



# Charities Act 2011

## 2011 CHAPTER 25

### PART 6

#### CY-PRÈS POWERS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

##### *Cy-près powers and variation of charters*

#### **61 Duty of trustees in relation to application of property cy-près**

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.

#### **62 Occasions for applying property cy-près**

- (1) Subject to subsection (3), 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 are—
  - (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,
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift,
  - (c) where—
    - (i) the property available by virtue of the gift, and
    - (ii) other property applicable for similar purposes,can be more effectively used in conjunction, and to that end can suitably, regard being had to the appropriate considerations, be made applicable to common purposes,
  - (d) where the original purposes were laid down by reference to—

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- (i) an area which then was but has since ceased to be a unit for some other purpose, or
- (ii) a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the appropriate considerations, or to be practical in administering the gift, or
- (e) where the original purposes, in whole or in part, have, since they were laid down—
  - (i) been adequately provided for by other means,
  - (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 appropriate considerations.
- (2) In subsection (1) “the appropriate considerations” means—
  - (a) (on the one hand) the spirit of the gift concerned, and
  - (b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.
- (3) Subsection (1) does 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.
- (4) References in subsections (1) to (3) to the original purposes of a gift are to be read, 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.
- (5) 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 column 1 in Schedule 4, provide for enlarging the area to any such area as is mentioned in column 2 in the same entry in that Schedule.
- (6) Subsection (5) does not affect the power to make schemes in circumstances falling within subsection (1).

### **63 Application cy-près: donor unknown or disclaiming**

- (1) Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally, if 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 ended,
 cannot be identified or cannot be found, or
  - (b) to a donor who has executed a disclaimer in the prescribed form of the 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 are not liable to

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any person in respect of the property if no claim by that person to be interested in it is received by them before the end of the period mentioned in subsection (1)(a)(ii).

- (3) Where property is applied cy-près by virtue of this section, all the donor's interest in it is treated as having been relinquished when the gift was made.
- (4) 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 section 64 (donors treated as unidentifiable)—
- (a) the scheme must specify the total amount of that property,
  - (b) the donor of any part of that amount is entitled, on making a claim within the time limit, 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 the scheme's date in connection with claims relating to the donor's gift, and
  - (c) the scheme may include directions as to the provision to be made for meeting any claims made in accordance with paragraph (b).
- (5) For the purposes of subsection (4)(b)—
- (a) a claim is made within the time limit only if it is made no later than 6 months after the date on which the scheme is made, and
  - (b) “the scheme's date” means the date on which the scheme is made.
- (6) Subsection (7) applies if—
- (a) any sum is, in accordance with any directions included in the scheme under subsection (4)(c), set aside for meeting claims made in accordance with subsection (4)(b), but
  - (b) the aggregate amount of any such claims actually made exceeds the relevant amount;
- 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) If the Commission so directs, each of the donors in question is entitled only to such proportion of the relevant amount as the amount of the donor's claim bears to the aggregate amount referred to in subsection (6)(b).

## **64 Donors treated as unidentifiable**

- (1) For the purposes of section 63 property is conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists of—
- (a) the proceeds of cash collections made—
    - (i) by means of collecting boxes, or
    - (ii) by other means not adapted for distinguishing one gift from another,
 or
  - (b) 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.
- (2) The court or the Commission may by order direct that property not falling within subsection (1) is for the purposes of section 63 to be treated (without any advertisement

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or inquiry) as belonging to donors who cannot be identified if it appears to the court or the Commission—

- (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.

## **65 Donors treated as disclaiming**

- (1) This section applies to property given—
  - (a) for specific charitable purposes, and
  - (b) in response to a solicitation within subsection (2).
- (2) A solicitation is within this subsection if—
  - (a) it is made for specific charitable purposes, and
  - (b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift.
- (3) A relevant declaration is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, the donor wishes to be given the opportunity by the trustees holding the property to request the return of the property in question (or a sum equal to its value at the time of the making of the gift).
- (4) Subsections (5) and (6) apply if—
  - (a) a person has given property as mentioned in subsection (1),
  - (b) the specific charitable purposes fail, and
  - (c) the donor has made a relevant declaration.
- (5) The trustees holding the property must take the prescribed steps for the purpose of—
  - (a) informing the donor of the failure of the purposes,
  - (b) enquiring whether the donor wishes to request the return of the property (or a sum equal to its value), and
  - (c) if within the prescribed period the donor makes such a request, returning the property (or such a sum) to the donor.
- (6) If those trustees have taken all appropriate prescribed steps but—
  - (a) they have failed to find the donor, or
  - (b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value),
 section 63(1) applies to the property as if it belonged to a donor within section 63(1) (b) (application of property where donor has disclaimed right to return of property).
- (7) If—
  - (a) a person has given property as mentioned in subsection (1),
  - (b) the specific charitable purposes fail, and
  - (c) the donor has not made a relevant declaration,

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section 63(1) similarly applies to the property as if it belonged to a donor within section 63(1)(b).

- (8) For the purposes of this section—
- (a) “solicitation” means a solicitation made in any manner and however communicated to the persons to whom it is addressed,
  - (b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and
  - (c) where any appeal consists of—
    - (i) solicitations that are accompanied by statements within subsection (2)(b), and
    - (ii) solicitations that are not so accompanied,
 a person giving property as a result of the appeal is to be presumed, unless the contrary is proved, to have responded to the former solicitations and not the latter.

## **66 Unknown and disclaiming donors: supplementary**

- (1) For the purposes of sections 63 and 65, charitable purposes are to be treated as failing if 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.
- (2) In sections 63 to 65 and this section—
  - (a) references to a donor include persons claiming through or under the original donor, and
  - (b) references to property given include the property for the time being representing the property originally given or property derived from it.
- (3) Subsection (2) applies except in so far as the context otherwise requires.
- (4) In sections 63 and 65 “prescribed” means prescribed by regulations made by the Commission.
- (5) Any such regulations are to be published by the Commission in such manner as it thinks fit.
- (6) Any such regulations may, as respects the advertisements which are to be published for the purposes of section 63(1)(a), make provision as to the form and content of such advertisements as well as the manner in which they are to be published.

## **67 Cy-près schemes**

- (1) The power of the court or the Commission to make schemes for the application of property cy-près must be exercised in accordance with this section.
- (2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied—
  - (a) for such charitable purposes, and
  - (b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,
 as it considers appropriate, having regard to the matters set out in subsection (3).
- (3) The matters are—

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- (a) the spirit of the original gift,
- (b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and
- (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

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

- (4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes.
- (5) In this section references to property given include the property for the time being representing the property originally given or property derived from it.
- (6) In this section references to the transfer of property to a charity are references to its transfer—
  - (a) to the charity,
  - (b) to the charity trustees,
  - (c) to any trustee for the charity, or
  - (d) to a person nominated by the charity trustees to hold it in trust for the charity, as the scheme may provide.
- (7) In this section references to the original purposes of a gift are to be read, 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.

## **68 Charities governed by charter, or by or under statute**

- (1) Subsection (2) applies where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter.
- (2) 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)—
  - (a) may be made by the court under the court's jurisdiction with respect to charities even though the scheme cannot take effect without the alteration of the charter, but
  - (b) must 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.
- (3) Subsection (4) applies where, under—
  - (a) the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or
  - (b) 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.

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- (4) Her Majesty may, on the application of the body corporate, 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 the same manner as the charter it amends.
- (5) The jurisdiction of the court with respect to charities is not excluded or restricted in the case of a charity of a description mentioned in Schedule 5 by the operation of the enactments or instruments there mentioned in relation to that description.
- (6) A scheme established for a charity of a description mentioned in Schedule 5—
  - (a) 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
  - (b) may also make any such provision as is authorised by that Schedule.

*Powers of Commission to make schemes etc.*

## **69 Commission's concurrent jurisdiction with High Court for certain purposes**

- (1) The Commission may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes—
  - (a) establishing a scheme for the administration of a charity;
  - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;
  - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.
- (2) Subsection (1) is subject to the provisions of this Act.
- (3) If the court directs a scheme for the administration of a charity to be established—
  - (a) the court may by order refer the matter to the Commission for it to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and
  - (b) any such order may provide for the scheme to be put into effect by order of the Commission as if prepared under subsection (1) and without any further order of the court.

## **70 Restrictions on Commission's concurrent jurisdiction**

- (1) The Commission does not have jurisdiction under section 69 to try or determine—
  - (a) the title at law or in equity to any property as between—
    - (i) a charity or trustee for a charity, and
    - (ii) a person holding or claiming the property or an interest in it adversely to the charity, or
  - (b) any question as to the existence or extent of any charge or trust.
- (2) Subject to the following subsections, the Commission must not exercise its jurisdiction under section 69 as respects any charity except—
  - (a) on the application of the charity,
  - (b) on an order of the court under section 69(3), or
  - (c) on the application of the Attorney General.

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- (3) In the case of a charity whose gross income does not exceed £500 a year, the Commission may exercise its jurisdiction under section 69 on the application of—
- (a) any one or more of the charity trustees,
  - (b) any person interested in the charity, or
  - (c) any two or more inhabitants of the area of the charity if it is a local charity.
- (4) Subsection (5) applies where in the case of a charity, other than an exempt charity, the Commission—
- (a) is satisfied that the charity trustees—
    - (i) ought in the interests of the charity to apply for a scheme, but
    - (ii) have unreasonably refused or neglected to do so, and
  - (b) has given the charity trustees an opportunity to make representations to it.
- (5) The Commission—
- (a) may proceed as if an application for a scheme had been made by the charity, but
  - (b) may not, where it acts by virtue of this subsection, alter the purposes of a charity unless 40 years have elapsed from the date of the charity's foundation.
- (6) Where—
- (a) a charity cannot apply to the Commission for a scheme because 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 Commission considers appropriate in the circumstances of the case,
- the Commission may nevertheless proceed as if the application were an application made by the charity.
- (7) The Commission may on the application of any charity trustee or trustee for a charity exercise its jurisdiction under section 69 for the purpose of discharging the applicant from trusteeship.
- (8) The Commission must not exercise its jurisdiction under section 69 in any case (not referred to it by order of the court) which—
- (a) because of its contentious character, or any special question of law or of fact which it may involve, or
  - (b) for other reasons,
- the Commission may consider more fit to be adjudicated on by the court.

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

- C1** S. 70(1) applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 47\(2\)](#) (with s. 20(2), [Sch. 8](#)))
- C2** S. 70(2) excluded by 1996 c. 14, Sch. 5 para. 6 (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 69\(3\)](#) (with s. 20(2), [Sch. 8](#)))

**71 Exercise of Commission's concurrent jurisdiction: notice**

- (1) Before exercising any jurisdiction under section 69 otherwise than on an order of the court, the Commission must give notice of its intention to do so to each of the charity trustees except any—



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- (a) that cannot be found or has no known address in the United Kingdom, or
  - (b) who is party or privy to an application for the exercise of the jurisdiction.
- (2) Any such notice—
- (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.

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

- C3** S. 71 applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 47\(2\)](#) (with s. 20(2), [Sch. 8](#)))

**72 Power to alter sum specified in s.70(3)**

If the [<sup>F1</sup>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 Commission may exercise its jurisdiction under section 69 in accordance with section 70(3),

the [<sup>F1</sup>Secretary of State] may by order amend section 70(3) by substituting a different sum for the sum for the time being specified there.

**Textual Amendments**

- F1** Words in s. 72 substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), [Sch. 2 para. 25\(2\)\(m\)](#) (with art. 12)

**73 Powers to make schemes altering provision made by Acts, etc.**

- (1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also—
- (a) that it is necessary or desirable for the scheme—
    - (i) to alter the provision made by an Act establishing or regulating the charity, or
    - (ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or
  - (b) that it is for any reason proper for the scheme to be subject to parliamentary review,
- the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commission under this section may be given effect by order of the [<sup>F2</sup>Secretary of State].
- (3) Subject to subsections (4) and (6), an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) 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

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general Act, no order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

- (5) Subject to subsection (6), any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commission as if it were a scheme brought into effect by order of the Commission under section 69.
- (6) Where subsection (4) applies to a scheme, the order giving effect to it—
- (a) may direct that the scheme must not be modified or superseded by a scheme brought into effect otherwise than under this section, and
  - (b) may also direct that subsection (4) is to apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (7) The Commission must not proceed under this section without the same application, and the same notice to the charity trustees, as would be required if the Commission was proceeding (without an order of the court) under section 69.
- (8) But on any application for a scheme, or in a case where it acts by virtue of section 70(5) or (6), the Commission may proceed under this section or section 69 as appears to it appropriate.

#### Textual Amendments

- F2** Words in s. 73(2) substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), **Sch. 2 para. 25(2)(n)** (with art. 12)

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

- C4** Ss. 73(1)-(6) applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, **Sch. 7 para. 47(2)** (with s. 20(2), Sch. 8))

## 74 Restriction on expenditure on promoting Bills

- (1) No expenditure incurred in preparing or promoting a Bill in Parliament is to be defrayed without the consent of the court or the Commission out of any money applicable for the purposes of a charity.
- (2) Subsection (1) applies regardless of anything in the trusts of a charity.

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

- C5** S. 74 excluded (15.7.2013) by [The Charities Act 2011 \(Commencement No. 2\) Order 2013 \(S.I. 2013/1775\)](#), **Sch. 2 para. 2**
- C6** S. 74 applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, **Sch. 7 para. 47(2)** (with s. 20(2), Sch. 8))

## 75 Further powers to alter application of charitable property

- (1) Subsection (2) applies where the Commission is satisfied that—
- (a) the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity,
  - (b) if those circumstances continue, a scheme might be made for applying the surplus cy-près, and

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- (c) it is for any reason not yet desirable to make such a scheme.
- (2) The Commission may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme.
- (3) Any application of accrued or accruing income authorised by an order under subsection (2) is to be treated as being within the purposes of the charity.
- (4) An order under subsection (2) must not extend—
  - (a) to more than £300 out of income accrued before the date of the order,
  - (b) to income accruing more than 3 years after that date, or
  - (c) to more than £100 out of the income accruing in any of those 3 years.

*Powers of Commission to act for protection of charities etc.***[<sup>F3</sup>75A Official warnings by the Commission**

- (1) The Commission may issue a warning—
  - (a) to a charity trustee or trustee for a charity who it considers has committed a breach of trust or duty or other misconduct or mismanagement in that capacity, or
  - (b) to a charity in connection with which it considers a breach of trust or duty or other misconduct or mismanagement has been committed.
- (2) The Commission—
  - (a) may publish a warning it has issued;
  - (b) may issue or publish a warning in any way it considers appropriate.
- (3) Before issuing a warning under this section, the Commission must give notice of its intention to do so to the charity, and each charity trustee or trustee for the charity, except any who cannot be found or who has no known address in the United Kingdom.
- (4) Any such notice—
  - (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (5) The notice must specify—
  - (a) the power under subsection (1) to give the warning, and the grounds for the warning;
  - (b) any action that the Commission considers should be taken, or that the Commission is considering taking, to rectify the misconduct or mismanagement referred to in subsection (1);
  - (c) whether and, if so, how the Commission proposes to publish the warning;
  - (d) a period within which representations may be made to the Commission about the content of the proposed warning.
- (6) Where the Commission gives notice under subsection (3) of its intention to issue a warning—
  - (a) it must take into account any representations made to it within the period specified in the notice, and

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- (b) it may (without further notice) issue the warning either without modifications or with such modifications as it thinks desirable.
- (7) The Commission may vary or withdraw a warning under this section.
- (8) Subsection (2) applies to the variation or withdrawal of a warning as it applies to a warning.
- (9) Subsections (3) to (6) apply to the variation of a warning as they apply to a warning, except that—
  - (a) in subsection (5)(a) references to the warning are to be read as references to the warning as varied, and
  - (b) the matter to be specified under subsection (5)(b) is any change as a result of the variation in the action previously proposed by the Commission.]

#### Textual Amendments

**F3** S. 75A inserted (1.11.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 1, 17\(4\); S.I. 2016/815, reg. 4\(a\)](#)

## 76 Suspension of trustees etc. and appointment of interim managers

- (1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied—
  - (a) that there is or has been [<sup>F4</sup>a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning under section 75A, or any other] misconduct or mismanagement in the administration of the charity, or
  - (b) that it is necessary or desirable to act for the purpose of—
    - (i) protecting the property of the charity, or
    - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.
- (2) The reference in subsection (1) to misconduct or mismanagement extends (regardless of anything in the trusts of the charity) to the employment—
  - (a) for the remuneration or reward of persons acting in the affairs of the charity, or
  - (b) 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.
- (3) The Commission may of its own motion do one or more of the following—
  - (a) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal (whether under section 79 or 80 or otherwise);
  - (b) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;
  - (c) by order—
    - (i) vest any property held by or in trust for the charity in the official custodian,

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- (ii) require the persons in whom any such property is vested to transfer it to the official custodian, or
  - (iii) appoint any person to transfer any such property to the official custodian;
  - (d) 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 Commission;
  - (e) order any debtor of the charity not to make any payment in or towards the discharge of the debtor's liability to the charity without the approval of the Commission;
  - (f) by order restrict (regardless of 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 Commission;
  - (g) by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.
- (4) The Commission may not make an order under subsection (3)(a) so as to suspend a person from office or employment for a period of more than 12 months<sup>[F5]</sup>, subject to any extension under subsection (7)].
- (5) But any order under subsection (3)(a) made in the case of any person (“P”) may make provision, as respects the period of P's suspension for matters arising out of it, and in particular—
- (a) for enabling any person to execute any instrument in P's name or otherwise act for P, and
  - (b) 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.

This does not affect the generality of section 337(1) and (2).

- (6) The Commission—
- (a) must, at such intervals as it thinks fit, review any order made by it under paragraph (a), or any of paragraphs (c) to (g), of subsection (3), and
  - (b) if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, must so discharge it (whether subject to any savings or other transitional provisions or not).
- <sup>[F6]</sup>(7) At any time before the expiry of an order under paragraph (a) of subsection (3) the Commission may extend or further extend the suspension by an order under that paragraph, provided that—
- (a) the order does not extend the suspension for a period of more than 12 months, and
  - (b) the total period of suspension is not more than 2 years.]

#### Textual Amendments

- F4** Words in s. 76(1)(a) substituted (31.7.2016 for specified purposes, 1.11.2016 in so far as not already in force) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 2\(2\), 17\(4\); S.I. 2016/815, regs. 2\(a\), 4\(b\)](#)
- F5** Words in s. 76(4) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 2\(3\), 17\(4\); S.I. 2016/815, reg. 2\(a\)](#)

*Status: Point in time view as at 29/04/2021.*

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**F6** S. 76(7) added (31.7.2016) by Charities (Protection and Social Investment) Act 2016 (c. 4), ss. 2(4), 17(4); S.I. 2016/815, reg. 2(a)

### **[<sup>F7</sup>76A Exercise of powers where section 76(1)(a) applies**

- (1) This section applies to any power under this Part which is exercisable in cases where the Commission is satisfied as mentioned in section 76(1)(a) in relation to a charity (misconduct or mismanagement), with or without any other condition.
- (2) If in such a case the Commission is also satisfied—
  - (a) that a particular person has been responsible for the misconduct or mismanagement,
  - (b) that a particular person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
  - (c) that a particular person's conduct contributed to it or facilitated it,
 the Commission may take into account the matters mentioned in subsection (3) in deciding whether or how to exercise the power.
- (3) Those matters are—
  - (a) the conduct of that person in relation to any other charity;
  - (b) any other conduct of that person that appears to the Commission to be damaging or likely to be damaging to public trust and confidence in charities generally or particular charities or classes of charity.]

#### **Textual Amendments**

**F7** S. 76A inserted (31.7.2016) by Charities (Protection and Social Investment) Act 2016 (c. 4), ss. 3, 17(4); S.I. 2016/815, reg. 2(b)

### **77 Offence of contravening certain orders under s.76**

- (1) It is an offence for a person to contravene an order under—
  - (a) section 76(3)(d) (order prohibiting person from parting with property),
  - (b) section 76(3)(e) (order prohibiting debtor of charity from discharging liability), or
  - (c) section 76(3)(f) (order restricting transactions or payments).
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) This section is not to be treated as precluding 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 section 76(3)(d) or (f) (whether or not proceedings in respect of the contravention are brought against the trustee under this section).

### **78 Interim managers: supplementary**

- (1) The Commission may under section 76(3)(g) appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.

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- (2) An order made by the Commission under section 76(3)(g) may make provision with respect to the functions to be discharged by the interim manager appointed by the order.
- This does not affect the generality of section 337(1) and (2).
- (3) Those functions are to be discharged by the interim manager under the supervision of the Commission.
- (4) In connection with the discharge of those functions, an order under section 76(3)(g) may provide—
- (a) for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
  - (b) for any powers or duties specified by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.
- (5) Where a person has been appointed interim manager by any such order—
- (a) section 110 (power to give advice and guidance) applies to the interim manager and the interim manager's functions as it applies to a charity trustee of the charity concerned and to the charity trustee's duties as such, and
  - (b) the Commission may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (6) The High Court may on an application under subsection (5)(b)—
- (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.
- (7) The costs of an application under subsection (5)(b) must be paid by the charity concerned.
- (8) Regulations made by the [<sup>F8</sup>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 Commission by such persons.
- (9) Regulations under subsection (8) may, in particular, authorise the Commission—
- (a) to require security for the due discharge of the functions of a person so appointed to be given by that person;
  - (b) to determine the amount of such a person's remuneration;
  - (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

**Textual Amendments**

- F8** Words in s. 78(8) substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), [Sch. 2 para. 25\(2\)\(o\)](#) (with art. 12)

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### [<sup>F9</sup>79] **Removal of trustee or officer etc for protective etc purposes**

- (1) Subsection (2) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied either as mentioned in section 76(1)(a) (misconduct or mismanagement) or as mentioned in section 76(1)(b) (need to protect property etc).
- (2) The Commission may of its own motion by order establish a scheme for the administration of the charity.
- (3) Subsection (4) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied both as mentioned in section 76(1)(a) (misconduct or mismanagement) and as mentioned in section 76(1)(b) (need to protect property etc).
- (4) Whether or not it acts under subsection (2), the Commission may of its own motion by order remove any trustee, charity trustee, officer, agent or employee of the charity—
  - (a) who has been responsible for the misconduct or mismanagement,
  - (b) who knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
  - (c) whose conduct contributed to it or facilitated it.
- (5) Where the Commission has given notice under section 82 of its intention to make an order under subsection (4) removing a person from an office or employment, the Commission may proceed to make the order even though the person has ceased to hold the office or employment.
- (6) Where an order is made relying on subsection (5)—
  - (a) section 81(1) (power to make supplementary provision) and Case D in section 178(1) (disqualification) apply as if the person was removed by the order, but
  - (b) the order does not affect the time when the person ceased to hold the office or employment.]

#### **Textual Amendments**

**F9** S. 79 substituted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 4\(2\), 17\(4\); S.I. 2016/815, reg. 2\(c\)](#)

### [<sup>F10</sup>79A] **Removal of disqualified trustee**

The Commission may remove a charity trustee or trustee for a charity by order made of its own motion if the person is disqualified from being a charity trustee or trustee for a charity (generally or in relation to the charity concerned)—

- (a) by virtue of section 178, or
- (b) by an order under section 181A.]

#### **Textual Amendments**

**F10** S. 79A inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 5\(2\), 17\(4\); S.I. 2016/815, reg. 2\(d\)](#)



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- (1) The Commission may remove a charity trustee by order made of its own motion if—
- (a) within the last 5 years, the trustee—
    - (i) having previously been [<sup>F11</sup>made] bankrupt, has been discharged, or
    - (ii) having previously made a composition or arrangement with, or granted a trust deed for, creditors, has been discharged in respect of it [<sup>F12</sup>; or
    - (iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;]
  - (b) the trustee is a corporation in liquidation;
  - (c) the trustee is incapable of acting because of mental disorder within the meaning of the Mental Health Act 1983;
  - (d) the trustee has not acted, and will not make a declaration of willingness or unwillingness to act;
  - (e) the trustee—
    - (i) is outside England and Wales or cannot be found, or
    - (ii) does not act,
 and the trustee's absence or failure to act impedes the proper administration of the charity.
- (2) The Commission may by order made of its own motion appoint a person to be a charity trustee—
- (a) in place of a charity trustee removed by the Commission under section 79 or subsection (1) or otherwise;
  - (b) if there are no charity trustees, or if because of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
  - (c) if there is a single charity trustee who is not a corporation aggregate and the Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) if the Commission is of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee—
    - (i) is outside England and Wales or cannot be found, or
    - (ii) does not act.
- (3) In subsection (1)(a)(i), the reference to the trustee having been [<sup>F13</sup>made] bankrupt includes a reference to the trustee's estate having been sequestrated.
- (4) This section does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 46 with respect to it.

**Textual Amendments**

- F11** Word in s. 80(1)(a)(i) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, [Sch. 1 para. 17\(2\)](#)

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- F12** S. 80(1)(a)(iii) and preceding word inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 62(2)** (with art. 5)
- F13** Word in s. 80(3) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, **Sch. 1 para. 17(2)**

## 81 Removal or appointment of charity trustees etc.: supplementary

- (1) The powers of the Commission under sections 76, 79 and 80 to remove or appoint charity trustees of its own motion include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under section 69 (Commission's concurrent jurisdiction with High Court for certain purposes).
- (2) Any order under any of those sections or this section—
  - (a) for the removal or appointment of a charity trustee or trustee for a charity, or
  - (b) for the vesting or transfer of any property,
 has the same effect as an order made under section 69.
- (3) Subsection (1) does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 46 with respect to it.

## 82 Removal of trustees etc.: notice

- (1) Before exercising any jurisdiction by virtue of section 79<sup>F14</sup>, 79A] or 80, the Commission must give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom.
- (2) Any such notice—
  - (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.

### Textual Amendments

- F14** Word in s. 82(1) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\)](#), **ss. 5(3), 17(4)**; S.I. 2016/815, reg. 2(d)

## 83 Power to suspend or remove trustees etc. from membership of charity

- (1) Subsection (2) applies where—
  - (a) the Commission makes an order under section 76(3) suspending from office or employment a person who is a trustee, charity trustee, officer, agent or employee of a charity, and
  - (b) the person is a member of the charity.
- (2) The Commission may also make an order suspending the person's membership of the charity for the period for which the person is suspended from office or employment.
- (3) Subsection (4) applies where—

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- (a) the Commission makes an order under section [F1579(4)] removing from office or employment a person who is [F16a trustee, charity trustee, officer,] agent or employee of a charity, and
  - (b) the person is a member of the charity.
- (4) The Commission may also make an order—
- (a) terminating the person's membership of the charity, and
  - (b) prohibiting the person from resuming membership of the charity without the Commission's consent.
- (5) If an application for the Commission's consent under subsection (4)(b) is made 5 years or more after the order was made, the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.

**Textual Amendments**

**F15** Word in s. 83(3) substituted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 4\(3\)\(a\), 17\(4\); S.I. 2016/815, reg. 2\(c\)](#)

**F16** Words in s. 83(3) substituted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 4\(3\)\(b\), 17\(4\); S.I. 2016/815, reg. 2\(c\)](#)

**84 Power to direct specified action to be taken**

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 46 with respect to any charity, it is satisfied either as mentioned in section 76(1)(a) (misconduct or mismanagement etc.) or as mentioned in section 76(1)(b) (need to protect property etc.).
- (2) The Commission may by order direct—
- (a) the charity trustees,
  - (b) any trustee for the charity,
  - (c) any officer or employee of the charity, or
  - (d) (if a body corporate) the charity itself,
- to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.
- (3) An order under this section—
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but
  - (b) may not require any action to be taken which is prohibited by any Act [F17 or Measure] or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.
- (4) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

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[<sup>F18</sup>(6) In this section and sections 84B and 85, “Measure” means a Measure of the Church Assembly or of the General Synod of the Church of England.]

**Textual Amendments**

- F17** Words in s. 84(3)(b) inserted (coming into force in accordance with s. 53(6)(7) of the amending Measure) by [Cathedrals Measure 2021 \(No. 2\)](#), s. 8(2) (with ss. 42(4), 48, 52(1))
- F18** S. 84(6) inserted (coming into force in accordance with s. 53(6)(7) of the amending Measure) by [Cathedrals Measure 2021 \(No. 2\)](#), s. 8(3) (with ss. 42(4), 48, 52(1))

[<sup>F19</sup>**84A Power to direct specified action not to be taken**

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 46 with respect to any charity, the Commission considers that any action, if taken or continued by a person listed in section 84(2), would constitute misconduct or mismanagement in the administration of the charity.
- (2) The Commission may make an order specifying the action and directing the person not to take it or continue it.
- (3) While an order under this section is in force, the Commission must review it at intervals of not more than 6 months.]

**Textual Amendments**

- F19** S. 84A inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\)](#), ss. 6(2), 17(4); S.I. 2016/815, reg. 2(e)

[<sup>F20</sup>**84B Power to direct winding up**

- (1) This section applies where the conditions in section 84(1) are met for that section to apply, but the Commission is satisfied—
  - (a) that the charity does not operate, or
  - (b) that its purposes can be promoted more effectively if it ceases to operate, and that exercising the power in subsection (2) is expedient in the public interest.
- (2) The Commission may by order direct—
  - (a) the charity trustees,
  - (b) any trustee for the charity,
  - (c) any officer or employee of the charity, or
  - (d) (if a body corporate) the charity itself,
 to take any action specified in the order for the purpose of having the charity wound up and dissolved, and any remaining property transferred to a charity with the same purposes.
- (3) An order under this section—
  - (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the winding up and dissolution of the charity or to its property, and

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- (b) in particular, may require the person or persons concerned to do anything for the purpose of having the charity wound up and dissolved and its property transferred that could otherwise only be done by the members of the charity or any of them,
- but may not require any action to be taken which is prohibited by any Act [<sup>F21</sup>or Measure].
- (4) Before making an order under this section the Commission must give public notice of its intention to make the order, inviting representations to be made to it within a period specified in the notice.
- (5) The Commission—
- (a) must take into account any representations made to it within the period specified in the notice, and
  - (b) may make the order (without further notice) either without modifications or with such modifications as it thinks desirable.
- (6) An order under this section may not be made less than 60 days after the first day on which public notice under subsection (4) is given, unless the Commission is satisfied after complying with subsections (4) and (5) that it is necessary to make the order to prevent or reduce misconduct or mismanagement in the administration of the charity or to protect the property of the charity or property that may come to the charity.
- (7) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)
- (a).
- (8) Subsection (7) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.]

**Textual Amendments**

**F20** S. 84B inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 7\(2\), 17\(4\); S.I. 2016/815, reg. 2\(f\)](#)

**F21** Words in s. 84B(3) inserted (coming into force in accordance with [s. 53\(6\)\(7\)](#) of the amending Measure) by [Cathedrals Measure 2021 \(No. 2\), s. 8\(2\)](#) (with [ss. 42\(4\), 48, 52\(1\)](#))

**85 Power to direct application of charity property**

- (1) This section applies where the Commission is satisfied—
- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling [<sup>F22</sup>or unable] to apply it properly for the purposes of the charity, and
  - (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.
- (2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.
- (3) An order under this section—

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- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but
  - (b) may not require any action to be taken which is prohibited by any Act <sup>[F23]</sup>or Measure] or expressly prohibited by the trusts of the charity.
- (4) Anything done by a person under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.
- <sup>[F24]</sup>(6) Subsection (5) does not apply to rights of the charity or of a charity trustee or trustee for the charity in that capacity.]

#### Textual Amendments

- F22** Words in s. 85(1)(a) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 8\(2\), 17\(4\); S.I. 2016/815, reg. 2\(g\)](#)
- F23** Words in s. 85(3)(b) inserted (coming into force in accordance with s. 53(6)(7) of the amending Measure) by [Cathedrals Measure 2021 \(No. 2\), s. 8\(2\) \(with ss. 42\(4\), 48, 52\(1\)\)](#)
- F24** S. 85(6) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 8\(3\), 17\(4\); S.I. 2016/815, reg. 2\(g\)](#)

## 86 Copy of certain orders, and reasons, to be sent to charity

- (1) Where the Commission makes an order under a provision mentioned in subsection (2) it must send the documents mentioned in subsection (3)—
- (a) to the charity concerned (if a body corporate), or
  - (b) (if not) to each of the charity trustees.
- (2) The provisions are—
- section 76 (suspension of trustees etc. and appointment of interim managers);
  - section 79 (removal of trustee or officer etc. for protective etc. purposes);
  - section 80 (other powers to remove or appoint charity trustees);
  - section 81 (removal or appointment of charity trustees etc.: supplementary);
  - section 83 (power to suspend or remove trustees etc. from membership of charity);
  - section 84 (power to direct specified action to be taken);
  - <sup>[F25]</sup>section 84A (power to direct specified action not to be taken);]
  - <sup>[F26]</sup>section 84B (power to direct winding up);]
  - section 85 (power to direct application of charity property).
- (3) The documents are—
- (a) a copy of the order, and
  - (b) a statement of the Commission's reasons for making it.
- (4) The documents must be sent to the charity or charity trustees as soon as practicable after the making of the order.
- (5) The Commission need not comply with subsection (4) in relation to the documents, or (as the case may be) the statement of its reasons, if it considers that to do so—

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- (a) would prejudice any inquiry or investigation, or
- (b) would not be in the interests of the charity;

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

- (6) Nothing in this section requires any document to be sent to a person who—
  - (a) cannot be found, or
  - (b) has no known address in the United Kingdom.
- (7) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 339.

**Textual Amendments**

- F25** Words in s. 86(2) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 6\(4\), 17\(4\); S.I. 2016/815, reg. 2\(e\)](#)
- F26** Words in s. 86(2) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 7\(4\), 17\(4\); S.I. 2016/815, reg. 2\(f\)](#)

**87 Supervision by Commission of certain Scottish charities**

- (1) Sections 76 to 82 (except section [F27]79(1) and (2)) and sections 84 to 86 have effect in relation to any body which—
  - (a) is entered in the Scottish Charity Register, and
  - (b) is managed or controlled wholly or mainly in or from England or Wales, as they have effect in relation to a charity.
- (2) Subsection (3) applies where—
  - (a) a body entered in the Scottish Charity Register is managed or controlled wholly or mainly in or from Scotland, but
  - (b) any person in England and Wales holds any property on behalf of the body or of any person concerned in its management or control.
- (3) If the Commission is satisfied, on the basis of such information as may be supplied to it by the Scottish Charity Regulator, as to the matters mentioned in subsection (4), it may make an order requiring the person holding the property not to part with it without the Commission's approval.
- (4) The matters are—
  - (a) that there has been any misconduct or mismanagement in the administration of the body, and
  - (b) that it is necessary or desirable to make an order under subsection (3) for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body.
- (5) Subsection (6) applies where—
  - (a) any person in England and Wales holds any property on behalf of a body entered in the Scottish Charity Register or of any person concerned in the management or control of such a body, and

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- (b) the Commission is satisfied (whether on the basis of such information as may be supplied to it by the Scottish Charity Regulator or otherwise)—
  - (i) that there has been any misconduct or mismanagement in the administration of the body, and
  - (ii) that it is necessary or desirable to make an order under subsection (6) for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body.
- (6) The Commission may by order—
  - (a) vest the property in such body or charity as is specified in the order in accordance with subsections (7) and (8),
  - (b) require any persons in whom the property is vested to transfer it to any such body or charity, or
  - (c) appoint any person to transfer the property to any such body or charity.
- (7) The Commission may specify in an order under subsection (6)—
  - (a) such other body entered in the Scottish Charity Register, or
  - (b) such charity,
 as it considers appropriate, if the purposes of the body or charity are, in the opinion of the Commission, as similar in character to those of the body referred to in subsection (5)(a) as is reasonably practicable.
- (8) But the Commission must not so specify any body or charity unless it has received from—
  - (a) the persons concerned in the management or control of the body, or
  - (b) (as the case may be) the charity trustees of the charity,
 written confirmation that they are willing to accept the property.

#### **Textual Amendments**

**F27** Words in s. 87(1) substituted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 4\(4\), 17\(4\); S.I. 2016/815, reg. 2\(c\)](#)

### *Publicity relating to schemes and orders*

#### **88 Publicity relating to schemes**

- (1) The Commission may not—
  - (a) make any order under this Act to establish a scheme for the administration of a charity, or
  - (b) submit such a scheme to the court or the [<sup>F28</sup>Secretary of State] for an order giving it effect,
 unless, before doing so, the Commission has complied with the publicity requirements in subsection (2).

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

- (2) The publicity requirements are—
  - (a) that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice, and



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- (b) that, in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish, or in a community in Wales, the Commission must communicate a draft of the scheme to—
- (i) the parish council or, if the parish has no council, the chairman of the parish meeting, or
  - (ii) the community council or, if the community has no council, the county council or county borough council.
- (3) The time when any such notice is given or any such communication takes place is to be decided by the Commission.
- (4) The Commission may determine that either or both of the publicity requirements is or are not to apply in relation to a particular scheme if it is satisfied that—
- (a) because of the nature of the scheme, or
  - (b) for any other reason,
- compliance with the requirement or requirements is unnecessary.
- (5) Where the Commission gives public notice of any proposals under this section—
- (a) it must take into account any representations made to it within the period specified in the notice, and
  - (b) it may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.
- (6) Where the Commission makes an order under this Act to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times—
- (a) at the Commission's office, and
  - (b) if the charity is a local charity, at some convenient place in the area of the charity.
- (7) Subsection (6)(b) does not apply if the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally.
- (8) Any public notice of any proposals which is to be given under this section—
- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
  - (b) is to be given in such manner as the Commission thinks sufficient and appropriate.

**Textual Amendments**

- F28** Words in s. 88(1)(b) substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), **Sch. 2 para. 25(2)(p)** (with art. 12)

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

- C7** S. 88 applied (with modifications) (2.1.2013) by [The Charitable Incorporated Organisations \(Insolvency and Dissolution\) Regulations 2012 \(S.I. 2012/3013\)](#), regs. 1, **25(4)**
- C8** S. 88 applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, **Sch. 7 para. 47(2)** (with s. 20(2), Sch. 8))

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## 89 Publicity for orders relating to trustees or other individuals

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

- (a) an order relating to the official custodian, or
- (b) an order under section 76(3)(b) (appointment of additional charity trustees),<sup>F29</sup> or
- (c) an order under section 79A (removal of disqualified trustee),]

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

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

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

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

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

(5) Before the Commission makes an order under this Act<sup>F30</sup>, other than an order under section 79A,] to remove a person who is—

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

without the person's consent, the Commission must give the person not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.

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

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

- (a) it must take into account any representations made to it within the period specified in the notice, and
- (b) it may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.

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

- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
- (b) (in the case of a public notice) is to be given in such manner as the Commission thinks sufficient and appropriate.

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

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

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#### Textual Amendments

- F29** S. 89(1)(c) and word inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 5\(4\), 17\(4\); S.I. 2016/815, reg. 2\(d\)](#)
- F30** Words in s. 89(5) inserted (31.7.2016) by [Charities \(Protection and Social Investment\) Act 2016 \(c. 4\), ss. 5\(5\), 17\(4\); S.I. 2016/815, reg. 2\(d\)](#)

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

- C9** S. 89 applied by 1987 c. 3, s. 5(8) (as substituted (14.3.2012) by [Charities Act 2011 \(c. 25\), s. 355, Sch. 7 para. 47\(2\)](#) (with [s. 20\(2\), Sch. 8](#)))

### *Property vested in official custodian*

## **90 Entrusting charity property to official custodian, and termination of trust**

- (1) The court may by order—
- vest in the official custodian any land held by or in trust for a charity,
  - authorise or require the persons in whom any such land is vested to transfer it to the official custodian, or
  - appoint any person to transfer any such land to the official custodian.
- (2) But subsection (1) does not apply to any interest in land by way of mortgage or other security.
- (3) Where property is vested in the official custodian in trust for a charity, the court may make an order discharging the official custodian from the trusteeship as respects all or any of that property.
- (4) Where—
- the official custodian is discharged from the trusteeship of any property, or
  - the trusts on which the official custodian 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.
- (5) No person is liable for any loss occasioned by—
- acting in conformity with an order under this section, or
  - giving effect to anything done in pursuance of such an order.
- (6) No person is excused from—
- acting in conformity with an order under this section, or
  - giving effect to anything done in pursuance of such an order,
- because the order has been in any respect improperly obtained.

## **91 Supplementary provisions as to property vested in official custodian**

- (1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, the official custodian—
- must not exercise any powers of management, but
  - as trustee of any property—
    - has all the same powers, duties and liabilities,

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- (ii) is entitled to the same rights and immunities, and
  - (iii) is subject to the control and orders of the court in the same way,
- as a corporation appointed custodian trustee under section 4 of the Public Trustee Act 1906.
- (2) Subsection (1) does not confer on the official custodian a power to charge fees.
  - (3) Subject to subsection (4), where any land is vested in the official custodian in trust for a charity, the charity trustees may, in the name and on behalf of the official custodian, 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.
  - (4) If any land is so vested in the official custodian by virtue of an order under section 76(3)(c), the power conferred on the charity trustees by subsection (3) is not exercisable by them in relation to any transaction affecting the land, unless the transaction is authorised by order of the court or of the Commission.
  - (5) Where any land is vested in the official custodian in trust for a charity—
    - (a) the charity trustees have the same power to make obligations entered into by them binding on the land as if it were vested in them, and
    - (b) any covenant, agreement or condition which is enforceable by or against the official custodian because the land is vested in the official custodian is enforceable by or against the charity trustees as if the land were vested in them.
  - (6) In relation to a corporate charity, subsections (3) to (5) apply with the substitution of references to the charity for references to the charity trustees.
  - (7) Subsections (3) to (5) do not authorise any charity trustees or charity to impose any personal liability on the official custodian.
  - (8) 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, the official custodian may permit them to be in the possession or under the control of the charity trustees without incurring any liability by doing so.

#### *Official custodian and Reverter of Sites Act 1987*

## **92 Divestment of official custodian where 1987 Act due to operate**

- (1) Subsection (2) applies where—
  - (a) any land is vested in the official custodian in trust for a charity, and
  - (b) it appears to the Commission that section 1 of the 1987 Act (right of reverter replaced by trust) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances.
- (2) The jurisdiction which, under section 69, is exercisable by the Commission for the purpose of discharging a trustee for a charity may, at any time before section 1 of the 1987 Act operates in relation to the land, be exercised by the Commission of its own motion for the purpose of—
  - (a) making an order discharging the official custodian from the trusteeship of the land, and
  - (b) making such vesting orders and giving such directions as appear to the Commission to be necessary or expedient in consequence.

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- (3) In this section and sections 93 to 95—
- (a) “the 1987 Act” means the Reverter of Sites Act 1987, and
  - (b) any reference to section 1 of the 1987 Act operating in relation to any land is a reference to a trust arising in relation to the land under that section.

### **93 Divestment of official custodian where 1987 Act has operated**

- (1) Subsection (2) applies 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 the official custodian but on the trust arising under that section.
- (2) The court or the Commission (of its own motion) may—
- (a) make an order discharging the official custodian from the trusteeship of the land, and
  - (b) (subject to sections 94 and 95) make such vesting orders and give such directions as appear to it to be necessary or expedient in consequence.

### **94 Vesting of land in relevant charity trustees following divestment**

- (1) Subsection (2) applies where an order discharging the official custodian from the trusteeship of any land—
- (a) is made by—
    - (i) the court under section 90(3), or
    - (ii) the Commission under section 69,
 on the ground 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 Commission under section 93.
- (2) The persons in whom the land is to be vested on the discharge of the official custodian are the relevant charity trustees, unless the court or (as the case may be) the Commission is satisfied that it would be appropriate for it to be vested in some other persons.
- (3) In subsection (2) “the relevant charity trustees” means—
- (a) in relation to an order made as mentioned in subsection (1)(a), 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 section 93, 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.

### **95 Supplementary provisions in connection with 1987 Act**

- (1) Subsection (2) applies where—
- (a) section 1 of the 1987 Act has operated in relation to any such land as is mentioned in section 93(1)(a), and

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- (b) the land remains vested in the official custodian as mentioned in section 93(1)(b).
- (2) Subject to subsection (3)—
  - (a) all the powers, duties and liabilities that would, apart from this section, be those of the official custodian as trustee of the land are instead to be those of the charity trustees of the charity concerned, and
  - (b) those trustees may, in the name and on behalf of the official custodian, 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) Subsection (2) is not to be treated as requiring or authorising those trustees to sell the land at a time when it remains vested in the official custodian.
- (4) Where—
  - (a) the official custodian has been discharged from the trusteeship of any land by an order under section 93, and
  - (b) the land has, in accordance with section 94, been vested in the charity trustees concerned or (as the case may be) in any persons other than those trustees,
 the land is to be held by those trustees, or (as the case may be) by those persons, as trustees on the terms of the trust arising under section 1 of the 1987 Act.
- (5) The official custodian is not liable to any person in respect of any loss or misapplication of any land vested in the official custodian in accordance with section 1 of the 1987 Act unless it is occasioned by or through any wilful neglect or default of—
  - (a) the official custodian, or
  - (b) any person acting for the official custodian.
- (6) But the Consolidated Fund is liable to make good to any person any sums for which the official custodian may be liable because of any such neglect or default.

*Establishment of common investment or deposit funds*

**96 Power to make common investment schemes**

- (1) The court or the Commission may by order make and bring into effect 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) In this section and sections 97 to 99 “common investment scheme” means a scheme under subsection (1).
- (3) The court or the Commission may make a common investment scheme on the application of any two or more charities.

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- (1) A common investment scheme—
- (a) may be made in terms admitting any charity to participate, or
  - (b) may restrict the right to participate in any manner.
- (2) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.
- (3) In this section “appropriate body” means—
- (a) a Scottish recognised body,<sup>F31</sup> ...
  - (b) a Northern Ireland charity [<sup>F32</sup>; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.]
- and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (2), “charity” includes an appropriate body.
- (4) The relevant provisions are—
- (a) section 96(1) (power to make common investment schemes),
  - (b) section 98 (provisions which may be included in common investment schemes),
  - (c) section 99(1) (provisions relating to rights of participating charity etc.), and
  - (d) (in relation only to a Northern Ireland charity) section 99(2) (power to participate in common investment schemes).

**Textual Amendments**

**F31** Word in s. 97(3)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(a\)](#)

**F32** S. 97(3)(c) and preceding word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(b\)](#)

**98 Provisions which may be included in common investment schemes**

- (1) 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 even though the person 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;

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- (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.
- (2) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity is to 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 is to be entitled—
- (a) to repayment of the sums deposited, and
  - (b) to interest on them at a rate determined by or under the scheme.
- (3) Where a scheme makes any such provision it must also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund—
- (a) for the repayment of deposits, and
  - (b) for the interest on deposits,
- including amounts required by way of reserve.

## **99 Further provisions relating to common investment schemes and funds**

- (1) Except in so far as a common investment scheme provides to the contrary—
- (a) the rights under it of a participating charity are not capable of being assigned or charged;
  - (b) a trustee or other person concerned in the management of the common investment fund is not required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (2) The powers of investment of every charity 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.
- (3) A common investment fund is to be treated for all purposes as being a charity.
- (4) Subsection (3) applies not only to common investment funds established under section 96, 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 charities.

## **100 Power to make common deposit schemes**

- (1) The court or the Commission may by order make and bring into effect 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



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- (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 on them at a rate determined under the scheme.
- (2) In this section and sections 101 to 103 “common deposit scheme” means a scheme under subsection (1).
- (3) The court or the Commission may make a common deposit scheme on the application of any two or more charities.

## 101 Bodies which may participate in common deposit schemes

- (1) A common deposit scheme—
  - (a) may be made in terms admitting any charity to participate, or
  - (b) may restrict the right to participate in any manner.
- (2) A common deposit scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.
- (3) In this section “appropriate body” means—
  - (a) a Scottish recognised body,<sup>F33</sup> ...
  - (b) a Northern Ireland charity [<sup>F34</sup>; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.]and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (2), “charity” includes an appropriate body.
- (4) The relevant provisions are—
  - (a) section 100(1) (power to make common deposit schemes),
  - (b) section 102 (provisions which may be included in common deposit schemes),
  - (c) section 103(1) (provisions relating to rights of participating charity etc.), and
  - (d) (in relation only to a Northern Ireland charity) section 103(2) (power to participate in common deposit schemes).

### Textual Amendments

**F33** Word in s. 101(3)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(a\)](#)

**F34** S. 101(3)(c) and preceding word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(b\)](#)

## 102 Provisions which may be included in common deposit schemes

A common deposit scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common deposit 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

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remuneration even though the person is also a charity trustee of or trustee for a participating charity;

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

### **103 Further provisions relating to common deposit schemes and funds**

- (1) Except in so far as a common deposit scheme provides to the contrary—
  - (a) the rights under it of a participating charity are not capable of being assigned or charged;
  - (b) a trustee or other person concerned in the management of the common deposit fund is not required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (2) The powers of investment of every charity include power to participate in common deposit schemes unless the power is excluded by a provision specifically referring to common deposit schemes in the trusts of the charity.
- (3) A common deposit fund is to be treated for all purposes as being a charity.
- (4) Subsection (3) applies not only to common deposit funds established under section 100, 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 charities.

### **104 Meaning of “Scottish recognised body” and “Northern Ireland charity”**

- (1) In sections 97 and 101 “Scottish recognised body” means a body—
  - (a) established under the law of Scotland, or
  - (b) managed or controlled wholly or mainly in or from Scotland,
 to which HMRC have given intimation, which has not subsequently been withdrawn, that tax relief is due in respect of income of the body which is applicable and applied to charitable purposes only.
- (2) In sections 97 and 101 “Northern Ireland charity” means an institution—
  - (a) which is a charity under the law of Northern Ireland, and
  - (b) to which HMRC have given intimation, which has not subsequently been withdrawn, that tax relief is due in respect of income of the institution which is applicable and applied to charitable purposes only.

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(3) For the purposes of this section—

“HMRC” means the Commissioners for Her Majesty's Revenue and Customs;

“tax relief” means relief under—

- (a) Part 10 of the Income Tax Act 2007, or
- (b) any provision of Part 11 of the Corporation Tax Act 2010 other than sections 480 (exemption for profits of small-scale trades) and 481 (exemption from charges under provisions to which section 1173 applies).

*<sup>F35</sup>Total return investment*

#### Textual Amendments

**F35** Ss. 104A, 104B inserted (6.4.2013 for specified purposes, 1.1.2014 in so far as not already in force) by Trusts (Capital and Income) Act 2013 (c. 1), ss. 4, 5(3); S.I. 2013/676, art. 3; S.I. 2013/2461, art. 2

### 104A Investment of endowment fund on total return basis

- (1) This section applies to any available endowment fund of a charity.
- (2) If the condition in subsection (3) is met in relation to the charity, the charity trustees may resolve that the fund, or a portion of it—
  - (a) should be invested without the need to maintain a balance between capital and income returns, and
  - (b) accordingly, should be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition is that the charity trustees are satisfied that it is in the interests of the charity that regulations under section 104B(1)(b) should apply in place of the restrictions mentioned in subsection (2)(b).
- (4) While a resolution under subsection (2) has effect, the regulations apply in place of the restrictions.
- (5) In this section “available endowment fund”, in relation to a charity, means—
  - (a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or
  - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

### 104B Total return investment: regulations

- (1) The Commission may by regulations make provision about—
  - (a) resolutions under section 104A(2),
  - (b) the investment of a relevant fund without the need to maintain a balance between capital and income returns, and expenditure from such a fund, and
  - (c) the steps that must be taken by charity trustees in respect of a fund, or portion of a fund, in the event of a resolution under section 104A(2) ceasing to have effect in respect of the fund or portion.

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- (2) Regulations under subsection (1)(a) may, in particular—
- (a) specify steps that must be taken by charity trustees before passing a resolution under section 104A(2),
  - (b) make provision about the variation and revocation of such a resolution,
  - (c) require charity trustees to notify the Commission of the passing, variation or revocation of such a resolution, and
  - (d) specify circumstances in which such a resolution is to cease to have effect.
- (3) Regulations under subsection (1)(b) may, in particular—
- (a) make provision requiring a relevant fund to be invested, and the returns from that investment to be allocated, in such a way as to maintain (so far as practicable) the long-term capital value of the fund,
  - (b) make provision about the taking of advice by charity trustees in connection with the investment of, and expenditure from, a relevant fund,
  - (c) confer on the charity trustees of a relevant fund a power (subject to such restrictions as may be specified in the regulations) to accumulate income,
  - (d) make provision about expenditure from a relevant fund (including by imposing limits on expenditure and specifying circumstances in which expenditure requires the Commission's consent), and
  - (e) require charity trustees to report to the Commission on the investment of, and expenditure from, a relevant fund.
- (4) A power to accumulate income conferred by regulations under subsection (1)(b) or (c) is not subject to section 14(3) of the Perpetuities and Accumulations Act 2009 (which provides for certain powers to accumulate income to cease to have effect after 21 years).
- (5) Any regulations made by the Commission under this section must be published by the Commission in such manner as it thinks fit.
- (6) In this section “ relevant fund ” means a fund, or portion of a fund, in respect of which a resolution under section 104A(2) has effect, and includes the returns from the investment of the fund or portion. ]

*Power to authorise dealings with charity property, ex gratia payments etc.*

## **105 Power to authorise dealings with charity property etc.**

- (1) Subject to the provisions of this section, where it appears to the Commission that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Commission may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity.
- (2) Anything done under the authority of an order under this section is to be treated as properly done in the exercise of those powers.
- (3) An order under this section—
  - (a) 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

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- (b) 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.

Paragraph (b) does not affect the generality of subsection (1).

- (4) An order under this section may give directions—
  - (a) as to the manner in which any expenditure is to be borne, and
  - (b) as to other matters connected with or arising out of the action authorised by the order.
- (5) Where anything is done in pursuance of an authority given by an order under this section, any directions given in connection with that authority—
  - (a) are binding on the charity trustees for the time being as if contained in the trusts of the charity, but
  - (b) may on the application of the charity be modified or superseded by a further order.
- (6) The directions which may be given by an order under this section in particular include directions—
  - (a) for meeting any expenditure out of a specified fund,
  - (b) for charging any expenditure to capital or to income,
  - (c) for requiring expenditure charged to capital to be recouped out of income within a specified period,
  - (d) for restricting the costs to be incurred at the expense of the charity, or
  - (e) for the investment of money arising from any transaction.

This does not affect the generality of subsection (4).

- (7) An order under this section may authorise any act even though—
  - (a) [<sup>F36</sup>it is prohibited by the Ecclesiastical Leases Act 1836, or]
  - (b) the trusts of the charity provide for the act to be done by or under the authority of the court.
- (8) But an order under this section may not—
  - (a) authorise the doing of any act expressly prohibited by any Act [<sup>F37</sup>other than the Ecclesiastical Leases Act 1836,] or by the trusts of the charity, or
  - (b) extend or alter the purposes of the charity.
- (9) In the case of a charitable company, an order under this section may authorise an act even though it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).
- (10) An order under this section does 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 or treated as having effect under or by virtue of the Mission and Pastoral Measure 2011.
- (11) The reference in subsection (10) to a building is to be treated as including—
  - (a) part of a building, and
  - (b) any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

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### Textual Amendments

- F36** S. 105(7)(a) repealed (E.) (1.7.2018) by [Statute Law \(Repeals\) Measure 2018 \(No. 1\)](#), s. 2(3), [Sch. Pt. 3](#); [S.I. 2018/718](#), art. 2
- F37** Words in s. 105(8) repealed (E.) (1.7.2018) by [Statute Law \(Repeals\) Measure 2018 \(No. 1\)](#), s. 2(3), [Sch. Pt. 3](#); [S.I. 2018/718](#), art. 2

## 106 Power to authorise ex gratia payments etc.

- (1) Subject to subsection (5), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees—
  - (a) (apart from this section) have no power to take the action, but
  - (b) in all the circumstances regard themselves as being under a moral obligation to take it.
- (2) The actions are—
  - (a) making any application of property of the charity, or
  - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The power conferred on the Commission by subsection (1) is exercisable by the Commission under the supervision of, and in accordance with such directions as may be given by, the Attorney General.
- (4) Any such directions may in particular require the Commission, in such circumstances as are specified in the directions—
  - (a) to refrain from exercising the power conferred by subsection (1), or
  - (b) to consult the Attorney General before exercising it.
- (5) Where—
  - (a) an application is made to the Commission for it to exercise the power conferred by subsection (1) in a case where it is not precluded from doing so by any such directions, but
  - (b) the Commission considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by the Commission,
 the Commission must refer the application to the Attorney General.
- (6) It is hereby declared that where—
  - (a) an application is made to the Commission as mentioned in subsection (5)(a), and
  - (b) the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (2)(a) or (b),
 that refusal does not preclude the Attorney General, on an application subsequently made to the Attorney General by the charity trustees, from authorising them to take that action.

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- (1) The Commission may give a direction under subsection (2) where—
- (a) it is informed by a relevant institution—
    - (i) that it holds one or more accounts in the name of or on behalf of a particular charity (“the relevant charity”), and
    - (ii) that the account, or (if it so holds two or more accounts) each of the accounts, is dormant, and
  - (b) it is unable, after making reasonable inquiries, to locate that charity or any of its trustees.
- (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), 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 Commission—
- (a) may specify in a direction under subsection (2) such other charity or charities as it considers appropriate, having regard, in a case where the purposes of the relevant charity are known to the Commission, to those purposes and to the purposes of the other charity or charities, but
  - (b) must not so specify any charity unless it has received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.
- (4) Any amount received by a charity by virtue of this section is to be received by the charity on terms that—
- (a) it is to be held and applied by the charity for the purposes of the charity, but
  - (b) as property of the charity, it is nevertheless subject to any restrictions on expenditure to which it was subject as property of the relevant charity.
- (5) 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 is a complete discharge of the institution in respect of that amount.

**108 Accounts which cease to be dormant before transfer**

- (1) This section applies where—
- (a) the Commission has been informed as mentioned in section 107(1)(a) by any relevant institution, and
  - (b) before any transfer is made by the institution in pursuance of a direction under section 107(2), 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.

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- (2) The institution must without delay notify those circumstances in writing to the Commission.
- (3) If it appears to the Commission that the account or accounts in question is or are no longer dormant, it must revoke any direction under section 107(2) which has previously been given by it to the institution with respect to the relevant charity.

## 109 Dormant bank accounts: supplementary

- (1) No obligation as to secrecy or other restriction on disclosure (however imposed) precludes a relevant institution from disclosing any information to the Commission for the purpose of enabling the Commission to discharge its functions under sections 107 and 108.
- (2) For the purposes of sections 107 and 108 and this section, an account is dormant if no transaction, other than—
  - (a) a transaction consisting in a payment into the account, or
  - (b) 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 5 years immediately preceding the date when the Commission is informed as mentioned in section 107(1) (a).
- (3) For the purposes of sections 107 and 108 and this section, a “relevant institution” means—
  - (a) the Bank of England [<sup>F38</sup>(acting otherwise than in its capacity as the Prudential Regulation Authority)],
  - (b) a person who has permission under [<sup>F39</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits,
  - <sup>F40</sup>(c) ..... or
  - (d) such other person who may lawfully accept deposits in the United Kingdom as may be prescribed by the [<sup>F41</sup>Secretary of State].
- (4) In subsection (3), paragraphs (b) to (d) are to be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act.
- (5) For the purposes of sections 107 and 108, references to the transfer of any amount to a charity are references to its transfer—
  - (a) to the charity trustees, or
  - (b) to any trustee for the charity,
 as the charity trustees may determine (and any reference to any amount received by a charity is to be read accordingly).
- (6) For the purpose of determining the matters in respect of which any of the powers conferred by sections 46 to 53 (inquiries and searches) may be exercised it is to be assumed that the Commission has no functions under section 107 or 108 in relation to accounts to which this subsection applies.

(This has the result that, for example, a relevant institution is not, in connection with the Commission's functions under sections 107 and 108, required under section 47(2)



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(a) to provide any statements, or answer any questions or inquiries, with respect to any such accounts held by the institution.)

(7) Subsection (6) applies to accounts which—

- (a) are dormant accounts by virtue of subsection (2), but
- (b) would not be dormant accounts if subsection (2)(a) were omitted.

#### Textual Amendments

- F38** Words in s. 109(3)(a) inserted (1.3.2017) by [The Bank of England and Financial Services \(Consequential Amendments\) Regulations 2017 \(S.I. 2017/80\)](#), reg. 1, **Sch. para. 20**
- F39** Words in s. 109(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 136** (with [Sch. 20](#)); [S.I. 2013/423](#), [Sch.](#)
- F40** S. 109(3)(c) omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), reg. 1(3), **Sch. para. 42** (with [reg. 4](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F41** Words in s. 109(3)(d) substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), **Sch. 2 para. 25(2)(q)** (with [art. 12](#))

#### *Additional powers of Commission*

### 110 Power to give advice

- (1) The Commission may, on the written application of any charity trustee or trustee for a charity, give the applicant its opinion or advice in relation to any matter—
- (a) relating to the performance of any duties of the applicant, as such a trustee, in relation to the charity concerned, or
  - (b) otherwise relating to the proper administration of the charity.
- (2) A person (“P”) who—
- (a) is a charity trustee or trustee for a charity, and
  - (b) acts in accordance with any opinion or advice given by the Commission under subsection (1) (whether to P or another trustee),
- is to be treated, as regards P's responsibility for so acting, as having acted in accordance with P's trust.
- (3) But subsection (2) does not apply to P if, when so acting—
- (a) P knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or
  - (b) a decision of the court or the Tribunal has been obtained on the matter or proceedings are pending to obtain one.

### 111 Power to determine membership of charity

- (1) The Commission may—
- (a) on the application of a charity, or
  - (b) at any time after the institution of an inquiry under section 46 with respect to a charity,
- determine who are the members of the charity.

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- (2) The Commission's power under subsection (1) may also be exercised by a person appointed by the Commission for the purpose.
- (3) In a case within subsection (1)(b) the Commission may, if it thinks fit, so appoint the person appointed to conduct the inquiry.

## **112 Power to order assessment of solicitor's bill**

- (1) The Commission may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, is to be assessed, together with the costs of the assessment—
  - (a) by a costs officer in such division of the High Court as may be specified in the order, or
  - (b) by the costs officer of any other court having jurisdiction to order the assessment of the bill.
- (2) On any order under this section for the assessment of a solicitor's bill—
  - (a) the assessment is to proceed,
  - (b) the costs officer has the same powers and duties, and
  - (c) the costs of the assessment are to 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 assessed.
- (3) No order under this section for the assessment of a solicitor's bill is to be made after payment of the bill, unless the Commission is of opinion that it contains exorbitant charges.
- (4) No order under this section is to be made in any case where the solicitor's costs are not subject to assessment on an order of the High Court because of—
  - (a) an agreement as to the solicitor's remuneration, or
  - (b) the lapse of time since payment of the bill.

*Legal proceedings relating to charities*

## **113 Petitions for winding up charities under Insolvency Act**

- (1) This section applies where a charity may be wound up by the High Court under the Insolvency Act 1986.
- (2) A petition for the charity to be wound up under the 1986 Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.
- (3) Such a petition may also be presented by the Commission if, at any time after it has instituted an inquiry under section 46 with respect to the charity, it is satisfied either as mentioned in section 76(1)(a) (misconduct or mismanagement etc.) or as mentioned in section 76(1)(b) (need to protect property etc.).
- (4) The power exercisable by the Commission by virtue of this section is exercisable—
  - (a) by the Commission of its own motion, but
  - (b) only with the agreement of the Attorney General on each occasion.

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## 114 Proceedings by the Commission

- (1) Subject to subsection (2), the Commission may exercise the same powers with respect to—
  - (a) the taking of legal proceedings with reference to charities or the property or affairs of charities, or
  - (b) the compromise of claims with a view to avoiding or ending such proceedings, as are exercisable by the Attorney General acting ex officio.
- (2) Subsection (1) does not apply to the power of the Attorney General under section 113(2) 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 Commission under subsection (1) are 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 is to be treated as requiring the Attorney General to be a party to any such proceedings.
- (5) The powers exercisable by the Commission by virtue of this section are exercisable—
  - (a) by the Commission of its own motion, but
  - (b) only with the agreement of the Attorney General on each occasion.

## 115 Proceedings by other persons

- (1) Charity proceedings may be taken with reference to a charity by—
  - (a) the charity,
  - (b) any of the charity trustees,
  - (c) any person interested in the charity, or
  - (d) if it is a local charity, any two or more inhabitants of the area of the charity, but not by any other person.
- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.
- (3) The Commission must not, without special reasons, authorise the taking of charity proceedings where in its opinion the case can be dealt with by the Commission under the powers of this Act other than those conferred by section 114.
- (4) This section does not require an order for the taking of proceedings—
  - (a) in a pending cause or matter, or
  - (b) for the bringing of any appeal.
- (5) Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.
- (6) Nothing in subsections (1) to (5) applies—
  - (a) to the taking of proceedings by the Attorney General, with or without a relator, or

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- (b) to the taking of proceedings by the Commission in accordance with section 114.
- (7) If it appears to the Commission, on an application for an order under this section or otherwise, that it is desirable—
- (a) for legal proceedings to be taken with reference to any charity or its property or affairs, and
  - (b) for the proceedings to be taken by the Attorney General,
- the Commission must so inform the Attorney General and send the Attorney General such statements and particulars as the Commission thinks necessary to explain the matter.
- (8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under—
- (a) the court's jurisdiction with respect to charities, or
  - (b) the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

### *Supplementary*

## **116 Effect of provisions relating to vesting or transfer of property**

No vesting or transfer of any property in pursuance of any provision of this Part operates as a breach of a covenant or condition against alienation or gives rise to a forfeiture.

**Status:**

Point in time view as at 29/04/2021.

**Changes to legislation:**

Charities Act 2011, Part 6 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.