



Charities Act 2022

2022 CHAPTER 6

PART 1

PURPOSES, POWERS AND GOVERNING DOCUMENTS

Permanent endowment

9 Definition of “permanent endowment”

In section 353 of the Charities Act 2011 (minor definitions), for subsection (3) substitute—

“(3) For the purposes of this Act, property is “permanent endowment” if it is subject to a restriction on being expended which distinguishes between income and capital.”

10 Amendment of powers to release restrictions on spending capital

(1) The Charities Act 2011 is amended as follows.

(2) In section 281 (power of unincorporated charities to spend capital: general)—

- (a) in subsection (1), omit “which is not a company or other body corporate”;
- (b) after subsection (6) insert—

“(6A) If—

- (a) an amount falls to be repaid to or paid into the fund by the charity trustees because the charity trustees have borrowed an amount from the fund,
- (b) the amount when repaid or paid would fall to be added to the fund and to be subject to the same restrictions as to expenditure as apply to the other capital in the fund, and
- (c) the condition in subsection (6B) is met in relation to the charity,

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the charity trustees may resolve for the purposes of this section that the obligation to repay or pay the amount ought to cease to have effect either wholly or in part.

(6B) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the obligation ceased to have effect to that extent.

(6C) Once the charity trustees have passed a resolution under subsection (6A), the obligation ceases to have effect to that extent.

(6D) Where a resolution passed under subsection (6A) relates to all outstanding obligations to repay amounts to or pay amounts into the fund in respect of the amount borrowed from the fund, any other obligation which falls to be carried out by the charity trustees because the charity trustees have borrowed that amount from the fund also ceases to have effect once the resolution has been passed.”

- (3) In section 282 (resolution to spend larger fund given for particular purpose)—
- (a) in the heading, omit “given for particular purpose”;
 - (b) in subsection (1), for the words from “which is not” to the end of the subsection substitute “if—
 - (a) in a case where subsection (1A) applies, the adjusted market value of the fund exceeds £25,000, or
 - (b) in any other case, the market value of the fund exceeds that sum.”;
 - (c) after subsection (1) insert—

“(1A) This subsection applies where the charity trustees of the charity have borrowed from the fund and all or part of that borrowing is outstanding.”;
 - (d) after subsection (3) insert—

“(3A) If—

 - (a) an amount falls to be repaid to or paid into the fund by the charity trustees because the charity trustees have borrowed an amount from the fund,
 - (b) the amount when repaid or paid would fall to be added to the fund and to be subject to the same restrictions as to expenditure as apply to the other capital in the fund, and
 - (c) the condition in subsection (3B) is met in relation to the charity,

the charity trustees may resolve for the purposes of this section that the obligation to repay or pay the amount ought to cease to have effect either wholly or in part.

(3B) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the obligation ceased to have effect to that extent.”;
 - (e) in subsection (4)(a), after “(2)” insert “or (3A)”;
 - (f) in subsection (5), at the appropriate place insert—

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“adjusted market value”, in relation to an endowment fund, means the current market value of the fund as determined on a valuation carried out for the purpose—

- (a) reduced by the value, if any, of the benefit of the debt owed by the charity trustees representing outstanding borrowing from the fund on the date of that valuation, and
- (b) increased by the amount of the charity trustees’ outstanding borrowing from the fund on that date;”;

“outstanding borrowing” means outstanding borrowing by virtue of section 284A or otherwise.”;

- (g) omit subsection (6).

(4) In section 284 (when and how a section 282 resolution takes effect)—

- (a) in subsection (5), after “282(2)” insert “or (as the case may be) the obligation to repay or pay the amount to the fund ceases to have effect, by virtue of this section, to the extent resolved by the trustees under section 282(3A)”;
- (b) after subsection (5) insert—

“(6) Where the resolution passed under section 282(3A) relates to all outstanding obligations to repay amounts to or pay amounts into the fund in respect of the amount borrowed from the fund, any other obligation which falls to be carried out by the charity trustees because the charity trustees have borrowed that amount from the fund ceases to have effect when the obligations to repay or pay amounts cease to have effect.”

11 Taking effect of resolution under section 282 of the Charities Act 2011

(1) Section 284 of the Charities Act 2011 (when and how a resolution under section 282 takes effect) is amended as follows.

(2) In subsection (3), for “period of 3 months beginning with the relevant date” substitute “relevant period”.

(3) For subsection (4) substitute—

“(4) The “relevant period” means—

- (a) the period of 60 days beginning with the date on which the Commission receives the copy of the resolution in accordance with section 282(4), or
- (b) that period as modified by subsection (4A) or (4B).

(4A) If under section 283(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the relevant period is suspended from the date on which the direction is given to the charity trustees until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.

(4B) If under section 283(2) the Commission directs the charity trustees to provide any information or explanations, the running of the relevant period is suspended from the date on which the direction is given to the charity trustees until the date on which the information or explanations is or are provided to the Commission.”

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12 Power to borrow from permanent endowment

- (1) The Charities Act 2011 is amended as follows.
- (2) After section 284 insert—

“Power to borrow from permanent endowment

284A Power to borrow from permanent endowment: general

- (1) This section applies to any available endowment fund of a charity.
- (2) The charity trustees may resolve to borrow an amount, not exceeding the permitted amount, from the available endowment fund if they are satisfied—
 - (a) that it is expedient for the amount to be borrowed, in the light of the purposes set out in the trusts to which the fund is subject and the purposes of the charity, and
 - (b) that arrangements are in place for the amount to be repaid within 20 years of being borrowed.
- (3) Any amount borrowed in accordance with subsection (2) no longer forms part of the available endowment fund and, as a result, is freed from the restrictions with respect to the expenditure of capital that applied to it when it was comprised in that fund.
- (4) An amount borrowed in accordance with subsection (2) may not be used to repay (in whole or in part) any amount previously borrowed from permanent endowment (whether the previous borrowing was by virtue of this section or otherwise).
- (5) When repaying an amount borrowed (whether in whole or in part), the charity trustees may resolve to pay an additional amount not exceeding the maximum estimated capital appreciation.
- (6) Any—
 - (a) repayment of an amount borrowed, and
 - (b) payment of an additional amount by virtue of a resolution under subsection (5),
 is to be added to the available endowment fund and is to be subject to the same restrictions as to expenditure as apply to the other capital in the fund.
- (7) The powers conferred by this section—
 - (a) may be restricted or excluded by the trusts of the charity;
 - (b) are (subject to paragraph (a)) in addition to any other power to borrow that the charity or charity trustees may have.
- (8) If, and in so far as, the power conferred by subsection (5) confers power to accumulate income, it is not subject to section 14(3) of the Perpetuities and Accumulations Act 2009 (which provides for certain powers to accumulate income to cease after 21 years).
- (9) 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

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- (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.
- (10) If a resolution under section 104A(2) has effect in respect of an available endowment fund (or portion of such a fund), references in this section to an “available endowment fund” include that fund (or portion) but do not include any returns from the investment of the fund (or portion) which have not been accumulated.
- (11) For the meaning of “permitted amount” and “maximum estimated capital appreciation” see sections 284B and 284C respectively.

284B Calculation of the “permitted amount”

- (1) The “permitted amount” for the purposes of section 284A(2) is given by the formula—

$$(0.25 \times (V + B)) - B$$

where—

V is the value of the available endowment fund on the relevant date (ignoring the value, if any, of the benefit of the debt owed by the charity trustees representing outstanding borrowing from the fund), and

B is the amount of the charity trustees’ outstanding borrowing from the available endowment fund on that date.

- (2) In subsection (1)—
- “outstanding borrowing” means outstanding borrowing by virtue of section 284A or otherwise;
- the “relevant date” is the date on which the trustees resolve to borrow from the available endowment fund (see section 284A(2)).
- (3) If a resolution under section 104A(2) has effect in respect of the available endowment fund (or any part of it), for the purposes of subsection (1) the value of the available endowment fund does not include any returns from the investment of the fund (or part) which have not been accumulated.

284C Calculation of the “maximum estimated capital appreciation”

- (1) The “maximum estimated capital appreciation” for the purposes of section 284A(5) is given by the formula—

$$R \times I$$

where—

R is the amount of borrowing being repaid, and

I is the percentage increase in the relevant index between the month in which the amount was borrowed and the month preceding the month in which the repayment is made (or if there is no increase is nil).

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- (2) The “relevant index” is whichever of the following is selected by the charity trustees from time to time—
- (a) the retail prices index;
 - (b) the consumer prices index;
 - (c) any similar general index of prices published by the Statistics Board.
- (3) In this section—
- “consumer prices index” means the general index for consumer prices published by the Statistics Board;
- “retail prices index” means the general index of retail prices (for all items) published by the Statistics Board.

284D Inability to repay

- (1) If (at any time) it appears to the charity trustees that—
- (a) they will not be able to fulfil the arrangements put in place to repay an amount borrowed under section 284A, or
 - (b) those arrangements are not sufficient to ensure that the amount is repaid,
- the trustees must apply to the Commission for an order under this section directing them how to proceed.
- (2) An order under this section may give such directions as the Commission thinks fit, including—
- (a) that the relevant amount may be repaid over a longer period,
 - (b) that the charity trustees put in place arrangements specified in the order, or
 - (c) that the charity trustees need not repay an amount borrowed.”
- (3) In section 285 (power to alter sums specified in Part 13), after subsection (2) insert—
- “(3) The Secretary of State may by regulations amend—
- (a) the period of time specified in section 284A(2)(b), or
 - (b) the multiplier in the formula set out in section 284B(1),
- so as to substitute a different time period or multiplier (as the case may be) for the period or multiplier for the time being specified in that provision.”
- (4) In section 348 (regulations subject to affirmative procedure etc)—
- (a) in subsection (1), after paragraph (c) insert—
 - “(d) regulations under section 285(3) (power to amend period or multiplier specified);”;
 - (b) in subsection (2), for “or (c)” substitute “, (c), (d)”.

13 Total return investment

- (1) The Charities Act 2011 is amended as follows.
- (2) After section 104A insert—

“104AA Total return investment: social investments

- (1) This section applies to a fund, or a portion of a fund, in respect of which a resolution under section 104A(2) has effect.
- (2) The charity trustees may resolve that—
 - (a) the fund or portion, and
 - (b) any returns from the investment of the fund or portion,may be used to make social investments (within the meaning of section 292A) which they could not otherwise make.
- (3) While a resolution under subsection (2) has effect, regulations under section 104B(1)(b) and (ba) apply to—
 - (a) the fund or portion, and
 - (b) any returns from the investment of the fund or portion.”
- (3) In section 104B (total return investment: regulations)—
 - (a) in subsection (1)(a), for “section 104A(2)” substitute “sections 104A(2) and 104AA(2)”;
 - (b) omit the “and” following subsection (1)(b);
 - (c) after subsection (1)(b) insert—
 - “(ba) the use of a relevant social investment fund to make social investments (within the meaning of section 292A),”;
 - (d) after subsection (1)(c) insert “, and”
 - (d) any steps that must be taken by charity trustees in respect of a relevant social investment fund in the event of a resolution under section 104AA(2) ceasing to have effect.”;
 - (e) in subsection (2)(a), after “104A(2)” insert “or 104AA(2)”;
 - (f) in subsection (6), for “section “relevant” substitute “section— “relevant””;
 - (g) in subsection (6), at the end insert—

““relevant social investment fund” means a fund, or a portion of a fund, and any returns from the investment of the fund, or portion, in respect of which a resolution under section 104AA(2) has effect.”