



# Charities Act 1993 (repealed)

## 1993 CHAPTER 10

### PART IV **E+W+N.I.**

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

##### *Extended powers of court and variation of charters*

### 13 Occasions for applying property cy-près. **E+W**

- (1) Subject to subsection (2) below, the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows—
- (a) where the original purposes, in whole or in part—
    - (i) have been as far as may be fulfilled; or
    - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
  - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
  - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
  - (e) where the original purposes, in whole or in part, have, since they were laid down,—
    - (i) been adequately provided for by other means; or

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- (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
  - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Subsection (1) above shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près except in so far as those conditions require a failure of the original purposes.
- (3) References in the foregoing subsections to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in Schedule 3 to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.
- (5) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

#### **14 Application cy-près of gifts of donors unknown or disclaiming. E+W**

- (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.

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- (4) The court may by order direct that property not falling within subsection (3) above shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified where it appears to the court either—
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
  - (b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (5) Where property is applied cy-près by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (3) or (4) above—
- (a) the scheme shall specify the total amount of that property; and
  - (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
  - (c) the scheme may include directions as to the provision to be made for meeting any such claim.
- (6) Where—
- (a) any sum is, in accordance with any such directions, set aside for meeting any such claims, but
  - (b) the aggregate amount of any such claims actually made exceeds the relevant amount,
- then, if the Commissioners so direct, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in paragraph (b) above; and for this purpose “the relevant amount” means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors’ gifts.
- (7) For the purposes of this section, charitable purposes shall be deemed to “fail” where any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors.
- (8) In this section “prescribed” means prescribed by regulations made by the Commissioners; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (1)(a) above, make provision as to the form and content of such advertisements as well as the manner in which they are to be published.
- (9) Any regulations made by the Commissioners under this section shall be published by the Commissioners in such manner as they think fit.
- (10) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

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

**15 Charities governed by charter, or by or under statute. E+W+N.I.**

- (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)

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

**16 Concurrent jurisdiction with High Court for certain purposes. E+W**

- (1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes—
- (a) establishing a scheme for the administration of a charity;
  - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;
  - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.

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- (2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) above and without any further order of the court.
- (3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.
- (4) Subject to the following subsections, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except—
  - (a) on the application of the charity; or
  - (b) on an order of the court under subsection (2) above; or
  - (c) in the case of a charity other than an exempt charity, on the application of the Attorney General.
- (5) In the case of a charity which is not an exempt charity and whose income from all sources does not in aggregate exceed £500 a year, the Commissioners may exercise their jurisdiction under this section on the application—
  - (a) of any one or more of the charity trustees; or
  - (b) of any person interested in the charity; or
  - (c) of any two or more inhabitants of the area of the charity if it is a local charity.
- (6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so and the Commissioners have given the charity trustees an opportunity to make representations to them, the Commissioners may proceed as if an application for a scheme had been made by the charity but the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.
- (7) Where—
  - (a) a charity cannot apply to the Commissioners for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but
  - (b) such an application is made by such number of the charity trustees as the Commissioners consider appropriate in the circumstances of the case,the Commissioners may nevertheless proceed as if the application were an application made by the charity.
- (8) The Commissioners may on the application of any charity trustee or trustee for a charity exercise their jurisdiction under this section for the purpose of discharging him from his trusteeship.
- (9) Before exercising any jurisdiction under this section otherwise than on an order of the court, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom or who is party or privy to an application for the exercise of the jurisdiction;

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and any such notice may be given by post, and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

- (10) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.
- (11) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.
- (12) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order (unless he is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity).
- (13) No appeal shall be brought under subsection (12) above except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of one of the judges of the High Court attached to the Chancery Division.
- (14) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (12) above as a charity trustee, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area and the council of any parish or (in Wales) any community comprising the area or any part of it.
- (15) If the Secretary of State thinks it expedient to do so—
  - (a) in consequence of changes in the value of money, or
  - (b) with a view to increasing the number of charities in respect of which the Commissioners may exercise their jurisdiction under this section in accordance with subsection (5) above,
 he may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

**Modifications etc. (not altering text)**

- C1** 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)
- C2** S. 16(4) excluded (1.4.1997) by 1996 c. 14, s. 120, Sch. 5, Pt. II paras. 6, 8 (with s. 72(5)); S.I. 1997/305, art. 2(1)

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

+W

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

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the Commissioners may settle a scheme accordingly with a view to its being given effect under this section.

- (2) A scheme settled by the Commissioners under this section may be given effect by order of the Secretary of State, and a draft of the order shall be laid before Parliament.
- (3) Without prejudice to the operation of section 6 of the <sup>M1</sup>Statutory Instruments Act 1946 in other cases, in the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act of Parliament, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.
- (4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section 16 above.
- (5) Where subsection (3) above applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (6) The Commissioners shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section 16 above; but on any application for a scheme, or in a case where they act by virtue of subsection (6) or (7) of that section, the Commissioners may proceed under this section or that section as appears to them appropriate.
- (7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or the Commissioners be defrayed out of any moneys applicable for the purposes of a charity but this subsection shall not apply in the case of an exempt charity.
- (8) Where the Commissioners are satisfied—
  - (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
  - (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and
  - (c) that it is for any reason not yet desirable to make such a scheme;
 then the Commissioners may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity.
- (9) An order under subsection (8) above shall not extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years.

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**Modifications etc. (not altering text)**

- C3** 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).

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### Marginal Citations

M1 1946 c. 36.

## 18 Power to act for protection of charities. **E+W**

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

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; or
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

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

- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
  - (ii) by order appoint such number of additional charity trustees as they consider necessary for the proper administration of the charity;
  - (iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;
  - (iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioners;
- (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;
  - (vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioners;
  - (vii) by order appoint (in accordance with section 19 below) a receiver and manager in respect of the property and affairs of the charity.

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

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; and
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

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

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



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- (3) The references in subsection (1) or (2) above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.
- (4) The Commissioners may also remove a charity trustee by order made of their own motion—
- (a) where, within the last five years, the trustee—
    - (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or
    - (ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;
  - (b) where the trustee is a corporation in liquidation;
  - (c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the <sup>M2</sup>Mental Health Act 1983;
  - (d) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (e) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (5) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—
- (a) in place of a charity trustee removed by them under this section or otherwise;
  - (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
  - (c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.
- (6) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section 16 above.
- (7) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 16 above.
- (8) Subject to subsection (9) below, subsections (11) to (13) of section 16 above shall apply to orders under this section as they apply to orders under that section.
- (9) The requirement to obtain any such certificate or leave as is mentioned in section 16(13) above shall not apply to—

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- (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity's property and affairs, or
  - (b) an appeal by a person against an order under subsection (2)(i) or (4)(a) above removing him from his office or employment.
- (10) Subsection (14) of section 16 above shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.
- (11) The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than twelve months; but (without prejudice to the generality of section 89(1) below), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.
- (12) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1) above, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (13) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).
- (14) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (15) Subsection (14) above shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) above (whether proceedings in respect of the contravention are brought against him under subsection (14) above or not).
- (16) This section shall not apply to an exempt charity.

#### **Marginal Citations**

**M2** 1983 c. 20.

## **19 Supplementary provisions relating to receiver and manager appointed for a charity. E+W**

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

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- (2) Without prejudice to the generality of section 89(1) below, any order made by the Commissioners under section 18(1)(vii) above may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by him under the supervision of the Commissioners.
- (3) In connection with the discharge of those functions any such order may provide—
  - (a) for the receiver and manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
  - (b) for any powers or duties exercisable or falling to be performed by the receiver and manager by virtue of paragraph (a) above to be exercisable or performed by him to the exclusion of those trustees.
- (4) Where a person has been appointed receiver and manager by any such order—
  - (a) section 29 below shall apply to him and to his functions as a person so appointed as it applies to a charity trustee of the charity concerned and to his duties as such; and
  - (b) the Commissioners may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (5) The High Court may on an application under subsection (4)(b) above—
  - (a) give such directions, or
  - (b) make such orders declaring the rights of any persons (whether before the court or not),as it thinks just; and the costs of any such application shall be paid by the charity concerned.
- (6) Regulations made by the Secretary of State may make provision with respect to—
  - (a) the appointment and removal of persons appointed in accordance with this section;
  - (b) the remuneration of such persons out of the income of the charities concerned;
  - (c) the making of reports to the Commissioners by such persons.
- (7) Regulations under subsection (6) above may, in particular, authorise the Commissioners—
  - (a) to require security for the due discharge of his functions to be given by a person so appointed;
  - (b) to determine the amount of such a person's remuneration;
  - (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

## **20 Publicity for proceedings under ss. 16 to 18. E+W**

- (1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the Secretary of State for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity, other than on

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ecclesiastical charity, in a parish or (in Wales) a community, a draft of the scheme has been communicated to the parish or community council or, in the case of a parish not having a council, to the chairman of the parish meeting.

- (2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme but this subsection shall not apply in the case of—
  - (a) an order under section 18(1)(ii) above; or
  - (b) an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.
- (3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or employee of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.
- (4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either without modification or with such modifications as appear to them to be desirable.
- (5) Where the Commissioners make an order which is subject to appeal under subsection (12) of section 16 above the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.
- (6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.
- (7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.
- (8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

**Modifications etc. (not altering text)**

**C4** S. 20 applied (1.8.1993) by 1987 c. 3, s. 5(8) (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 23(1) of this Act).

*Status: Point in time view as at 01/06/1998.*

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

*Property vested in official custodian*

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

**+W**

- (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. E+W**

- (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 <sup>M3</sup>Public Trustee Act 1906 except that he shall have no power to charge fees.
- (2) Subject to subsection (3) below, where any land is vested in the official custodian in trust for a charity, the charity trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.
- (3) If any land is so vested in the official custodian by virtue of an order under section 18 above, the power conferred on the charity trustees by subsection (2) above shall not be exercisable by them in relation to any transaction affecting the land, unless the transaction is authorised by order of the court or of the Commissioners.
- (4) Where any land is vested in the official custodian in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land being vested in him shall be enforceable by or against the charity trustees as if the land were vested in them.
- (5) In relation to a corporate charity, subsections (2), (3) and (4) above shall apply with the substitution of references to the charity for references to the charity trustees.

*Status: Point in time view as at 01/06/1998.*

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

- (6) Subsections (2), (3) and (4) above shall not authorise any charity trustees or charity to impose any personal liability on the official custodian.
- (7) Where the official custodian is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees without thereby incurring any liability.

#### Marginal Citations

M3 1906 c. 55.

### 23 Divestment in the case of land subject to Reverter of Sites Act 1987. E+W

- (1) Where—
- (a) any land is vested in the official custodian in trust for a charity, and
  - (b) it appears to the Commissioners that section 1 of the <sup>M4</sup>Reverter of Sites Act 1987 (right of reverter replaced by [<sup>F1</sup>trust]) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances,
- the jurisdiction which, under section 16 above, is exercisable by the Commissioners for the purpose of discharging a trustee for a charity may, at any time before section 1 of that Act (“the 1987 Act”) operates in relation to the land, be exercised by them of their own motion for the purpose of—
- (i) making an order discharging the official custodian from his trusteeship of the land, and
  - (ii) making such vesting orders and giving such directions as appear to them to be necessary or expedient in consequence.
- (2) Where—
- (a) section 1 of the 1987 Act has operated in relation to any land which, immediately before the time when that section so operated, was vested in the official custodian in trust for a charity, and
  - (b) the land remains vested in him but on the trust arising under that section,
- the court or the Commissioners (of their own motion) may—
- (i) make an order discharging the official custodian from his trusteeship of the land, and
  - (ii) (subject to the following provisions of this section) make such vesting orders and give such directions as appear to it or them to be necessary or expedient in consequence.
- (3) Where any order discharging the official custodian from his trusteeship of any land—
- (a) is made by the court under section 21(2) above, or by the Commissioners under section 16 above, on the grounds that section 1 of the 1987 Act will, or is likely to, operate in relation to the land, or
  - (b) is made by the court or the Commissioners under subsection (2) above,
- the persons in whom the land is to be vested on the discharge of the official custodian shall be the relevant charity trustees (as defined in subsection (4) below), unless the court or (as the case may be) the Commissioners is or are satisfied that it would be appropriate for it to be vested in some other persons.

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*Status: Point in time view as at 01/06/1998.*

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

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- (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 [F<sup>1</sup>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 [F<sup>1</sup>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 [F<sup>1</sup>trust] arising in relation to the land under that section.

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#### Textual Amendments

**F1** 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**

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#### Marginal Citations

**M4** 1987 c. 15.

*Status: Point in time view as at 01/06/1998.*

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

*Establishment of common investment or deposit funds*

**24 Schemes to establish common investment funds. E+W**

- (1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as “common investment schemes”) for the establishment of common investment funds under trusts which provide—
  - (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
  - (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.
- (2) The court or the Commissioners may make a common investment scheme on the application of any two or more charities.
- (3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.
- (4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision—
  - (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee of or trustee for a participating charity;
  - (b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;
  - (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;
  - (d) for enabling money to be borrowed temporarily for the purpose of meeting payments to be made out of the funds;
  - (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;
  - (f) for regulating the accounts and information to be supplied to participating charities.
- (5) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme; and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making



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*Status: Point in time view as at 01/06/1998.*

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

- (6) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (7) The powers of investment of every charity shall include power to participate in common investment schemes unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.
- (8) A common investment fund shall be deemed for all purposes to be a charity; and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.
- (9) Subsection (8) above shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charity.

**Modifications etc. (not altering text)**

**C5** 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. E+W**

- (1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as “common deposit schemes”) for the establishment of common deposit funds under trusts which provide—
  - (a) for sums to be deposited by or on behalf of a charity participating in the scheme and invested under the control of trustees appointed to manage the fund; and
  - (b) for any such charity to be entitled (subject to the provisions of the scheme) to repayment of any sums so deposited and to interest thereon at a rate determined under the scheme.
- (2) Subject to subsection (3) below, the following provisions of section 24 above, namely—
  - (a) subsections (2) to (4), and
  - (b) subsections (6) to (9),
 shall have effect in relation to common deposit schemes and common deposit funds as they have effect in relation to common investment schemes and common investment funds.
- (3) In its application in accordance with subsection (2) above, subsection (4) of that section shall have effect with the substitution for paragraphs (b) and (c) of the following paragraphs—
  - “(b) for regulating as to time, amount or otherwise the right to repayment of sums deposited in the fund;

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

**Modifications etc. (not altering text)**

**C6** S. 25 excluded (6.2.2000) by 1993 c. 10, s. 122(4), **Sch. 19 Pt. IV para. 15(b)**

*Additional powers of Commissioners*

**26 Power to authorise dealings with charity property etc. E+W**

- (1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.
- (2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1) above) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.
- (3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being as if contained in the trusts of the charity; but any such directions may on the application of the charity be modified or superseded by a further order.
- (4) Without prejudice to the generality of subsection (3) above, the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.
- (5) An order under this section may authorise any act notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below or that the trusts of the charity provide for the act to be done by or under the authority of the court; but no such order shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity or shall extend or alter the purposes of the charity.
- (6) The Acts referred to in subsection (5) above as the disabling Acts are the <sup>M5</sup>Ecclesiastical Leases Act 1571, the <sup>M6</sup>Ecclesiastical Leases Act 1572, the <sup>M7</sup>Ecclesiastical Leases Act 1575 and the <sup>M8</sup>Ecclesiastical Leases Act 1836.

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- (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 <sup>M9</sup>Pastoral Measure 1968 or the <sup>M10</sup>Pastoral Measure 1983, the reference to a building being taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

#### Marginal Citations

<b>M5</b>	1571 c. 10.
<b>M6</b>	1572 c. 11.
<b>M7</b>	1575 c. 11.
<b>M8</b>	1836 c. 20.
<b>M9</b>	1968 No.1.
<b>M10</b>	1983 No.1.

## 27 Power to authorise ex gratia payments etc. **E+W**

- (1) Subject to subsection (3) below, the Commissioners may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—
- to make any application of property of the charity, or
  - to waive to any extent, on behalf of the charity, its entitlement to receive any property,
- in a case where the charity trustees—
- (apart from this section) have no power to do so, but
  - in all the circumstances regard themselves as being under a moral obligation to do so.
- (2) The power conferred on the Commissioners by subsection (1) above shall be exercisable by them under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require the Commissioners, in such circumstances as are specified in the directions—
- to refrain from exercising that power; or
  - to consult the Attorney General before exercising it.
- (3) Where—
- an application is made to the Commissioners for them to exercise that power in a case where they are not precluded from doing so by any such directions, but
  - they consider that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by them,
- they shall refer the application to the Attorney General.
- (4) It is hereby declared that where, in the case of any application made to them as mentioned in subsection (3)(a) above, the Commissioners determine the application by refusing to authorise charity trustees to take any action falling within subsection (1) (a) or (b) above, that refusal shall not preclude the Attorney General, on an application subsequently made to him by the trustees, from authorising the trustees to take that action.

*Status: Point in time view as at 01/06/1998.*

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

## 28 Power to give directions about dormant bank accounts of charities. E+W

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

they may give a direction under subsection (2) below.
- (2) A direction under this subsection is a direction which—
  - (a) requires the institution concerned to transfer the amount, or (as the case may be) the aggregate amount, standing to the credit of the relevant charity in the account or accounts in question to such other charity as is specified in the direction in accordance with subsection (3) below; or
  - (b) requires the institution concerned to transfer to each of two or more other charities so specified in the direction such part of that amount or aggregate amount as is there specified in relation to that charity.
- (3) The Commissioners may specify in a direction under subsection (2) above such other charity or charities as they consider appropriate, having regard, in a case where the purposes of the relevant charity are known to them, to those purposes and to the purposes of the other charity or charities; but the Commissioners shall not so specify any charity unless they have received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.
- (4) Any amount received by a charity by virtue of this section shall be received by the charity on terms that—
  - (a) it shall be held and applied by the charity for the purposes of the charity, but
  - (b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity.
- (5) Where—
  - (a) the Commissioners have been informed as mentioned in subsection (1)(a) above by any relevant institution, and
  - (b) before any transfer is made by the institution in pursuance of a direction under subsection (2) above, the institution has, by reason of any circumstances, cause to believe that the account, or (as the case may be) any of the accounts, held by it in the name of or on behalf of the relevant charity is no longer dormant,

the institution shall forthwith notify those circumstances in writing to the Commissioners; and, if it appears to the Commissioners that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) above which has previously been given by them to the institution with respect to the relevant charity.
- (6) The receipt of any charity trustees or trustee for a charity in respect of any amount received from a relevant institution by virtue of this section shall be a complete discharge of the institution in respect of that amount.

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- (7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commissioners for the purpose of enabling them to discharge their functions under this section.
- (8) For the purposes of this section—
- (a) an account is dormant if no transaction, other than—
- (i) a transaction consisting in a payment into the account, or
  - (ii) a transaction which the institution holding the account has itself caused to be effected,
- has been effected in relation to the account within the period of five years immediately preceding the date when the Commissioners are informed as mentioned in paragraph (a) of subsection (1) above;
- (b) a “relevant institution” means—
- (i) the Bank of England;
  - (ii) an institution which is authorised by the [<sup>F2</sup>Financial Services Authority] to operate a deposit-taking business under Part I of the <sup>M11</sup>Banking Act 1987;
  - (iii) a European deposit-taker as defined in regulation 82(3) of the <sup>M12</sup>Banking Coordination (Second Council Directive) Regulations 1992;
  - (iv) a building society which is authorised by the Building Societies Commission under section 9 of the <sup>M13</sup>Building Societies Act 1986 to raise money from its members; or
  - (v) such other institution mentioned in Schedule 2 to the Banking Act 1987 as the Secretary of State may prescribe by regulations; and
- (c) references to the transfer of any amount to a charity are references to its transfer—
- (i) to the charity trustees, or
  - (ii) to any trustee for the charity,
- as the charity trustees may determine (and any reference to any amount received by a charity shall be construed accordingly).
- (9) For the purpose of determining the matters in respect of which any of the powers conferred by section 8 or 9 above may be exercised it shall be assumed that the Commissioners have no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of the Commissioners under this section, be required under section 8(3)(a) above to furnish any statements, or answer any questions or inquiries, with respect to any such accounts held by the institution).
- This subsection applies to accounts which are dormant accounts by virtue of subsection (8)(a) above but would not be such accounts if sub-paragraph (i) of that provision were omitted.
- (10) Subsection (1) above shall not apply to any account held in the name of or on behalf of an exempt charity.

#### Textual Amendments

- F2** Words in s. 28(8)(b)(ii) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. III para. 42**; S.I. 1998/1120, **art. 2**

*Status: Point in time view as at 01/06/1998.*

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

#### Marginal Citations

M11 1987 c. 22.

M12 S.I. 1992/3218.

M13 1986 c. 53.

### 29 Power to advise charity trustees. **E+W**

- (1) The Commissioners may on the written application of any charity trustee give him their opinion or advice on any matter affecting the performance of his duties as such.
- (2) A charity trustee or trustee for a charity acting in accordance with the opinion or advice of the Commissioners given under this section with respect to the charity shall be deemed, as regards his responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—
  - (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or
  - (b) the decision of the court has been obtained on the matter or proceedings are pending to obtain one.

### 30 Powers for preservation of charity documents. **E+W**

- (1) The Commissioners may provide books in which any deed, will or other document relating to a charity may be enrolled.
- (2) The Commissioners may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commissioners deposit them with the Commissioners for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.
- (3) Where a document is enrolled by the Commissioners or is for the time being deposited with them under this section, evidence of its contents may be given by means of a copy certified by any officer of the Commissioners generally or specially authorised by them to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.
- (4) Regulations made by the Secretary of State may make provision for such documents deposited with the Commissioners under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.
- (5) Subsections (3) and (4) above shall apply to any document transmitted to the Commissioners under section 9 above and kept by them under subsection (3) of that section, as if the document had been deposited with them for safe keeping under this section.

### 31 Power to order taxation of solicitor's bill. **E+W**

- (1) The Commissioners may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, shall be taxed, together with the

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costs of the taxation, by a taxing officer in such division of the High Court as may be specified in the order, or by the taxing officer of any other court having jurisdiction to order the taxation of the bill.

- (2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the taxing officer shall have the same powers and duties, and the costs of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are taxed.
- (3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill unless the Commissioners are of opinion that it contains exorbitant charges; and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the High Court by reason either of an agreement as to his remuneration or the lapse of time since payment of the bill.

#### *Legal proceedings relating to charities*

### **32 Proceedings by Commissioners. E+W**

- (1) Subject to subsection (2) below, the Commissioners may exercise the same powers with respect to—
  - (a) the taking of legal proceedings with reference to charities or the property or affairs of charities, or
  - (b) the compromise of claims with a view to avoiding or ending such proceedings, as are exercisable by the Attorney General acting ex officio.
- (2) Subsection (1) above does not apply to the power of the Attorney General under section 63(1) below to present a petition for the winding up of a charity.
- (3) The practice and procedure to be followed in relation to any proceedings taken by the Commissioners under subsection (1) above shall be the same in all respects (and in particular as regards costs) as if they were proceedings taken by the Attorney General acting ex officio.
- (4) No rule of law or practice shall be taken to require the Attorney General to be a party to any such proceedings.
- (5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

### **33 Proceedings by other persons. E+W**

- (1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity if it is a local charity, but not by any other person.
- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioners.

*Status: Point in time view as at 01/06/1998.*

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

- (3) The Commissioners shall not, without special reasons, authorise the taking of charity proceedings where in their opinion the case can be dealt with by them under the powers of this Act other than those conferred by section 32 above.
- (4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.
- (5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.
- (6) Nothing in the foregoing subsections shall apply to the taking of proceedings by the Attorney General, with or without a relator, or to the taking of proceedings by the Commissioners in accordance with section 32 above.
- (7) Where it appears to the Commissioners, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney General, the Commissioners shall so inform the Attorney General, and send him such statements and particulars as they think necessary to explain the matter.
- (8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under the court’s jurisdiction with respect to charities, or brought under the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

#### **34 Report of s. 8 inquiry to be evidence in certain proceedings. E+W**

- (1) A copy of the report of the person conducting an inquiry under section 8 above shall, if certified by the Commissioners to be a true copy, be admissible in any proceedings to which this section applies—
  - (a) as evidence of any fact stated in the report; and
  - (b) as evidence of the opinion of that person as to any matter referred to in it.
- (2) This section applies to—
  - (a) any legal proceedings instituted by the Commissioners under this Part of this Act; and
  - (b) any legal proceedings instituted by the Attorney General in respect of a charity.
- (3) A document purporting to be a certificate issued for the purposes of subsection (1) above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

*Meaning of “trust corporation”*

#### **35 Application of provisions to trust corporations appointed under s. 16 or 18. E+W**

- (1) In the definition of “trust corporation” contained in the following provisions—



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**Status:** Point in time view as at 01/06/1998.

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

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- (a) section 117(xxx) of the <sup>M14</sup>Settled Land Act 1925,
- (b) section 68(18) of the <sup>M15</sup>Trustee Act 1925,
- (c) section 205(xxviii) of the <sup>M16</sup>Law of Property Act 1925,
- (d) section 55(xxvi) of the <sup>M17</sup>Administration of Estates Act 1925, and
- (e) section 128 of the <sup>M18</sup>Supreme Court Act 1981,

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

- (2) This section shall be deemed always to have had effect; but the reference to section 128 of the Supreme Court Act 1981 shall, in relation to any time before 1st January 1982, be construed as a reference to section 175(1) of the <sup>M19</sup>Supreme Court of Judicature (Consolidation) Act 1925.

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#### **Commencement Information**

- II** As from Royal Assent, this section shall be deemed to always have had effect.
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#### **Marginal Citations**

- M14** 1925 c. 18.  
**M15** 1925 c. 19.  
**M16** 1925 c. 20.  
**M17** 1925 c. 23.  
**M18** 1981 c. 54.  
**M19** 1925 c. 49.

**Status:**

Point in time view as at 01/06/1998.

**Changes to legislation:**

There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV.