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STATUTORY INSTRUMENTS

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**1997 No. 2240**

**CHARITIES**

**The Charities (Clergy Orphan Corporation) Order 1997**

*Made - - - - 15th September 1997*

*Coming into force - - 29th September 1997*

Whereas the Charity Commissioners for England and Wales have, in pursuance of section 17(1) of the Charities Act 1993(1), settled the Scheme set out in the Appendix to this Order with a view to its being given effect under that section:

And whereas the Scheme does not alter any statutory provision contained in or having effect under any public general Act of Parliament:

And whereas a draft of this Order has been laid before Parliament, the period of forty days mentioned in section 6(1) of the Statutory Instruments Act 1946(2) has expired and neither House of Parliament has within that period resolved that the Order not be made:

Now, therefore, in pursuance of section 17(2) of the Charities Act 1993, the Secretary of State hereby makes the following Order:—

1. This Order may be cited as the Charities (Clergy Orphan Corporation) Order 1997 and shall come into force on the fourteenth day after the day on which it is made.
2. The Scheme set out in the Appendix to this Order shall have effect.

Home Office  
15th September 1997

*Alun Michael*  
Minister of State

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(1) 1993 c. 10.  
(2) 1946 c. 36.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## APPENDIX

### SCHEME FOR THE ADMINISTRATION OF THE CHARITY KNOWN AS THE CLERGY ORPHAN CORPORATION SITUATE IN GREATER LONDON.

Whereas the Charity called the Governors of the Society for clothing maintaining and educating poor orphans of clergymen of the Church of England and of the Church in Wales and commonly known as the Clergy Orphan Corporation (“the Charity”) is now regulated by the Clergy Orphan Corporation Acts of 1809 and 1958(3)(“the Corporation Acts”):

And whereas it is sought to modernise the objects and powers of the Charity and to appoint as Trustee of the Charity the Governors of the Charity for the relief of poor widows and children of clergymen, commonly known The Corporation of the Sons of the Clergy, a body corporate established by Royal Charter in 1678:

And whereas the Charity has made application to the Charity Commissioners for a Scheme for the administration thereof:

And whereas it appears to the Charity Commissioners that a Scheme should be established for the administration thereof but that it is necessary for the Scheme to make provision which goes beyond the powers exercisable by them apart from section 17 of the Charities Act 1993:

And whereas in pursuance of section 20 of the Charities Act 1993 public notice of the Charity Commissioners proposals for this Scheme has been given and no representations have been received in respect thereof:

Now therefore the Charity Commissioners for England and Wales in pursuance of section 17(1) of the Charities Act 1993 hereby settle the following Scheme:

## SCHEME

**1. *Repeals*** The provisions of the Corporation Acts shall cease to have effect from the date on which this Scheme is given effect by an Order of the Secretary of State under section 17(2) of the Charities Act 1993 with the exception of those parts of sections 1 of the Clergy Orphan Corporation Act 1809 which incorporate the Governors of the Society.

**2. *Trustee of Charity*** The body corporate commonly known as the Corporation of the Sons of the Clergy shall be the trustee of the Charity (“the Trustee”).

**3. *Administration of Charity***

- (a) The Charity shall be administered and managed by the Trustee (acting in accordance with its usual procedures and powers) under the name Clergy Orphan Corporation or such other name as the Trustee with approval of the Charity Commissioners shall from time to time decide.
- (b) All property of the Charity whether presently belonging to the Charity or acquired by the Charity (by whatever means) in future shall be administered and managed for the benefit of the Charity by the Trustee in accordance with the terms of this Scheme.
- (c) The Trustee shall have power within the limits of this Scheme to make such Rules, Regulations, Bye-laws or Standing Orders for the management of the Charity and its affairs as it shall think fit, with power to revoke replace or amend the same as may be necessary.

**4. *Objects***

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(3) c. xviii (49 Geo III), c. xxii (6 & 7 Eliz. 2).

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(a) The objects of the Charity shall be the clothing, maintaining and educating of poor orphans of clergymen of the Church of England or of the Church in Wales.

(b) The expression clergymen shall be construed as including both men and women.

**5. *Application of Income*** The income of the Charity shall be applied as follows:

(a) in meeting the reasonable costs of administering the Charity

(b) in furtherance of the objects of the Charity.

**6. *Investment***

(a) Any property for the time being available for investment shall be invested under the control of the Trustee.

(b) In addition to the powers of investment given to the trustees of a charity by statute from time to time the Trustee may apply the property of the Charity for the time being available for investment in accordance with the provisions of the Schedule hereto.

**7. *Existing Schemes*** For any reference in any existing Scheme made by the Charity Commissioners or the Minister of Education to the Governors of the Society for the clothing maintaining and educating poor orphans of clergymen of the Church of England or of the Church in Wales there shall be substituted a reference to the current name of the Charity as decided under clause 3 of this Scheme from time to time.

**8. *Questions under the Scheme*** Any question as to the construction of this Scheme or as to the regularity or the validity of any acts done or about to be done under this Scheme may be determined by the Commissioners by way of written advice under section 29 of the Charities Act 1993 upon written application made to them by the Trustee for that purpose.

## THE SCHEDULE

### *Powers of Investment*

**1. *Investment***

(a) *Free Fund and Restricted Fund* The Charity shall divide into two funds to be known respectively as the Free Fund and the Restricted Fund the property of the Charity (other than land) and any narrower-range investments belonging to the Charity at the date of this Scheme and cash being the proceeds of sale of narrower range investments shall be added to the Restricted Fund and the other investments and cash belonging to the Charity (other than land) shall be added to the Free Fund but notwithstanding the foregoing such division shall be carried out so as to ensure that the value of the property in the Free Fund is 85% of the value of the property available for division and the value of the Restricted Fund amounts to 15% of the property available for division; and when such division has been made:

(i) property representing or constituting a capital accretion to the property included in one of those funds shall be included in that fund;

(ii) subject to clause 6 of this Scheme any property (other than land) belonging to the Charity which is not included in either fund and is to be invested shall be divided between and added to those funds so as to secure that the property added to the Free Fund represents 85% of the value of such property and the property added to the Restricted Fund is equal to 15% of the value of such property.

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- (b) Restricted Fund: subject to sub-clauses (e), (f) and (g) of this paragraph the Trustee may invest the cash and other property of the Charity in any investment for the time being authorised by the Trustee Investments Act 1961 or any amendment thereof.
- (c) Free Fund: subject to sub-clauses (e), (f) and (g) of this clause the Trustee may invest the cash and other property of the Charity at their discretion in:
  - (i) Any investments which are qualifying investments within the meaning of paragraphs 2 to 8 of Schedule 20 to the Income and Corporation Taxes Act 1988 but excluding units of a Unit Trust scheme which is not an authorised Unit Trust under the Financial Services Act 1986. Where any such investments are traded investments they must be such as are traded with proper authority on a recognised stock exchange within the meaning of section 841 of the Income and Corporation Taxes Act 1988;
  - (ii) In mortgages within the limits permitted by paragraph 13 Part II of Schedule I to the Trustee Investments Act 1961 or any amendment thereof.
- (d) Any land held as an investment which at the date of this Scheme belongs to the Charity may continue to be retained as an investment. Where such land is sold, subject to the taking and consideration of advice from a professional adviser who is qualified by his ability in and practical experience of land held as an investment the Trustee may apply the proceeds of sale in investing in other freehold or leasehold land in England or Wales.
- (e) The Trustee shall at all times keep the investments of the charity under review (including land held by it as an investment) and may at any time at its discretion realise exchange or otherwise dispose of any investment (including land held as an investment) or deposit or loan either to raise cash for the purposes of the Charity or for investment in accordance with the terms of this Scheme.
- (f) In performance of its functions under this clause the Trustee shall have regard to:
  - (i) the need for diversification of investments (including land held as an investment) of the Charity in so far as it is appropriate to the circumstances of the charity; and
  - (ii) in relation to any investment (including land) of the Charity or any proposed investment, to the suitability to the Charity of the investments of the description concerned and of the particular investment as an investment of that description.
- (g) Unless authorised by an Order or Orders of the Commissioners the Trustee shall not invest by way of underwriting any new issue of shares stock or other securities. Provided that they may invest by way of underwriting an issue of stock eligible to be held by the Charity where the Trustee does so in order to secure an allocation of the new issue (and not for the sole or main purpose of obtaining commission) and is satisfied that the Charity has the resources to take up the allocation and that to do so would not be hazardous or speculative.

**2. Investment Expert** In this Schedule the expression “Investment Expert” means either a company or firm of repute in the field of investment which is an authorised person or an exempted person for the purposes of the Financial Services Act 1986 or an individual being an authorised person for the purposes of that Act who has not less than 15 years experience of investment and financial management.

### **3. Investment advice**

- (a) The Trustee shall arrange that the investments (including land held as an investment) are at all times kept under review by one or more investment experts and other professional advisers who shall be instructed and required to undertake to inform the Trustee promptly of any changes in investments which appear to them to be desirable except to the extent that the Trustee has exercised power of delegation conferred by clause 5 of this Schedule.

- (b) No investment other than one which is for the time being a narrow range investment within the meaning of the Trustee Investments Act 1961 shall be made by the Trustee except on the advice of an Investment Expert.

**4. *Investment Manager*** The Trustee may appoint as the Investment Manager for the Charity a person whom it is satisfied after inquiry is a proper and competent person to act in that capacity and who is either:

- (a) an individual of repute with at least 15 years experience of investment management who is an authorised person within the meaning of the Financial Services Act 1986; or
- (b) a company or firm of repute which is an authorised or exempted person within the meaning of that Act otherwise than by virtue of section 45(1)(j) of that Act.

**5. *Delegation*** The Trustee may delegate to an Investment Manager so appointed power at his discretion to buy and sell investments for the Charity on behalf of the Trustee in accordance with the investment policy laid down by the Trustee. The Trustee may only do so on terms consistent with this Scheme.

**6.** Where the Trustee makes any delegation under this Scheme it shall:

- (a) inform the Investment Manager in writing of the extent of the Charity's investment powers;
- (b) lay down a detailed investment policy for the Charity and immediately inform the Investment Manager in writing of it and of any changes to it;
- (c) ensure that the terms of the delegated authority are clearly set out in writing and notified to the Investment Manager;
- (d) ensure that it is kept informed and review on a regular basis the performance of their investment portfolio managed by the Investment Manager and on the exercise by him of his delegated authority;
- (e) take all reasonable care to ensure that the Investment Manager complies with the terms of his delegated authority;
- (f) review the appointment of the Investment Manager at such intervals not exceeding 24 months as they think fit;
- (g) pay such reasonable and proper remuneration to the Investment Manager and agree such proper terms as to notice and other matters as the Trustee shall decide and as are consistent with this Scheme provided that such remuneration may include commission fees and/or expenses earned by the Investment Manager if and only to the extent that such commission fees and/or expenses are disclosed to the Trustee.

**7.** Where the Trustee makes any delegation under this Scheme it shall do so on terms that:

- (a) the Investment Manager shall comply with the terms of his delegated authority;
- (b) the Investment Manager shall not do anything which the Trustee does not have power to do;
- (c) the Trustee may with reasonable notice revoke the delegation or vary any of its terms in a way which is consistent with the terms of this Scheme; and
- (d) the Trustee shall give directions to the Investment Manager as to the manner in which he is to report to it all sales and purchases of investments made on its behalf.

**8. *Holding of Investments*** The Trustee may:

- (a) make such arrangements as it thinks fit for any investments of the Charity or income from those investments to be held by a corporate body as custodian trustee or as the Trustee's nominee; and

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- (b) pay reasonable and proper remuneration to any corporate body acting as custodian trustee or the Trustee's nominee in pursuance of this clause.

Sealed by Order of the Commissioners this

L.S.

19th day of March 1997.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives effect to a Scheme sealed by the Charity Commissioners for England and Wales to administer the Charity commonly known as the "Clergy Orphan Corporation". The Charity is currently administered by the Clergy Orphan Corporation Acts 1809 and 1958 ("the Clergy Orphan Corporation Acts") and is formally known as "the Governors for the Society for clothing, maintaining and educating poor orphans of clergymen of the Church of England and of the Church in Wales".

The Scheme alters the greater part of the Clergy Orphan Corporation Acts except so far as they constitute the charity as a corporate body. It appoints the corporate body established by Royal Charter known as the Corporation of the Sons of the Clergy to be the Trustee of the Charity and modernises the objects of the Charity and its administration.