



# Charities Act 2011

## 2011 CHAPTER 25

### PART 17

#### THE TRIBUNAL

### CHAPTER 1

#### GENERAL

#### **315 The Tribunal**

- (1) In this Act, “the Tribunal” in relation to any appeal, application or reference, means—
  - (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the appeal, application or reference, or
  - (b) the First-tier Tribunal, in any other case.
- (2) The Tribunal has jurisdiction to hear and determine—
  - (a) such appeals and applications as may be made to the Tribunal in accordance with Chapter 2, 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 Chapter 3 by the Commission or the Attorney General.
- (3) Such appeals, applications and matters are to be heard and determined by the Tribunal in accordance with Chapters 2 and 3, or any such enactment, taken with—
  - (a) rules made under section 316(2), and
  - (b) Tribunal Procedure Rules.

#### **316 Rules relating to appeals, applications or references**

- (1) This section applies in relation to appeals, applications or references to the Tribunal which are mentioned in section 315(2).

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- (2) The Lord Chancellor may make rules—
  - (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) 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.
- (3) Tribunal Procedure Rules may make any other provision regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it.
- (4) Rules under subsection (2) or (3) may confer a discretion on—
  - (a) the Tribunal, or
  - (b) any other person.
- (5) Rules of the Lord Chancellor under this section—
  - (a) are to be made by statutory instrument, and
  - (b) are subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Rules of the Lord Chancellor under this section may make—
  - (a) different provision for different cases, and
  - (b) such supplemental, incidental, consequential or transitional provision or savings as the Lord Chancellor considers appropriate.

### **317 Appeal from Tribunal**

- (1) For the purposes of sections 11(2) and 13(2) of the Tribunals, Courts and Enforcement Act 2007, the Commission and the Attorney General are to be treated as parties to cases before the Tribunal in respect of any such appeal, application or reference as is mentioned in section 315(2).
- (2) In the case of an appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 against a decision of the Tribunal which determines a question referred to it by the Commission or the Attorney General, the tribunal or court hearing the appeal—
  - (a) must consider afresh the question referred to the Tribunal, and
  - (b) may take into account evidence which was not available to the Tribunal.

### **318 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 appropriate body 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 appropriate body—
  - (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 the Attorney General thinks necessary or expedient, and
  - (b) argue before the appropriate body any question in relation to the proceedings which the appropriate body considers it necessary to have fully argued.
- (5) Subsection (4) applies whether or not a direction is given under subsection (2).
- (6) In this section “the appropriate body” means the Tribunal or, in the case of an appeal from the Tribunal, the tribunal or court hearing the appeal.

## CHAPTER 2

### APPEALS AND APPLICATIONS TO TRIBUNAL

#### **319 Appeals: general**

- (1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6.
- (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 Schedule 6.
- (3) The Commission is to be the respondent to such an appeal.
- (4) In determining such an appeal the Tribunal—
  - (a) must 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 Schedule 6.

#### **320 Appeals: orders under s.52**

- (1) Section 319(4)(a) does not apply in relation to an appeal against an order made under section 52 (power to call for documents).
- (2) On such an appeal the Tribunal must 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 subsection (2)(a) or (b).

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### **321 Reviews**

- (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 Schedule 6 which corresponds to the entry in column 1 which relates to the reviewable matter.
- (3) The Commission is to be the respondent to such an application.
- (4) In determining such an application the Tribunal must 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 Schedule 6 which corresponds to the entry in column 1 which relates to the reviewable matter.

### **322 Reviewable matters**

- (1) In this Chapter references to reviewable matters are to—
  - (a) decisions to which subsection (2) applies, and
  - (b) orders to which subsection (3) applies.
- (2) This subsection applies to decisions of the Commission—
  - (a) to institute an inquiry under section 46 with regard to a particular institution;
  - (b) to institute an inquiry under section 46 with regard to a class of institutions;
  - (c) not to make a common investment scheme under section 96;
  - (d) not to make a common deposit scheme under section 100;
  - (e) not to make an order under section 105 (power to authorise dealings with charity property etc.) in relation to a charity;
  - (f) not to make an order under section 117 (restrictions on dispositions of land) in relation to land held by or in trust for a charity;
  - (g) not to make an order under section 124 (restrictions on mortgages) in relation to a mortgage of land held by or in trust for a charity.
- (3) This subsection applies to an order made by the Commission under section 147(2) (investigation and audit) in relation to a charitable company.

### **323 Remission of matters to Commission**

References in column 3 of Schedule 6 to the power to remit a matter to the Commission are to the power to remit the matter—

- (a) generally, or
- (b) for determination in accordance with a finding made or direction given by the Tribunal.

### **324 Power to amend provisions relating to appeals and applications to Tribunal**

- (1) The Minister may by order—

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- (a) amend or otherwise modify an entry in Schedule 6,
  - (b) add an entry to Schedule 6, or
  - (c) remove an entry from Schedule 6.
- (2) An order under subsection (1) may make such amendments, repeals or other modifications of—
- (a) sections 319 to 323, or
  - (b) an enactment which applies this Chapter and Schedule 6,
- as the Minister considers appropriate in consequence of any change in Schedule 6 made by the order.
- (3) Subsections (1) and (2) apply (with the necessary modifications) in relation to section 57 of the Charities Act 2006 as if—
- (a) that section were contained in this Chapter, and
  - (b) the reference in subsection (2) to sections 319 to 323 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.

## CHAPTER 3

### REFERENCES TO TRIBUNAL

#### **325 References by Commission**

- (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 is to be a party to proceedings before the Tribunal on the reference.
- (4) The following are 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.

#### **326 References by Attorney General**

- (1) A question which involves—
- (a) the operation of charity law in any respect, or

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- (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 is to be a party to proceedings before the Tribunal on the reference.
- (3) The following are 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
    - (iii) any other person who is likely to be so affected.

### **327 Powers of Commission in relation to matters referred to Tribunal**

- (1) This section applies where a question which involves the application of charity law to a particular state of affairs has been referred to the Tribunal under section 325 or 326.
- (2) The Commission must 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 subsection (2) are satisfied, and
  - (b) the question has been decided in proceedings on the reference,
 the Commission must give effect to that decision when dealing with the particular state of affairs to which the reference related.

### **328 Suspension of time limits while reference is in progress**

- (1) Subsection (2) applies if—
  - (a) section 327(2) 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 section 327(2) are satisfied.
- (3) Nothing in—
  - (a) this section, or
  - (b) section 271 or 278 (suspension of period during which Commission may object to resolution of unincorporated charity),

prevents the specified period being suspended concurrently by virtue of subsection (2) and any of the provisions of sections 271 and 278.

### **329 Agreement for Commission to act while reference is in progress**

- (1) Section 327(2) 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)) 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 section 328(2) of any period during which it would otherwise be permitted or required to take them.
- (3) Section 327(3) 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 section.

### **330 Appeals and applications in respect of matters determined on references**

- (1) No appeal or application may be made to the Tribunal by a person to whom subsection (2) applies in respect of an order or decision made, or direction given, by the Commission in accordance with section 327(3).
- (2) This subsection 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) 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 subsection (1).

### **331 Interpretation**

- (1) In this Chapter—

“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 10(2) (ecclesiastical corporations etc.) do not have effect for the purposes of this Chapter.