

CHARITIES ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Section 26 – Power to enter premises and seize documents etc.

100. This section inserts into the 1993 Act a new section, section 31A, which gives the Charity Commission power to enter premises for certain purposes and on certain conditions. The Charity Commissioners have had since 1960 an enforceable power to call for documents and search records, but have never had power to enter premises to take possession of documents or information.
101. The power of entry is exercisable subject to obtaining a warrant from a justice of the peace. *Subsection (1)* of new section 31A sets out the circumstances in which a justice of the peace may issue a warrant.
102. The conditions in *subsection (2)* include the condition (paragraph (a) of that subsection) that an inquiry has been instituted under section 8 of the 1993 Act. Section 8 gives the Commission power to institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.
103. *Subsection (3)* sets out the actions which a warrant authorises the Commission employee named in the warrant to take. The documents which that person may take into his possession are limited, by paragraph (c) of that subsection, to documents falling within paragraph (b) of subsection (2) – that is, to documents which are relevant to the inquiry in question and which the Commission could require to be furnished or produced under its power in section 9(1) of the 1993 Act. Subsection (3)(d) allows the Commission employee to take possession of computer disks and other electronic storage devices containing information of the same description. *Subsection (4)* provides that the warrant must be executed within one month of its issue.
104. *Subsection (6)* provides that a written record of the entry and seizure must be made, and sets out the matters it must include. *Subsection (7)* provides that the written record must be presented on request to the occupier or his representative. *Subsection (8)* provides that unless it is not practicable, the Commission employee must prepare the written record whilst on the premises and, if it is requested, provide the copy of the record before leaving the premises.
105. *Subsection (9)* allows the Commission to retain documents or devices that it has seized for as long as it needs to retain them for the purposes of its inquiry. An effect of paragraph (a) of this subsection is that, if keeping a photocopy of a document will suffice for the purpose of the inquiry, the Commission must return the original document.
106. *Subsection (10)* provides for the Commission to return a seized document or device either to the person from whom the Commission seized it, or to any of the charity trustees. This would allow the Commission to give direct to the trustees property which belongs to the charity but which was in someone else's possession when seized.

*These notes refer to the Charities Act 2006 (c.50)
which received Royal Assent on 8 November 2006*

107. *Subsection (2)* of this section applies section 50 of the Criminal Justice and Police Act 2001 to the Charity Commission's power of seizure. That would in some circumstances allow a Commission employee to seize something (such as a computer):
- when he believed that it contained information the Commission was entitled to take but he could not determine, on the premises, whether or not it did in fact contain that information; or
 - when he knew that it contained information the Commission was entitled to take but he could not, on the premises, extract the information from the computer.