 for specified purposes, 1.8.2011 for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 176**; S.I. 2007/309, art. 2, Sch.; S.I. 2010/503, art. 2, Sch. 1 (with Sch. 2); S.I. 2011/1728, art. 2, Sch. 1 (with Sch. 2)

F553 Words in s. 100(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(5)**, 79(2); S.I. 2007/309, art. 2, Sch.

F554 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

SCHEDULES

[F555]SCHEDULE 1

Section 1.

. . . . . .

Textual Amendments

F555 Sch. 1 repealed (27.2.2007) by Charities Act 2006 (c. 50), ss. 6(6), 79(2), **Sch. 9**; S.I. 2007/309, art. 2, Sch.

[[F556]SCHEDULE 1A

Section 1A

THE CHARITY COMMISSION

Textual Amendments

F556 Sch. 1A inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 1 para. 1**; S.I. 2007/309, art. 2, Sch.

Membership

1 (1) The Commission shall consist of a chairman and at least four, but not more than eight, other members.

(2) The members shall be appointed by the Minister.

(3) The Minister shall exercise the power in sub-paragraph (2) so as to secure that—

(a) the knowledge and experience of the members of the Commission (taken together) includes knowledge and experience of the matters mentioned in sub-paragraph (4),

(b) at least two members have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990, and

(c) at least one member knows about conditions in Wales and has been appointed following consultation with the National Assembly for Wales.

(4) The matters mentioned in this sub-paragraph are—

(a) the law relating to charities,

(b) charity accounts and the financing of charities, and

(c) the operation and regulation of charities of different sizes and descriptions.

(5) In sub-paragraph (3)(c) "member" does not include the chairman of the Commission.

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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)*

Terms of appointment and remuneration

2 The members of the Commission shall hold and vacate office as such in accordance with the terms of their respective appointments.

3 (1) An appointment of a person to hold office as a member of the Commission shall be for a term not exceeding three years.

(2) A person holding office as a member of the Commission—

(a) may resign that office by giving notice in writing to the Minister, and

(b) may be removed from office by the Minister on the ground of incapacity or misbehaviour.

(3) Before removing a member of the Commission the Minister shall consult—

(a) the Commission, and

(b) if the member was appointed following consultation with the National Assembly for Wales, the Assembly.

(4) No person may hold office as a member of the Commission for more than ten years in total.

(5) For the purposes of sub-paragraph (4), time spent holding office as a Charity Commissioner for England and Wales shall be counted as time spent holding office as a member of the Commission.

4 (1) The Commission shall pay to its members such remuneration, and such other allowances, as may be determined by the Minister.

(2) The Commission shall, if required to do so by the Minister—

(a) pay such pension, allowances or gratuities as may be determined by the Minister to or in respect of a person who is or has been a member of the Commission, or

(b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.

(3) If the Minister determines that there are special circumstances which make it right for a person ceasing to hold office as a member of the Commission to receive compensation, the Commission shall pay to him a sum by way of compensation of such amount as may be determined by the Minister.

Staff

5 (1) The Commission—

(a) shall appoint a chief executive, and

(b) may appoint such other staff as it may determine.

(2) The terms and conditions of service of persons appointed under sub-paragraph (1) are to be such as the Commission may determine with the approval of the Minister for the Civil Service.

Committees

6 (1) The Commission may establish committees and any committee of the Commission may establish sub-committees.

(2) The members of a committee of the Commission may include persons who are not members of the Commission (and the members of a sub-committee may include persons who are not members of the committee or of the Commission).

Procedure etc.

7 (1) The Commission may regulate its own procedure (including quorum).

(2) The validity of anything done by the Commission is not affected by a vacancy among its members or by a defect in the appointment of a member.

Performance of functions

8 Anything authorised or required to be done by the Commission may be done by—

(a) any member or member of staff of the Commission who is authorised for that purpose by the Commission, whether generally or specially;

(b) any committee of the Commission which has been so authorised.

Evidence

9 The Documentary Evidence Act 1868 shall have effect as if—

(a) the Commission were mentioned in the first column of the Schedule to that Act,

(b) any member or member of staff of the Commission authorised to act on behalf of the Commission were specified in the second column of that Schedule in connection with the Commission, and

(c) the regulations referred to in that Act included any document issued by or under the authority of the Commission.

Execution of documents

10 (1) A document is executed by the Commission by the fixing of its common seal to the document.

(2) But the fixing of that seal to a document must be authenticated by the signature of—

(a) any member of the Commission, or

(b) any member of its staff,

who is authorised for the purpose by the Commission.

(3) A document which is expressed (in whatever form of words) to be executed by the Commission and is signed by—

(a) any member of the Commission, or

(b) any member of its staff,

who is authorised for the purpose by the Commission has the same effect as if executed in accordance with sub-paragraphs (1) and (2).

(4) A document executed by the Commission which makes it clear on its face that it is intended to be a deed has effect, upon delivery, as a deed; and it is to be presumed (unless a contrary intention is proved) to be delivered upon its being executed.

(5) In favour of a purchaser a document is to be deemed to have been duly executed by the Commission if it purports to be signed on its behalf by—

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(a) any member of the Commission, or
(b) any member of its staff;

and, where it makes it clear on its face that it is intended to be a deed, it is to be deemed to have been delivered upon its being executed.

(6) For the purposes of this paragraph—

"authorised" means authorised whether generally or specially; and

"purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquired an interest in property.

Annual report

11 (1) As soon as practicable after the end of each financial year the Commission shall publish a report on—
(a) the discharge of its functions,
(b) the extent to which, in its opinion, its objectives (see section 1B of this Act) have been met,
(c) the performance of its general duties (see section 1D of this Act), and
(d) the management of its affairs,

during that year.

(2) The Commission shall lay a copy of each such report before Parliament.

(3) In sub-paragraph (1) above, "financial year" means—
(a) the period beginning with the date on which the Commission is established and ending with the next 31st March following that date, and
(b) each successive period of 12 months ending with 31st March.

Annual public meeting

12 (1) The Commission shall hold a public meeting ("the annual meeting") for the purpose of enabling a report under paragraph 11 above to be considered.

(2) The annual meeting shall be held within the period of three months beginning with the day on which the report is published.

(3) The Commission shall organise the annual meeting so as to allow—
(a) a general discussion of the contents of the report which is being considered, and
(b) a reasonable opportunity for those attending the meeting to put questions to the Commission about matters to which the report relates.

(4) But subject to sub-paragraph (3) above the annual meeting is to be organised and conducted in such a way as the Commission considers appropriate.

(5) The Commission shall—
(a) take such steps as are reasonable in the circumstances to ensure that notice of the annual meeting is given to every registered charity, and
(b) publish notice of the annual meeting in the way appearing to it to be best calculated to bring it to the attention of members of the public.

(6) Each such notice shall—

(a) give details of the time and place at which the meeting is to be held,
(b) set out the proposed agenda for the meeting,
(c) indicate the proposed duration of the meeting, and
(d) give details of the Commission's arrangements for enabling persons to attend.

(7) If the Commission proposes to alter any of the arrangements which have been included in notices given or published under sub-paragraph (5) above it shall—
(a) give reasonable notice of the alteration, and
(b) publish the notice in the way appearing to it to be best calculated to bring it to the attention of registered charities and members of the public.**]**

[F557SCHEDULE 1B

Section 2A(3)

THE CHARITY TRIBUNAL

Textual Amendments

F557 Sch. 1B inserted (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 3 para. 1**; S.I. 2008/751, art. 2, Sch.

Membership

1 (1) The Tribunal shall consist of the President and its other members.

(2) The Lord Chancellor shall appoint—
(a) a President of the Tribunal,
(b) legal members of the Tribunal, and
(c) ordinary members of the Tribunal.

(3) A person may be appointed as the President or a legal member of the Tribunal only if he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990.

(4) A person may be appointed as an ordinary member of the Tribunal only if he appears to the Lord Chancellor to have appropriate knowledge or experience relating to charities.

Deputy President

2 (1) The Lord Chancellor may appoint a legal member as deputy President of the Tribunal.

(2) The deputy President—
(a) may act for the President when he is unable to act or unavailable, and
(b) shall perform such other functions as the President may delegate or assign to him.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Terms of appointment

3 (1) The members of the Tribunal shall hold and vacate office as such in accordance with the terms of their respective appointments.

(2) A person holding office as a member of the Tribunal—

(a) may resign that office by giving notice in writing to the Lord Chancellor, and

(b) may be removed from office by the Lord Chancellor on the ground of incapacity or misbehaviour.

(3) A previous appointment of a person as a member of the Tribunal does not affect his eligibility for re-appointment as a member of the Tribunal.

Retirement etc.

4 (1) A person shall not hold office as a member of the Tribunal after reaching the age of 70.

(2) Section 26(5) and (6) of the Judicial Pensions and Retirement Act 1993 (extension to age 75) apply in relation to a member of the Tribunal as they apply in relation to a holder of a relevant office.

Remuneration etc.

5 (1) The Lord Chancellor may pay to the members of the Tribunal such remuneration, and such other allowances, as he may determine.

(2) The Lord Chancellor may—

(a) pay such pension, allowances or gratuities as he may determine to or in respect of a person who is or has been a member of the Tribunal, or

(b) make such payments as he may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.

(3) If the Lord Chancellor determines that there are special circumstances which make it right for a person ceasing to hold office as a member of the Tribunal to receive compensation, the Lord Chancellor may pay to him a sum by way of compensation of such amount as may be determined by the Lord Chancellor.

Staff and facilities

6 The Lord Chancellor may make staff and facilities available to the Tribunal.

Panels

7 (1) The functions of the Tribunal shall be exercised by panels of the Tribunal.

(2) Panels of the Tribunal shall sit at such times and in such places as the President may direct.

(3) Before giving a direction under sub-paragraph (2) above the President shall consult the Lord Chancellor.

(4) More than one panel may sit at a time.

8 (1) The President shall make arrangements for determining which of the members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function.

(2) Those arrangements shall, in particular, ensure that each panel is constituted in one of the following ways—

(a) as the President sitting alone,
(b) as a legal member sitting alone,
(c) as the President sitting with two other members,
(d) as a legal member sitting with two other members,
(e) as the President sitting with one other member,
(f) as a legal member sitting with one other member,

(and references in paragraphs (d) and (f) to other members do not include the President).

(3) The President shall publish arrangements made under this paragraph.

Practice and procedure

9 (1) Decisions of the Tribunal may be taken by majority vote.

(2) In the case of a panel constituted in accordance with paragraph 8(2)(e), the President shall have a casting vote.

(3) In the case of a panel constituted in accordance with paragraph 8(2)(f) which consists of a legal member and an ordinary member, the legal member shall have a casting vote.

(4) The President shall make and publish arrangements as to who is to have a casting vote in the case of a panel constituted in accordance with paragraph 8(2)(f) which consists of two legal members.

10 The President may, subject to rules under section 2B of this Act, give directions about the practice and procedure of the Tribunal.**]**

[[F558]SCHEDULE 1C

Section 2A(4)

APPEALS AND APPLICATIONS TO CHARITY TRIBUNAL

Textual Amendments

F558 Sch. 1C, Sch. 1D inserted (27.2.2007 for the insertion of Sch. 1C para. 6 for specified purposes, 18.3.2008 for the insertion of Sch. 1C paras. 1 (for specified purposes), 2-5, 6 (in so far as not already in force) and Sch. 1D, 31.1.2009 for the insertion of Sch. 1C para. 1 for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 4**; S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.; S.I. 2008/3267, art. 2, Sch. (with arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Appeals: general

1 (1) Except in the case of a reviewable matter (see paragraph 3) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of the Table.

(2) Such an appeal may be brought by—
(a) the Attorney General, or
(b) any person specified in the corresponding entry in column 2 of the Table.

(3) The Commission shall be the respondent to such an appeal.

(4) In determining such an appeal the Tribunal—
(a) shall consider afresh the decision, direction or order appealed against, and
(b) may take into account evidence which was not available to the Commission.

(5) The Tribunal may—
(a) dismiss the appeal, or
(b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of the Table.

Appeals: orders under section 9

2 (1) Paragraph 1(4)(a) above does not apply in relation to an appeal against an order made under section 9 of this Act.

(2) On such an appeal the Tribunal shall consider whether the information or document in question—
(a) relates to a charity;
(b) is relevant to the discharge of the functions of the Commission or the official custodian.

(3) The Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within either paragraph (a) or paragraph (b) of sub-paragraph (2) above.

Reviewable matters

3 (1) In this Schedule references to "reviewable matters" are to—
(a) decisions to which sub-paragraph (2) applies, and
(b) orders to which sub-paragraph (3) applies.

(2) This sub-paragraph applies to decisions of the Commission—
(a) to institute an inquiry under section 8 of this Act with regard to a particular institution,
(b) to institute an inquiry under section 8 of this Act with regard to a class of institutions,
(c) not to make a common investment scheme under section 24 of this Act,
(d) not to make a common deposit scheme under section 25 of this Act,
(e) not to make an order under section 26 of this Act in relation to a charity,
(f) not to make an order under section 36 of this Act in relation to land held by or in trust for a charity,

(g) not to make an order under section 38 of this Act in relation to a mortgage of land held by or in trust for a charity.

(3) This sub-paragraph applies to an order made by the Commission under section 69(1) of this Act in relation to a company which is a charity.

Reviews

4 (1) An application may be made to the Tribunal for the review of a reviewable matter.

(2) Such an application may be made by—
(a) the Attorney General, or
(b) any person mentioned in the entry in column 2 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.

(3) The Commission shall be the respondent to such an application.

(4) In determining such an application the Tribunal shall apply the principles which would be applied by the High Court on an application for judicial review.

(5) The Tribunal may—
(a) dismiss the application, or
(b) if it allows the application, exercise any power mentioned in the entry in column 3 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.

Interpretation: remission of matters to Commission

5 References in column 3 of the Table to the power to remit a matter to the Commission are to the power to remit the matter either—
(a) generally, or
(b) for determination in accordance with a finding made or direction given by the Tribunal.

TABLE

1	***2***	***3***
Decision of the Commission under section 3 or 3A of this Act— (a) to enter or not to enter an institution in the register of charities, or (b) to remove or not to remove an institution from the register.	The persons are— (a) the persons who are or claim to be the charity trustees of the institution, (b) (if a body corporate) the institution itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to rectify the register.

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Decision of the Commission not to make a determination under section 3(9) of this Act in relation to particular information contained in the register.	The persons are— (a) the charity trustees of the charity to which the information relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Direction given by the Commission under section 6 of this Act requiring the name of a charity to be changed.	The persons are— (a) the charity trustees of the charity to which the direction relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the direction.	Power to— (a) quash the direction and (if appropriate) remit the matter to the Commission, (b) substitute for the direction any other direction which could have been given by the Commission.
Decision of the Commission to institute an inquiry under section 8 of this Act with regard to a particular institution.	The persons are— (a) the persons who have control or management of the institution, and (b) (if a body corporate) the institution itself.	Power to direct the Commission to end the inquiry.
Decision of the Commission to institute an inquiry under section 8 of this Act with regard to a class of institutions.	The persons are— (a) the persons who have control or management of any institution which is a member of the class of institutions, and (b) (if a body corporate) any such institution.	Power to— (a) direct the Commission that the inquiry should not consider a particular institution, (b) direct the Commission to end the inquiry.
Order made by the Commission under section 9 of this Act requiring a person to	The persons are any person who is required to supply	Power to— (a) quash the order, (b) substitute for all or part of

supply information or a document.	the information or document.	the order any other order which could have been made by the Commission.
Order made by the Commission under section 16(1) of this Act (including such an order made by virtue of section 23(1)).	The persons are— (a) in a section 16(1)(a) case, the charity trustees of the charity to which the order relates or (if a body corporate) the charity itself, (b) in a section 16(1)(b) case, any person discharged or removed by the order, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 18(1) of this Act in relation to a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, (c) in a section 18(1)(i) case, any person suspended by the order, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 18(2) of this	The persons are— (a) the charity trustees of the charity,	Power to— (a) quash the order in whole or in part and (if

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Act in relation to a charity.	(b) (if a body corporate) the charity itself, (c) in a section 18(2)(i) case, any person removed by the order, and (d) any other person who is or may be affected by the order.	appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 18(4) of this Act removing a charity trustee.	The persons are— (a) the charity trustee, (b) the remaining charity trustees of the charity of which he was a charity trustee, (c) (if a body corporate) the charity itself, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 18(5) of this Act appointing a charity trustee.	The persons are— (a) the other charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been

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		made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission— (a) to discharge an order following a review under section 18(13) of this Act, or (b) not to discharge an order following such a review.	The persons are— (a) the charity trustees of the charity to which the order relates, (b) (if a body corporate) the charity itself, (c) if the order in question was made under section 18(1)(i), any person suspended by it, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) make the discharge of the order subject to savings or other transitional provisions, (c) remove any savings or other transitional provisions to which the discharge of the order was subject, (d) discharge the order in whole or in part (whether subject to any savings or other transitional provisions or not).
Order made by the Commission under section 18A(2) of this Act which suspends a person's membership of a charity.	The persons are— (a) the person whose membership is suspended by the order, and (b) any other person who is or may be affected by the order.	Power to quash the order and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 19A(2) of this Act which directs a	The persons are any person who is directed by the order to take the specified action.	Power to quash the order and (if appropriate) remit the matter to the Commission.

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person to take action specified in the order.		
Order made by the Commission under section 19B(2) of this Act which directs a person to apply property in a specified manner.	The persons are any person who is directed by the order to apply the property in the specified manner.	Power to quash the order and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 23(2) of this Act in relation to any land vested in the official custodian in trust for a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission not to make a common investment scheme under section 24 of this Act.	The persons are— (a) the charity trustees of a charity which applied to the Commission for the scheme, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to make a common deposit scheme under section 25 of this Act.	The persons are— (a) the charity trustees of a charity which applied to the Commission for the scheme,	Power to quash the decision and (if appropriate) remit the matter to the Commission.

	(b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	
Decision by the Commission not to make an order under section 26 of this Act in relation to a charity.	The persons are— (a) the charity trustees of the charity, and (b) (if a body corporate) the charity itself.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Direction given by the Commission under section 28 of this Act in relation to an account held in the name of or on behalf of a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the direction and (if appropriate) remit the matter to the Commission, (b) substitute for the direction any other direction which could have been given by the Commission, (c) add to the direction anything which could have been contained in a direction given by the Commission.
Order made by the Commission under section 31 of this Act for the taxation of a solicitor's bill.	The persons are— (a) the solicitor, (b) any person for whom the work was done by the solicitor, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission not to	The persons are—	Power to quash the decision and (if

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make an order under section 36 of this Act in relation to land held by or in trust for a charity.	(a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	appropriate) remit the matter to the Commission.
Decision of the Commission not to make an order under section 38 of this Act in relation to a mortgage of land held by or in trust for a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 43(4) of this Act requiring the accounts of a charity to be audited.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 44(2) of this Act in relation to a charity, or a decision of the Commission not to make such an order in relation to a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, (c) in the case of a decision not to make an order, the auditor, independent examiner or examiner, and (d) any other person who is or may	Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order of a kind the Commission could have made, (c) make any order which the Commission could have made.

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	be affected by the order or the decision.	
Decision of the Commission under section 46(5) of this Act to request charity trustees to prepare an annual report for a charity.	The persons are— (a) the charity trustees, and (b) (if a body corporate) the charity itself.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to dispense with the requirements of section 48(1) in relation to a charity or class of charities.	The persons are the charity trustees of any charity affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission— (a) to grant a certificate of incorporation under section 50(1) of this Act to the trustees of a charity, or (b) not to grant such a certificate.	The persons are— (a) the trustees of the charity, and (b) any other person who is or may be affected by the decision.	Power to quash— (a) the decision, (b) any conditions or directions inserted in the certificate, and (if appropriate) remit the matter to the Commission.
Decision of the Commission to amend a certificate of incorporation of a charity under section 56(4) of this Act.	The persons are— (a) the trustees of the charity, and (b) any other person who is or may be affected by the amended certificate of incorporation.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to amend a certificate of incorporation under section 56(4) of this Act.	The persons are— (a) the trustees of the charity, and (b) any other person who is or may be affected by the decision not to amend the certificate of incorporation.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) make any order the Commission could have made under section 56(4).

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Order of the Commission under section 61(1) or (2) of this Act which dissolves a charity which is an incorporated body.	The persons are— (a) the trustees of the charity, (b) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission to give, or withhold, consent under section 64(2), 65(4) or 66(1) of this Act in relation to a body corporate which is a charity.	The persons are— (a) the charity trustees of the charity, (b) the body corporate itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 69(1) of this Act in relation to a company which is a charity.	The persons are— (a) the directors of the company, (b) the company itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under	The persons are—	Power to— (a) quash the order,

section 69(4) of this Act which gives directions to a person or to charity trustees.	(a) in the case of directions given to a person, that person, (b) in the case of directions given to charity trustees, those charity trustees and (if a body corporate) the charity of which they are charity trustees, and (c) any other person who is or may be affected by the directions.	(b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission under section 69E of this Act to grant an application for the constitution of a CIO and its registration as a charity.	The persons are any person (other than the persons who made the application) who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to rectify the register of charities.
Decision of the Commission under section 69E of this Act not to grant an application for the constitution of a CIO and its registration as a charity.	The persons are— (a) the persons who made the application, and (b) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.
Decision of the Commission under section 69H of this Act not to grant an application for the conversion of a charitable company or a registered society into a CIO and the CIO's registration as a charity.	The persons are— (a) the charity which made the application, (b) the charity trustees of the charity, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.

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Decision of the Commission under section 69K of this Act to grant an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO as their successor.	The persons are any creditor of any of the CIOs being amalgamated.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under section 69K of this Act not to grant an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO as their successor.	The persons are— (a) the CIOs which applied for the amalgamation, (b) the charity trustees of the CIOs, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.
Decision of the Commission to confirm a resolution passed by a CIO under section 69M(1) of this Act.	The persons are any creditor of the CIO.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to confirm a resolution passed by a CIO under section 69M(1) of this Act.	The persons are— (a) the CIO, (b) the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to confirm the resolution.
Decision of the Commission under section 72(4) of this Act to waive, or not to waive, a person's disqualification.	The persons are— (a) the person who applied for the waiver, and (b) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) substitute for the decision any other decision of a kind which could have been

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		made by the Commission.
Order made by the Commission under section 73(4) of this Act in relation to a person who has acted as charity trustee or trustee for a charity.	The persons are— (a) the person subject to the order, and (b) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission.
Order made by the Commission under section 73C(5) or (6) of this Act requiring a trustee or connected person to repay, or not to receive, remuneration.	The persons are— (a) the trustee or connected person, (b) (b the other charity trustees of the charity concerned, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission.
Decision of the Commission to notify charity trustees under section 74A(2) of this Act that it objects to a resolution of the charity trustees under section 74(2) or 74C(2).	The persons are— (a) the charity trustees, and (b) any other person who is or may be affected by the decision.	Power to quash the decision.
Decision of the Commission not to concur under section 75A of this Act with a resolution of charity trustees under section 75A(3) or 75B(2).	The persons are— (a) the charity trustees, (b) (b (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission to withhold approval for	The persons are— (a) the trustees,	Power to quash the decision and (if appropriate) remit

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the transfer of property from trustees to a parish council under section 79(1) of this Act.	(b) (b the parish council, and (c) any other person who is or may be affected by the decision.	the matter to the Commission.
Order made by the Commission under section 80(2) of this Act in relation to a person holding property on behalf of a recognised body or of any person concerned in its management or control.	The persons are— (a) the person holding the property in question, and (b) any other person who is or may be affected by the order.	Power to quash the order and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to give a direction under section 96(5) or (6) of this Act in relation to an institution or a charity.	The persons are the trustees of the institution or charity concerned.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under paragraph 15 of Schedule 5B to this Act to refuse to register an amendment to the constitution of a CIO.	The persons are— (a) the CIO, (b) (b the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to register the amendment.

Power to amend Table etc.

6 (1) The Minister may by order—

(a) amend or otherwise modify an entry in the Table,

(b) add an entry to the Table, or

(c) remove an entry from the Table.

(2) An order under sub-paragraph (1) may make such amendments, repeals or other modifications of paragraphs 1 to 5 of this Schedule, or of an enactment which applies this Schedule, as the Minister considers appropriate in consequence of any change in the Table made by the order.

(3) No order shall be made under this paragraph unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

7 Paragraph 6 above applies (with the necessary modifications) in relation to section 57 of the Charities Act 2006 as if—

(a) the provisions of that section were contained in this Schedule, and

(b) the reference in that paragraph to paragraphs 1 to 5 of this Schedule included a reference to any other provision relating to appeals to the Tribunal which is contained in Chapter 1 of Part 3 of the Charities Act 2006.

SCHEDULE 1D

Section 2A(4)

REFERENCES TO CHARITY TRIBUNAL

References by Commission

1 (1) A question which—
(a) has arisen in connection with the exercise by the Commission of any of its functions, and
(b) involves either the operation of charity law in any respect or its application to a particular state of affairs,
may be referred to the Tribunal by the Commission if the Commission considers it desirable to refer the question to the Tribunal.

(2) The Commission may make such a reference only with the consent of the Attorney General.

(3) The Commission shall be a party to proceedings before the Tribunal on the reference.

(4) The following shall be entitled to be parties to proceedings before the Tribunal on the reference—
(a) the Attorney General, and
(b) with the Tribunal's permission—
(i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,
(ii) any such charity which is a body corporate, and
(iii) any other person who is likely to be so affected.

References by Attorney General

2 (1) A question which involves either—
(a) the operation of charity law in any respect, or
(b) the application of charity law to a particular state of affairs,
may be referred to the Tribunal by the Attorney General if the Attorney General considers it desirable to refer the question to the Tribunal.

(2) The Attorney General shall be a party to proceedings before the Tribunal on the reference.

(3) The following shall be entitled to be parties to proceedings before the Tribunal on the reference—
(a) the Commission, and
(b) with the Tribunal's permission—
(i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,
(ii) any such charity which is a body corporate, and

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(iii) any other person who is likely to be so affected.

Powers of Commission in relation to matters referred to Tribunal

3 (1) This paragraph applies where a question which involves the application of charity law to a particular state of affairs has been referred to the Tribunal under paragraph 1 or 2 above.

(2) The Commission shall not take any steps in reliance on any view as to the application of charity law to that state of affairs until—

(a) proceedings on the reference (including any proceedings on appeal) have been concluded, and

(b) any period during which an appeal (or further appeal) may ordinarily be made has ended.

(3) Where—

(a) paragraphs (a) and (b) of sub-paragraph (2) above are satisfied, and

(b) the question has been decided in proceedings on the reference,

the Commission shall give effect to that decision when dealing with the particular state of affairs to which the reference related.

Suspension of time limits while reference in progress

4 (1) Sub-paragraph (2) below applies if—

(a) paragraph 3(2) above prevents the Commission from taking any steps which it would otherwise be permitted or required to take, and

(b) the steps in question may be taken only during a period specified in an enactment ("the specified period").

(2) The running of the specified period is suspended for the period which—

(a) begins with the date on which the question is referred to the Tribunal, and

(b) ends with the date on which paragraphs (a) and (b) of paragraph 3(2) above are satisfied.

(3) Nothing in this paragraph or section 74A of this Act prevents the specified period being suspended concurrently by virtue of sub-paragraph (2) above and that section.

Agreement for Commission to act while reference in progress

5 (1) Paragraph 3(2) above does not apply in relation to any steps taken by the Commission with the agreement of—

(a) the persons who are parties to the proceedings on the reference at the time when those steps are taken, and

(b) (if not within paragraph (a) above) the charity trustees of any charity which—

(i) is likely to be directly affected by the taking of those steps, and

(ii) is not a party to the proceedings at that time.

(2) The Commission may take those steps despite the suspension in accordance with paragraph 4(2) above of any period during which it would otherwise be permitted or required to take them.

(3) Paragraph 3(3) above does not require the Commission to give effect to a decision as to the application of charity law to a particular state of affairs to the extent that the decision is inconsistent with any steps already taken by the Commission in relation to that state of affairs in accordance with this paragraph.

Appeals and applications in respect of matters determined on references

6 (1) No appeal or application may be made to the Tribunal by a person to whom sub-paragraph (2) below applies in respect of an order or decision made, or direction given, by the Commission in accordance with paragraph 3(3) above.

(2) This sub-paragraph applies to a person who was at any stage a party to the proceedings in which the question referred to the Tribunal was decided.

(3) Rules under section 2B(1) of this Act may include provision as to who is to be treated for the purposes of sub-paragraph (2) above as being (or not being) a party to the proceedings.

(4) Any enactment (including one contained in this Act) which provides for an appeal or application to be made to the Tribunal has effect subject to sub-paragraph (1) above.

Interpretation

7 (1) In this Schedule—

"charity law" means—

(a) any enactment contained in, or made under, this Act or the Charities Act 2006,

(b) any other enactment specified in regulations made by the Minister, and

(c) any rule of law which relates to charities, and

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978), and includes an enactment whenever passed or made.

(2) The exclusions contained in section 96(2) of this Act (ecclesiastical corporations etc.) do not have effect for the purposes of this Schedule.**]**

SCHEDULE 2

Sections 3 and 96.

EXEMPT CHARITIES

Modifications etc. (not altering text)

C23 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**

C24 Sch. 2 power to amend conferred (27.2.2007) by Charities Act 2006 (c. 50), **ss. 11(11)**(12), 79(2); S.I. 2007/309, art. 2, Sch.

The following institutions, so far as they are charities, are exempt charities within the meaning of this Act, that is to say—

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(a) any institution which, if the [M46]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 [M47]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;

[F559](d) . . . . . .

[F560][(da) theQualifications and Curriculum Authority;]

[F561](e) . . . . . .

[F562][(f) the Qualifications, Curriculum and Assessment Authority for Wales;]

[F561](g) . . . . . .

[F563](h) . . . . . .

(i) a successor company to a higher education corporation (within the meaning of section 129(5) of the [M48]Education Reform Act 1988) at a time when an institution conducted by the company is for the time being designated under that section;

[F563](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 [M49]Industrial and Provident Societies Act 1965 and any registered society or branch within the meaning of the [M50]Friendly Societies Act 1974;

(z) the Board of Governors of the Museum of London;

(za) the British Library Board.

[F564][(zb) the National Lottery Charities Board.]

Textual Amendments

F559 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**

F560 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)

F561 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)

F562 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**

F563 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)**

F564 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

M46 1960 c. 58.

M47 1855 c. 81.

M48 1988 c. 40.

M49 1965 c. 12.

M50 1974 c. 46.

Textual Amendments

F559 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**

F560 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)

F561 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)

F562 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**

F563 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)**

F564 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

M46 1960 c. 58.

M47 1855 c. 81.

M48 1988 c. 40.

M49 1965 c. 12.

M50 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 or ecclesiastical), and not partly in the City of London.
3. A district	Any area comprising the district
[[F565]3A.A Welsh county or county borough**]**	**[**[F565] 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 **[**[F566]or in any adjacent Welsh county or county borough**]**
[[F567] 4A . Any area in a Welsh county or county borough**]**	**[**[F567](i)Any area in the county or county borough ;**]** **[**[F567](ii)the county or county borough ;**]** **[**[F567](iii)any area comprising the county or county borough ;**]** **[**[F567](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

F565 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**

F566 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**

F567 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**

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

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 [M51]Seamen's Fund Winding-up Act 1851 which is repealed by the [M52]Charities Act 1960;

(b) in relation to charities established or regulated by schemes under the Endowed Schools Act 1869 to 1948, or section 75 of the [M53]Elementary Education Act 1870 or by schemes given effect under section 2 of the [M54]Education Act 1973 **[**[F568]or section 554 of the Education Act 1996**]**;

[F569](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 [M55]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 [M56]London Government Act 1899;

(g) in relation to charities established or regulated by orders or regulations under section 2 of the [M57]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

F568 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)

F569 Sch. 4 para. 1(c) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. III**

Marginal Citations

M51 1851 c. 102.
M52 1960 c. 58.
M53 1870 c. 75.
M54 1973 c. 16.
M55 1883 c. 18.
M56 1899 c. 14.
M57 1935 c. 11.

2 Notwithstanding anything in section 19 of the [M58]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

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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.

Marginal Citations

M58 1876 c. 56.

SCHEDULE 5

Section 36(2).

MEANING OF "CONNECTED PERSON" FOR PURPOSES OF SECTION 36(2)

1 **[**[F570](1) In section 36(2) of this Act "connected person", in relation to a charity, means any person who falls within sub-paragraph (2)—

(a) at the time of the disposition in question, or

(b) at the time of any contract for the disposition in question.

(2) The persons falling within this sub-paragraph are—**]**

(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 **[**[F571]or civil partner**]** of any person falling within any of sub-paragraphs (a) to (d) above;

[[F572](ea) a person carrying on business in partnership with any person falling within any of sub-paragraphs (a) to (e) above;**]**

(f) an institution which is controlled—

(i) by any person falling within any of sub-paragraphs (a) to **[**[F573](ea)**]** 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

F570 Words in Sch. 5 para. 1 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(2)**; S.I. 2007/309, art. 2, Sch. (with art. 6(2))

F571 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)

F572 Sch. 5 para. 1(2)(ea) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(4)**; S.I. 2007/309, art. 2, Sch. (with art. 6(2))

F573 Words in Sch. 5 para. 1(2)(f)(i) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(4)**; S.I. 2007/309, art. 2, Sch. (with art. 6(2))

2 (1) In paragraph **[**[F574]1(2)(c)**]** above "child" includes a stepchild and an illegitimate child.

(2) For the purposes of paragraph **[**[F575]1(2)(e)**]** above a person living with another as that person's husband or wife shall be treated as that person's spouse.

[[F576](3) Where two persons of the same sex are not civil partners but live together as if they were, each of them shall be treated for those purposes as the civil partner of the other.**]**

Textual Amendments

F574 Words in Sch. 5 para. 2(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(5)(a)**; S.I. 2007/309, art. 2, Sch.

F575 Words in Sch. 5 para. 2(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(5)(b)**; S.I. 2007/309, art. 2, Sch.

F576 Sch. 5 para. 2(3) added (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(5)(c)**; S.I. 2007/309, art. 2, Sch.

3 For the purposes of paragraph **[**[F577]1(2)(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.

Textual Amendments

F577 Words in Sch. 5 para. 3 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(6)**; S.I. 2007/309, art. 2, Sch.

4 (1) For the purposes of paragraph **[**[F578]1(2)(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.

(2) The rules set out in **[**[F579]Schedule 1 to the Companies Act 2006**]** (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 **[**[F580]section 254**]** of that Act ("connected persons" etc).

(3) In this paragraph "equity share capital" and "share" have the same meaning as in that Act.

Textual Amendments

F578 Words in Sch. 5 para. 4(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 178(7)**; S.I. 2007/309, art. 2, Sch.

F579 Words in Sch. 5 para. 4(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 82(a)** (with art. 12)

F580 Words in Sch. 5 para. 4(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 82(b)** (with art. 12)

[F581SCHEDULE 5A

Section 49A

GROUP ACCOUNTS

Textual Amendments

F581 Sch. 5A inserted (27.2.2007 for the insertion of Sch. 5A paras. 3(3)(b)(4)(5), 4(2)(3), 6(2), 8, 10(2)(3), 15 for specified purposes, 1.4.2008 in so far as not already in force) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 6** (with Sch. 10 para. 17); S.I. 2007/309, art. 2, Sch.; S.I. 2008/945, art. 2, Sch. 1

Interpretation

1 (1) This paragraph applies for the purposes of this Schedule.

[F582(2) A charity is a "parent charity" if it is (or is to be treated as) a parent undertaking in relation to one or more other undertakings in accordance with the provisions of section 258 of, and Schedule 10A to, the Companies Act 1985.]

(3) Each undertaking in relation to which a parent charity is (or is to be treated as) a parent undertaking in accordance with those provisions is a "subsidiary undertaking" in relation to the parent charity.

(4) But sub-paragraph (3) does not have the result that any of the following is a "subsidiary undertaking"—

(a) any special trusts of a charity,

(b) any institution which, by virtue of a direction under section 96(5) of this Act, is to be treated as forming part of a charity for the purposes of this Part of this Act, or

(c) any charity to which a direction under section 96(6) of this Act applies for those purposes.

(5) "The group", in relation to a parent charity, means that charity and its subsidiary undertaking or undertakings, and any reference to the members of the group is to be construed accordingly.

(6) For the purposes of—

(a) this paragraph, and

(b) the operation of the provisions mentioned in sub-paragraph (2) above for the purposes of this paragraph,

"undertaking" has the meaning given by sub-paragraph (7) below.

(7) For those purposes "undertaking" means—

(a) an undertaking as defined by section 259(1) of the Companies Act 1985, or

(b) a charity which is not an undertaking as so defined.

Textual Amendments

F582 Sch. 5A para. 1(2) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(2)**

Accounting records

2 (1) The charity trustees—

(a) of a parent charity, or

(b) of any charity which is a subsidiary undertaking,

must ensure that the accounting records kept in respect of the charity under section 41(1) of this Act **[**[F583]or, as the case may be, section 221 of the Companies Act 1985 (duty to keep accounting records)**]** not only comply with the requirements of that provision but also are such as to enable the charity trustees of the parent charity to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(2) If a parent charity has a subsidiary undertaking in relation to which the requirements of section 41(1) of this Act **[**[F584]or section 221 of the Companies Act 1985**]** do not apply, the charity trustees of the parent charity must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the trustees to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(3) In this paragraph "the relevant requirements" means the requirements of regulations under paragraph 3.

Textual Amendments

F583 Words in Sch. 5A para. 2(1) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(3)(a)**

F584 Words in Sch. 5A para. 2(2) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(3)(b)**

Preparation of group accounts

3 **[**[F585](1) This paragraph applies in relation to a financial year of a charity if–

(a) the charity is a parent charity at the end of that year; and

(b) (where it is a company) it is not required to prepare consolidated accounts for that year under section 227 of the Companies Act 1985 (duty to prepare group accounts), whether or not such accounts are in fact prepared.**]**

(2) The charity trustees of the parent charity must prepare group accounts in respect of that year.

(3) "Group accounts" means consolidated accounts—

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(a) relating to the group, and

(b) complying with such requirements as to their form and contents as may be prescribed by regulations made by the Minister.

(4) Without prejudice to the generality of sub-paragraph (3), regulations under that sub-paragraph may make provision—

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

(b) for dealing with cases where the financial years of the members of the group do not all coincide;

(c) as to any information to be provided by way of notes to the accounts.

(5) Regulations under that sub-paragraph may also make provision—

(a) for determining the financial years of subsidiary undertakings for the purposes of this Schedule;

(b) for imposing on the charity trustees of a parent charity requirements with respect to securing that such financial years coincide with that of the charity.

(6) If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity **[**[F586](other than a parent charity which is a company)**]** in relation to a financial year—

(a) that requirement so applies in addition to the requirement in section 42(1) of this Act, and

(b) the option of preparing the documents mentioned in section 42(3) of this Act is not available in relation to that year (whatever the amount of the charity's gross income for that year).

[F587](6A) **[** If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity in relation to a financial year and the charity is a company, that requirement so applies in addition to the requirement in section 226 of the Companies Act 1985 (duty to prepare individual accounts).**]**

(7) Sub-paragraph (2) has effect subject to paragraph 4.

Textual Amendments

F585 Sch. 5A para. 3(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(4)**

F586 Words in Sch. 5A para. 3(6) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(5)**

F587 Sch. 5A para. 3(6A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(6)**

Exceptions relating to requirement to prepare group accounts

4 (1) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if at the end of that year it is itself a subsidiary undertaking in relation to another charity.

(2) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if the aggregate gross income of the group for that year does not exceed such sum as is specified in regulations made by the Minister.

(3) Regulations made by the Minister may prescribe circumstances in which a subsidiary undertaking may or (as the case may be) must be excluded from group accounts required to be prepared under paragraph 3(2) for a financial year.

(4) Where, by virtue of such regulations, each of the subsidiary undertakings which are members of a group is either permitted or required to be excluded from any such group accounts for a financial year, the requirement in paragraph 3(2) does not apply to the charity trustees of the parent charity in relation to that year.

Preservation of group accounts

5 (1) The charity trustees of a charity shall preserve any group accounts prepared by them under paragraph 3(2) for at least six years from the end of the financial year to which the accounts relate.

(2) Subsection (4) of section 41 of this Act shall apply in relation to the preservation of any such accounts as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being construed as references to sub-paragraph (1) above).

[[F588](3) For the purposes of sub-paragraph (2), section 41 applies as if subsection (5) of that section were omitted.**]**

Textual Amendments

F588 Sch. 5A para. 5(3) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(7)**

Audit of accounts of larger groups

6 (1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and—

(a) the aggregate gross income of the group in that year exceeds the relevant income threshold, or

(b) the aggregate gross income of the group in that year exceeds the relevant income threshold and at the end of the year the aggregate value of the assets of the group (before deduction of liabilities) exceeds the relevant assets threshold.

(2) In sub-paragraph (1)—

(a) the reference in paragraph (a) or (b) to the relevant income threshold is a reference to the sum prescribed as the relevant income threshold for the purposes of that paragraph, and

(b) the reference in paragraph (b) to the relevant assets threshold is a reference to the sum prescribed as the relevant assets threshold for the purposes of that paragraph.

"Prescribed" means prescribed by regulations made by the Minister.

(3) This paragraph also applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and the appropriate audit provision applies in relation to the parent charity's own accounts for that year.

(4) If this paragraph applies in relation to a financial year of a parent charity by virtue of sub-paragraph (1) or (3), the group accounts for that year shall be audited—

(a) (subject to paragraph (b) or (c) below) by a person within section 43(2)(a) or (b) of this Act;

(b) if section 43A of this Act applies in relation to that year, by a person appointed by the Audit Commission (see section 43A(7));

(c) if section 43B of this Act applies in relation to that year, by the Auditor General for Wales.

(5) Where it appears to the Commission that sub-paragraph (4)(a) above has not been complied with in relation to that year within ten months from the end of that year—

(a) the Commission may by order require the group accounts for that year to be audited by a person within section 43(2)(a) or (b) of this Act, and

(b) if it so orders, the auditor shall be a person appointed by the Commission.

(6) Section 43(6) of this Act shall apply in relation to any such audit as it applies in relation to an audit carried out by an auditor appointed under section 43(5) (reading the reference to the funds of the charity as a reference to the funds of the parent charity).

(7) Section 43A(4) and (6) of this Act apply in relation to any appointment under sub-paragraph (4)(b) above as they apply in relation to an appointment under section 43A(2).

[[F589](8) If this paragraph applies in relation to a financial year of a parent charity by virtue of sub-paragraph (1)—

(a) (subject to paragraph (b) below) the appropriate audit provision shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply);

(b) where the parent charity is a company and its own accounts for that year are not required to be audited in accordance with Part 7 of the Companies Act 1985, section 43(2) of this Act shall apply in relation to those accounts (whether or not it would otherwise so apply).**]**

(9) In this paragraph "the appropriate audit provision", in relation to a financial year of a parent charity, means—

(a) (subject to paragraph **[**[F590](b), (c) or (d)**]** below) section 43(2) of this Act;

(b) if section 43A of this Act applies in relation to that year, section 43A(2);

(c) if section 43B of this Act applies in relation to that year, section 43B(2).

[[F591](d) if the parent charity is a company, section 43(2) of this Act or Part 7 of the Companies Act 1985 (as the case may be).**]**

Textual Amendments

F589 Sch. 5A para. 6(8) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(8)**

F590 Words in Sch. 5A para. 6(9)(a) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(9)**

F591 Sch. 5A para. 6(9)(d) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (S.I. 2008/527), arts. 1(1), **8(10)**

Examination of accounts of smaller groups

7 (1) This paragraph applies where—

(a) group accounts are prepared for a financial year of a parent charity under paragraph 3(2), and

(b) paragraph 6 does not apply in relation to that year.

(2) If—

(a) this paragraph applies in relation to a financial year of a parent charity, and

(b) sub-paragraph (4) or (5) below does not apply in relation to it,

subsections (3) to (7) of section 43 of this Act shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply, but subject to the modifications in sub-paragraph (3) below.

(3) The modifications are—

(a) any reference to the charity trustees of the charity is to be construed as a reference to the charity trustees of the parent charity;

(b) any reference to the charity's gross income in the financial year in question is to be construed as a reference to the aggregate gross income of the group in that year; and

(c) any reference to the funds of the charity is to be construed as a reference to the funds of the parent charity.

(4) If—

(a) this paragraph applies in relation to a financial year of a parent charity, and

(b) section 43A of this Act also applies in relation to that year,

subsections (3) to (6) of that section shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply.

(5) If—

(a) this paragraph applies in relation to a financial year of a parent charity, and

(b) section 43B of this Act also applies in relation to that year,

subsection (3) of that section shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply.

(6) If the group accounts for a financial year of a parent charity are to be examined or audited in accordance with section 43(3) of this Act (as applied by sub-paragraph (2) above), section 43(3) shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply).

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(7) Nothing in sub-paragraph (4) or (5) above affects the operation of section 43A(3) to (6) or (as the case may be) section 43B(3) in relation to the parent charity's own accounts for the financial year in question.

Supplementary provisions relating to audits etc.

8 (1) Section 44(1) of this Act shall apply in relation to audits and examinations carried out under or by virtue of paragraph 6 or 7, but subject to the modifications in sub-paragraph (2) below.

(2) The modifications are—

(a) in paragraph (b), the reference to section 43, 43A or 43B of this Act is to be construed as a reference to paragraph 6 above or to any of those sections as applied by paragraph 7 above;

(b) also in paragraph (b), the reference to any such statement of accounts as is mentioned in sub-paragraph (i) of that paragraph is to be construed as a reference to group accounts prepared for a financial year under paragraph 3(2) above;

(c) in paragraph (c), any reference to section 43, 43A or 43B of this Act is to be construed as a reference to that section as applied by paragraph 7 above;

(d) in paragraphs (d) and (e), any reference to the charity concerned or a charity is to be construed as a reference to any member of the group; and

(e) in paragraph (f), the reference to the requirements of section 43(2) or (3) of this Act is to be construed as a reference to the requirements of paragraph 6(4)(a) or those applied by paragraph 7(2) above.

(3) Without prejudice to the generality of section 44(1)(e), as modified by sub-paragraph (2)(d) above, regulations made under that provision may make provision corresponding or similar to any provision made by section 389A of the Companies Act 1985 (c. 6) in connection with the rights exercisable by an auditor of a company in relation to a subsidiary undertaking of the company.

(4) In section 44(2) of this Act the reference to section 44(1)(d) or (e) includes a reference to that provision as it applies in accordance with this paragraph.

Duty of auditors etc. to report matters to Commission

9 (1) Section 44A(2) to (5) and (7) of this Act shall apply in relation to a person appointed to audit, or report on, any group accounts under or by virtue of paragraph 6 or 7 above as they apply in relation to a person such as is mentioned in section 44A(1).

(2) In section 44A(2)(a), as it applies in accordance with sub-paragraph (1) above, the reference to the charity or any connected institution or body is to be construed as a reference to the parent charity or any of its subsidiary undertakings.

Annual reports

10 (1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2).

(2) The annual report prepared by the charity trustees of the parent charity in respect of that year under section 45 of this Act shall include—

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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)*

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

(b) such other information relating to any of those undertakings,

as may be prescribed by regulations made by the Minister.

(3) Without prejudice to the generality of sub-paragraph (2), regulations under that sub-paragraph may make provision—

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

(b) enabling the Commission to dispense with any requirement prescribed by virtue of sub-paragraph (2)(b) in the case of a particular subsidiary undertaking or a particular class of subsidiary undertaking.

(4) Section 45(3) to (3B) shall apply in relation to the annual report referred to in sub-paragraph (2) above as if any reference to the charity's gross income in the financial year in question were a reference to the aggregate gross income of the group in that year.

(5) When transmitted to the Commission in accordance with sub-paragraph (4) above, the copy of the annual report shall have attached to it both a copy of the group accounts prepared for that year under paragraph 3(2) and—

(a) a copy of the report made by the auditor on those accounts; or

(b) where those accounts have been examined under section 43, 43A or 43B of this Act (as applied by paragraph 7 above), a copy of the report made by the person carrying out the examination.

(6) The requirements in this paragraph are in addition to those in section 45 of this Act.

Excepted charities

11 (1) This paragraph applies where—

(a) a charity is required to prepare an annual report in respect of a financial year by virtue of section 46(5) of this Act,

(b) the charity is a parent charity at the end of the year, and

(c) group accounts are prepared for that year under paragraph 3(2) by the charity trustees of the charity.

(2) When transmitted to the Commission in accordance with section 46(7) of this Act, the copy of the annual report shall have attached to it both a copy of the group accounts and—

(a) a copy of the report made by the auditor on those accounts; or

(b) where those accounts have been examined under section 43, 43A or 43B of this Act (as applied by paragraph 7 above), a copy of the report made by the person carrying out the examination.

(3) The requirement in sub-paragraph (2) is in addition to that in section 46(6) of this Act.

Exempt charities

12 Nothing in the preceding provisions of this Schedule applies to an exempt charity.

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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)*

Public inspection of annual reports etc.

13 In section 47(2) of this Act, the reference to a charity's most recent accounts includes, in relation to a charity whose charity trustees have prepared any group accounts under paragraph 3(2), the group accounts most recently prepared by them.

Offences

14 (1) Section 49(1) of this Act applies in relation to a requirement within sub-paragraph (2) as it applies in relation to a requirement within section 49(1)(a).

(2) A requirement is within this sub-paragraph where it is imposed by section 45(3) or (3A) of this Act, taken with—

(a) section 45(3B), (4) and (5), and

(b) paragraph 10(5) or 11(2) above,

as applicable.

(3) In sub-paragraph (2) any reference to section 45(3), (3A) or (3B) of this Act is a reference to that provision as applied by paragraph 10(4) above.

(4) In section 49(1)(b) the reference to section 47(2) of this Act includes a reference to that provision as extended by paragraph 13 above.

Aggregate gross income

15 The Minister may by regulations make provision for determining for the purposes of this Schedule the amount of the aggregate gross income for a financial year of a group consisting of a parent charity and its subsidiary undertaking or undertakings.**]**

[[F592]SCHEDULE 5B

Section 69P

FURTHER PROVISION ABOUT CHARITABLE INCORPORATED ORGANISATIONS

Textual Amendments

F592 Sch. 5B inserted (27.2.2007 for the insertion of Sch. 5B paras. 10(2)(3), 13 for specified purposes) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 7 para. 2**; S.I. 2007/309, art. 2, Sch.

Powers

1 (1) Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

(2) The CIO's charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO.

Constitutional requirements

2 A CIO shall use and apply its property in furtherance of its purposes and in accordance with its constitution.

3 If the CIO is one whose members are liable to contribute to its assets if it is wound up, its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract—

(a) to which the CIO and each of its members was a party, and

(b) which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution.

4 Money payable by a member to the CIO under the constitution is a debt due from him to the CIO, and is of the nature of a specialty debt.

Third parties

5 (1) Sub-paragraphs (2) and (3) are subject to sub-paragraph (4).

(2) The validity of an act done (or purportedly done) by a CIO shall not be called into question on the ground that it lacked constitutional capacity.

(3) The power of the charity trustees of a CIO to act so as to bind the CIO (or authorise others to do so) shall not be called into question on the ground of any constitutional limitations on their powers.

(4) But sub-paragraphs (2) and (3) apply only in favour of a person who gives full consideration in money or money's worth in relation to the act in question, and does not know—

(a) in a sub-paragraph (2) case, that the act is beyond the CIO's constitutional capacity, or

(b) in a sub-paragraph (3) case, that the act is beyond the constitutional powers of its charity trustees,

and (in addition) sub-paragraph (3) applies only if the person dealt with the CIO in good faith (which he shall be presumed to have done unless the contrary is proved).

(5) A party to an arrangement or transaction with a CIO is not bound to inquire—

(a) whether it is within the CIO's constitutional capacity, or

(b) as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so.

(6) If a CIO purports to transfer or grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, 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 CIO's act.

(7) In any proceedings arising out of sub-paragraphs (2) to (4), the burden of proving that a person knew that an act—

(a) was beyond the CIO's constitutional capacity, or

(b) was beyond the constitutional powers of its charity trustees,

lies on the person making that allegation.

(8) In this paragraph and paragraphs 6 to 8—

(a) references to a CIO's lack of "constitutional capacity" are to lack of capacity because of anything in its constitution, and

(b) references to "constitutional limitations" on the powers of a CIO's charity trustees are to limitations on their powers under its constitution, including

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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)*

limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO's members, and "constitutional powers" is to be construed accordingly.

6 (1) Nothing in paragraph 5 prevents a person from bringing proceedings to restrain the doing of an act which would be—
(a) beyond the CIO's constitutional capacity, or
(b) beyond the constitutional powers of the CIO's charity trustees.

(2) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CIO.

(3) Sub-paragraph (2) does not prevent the Commission from exercising any of its powers.

7 Nothing in paragraph 5(3) affects any liability incurred by the CIO's charity trustees (or any one of them) for acting beyond his or their constitutional powers.

8 Nothing in paragraph 5 absolves the CIO's charity trustees from their duty to act within the CIO's constitution and in accordance with any constitutional limitations on their powers.

Duties

9 It is the duty of—
(a) each member of a CIO, and
(b) each charity trustee of a CIO,
to exercise his powers, and (in the case of a charity trustee) to perform his functions, in his capacity as such, in the way he decides, in good faith, would be most likely to further the purposes of the CIO.

10 (1) Subject to any provision of a CIO's constitution permitted by virtue of regulations made under sub-paragraph (2), each charity trustee of a CIO shall in the performance of his functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular—
(a) to any special knowledge or experience that he has or holds himself out as having, and
(b) if he acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) The Minister may make regulations permitting a CIO's constitution to provide that the duty in sub-paragraph (1) does not apply, or does not apply in so far as is specified in the constitution.

(3) Regulations under sub-paragraph (2) may provide for limits on the extent to which, or the cases in which, a CIO's constitution may disapply the duty in sub-paragraph (1).

Personal benefit and payments

11 (1) A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, he did not disclose to all the charity trustees of the CIO any material interest of his in it or in any other person or body party to it (whether that interest is direct or indirect).

(2) Nothing in sub-paragraph (1) confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO.

12 A charity trustee of a CIO—

(a) is entitled to be reimbursed by the CIO, or

(b) may pay out of the CIO's funds,

expenses properly incurred by him in the performance of his functions as such.

Procedure

13 (1) The Minister may by regulations make provision about the procedure of CIOs.

(2) Subject to—

(a) any such regulations,

(b) any other requirement imposed by or by virtue of this Act or any other enactment, and

(c) anything in the CIO's constitution,

a CIO may regulate its own procedure.

(3) But a CIO's procedure shall include provision for the holding of a general meeting of its members, and the regulations referred to in sub-paragraph (1) may in particular make provision about such meetings.

Amendment of constitution

14 (1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).

(2) Such a resolution must be passed—

(a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or

(b) unanimously by the CIO's members, otherwise than at a general meeting.

(3) The date of passing of such a resolution is—

(a) the date of the general meeting at which it was passed, or

(b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).

(4) The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO's ceasing to be a charity.

(5) Subject to paragraph 15(5) below, a resolution containing an amendment which would make any regulated alteration is to that extent ineffective unless the prior written consent of the Commission has been obtained to the making of the amendment.

(6) The following are regulated alterations—

(a) any alteration of the CIO's purposes,

(b) any alteration of any provision of the CIO's constitution directing the application of property of the CIO on its dissolution,

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(c) any alteration of any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.

(7) For the purposes of sub-paragraph (6)(c)—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A of this Act) whose receipt may be authorised under that section, and

(b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 73B(5) and (6) of this Act, for determining whether a person is connected with a charity trustee for the purposes of section 73A.

Registration and coming into effect of amendments

15 (1) A CIO shall send to the Commission a copy of a resolution containing an amendment to its constitution, together with—

(a) a copy of the constitution as amended, and

(b) such other documents and information as the Commission may require,

by the end of the period of 15 days beginning with the date of passing of the resolution (see paragraph 14(3)).

(2) An amendment to a CIO's constitution does not take effect until it has been registered.

(3) The Commission shall refuse to register an amendment if—

(a) in the opinion of the Commission the CIO had no power to make it (for example, because the effect of making it would be that the CIO ceased to be a charity, or that the CIO or its constitution did not comply with any requirement imposed by or by virtue of this Act or any other enactment), or

(b) the amendment would change the name of the CIO, and the Commission could have refused an application under section 69E of this Act for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in subsection (4) of that section.

(4) The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the consent referred to in paragraph 14(5) had not been obtained.

(5) But if the Commission does register such an amendment, paragraph 14(5) does not apply.]

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)

F593 5 . . . . . .

Textual Amendments

F593 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 ".

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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)*

(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.

(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)

F594 16 . . . . . .

Textual Amendments

F594 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 ".

(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 ".

[[F595](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 ";

[F596](b) . . . . . .

Textual Amendments

F595 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)**

F596 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)

F597 27 . . . . . .

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

Textual Amendments

F597 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 ".

(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

F598 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

M59 1973 c. 32
M60 1974 c. 39
M61 1976 c. 80
M62 1977 c. 42
M63 1977 c. 49
M64 1978 No. 1
M65 1979 c. 46
M66 1984 c. xxvii
M67 1985 c. 51
M68 1985 c. 68
M69 1987 c. 31
M70 1988 c. 40
M71 1988 c. 48
M72 1988 c. 50
M73 1988 c. xxiii
M74 1988 c. xxiv

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.

Status: *Point in time view as at 01/04/2008. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Charities Act 1993 (repealed). (See end of Document for details)*

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.
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.

[F599]SCHEDULE 8

Section 99(3), (4).

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Textual Amendments

F599 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

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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)*

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.
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.

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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)*

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).
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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