Charities Act (Northern Ireland) 2008

2008 CHAPTER 12

An Act to provide for the establishment and functions of the Charity Commission for Northern Ireland and the Charity Tribunal for Northern Ireland; to make provision about the law of charities, including provision about charitable incorporated organisations; to make further provision about public charitable collections and other fund-raising carried on in connection with charities and other institutions; and for connected purposes. [9th September 2008]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Modifications etc. (not altering text)

C1 Act modified (19.8.2013) by The Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2013 (S.R. 2013/211), **art. 2(1)**

PART 1

INTRODUCTORY

Meaning of "charity"

1.—(1) For the purposes of the law of Northern Ireland, "charity" means an institution which—

(a) is established for charitable purposes only, and

(b) falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities.

(2) The definition of "charity" in subsection (1) does not apply for the purposes of a statutory provision if a different definition of that term applies for those purposes by virtue of that or any other statutory provision.

(3) A charity shall be deemed for the purposes of this Act to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act "permanent endowment" means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.

(4) The Commission may direct that for all or any of the purposes of this Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity.

(5) The Commission may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees shall be treated as a single charity.

Meaning of "charitable purpose"

2.—(1) For the purposes of the law of Northern Ireland, a charitable purpose is a purpose which—

(a) falls within subsection (2), and

(b) is for the public benefit (see section 3).

(2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

(a) the prevention or relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the advancement of health or the saving of lives;

(e) the advancement of citizenship or community development;

(f) the advancement of the arts, culture, heritage or science;

(g) the advancement of amateur sport;

(h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

(i) the advancement of environmental protection or improvement;

(j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

(k) the advancement of animal welfare;

(l) any other purposes within subsection (4).

(3) In subsection (2)—

(a) in paragraph (c) "religion" includes—

(i) a religion which involves belief in one god or more than one god, and

(ii) any analogous philosophical belief (whether or not involving belief in a god);

(b) in paragraph (d) "the advancement of health" includes the prevention or relief of sickness, disease or human suffering;

(c) paragraph (e) includes—

(i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;

(d) in paragraph (g) "sport" means sports or games which promote health by involving physical or mental skill or exertion;

(e) paragraph (h) includes the advancement of peace and good community relations; and

(f) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.

(4) The purposes within this subsection (see subsection (2)(l)) are—

(a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act (Northern Ireland) 1958 (c. 16);

(b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and

(c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.

(5) Where any of the terms used in any of paragraphs (a) to (k) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.

(6) Any reference in any statutory provision or document (in whatever terms)—

(a) to charitable purposes, or

(b) to institutions having purposes that are charitable under charity law,

is to be construed in accordance with subsection (1).

(7) Subsection (6)—

(a) applies whether the statutory provision or document was passed or made before or after the passing of this Act, but

(b) does not apply where the context otherwise requires.

(8) In this section—

"charity law" means the law relating to charities in Northern Ireland; and

"existing charity law" means charity law as in operation immediately before the day on which this section comes into operation.

[[F1]The "public benefit" requirement

3.—(1) For section 3 of the 2008 Act (the "public benefit" test) there shall be substituted the following section—

"**The public benefit requirement**

(1) In this Act "the public benefit requirement" means the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit.

(3) In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.

(4) Subsection (3) is subject to subsection (2).".

(2) This section shall be deemed always to have had effect.**]**

Textual Amendments

F1 S. 3 substituted (retrospective to 25.9.2009) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 1(1)(2)**, 10(1)

Guidance as to operation of public benefit requirement

4.—(1) The Commission must issue guidance in pursuance of its public benefit objective**[[F2]**(see paragraph 2 in section 7(3))**]**.

[F3](2) . . . . . .

(3) The Commission may revise any guidance issued under this section.

(4) The Commission must carry out such public and other consultation as it considers appropriate—

(a) before issuing any guidance under this section, or

(b) (unless it considers that it is unnecessary to do so) before revising any such guidance.

(5) The Commission must publish any guidance issued or revised under this section in such manner as it considers appropriate.

(6) The charity trustees of a charity must have regard to any such guidance when exercising any powers or duties to which the guidance is relevant.

Textual Amendments

F2 Words in s. 4(1) added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 2**

F3 S. 4(2) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 2**

Special provisions about recreational charities, sports clubs, etc.

5.—(1) The Recreational Charities Act (Northern Ireland) 1958 (c. 16) is amended in accordance with subsection (2).

(2) In section 1 (certain recreational and similar purposes deemed to be charitable) for subsection (2) substitute—

"(2) The requirement in subsection (1) that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.

(2A) The basic conditions are—

(a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(b) that either—

(i) those persons have need of the facilities by reason of their youth, age, infirmity or disability, poverty, or social and economic circumstances, or

(ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.".

(3) A registered sports club established for charitable purposes is to be treated as not being so established, and accordingly cannot be a charity.

(4) In subsection (3) a "registered sports club" means **[**[F4]a registered club within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs).**]**

Textual Amendments

F4 Words in s. 5(4) substituted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), **Sch. 1 para. 586** (with saving in Sch. 2)

Modifications etc. (not altering text)

C2 S. 5 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

PART 2

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Establishment of the Commission

The Charity Commission for Northern Ireland

6.—(1) There shall be a body corporate to be known as the Charity Commission for Northern Ireland (in this Act referred to as "the Commission").

(2) The Commission shall consist of a chair, a deputy chair and at least 3, but no more than 5, other members.

(3) The members shall be appointed by the Department.

(4) The Department shall exercise the power in subsection (3) so as to secure that—

(a) the knowledge and experience of the members of the Commission (taken together) includes knowledge and experience of the matters mentioned in subsection (5), and

(b) at least 1 member is legally qualified.

(5) The matters mentioned in this subsection are—

(a) the law relating to charities,

(b) charity accounts and the financing of charities, and

(c) the operation and regulation of charities of different sizes and descriptions.

(6) A person is not legally qualified for the purposes of subsection (4)(b) unless the person is a barrister or solicitor of not less than 7 years' standing.

(7) Schedule 1 makes further provision with respect to the Commission.

(8) Subject to Schedule 1, section 19 of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to the Commission.

The Commission's objectives, general functions, etc.

The Commission's objectives

7.—(1) The Commission has the objectives set out in subsection (2).

(2) The objectives are—

(1) The public confidence objective.

(2) The public benefit objective.

(3) The compliance objective.

(4) The charitable resources objective.

(5) The accountability objective.

(3) Those objectives are defined as follows—

(1) The public confidence objective is to increase public trust and confidence in charities.

(2) The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

(3) The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

(4) The charitable resources objective is to promote the effective use of charitable resources.

(5) The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

[F5](4) . . . . . .

Textual Amendments

F5 S. 7(4) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 2**

The Commission's general functions

8.—(1) The Commission has the general functions set out in subsection (2).

(2) The general functions are—

(1) Determining whether institutions are or are not charities.

(2) Encouraging and facilitating the better administration of charities.

(3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.

(4) Determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections.

(5) Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.

(6) Giving information or advice, or making proposals, to the Department on matters relating to any of the Commission's functions or meeting any of its objectives.

(3) The Commission's fifth general function includes (among other things) the establishment and maintenance of an accurate and up-to-date register of charities under section 16.

(4) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by the Department for information or advice on any matter relating to any of the Commission's functions.

The Commission's general duties

9.—(1) The Commission has the general duties set out in subsection (2).

(2) The general duties are—

(1) So far as is reasonably practicable the Commission must, in performing its functions, act in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

(2) So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—

(a) all forms of charitable giving, and

(b) voluntary participation in charity work.

(3) In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.

(4) In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).

(5) In performing its functions the Commission must have regard to the desirability of facilitating innovation by or on behalf of charities.

(6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

The Commission's incidental powers

10.—(1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2) However, nothing in this Act authorises the Commission—

(a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or

(b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not affect the operation of section 36 or 37 (power of Commission to give directions as to action to be taken or as to application of charity property).

Modifications etc. (not altering text)

C3 S. 10(3) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I1 S. 10 wholly in operation at 18.2.2011; s. 10 not in operation at Royal Assent, see s. 185(1); s. 10(1)(2) in operation at 27.3.2009 by S.R. 2009/138, **art. 2**, Sch.; s. 10(3) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

PROSPECTIVE

The official custodian for charities in Northern Ireland

The official custodian for charities in Northern Ireland

11.—(1) There shall be an officer to be known as the official custodian for charities in Northern Ireland (in this Act referred to as "the official custodian") whose function it shall be to act as trustee for charities in the cases provided for by this Act; and the official custodian shall be **[**[F6]a corporation sole whose official seal**]** shall be officially and judicially noticed.

(2) Such individual as the Commission may designate shall be the official custodian.

(3) The duties of the official custodian shall be performed in accordance with such general or special directions as may be given by the Commission, and

the expenses of the official custodian (except those re-imbursed, or recovered by, the official custodian as trustee for any charity) shall be defrayed by the Commission.

(4) Anything which is required to or may be done by, to or before the official custodian may be done by, to or before any member of staff of the Commission generally or specially authorised by it to act for the official custodian during a vacancy in the office of the official custodian or otherwise.

(5) The official custodian shall not be liable as trustee for any charity in respect of any loss or of the mis-application of any property unless it is occasioned by or through the wilful neglect or default of the official custodian or of any person acting for the official custodian; but the Commission shall be liable to make good to a charity any sums for which the official custodian may be liable by reason of any such neglect or default.

(6) The official custodian shall keep such books of account and such records in relation thereto as may be directed by the Department and shall prepare accounts in such form, in such manner and at such times as may be so directed.

(7) The accounts so prepared shall be examined, certified and reported on by the Comptroller and Auditor General.

(8) The Comptroller and Auditor General shall send to the Commission a copy of the accounts as certified in accordance with subsection (7), together with the report on them.

(9) The Commission shall publish and lay before the Assembly a copy of the documents sent to it under subsection (8).

Textual Amendments

F6 Words in s. 11(1) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 3**

PART 3

THE CHARITY TRIBUNAL FOR NORTHERN IRELAND

The Charity Tribunal for Northern Ireland

12.—(1) There shall be a tribunal to be known as the Charity Tribunal for Northern Ireland (in this Act referred to as "the Tribunal").

(2) Schedule 2 makes provision with respect to the constitution of the Tribunal and other matters relating to it.

(3) The Tribunal shall have jurisdiction to hear and determine—

(a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 3, or any other statutory provision, in respect of decisions, orders or directions of the Commission, and

(b) such matters as may be referred to the Tribunal in accordance with Schedule 4 by the Commission or the Attorney General.

(4) Such appeals, applications and matters shall be heard and determined by the Tribunal in accordance with those Schedules, or any such statutory provision, taken with section 13 and rules made under that section.

Modifications etc. (not altering text)

C4 S. 12(3)(4) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I2 S. 12 wholly in operation at 18.2.2011; s. 12 not in operation at Royal Assent, see s. 185(1); s. 12(1)(2) in operation at 25.9.2009 by S.R. 2009/324, **art. 2**; s. 12(3)(4) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Practice and procedure

13.—(1) The **[**[F7]Department of Justice**]** may make rules—

(a) regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it;

(b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.

(2) Rules under subsection (1)(a) may, in particular, make provision—

(a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);

(b) specifying the period following the Commission's final decision, direction or order within which such appeals or applications may be made;

(c) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission;

(d) specifying the manner in which appeals, applications or references to the Tribunal are to be made.

(3) Rules under subsection (1)(b) may, in particular, make provision—

(a) for the President or a legal member of the Tribunal (see paragraph 1(2)(b) of Schedule 2) to determine preliminary, interlocutory or ancillary matters;

(b) for matters to be determined without an oral hearing in specified circumstances;

(c) for the Tribunal to deal with urgent cases expeditiously;

(d) about the disclosure of documents;

(e) about evidence;

(f) about the admission of members of the public to proceedings;

(g) about the representation of parties to proceedings;

(h) about the withdrawal of appeals, applications or references;

(i) about the recording and promulgation of decisions;

(j) about the award of costs.

(4) Rules under subsection (1)(a) or (b) may confer a discretion on—

(a) the Tribunal,

(b) a member of the Tribunal, or

(c) any other person.

(5) The Tribunal may award costs only in accordance with subsections (6) and (7).

(6) If the Tribunal considers that any party to proceedings before it has acted vexatiously, frivolously or unreasonably, the Tribunal may order that party to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.

(7) If the Tribunal considers that a decision, direction or order of the Commission which is the subject of proceedings before it was unreasonable, the Tribunal may order the Commission to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.

(8) Rules of the **[**[F7]Department of Justice**]** under this section shall be subject to **[**[F8]negative resolution**]**.

(9) Rules of the **[**[F7]Department of Justice**]** under this section may make such supplemental, incidental, consequential or transitional provision or savings as the **[**[F7]Department of Justice**]** considers appropriate.

Textual Amendments

F7 Words in s. 13 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 170(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

F8 Words in s. 13(8) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 170(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Modifications etc. (not altering text)

C5 S. 13: functions transferred from Lord Chancellor to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 58(a)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

C6 S. 13(5)-(7) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I3 S. 13 wholly in operation at 18.2.2011; s. 13 not in operation at Royal Assent, see s. 185(1); s. 13(1)-(4)(8)(9) in operation at 25.9.2009 by S.R. 2009/324, **art. 2**; s. 13(5)-(7) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Appeal from Tribunal

14.—(1) A party to proceedings before the Tribunal may appeal to the Court against a decision of the Tribunal.

(2) Subject to subsection (3), an appeal may be brought under this section against a decision of the Tribunal only on a point of law.

(3) In the case of an appeal under this section against a decision of the Tribunal which determines a question referred to it by the Commission or the Attorney General, the Court—

(a) shall consider afresh the question referred to the Tribunal, and

(b) may take into account evidence which was not available to the Tribunal.

(4) An appeal under this section may be brought only with the permission of—

(a) the Tribunal, or

(b) if the Tribunal refuses permission, the Court.

(5) For the purposes of subsection (1)—

(a) the Commission and the Attorney General are to be treated as parties to all proceedings before the Tribunal, and

(b) rules under section 13(1) may include provision as to who else is to be treated as being (or not being) a party to proceedings before the Tribunal.

Modifications etc. (not altering text)

C7 S. 14 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Intervention by Attorney General

15.—(1) This section applies to any proceedings—

(a) before the Tribunal, or

(b) on an appeal from the Tribunal,

to which the Attorney General is not a party.

(2) The Tribunal or, in the case of an appeal from the Tribunal, the Court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General.

(3) A direction under subsection (2) may be made by the Tribunal or Court—

(a) of its own motion, or

(b) on the application of any party to the proceedings.

(4) The Attorney General may—

(a) intervene in the proceedings in such manner as the Attorney General thinks necessary or expedient, and

(b) argue before the Tribunal or Court any question in relation to the proceedings which the Tribunal or Court considers it necessary to have fully argued.

(5) Subsection (4) applies whether or not the Tribunal or Court has given a direction under subsection (2).

Modifications etc. (not altering text)

C8 S. 15 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

PART 4

REGISTRATION OF CHARITIES AND CHARITABLE NAMES

The register of charities

Register of charities

16.—(1) The Commission shall keep a register of charities.

(2) Every institution which is a charity under the law of Northern Ireland must be registered in the register of charities.

(3) The register shall be kept by the Commission in such manner as it thinks fit.

(4) The register shall contain—

(a) the name of the charity,

(b) if the charity is a designated religious charity within the meaning of section 165, a statement to that effect, and

(c) such other particulars of, and such other information relating to, the charity as the Commission thinks fit.

(5) The Commission shall remove from the register—

(a) any institution which it no longer considers to be a charity, and

(b) any charity which has ceased to exist or does not operate.

(6) If the removal of an institution under subsection (5)(a) is due to any change in its trusts, the removal shall take effect from the date of that change.

(7) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times.

(8) Where any information contained in the register is not in documentary form, subsection (7) shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

(9) If the Commission so determines, subsection (7) shall not apply to any particular information contained in the register that is specified in the determination.

(10) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 17 shall, so long as the charity remains on the register—

(a) be kept by the Commission, and

(b) be open to public inspection at all reasonable times.

Commencement Information

I4 S. 16 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Duties of trustees in connection with registration

17.—(1) Where a charity required to be registered by virtue of section 16(2) is not registered, it is the duty of the charity trustees—

(a) to apply to the Commission for the charity to be registered, and

(b) to supply the Commission with the required documents and information.

(2) The "required documents and information" are—

(a) copies of the charity's trusts or (if they are not set out in any extant document) particulars of them,

(b) such other documents or information as may be prescribed by regulations made by the Department, and

(c) such other documents or information as the Commission may require for the purposes of the application.

(3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees)—

(a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and

(b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts.

(4) Nothing in subsection (3) requires a person—

(a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the Court,

(b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or

(c) if the person refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document.

(5) Where a copy of a document relating to a registered charity—

(a) is not required to be supplied to the Commission as the result of subsection (4), but

(b) is in the possession of the Commission,

a copy of the document shall be open to inspection under section 16(10) as if supplied to the Commission under this section.

Commencement Information

I5 S. 17 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Effect of, and claims and objections to, registration

18.—(1) An institution shall for all purposes other than rectification of the register be conclusively presumed to be or to have been a charity at any time when it is or was on the register of charities.

(2) Any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity, object to its being entered by the Commission in the register, or apply to the Commission for it to be removed from the register; and the Department may by regulations make provision as to the manner in which any such objection or application is to be made, prosecuted or dealt with.

(3) If there is an appeal to the Tribunal against any decision of the Commission to enter an institution in the register, or not to remove an institution from the register, then until the Commission is satisfied whether the decision of the Commission is or is not to stand, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense.

(4) For the purposes of subsection (1) an institution shall be deemed not to be on the register during any period when the entry relating to it is in suspense under subsection (3).

(5) Any question affecting the registration or removal from the register of an institution may, notwithstanding that it has been determined by a decision on appeal under Schedule 3, be considered afresh by the Commission and shall not be concluded by that decision, if it appears to the Commission that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision.

Commencement Information

I6 S. 18 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Status of registered charity to appear on official publications, etc.

19.—(1) The fact that a charity is registered shall be stated in legible characters—

(a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;

(b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and

(c) in all bills rendered by it and in all its invoices, receipts and letters of credit.

(2) Subsection (1)(a) has effect whether the solicitation is express or implied, and whether the money or other property is to be given for any consideration or not.

(3) Any person who issues or authorises the issue of any document falling within paragraph (a) or (c) of subsection (1) which does not contain the statement required by that subsection, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any person who signs any document falling within paragraph (b) of subsection (1) which does not contain the statement required by that subsection, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement Information

I7 S. 19 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Charity names

Power of Commission to require charity's name to be changed

20.—(1) Where this subsection applies to a charity, the Commission may give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the charity trustees may determine with the approval of the Commission.

(2) Subsection (1) applies to a charity if—

(a) it is a registered charity and its name ("the registered name")—

(i) is the same as, or

(ii) is in the opinion of the Commission too like,

the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not);

(b) the name of the charity is in the opinion of the Commission likely to mislead the public as to the true nature—

(i) of the purposes of the charity as set out in its trusts, or

(ii) of the activities which the charity carries on under its trusts in pursuit of those purposes;

(c) the name of the charity includes any word or expression for the time being specified in regulations made by the Department and the inclusion in its name of that word or expression is in the opinion of the Commission likely to mislead the public in any respect as to the status of the charity;

(d) the name of the charity is in the opinion of the Commission likely to give the impression that the charity is connected in some way with a government department or any district council, or with any other body of persons or any individual, when it is not so connected; or

(e) the name of the charity is in the opinion of the Commission offensive;

and in this subsection any reference to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.

(3) Any direction given by virtue of subsection (2)(a) must be given within 12 months of the time when the registered name was entered in the register in respect of the charity.

(4) Any direction given under this section with respect to a charity shall be given to the charity trustees; and on receiving any such direction the charity trustees shall give effect to it notwithstanding anything in the trusts of the charity.

(5) Where the name of any charity is changed under this section, then (without prejudice to section 17(3)) it shall be the duty of the charity trustees forthwith to notify the Commission of the charity's new name and of the date on which the change occurred.

(6) A change of name by a charity under this section does not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

[F9](7) . . . . . .

(8) Any reference in this section to the charity trustees of a charity shall, in relation to a charity which is a company, be read as a reference to the directors of the company.

Textual Amendments

F9 S. 20(7) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 4, **2** (S. 20(7) never in operation)

Modifications etc. (not altering text)

C9 S. 20(1)(2)(b)-(e)(4)(6)(8) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I8 S. 20 partly in operation; s. 20 not in operation at Royal Assent see s. 185(1); s. 20(1)(2)(b)-(e)(4)(6)(8) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

I9 S. 20(2)(a)(3)(5)(7) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Effect of direction under section 20 where charity is a company

21.—(1) Where any direction is given under section 20 with respect to a charity which is a company, the direction shall be taken to require the name of the charity to be changed by resolution of the directors of the company.

(2) Where a resolution of the directors is passed in accordance with subsection (1), the company must give notice of the change to the registrar of companies.

(3) Where the name of such a charity is changed in compliance with any such direction, the registrar of companies—

(a) shall, **[**[F10]if satisfied that the new name complies with the requirements of Part 5 of the Companies Act 2006**]**, enter the new name on the register of companies in place of the former name, and

(b) shall issue a certificate of incorporation altered to meet the circumstances of the case;

and the change of name has effect from the date on which the altered certificate is issued.

Textual Amendments

F10 Words in s. 21(3)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 5**

Modifications etc. (not altering text)

C10 S. 21(1)(2) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I10 S. 21 partly in operation; s. 21 not in operation at Royal Assent see s. 185(1); s. 21(1)(2) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

I11 S. 21(3) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

PART 5

INFORMATION POWERS

General power to institute inquiries

22.—(1) The Commission may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(2) The Commission may either conduct such an inquiry or appoint a person to conduct it and make a report to the Commission.

(3) For the purposes of any such inquiry the Commission, or a person appointed by the Commission to conduct it, may (subject to the provisions of this section) direct any person (P)—

(a) to **[**[F11]provide**]** accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which P has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to P on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to **[**[F12]provide**]** copies of documents in P's custody or under P's control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;

(c) to attend at a specified time and place and give evidence or produce any such documents.

(4) For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require P to make and subscribe a declaration of the truth of the matters about which P is examined.

(5) The Commission may pay to P the necessary expenses of attending to give evidence or produce documents for the purpose of an inquiry under this section, and P shall not be required in obedience to a direction under paragraph (c) of subsection (3) to go more than 10 miles from P's place of residence unless those expenses are paid or tendered to P.

(6) Where an inquiry has been held under this section, the Commission may either—

(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published, or

(b) publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the Commission about the action to be taken.

Textual Amendments

F11 Word in s. 22(3)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(a)**

F12 Word in s. 22(3)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(a)**

Modifications etc. (not altering text)

C11 S. 22 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to call for documents and search records

23.—(1) The Commission may by order—

(a) require any person who has possession of any information which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian to **[**[F13]provide**]** that information to the Commission;

(b) require any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian—

(i) to **[**[F14]provide**]** the Commission with a copy of or extract from the document, or

(ii) (unless the document forms part of the records or other documents of a court or of a public or local authority) to transmit the document itself to the Commission for its inspection.

(2) Any member of staff of the Commission, if so authorised by it, shall be entitled without payment to inspect and take copies of or extracts from the records or other documents of any court, or of any public registry or office of records, for any purpose connected with the discharge of the functions of the Commission or of the official custodian.

(3) The Commission shall be entitled without payment to keep any copy or extract **[**[F15]provided**]** to it under subsection (1), and where a document transmitted to the Commission under that subsection for it to inspect relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of it, the Commission may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.

(4) The rights conferred by subsection (2) shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

(5) In subsection (2) the reference to a member of the staff of the Commission includes the official custodian even if the official custodian is not a member of the staff of the Commission.

Textual Amendments

F13 Word in s. 23(1)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(b)**

F14 Word in s. 23(1)(b)(i) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(b)**

F15 Word in s. 23(3) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(2)(a)**

Modifications etc. (not altering text)

C12 S. 23(1)-(4) modified (except in so far as it relates to the official custodian) (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I12 S. 23 partly in operation; s. 23 not in operation at Royal Assent see s. 185(1); s. 23(1)-(4) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Disclosure of information by and to the Commission

24.—(1) The Commission may disclose any information to any public body or office-holder (in Northern Ireland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom)—

(a) for any purpose connected with the exercise of the Commission's functions, or

(b) for the purpose of enabling or assisting the public body or office-holder to exercise any functions.

(2) Any person to whom this subsection applies may disclose any information to the Commission for the purpose of enabling or assisting it to exercise any functions.

(3) Subsection (2) applies to—

(a) any Northern Ireland authority,

(b) the Northern Ireland Assembly Commission,

(c) any district council,

(d) any constable, and

(e) any other public authority whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters.

(4) In subsection (3)(a) "Northern Ireland authority" means the First Minister, the deputy First Minister, a Northern Ireland Minister or a Northern Ireland department.

(5) A power to disclose information under subsection (1) or (2) is subject to any express restriction imposed by or under any other statutory provision.

(6) Where any information disclosed to the Commission under or for the purposes of any statutory provision is so disclosed subject to any express restriction on the disclosure of the information by the Commission, the Commission's power of disclosure under subsection (1) shall, in relation to the information, be exercisable subject to any such restriction.

Supply of false or misleading information to Commission, etc.

25.—(1) Any person who knowingly or recklessly provides the Commission with information which is false or misleading in a material particular is guilty of an offence if the information—

(a) is provided in purported compliance with a requirement imposed by or under this Act; or

(b) is provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Commission for the purpose of discharging its functions under this Act.

(2) Any person who wilfully alters, suppresses, conceals or destroys any document which that person is or is liable to be required, by or under this Act, to produce to the Commission is guilty of an offence.

(3) Any person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(4) In this section references to the Commission include references to any person conducting an inquiry under section 22.

Modifications etc. (not altering text)

C13 S. 25 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

PART 6

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

Extended powers of Court and variation of charters

Occasions for applying property cy-près

26.—(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 shall be as follows—

(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; or

(b) where the original purposes provide a use for part only of the property available by virtue of the gift; or

(c) where the property available by virtue of the gift and 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; or

(d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to 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; or

(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) shall 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) In authorising property comprised in a charitable gift to be applied cy-près, the Court or the Commission shall have power to alter—

(a) the purposes for which the property given may be applied; and

(b) the provisions and conditions governing the application of the property for those purposes;

so as to secure that the property is applied as beneficially as is possible, consistently with the spirit of the gift.

(5) In ascertaining the spirit of a gift for the purpose of subsection (1)(a)(ii) or (4) the Court or the Commission may take into account the conduct, and any habits or actions, of the donor and any written or oral declarations made by the donor at any time in relation to the gift.

(6) References in the foregoing subsections to the original purposes of a gift shall be construed, 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.

(7) 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.

Commencement Information

I13 S. 26 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Application cy-près of gifts of donors unknown or disclaiming

27.—(1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where 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 expired,

cannot be identified or cannot be found; or

(b) to a donor who has executed a disclaimer in the prescribed form of the donor's 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 shall not be liable to any person in respect of the property if no claim by that person to be interested in it is received by them before the expiry of the period mentioned in subsection (1)(a)(ii).

(3) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—

(a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or

(b) of 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.

(4) The Court or the Commission may by order direct that property not falling within subsection (3) shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified where it appears to the Court or the Commission either—

(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.

(5) Where property is applied cy-près by virtue of this section, the donor shall be deemed to have parted with all of the donor's interest at the time when the gift was made; 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 subsection (3) or (4)—

(a) the scheme shall specify the total amount of that property; and

(b) the donor of any part of that amount shall be entitled, if the donor makes a claim not later than 6 months after the date on which the scheme is made, 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 that 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 **[**[F16]claims made in accordance with paragraph (b)**]**.

(6) Where—

(a) any sum is, in accordance with any such directions, set aside for meeting **[**[F17]claims made in accordance with subsection (5)(b)**]**, but

(b) the aggregate amount of any such claims actually made exceeds the relevant amount,

then, if the Commission so directs, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of that donor's claim bears to the aggregate amount referred to in paragraph (b); 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) For the purposes of this section, charitable purposes shall be deemed to "fail" where 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.

(8) In this section "prescribed" means prescribed by regulations made by the Commission; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (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.

(9) In this section references to a donor include persons claiming through or under the original donor, and references to property given include the property

for the time being representing the property originally given or property derived from it.

(10) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this section.

Textual Amendments

F16 Words in s. 27(5)(c) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 7(2)**

F17 Words in s. 27(6)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 7(3)**

Commencement Information

I14 S. 27 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Application cy-près of gifts made in response to certain solicitations

28.—(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 the trustees holding the property to give the donor the opportunity 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).

(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 27(1) shall apply to the property as if it belonged to a donor within paragraph (b) of that subsection (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,

section 27(1) shall similarly apply to the property as if it belonged to a donor within sub-paragraph (b) of that subsection.

(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 both solicitations that are accompanied by statements within subsection (2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless the person proves otherwise.

(9) In this section "prescribed" means prescribed by regulations made by the Commission.

(10) Subsections (7) and (9) of section 27 shall apply for the purposes of this section as they apply for the purposes of section 27.

Commencement Information

I15 S. 28 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Cy-près schemes

29.—(1) The power of the Court or the Commission to make schemes for the application of property cy-près shall 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—

(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, or

(b) to the charity trustees, or

(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.

[[F18](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.**]**

Textual Amendments

F18 S. 29(7) added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 8**

Commencement Information

I16 S. 29 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

[F19Gifts for mixed purposes

29A.—(1) This section applies where property is given for purposes so described that, consistently with the terms of the gift, the property could all be used for charitable purposes but could equally well be used wholly or partly for purposes which are not charitable.

(2) If, but for this section, the gift would be invalid, the gift shall have effect as a gift for such charitable purposes as may be determined by a scheme made by the Court or the Commission.

(3) Where the terms of a gift and the surrounding circumstances appear to the Court or the Commission to show a predominant intention on the part of the donor to further a particular charitable purpose, the Court or the Commission shall, in making a scheme under subsection (2), have regard, so far as practicable, to that intention.

(4) Where—

(a) property is disposed of by way of successive gifts so that a gift is dependent upon a prior gift; and

(b) the prior gift has been made the subject of a scheme under this section,

any gift dependent upon the prior gift shall have the like effect as it would have had if the prior gift had at all times been for the purposes determined by that scheme.**]**

Textual Amendments

F19 S. 29A inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 2**, 10(1)

Charities governed by charter

30 Where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, 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) may be made by the Court under the Court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter, but shall 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.

Commencement Information

I17 S. 30 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Powers of Commission to make schemes and act for protection of charities, etc.

Concurrent jurisdiction with High Court for certain purposes

31.—(1) Subject to the provisions of this Act, 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) Where the Court directs a scheme for the administration of a charity to be established, 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 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.

(3) The Commission shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.

(4) Subject to the following subsections, the Commission shall not exercise its jurisdiction under this section as respects any charity, except—

(a) on the application of the charity; or

(b) on an order of the Court under subsection (2); or

(c) on the application of the Attorney General.

(5) In the case of a charity whose gross income does not in aggregate exceed £500 a year, the Commission may exercise its jurisdiction under this section on the application—

(a) of any one or more of the charity trustees; or

(b) of any person interested in the charity.

(6) Where, in the case of a charity, the Commission is satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have

unreasonably refused or neglected to do so and the Commission has given the charity trustees an opportunity to make representations to it, the Commission may proceed as if an application for a scheme had been made by the charity but the Commission shall not have power in a case where it acts by virtue of this subsection to alter the purposes of a charity, unless 40 years have elapsed from the date of its foundation.

(7) Where—

(a) a charity cannot apply to the Commission for a scheme by reason 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.

(8) The Commission may on the application of any charity trustee or trustee for a charity exercise its jurisdiction under this section for the purpose of discharging that person from trusteeship.

(9) Before exercising any jurisdiction under this section otherwise than on an order of the Court, the Commission shall 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 or who is party or privy to an application for the exercise of the jurisdiction; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address.

(10) The Commission shall not exercise its jurisdiction under this section in any case (not referred to the Commission by order of the Court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commission may consider more fit to be adjudicated on by the Court.

(11) If the Department 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 this section in accordance with subsection (5),

it may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

Modifications etc. (not altering text)

C14 S. 31 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Further powers to make schemes or alter application of charitable property

32.—(1) Where it appears to the Commission that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of the Parliament of the United Kingdom or Northern Ireland legislation establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or that it is for any reason proper for the scheme to be subject to review by the Assembly, then (subject to subsection (6)) the Commission may 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 Department [F20]....

(3) 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 general Act of Parliament of the United Kingdom or Northern Ireland legislation, **[**[F21]no order shall be made unless a draft of the order has been laid before and approved by a**]** resolution of the Assembly.

(4) Subject to subsection (5), 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 31.

(5) Where subsection (3) applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.

(6) The Commission shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if it was proceeding (without an order of the Court) under section 31; but on any application for a scheme, or in a case where it acts by virtue of subsection (6) or (7) of that section, the Commission may proceed under this section or that section as appears to it appropriate.

(7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in the Parliament of the United Kingdom or a Bill of the Assembly shall without the consent of the Court or the Commission be defrayed out of any moneys applicable for the purposes of a charity.

(8) Where the Commission is satisfied—

(a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and

(b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and

(c) that it is for any reason not yet desirable to make such a scheme;

then 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, and any application authorised by the order shall be deemed to be within the purposes of the charity.

(9) An order under subsection (8) shall not extend to more than £300 out of income accrued before the date of the order, not to income accruing more than 3 years after that date, nor to more than £100 out of the income accruing in any of those 3 years.

Textual Amendments

F20 Words in s. 32(2) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 9(2), **2**

F21 Words in s. 32(3) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 9(3)**

Modifications etc. (not altering text)

C15 S. 32 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to act for protection of charities

33.—(1) Where, at any time after it has instituted an inquiry under section 22 with respect to any charity, the Commission is satisfied—

(a) that there is or has been any misconduct or mismanagement in the administration of the charity; or

(b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commission may of its own motion do one or more of the following things—

(i) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from the exercise of that person's office or employment pending consideration being given to that person's removal (whether under this section or otherwise);

(ii) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;

(iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to transfer it to the official custodian, or appoint any person to transfer any such property to the official custodian;

(iv) 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;

(v) order any debtor of the charity not to make any payment in or towards the discharge of liability to the charity without the approval of the Commission;

(vi) by order restrict (notwithstanding 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;

(vii) by order appoint (in accordance with section 35) an interim manager, who shall act as receiver and manager in respect of the property and affairs of the charity.

(2) Where, at any time after it has instituted an inquiry under section 22 with respect to any charity, the Commission is satisfied—

(a) that there is or has been any misconduct or mismanagement in the administration of the charity; and

(b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commission may of its own motion do either or both of the following things—

(i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or whose conduct has contributed to it or facilitated it;

(ii) by order establish a scheme for the administration of the charity.

(3) The references in subsections (1) or (2) to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or 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.

(4) The Commission may also remove a charity trustee by order made of its own motion—

(a) where, within the last 5 years, the trustee—

(i) having previously been adjudged bankrupt or had estate sequestrated, 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;**[**[F22]or**]**

[[F22](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) where the trustee is a corporation in liquidation;

(c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);

(d) where the trustee has not acted, and will not declare willingness or unwillingness to act;

(e) where the trustee is outside Northern Ireland or cannot be found or does not act, and that absence or failure to act impedes the proper administration of the charity.

(5) 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 this section or otherwise;

(b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

(c) where there is a single charity trustee, not being 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) where 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 either cannot be found or does not act or is outside Northern Ireland.

(6) The powers of the Commission under this section to remove or appoint charity trustees of its own motion shall 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 31.

(7) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 31.

(8) The power of the Commission to make an order under subsection (1)(i) shall not be exercisable so as to suspend any person (P) from the exercise of office or employment for a period of more than 12 months; but (without prejudice to the generality of section 175(1)), any such order made in the case of

P may make provision as respects the period of P's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in P's name or otherwise act for P and, 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.

(9) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1), the Commission shall 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; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address.

(10) The Commission shall, at such intervals as it thinks fit, review any order made by it under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1); and, if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, the Commission shall so discharge it (whether subject to any savings or other transitional provisions or not).

(11) Any person who contravenes an order under subsection (1)(iv), (v) or (vi), is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Subsection (11) shall not be taken to preclude 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 subsection (1)(iv) or (vi) (whether proceedings in respect of the contravention are brought against that person under subsection (11) or not).

Textual Amendments

F22 S. 33(4)(a)(iii) and preceding word added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(2)**, 10(1)

Modifications etc. (not altering text)

C16 S. 33 (except s. 33(1)(b)(iii)) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I18 S. 33 partly in operation; s. 33 not in operation at Royal Assent see s. 185(1); s. 33 (except s. 33(1)(b)(iii)) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

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

34.—(1) This section applies where the Commission makes—

(a) an order under section 33(1) suspending from office or employment any trustee, charity trustee, officer, agent or employee of a charity, or

(b) an order under section 33(2) removing from office or employment any officer, agent or employee of a charity,

and the trustee, charity trustee, officer, agent or employee (as the case may be) is a member of the charity.

(2) If the order suspends the person in question from office or employment, the Commission may also make an order suspending that person's membership of the charity for the period for which that person is suspended from office or employment.

(3) If the order removes the person in question from office or employment, the Commission may also make an order—

(a) terminating that person's membership of the charity, and

(b) prohibiting that person from resuming membership of the charity without the Commission's consent.

(4) If an application for the Commission's consent under subsection (3)(b) is made 5 years or more after the order was made, the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.

Modifications etc. (not altering text)

C17 S. 34 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Supplementary provisions relating to interim manager appointed for a charity

35.—(1) The Commission may under section 33(1)(vii) appoint to be interim manager in respect of a charity such person**[**[F23](other than a member of its staff)**]** as it thinks fit.

(2) Without prejudice to the generality of section 175(1), any order made by the Commission under section 33(1)(vii) may make provision with respect to the functions to be discharged by the interim manager appointed by the order; and those functions shall be discharged by the interim manager under the supervision of the Commission.

(3) In connection with the discharge of those functions any such order 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 exercisable or falling to be performed by the interim manager by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.

(4) Where a person has been appointed interim manager by any such order—

(a) section 49 shall apply to that person and to that person's functions as a person so appointed as it applies to a charity trustee of the charity concerned and to the duties of a charity trustee as such; and

(b) the Commission may apply to the Court for directions in relation to any particular matter arising in connection with the discharge of those functions.

(5) The Court may on an application under subsection (4)(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; and the costs of any such application shall be paid by the charity concerned.

(6) Regulations made by the Department 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.

(7) Regulations under subsection (6) may, in particular, authorise the Commission—

(a) to require a person so appointed to give security for the due discharge of that person's functions;

(b) to determine the amount of that person's remuneration;

(c) to **[**[F24]disallow**]** any amount of remuneration in such circumstances as are prescribed by the regulations.

Textual Amendments

F23 Words in s. 35(1) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 10(2)**

F24 Word in s. 35(7)(c) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 10(3)**

Modifications etc. (not altering text)

C18 S. 35 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to give specific directions for protection of charity

36.—(1) This section applies where, at any time after the Commission has instituted an inquiry under section 22 with respect to any charity, it is satisfied as mentioned in section 33(1)(a) or (b).

(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 statutory provision 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 shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a).

(5) Subsection (4) does not affect any contractual or other rights of any other person arising in respect of anything which has been done under the authority of such an order.

Modifications etc. (not altering text)

C19 S. 36 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to direct application of charity property

37.—(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 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—

(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 statutory provision or expressly prohibited by the trusts of the charity.

(4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a).

(5) Subsection (4) does not affect any contractual or other rights of any other person arising in respect of anything which has been done under the authority of such an order.

Modifications etc. (not altering text)

C20 S. 37 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Copy of order under section 33, 34, 36 or 37, and Commission's reasons, to be sent to charity

38.—(1) Where the Commission makes an order under section 33, 34, 36 or 37, it must send the documents mentioned in subsection (2)—

(a) to the charity concerned (if a body corporate), or

(b) (if not) to each of the charity trustees.

(2) The documents are—

(a) a copy of the order, and

(b) a statement of the Commission's reasons for making it.

(3) The documents must be sent to the charity or charity trustees as soon as practicable after the making of the order.

(4) The Commission need not, however, comply with subsection (3) in relation to the documents, or (as the case may be) the statement of its reasons, if it considers that to do so—

(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.

(5) Nothing in this section requires any document to be sent to a person who cannot be found or who has no known address.

Modifications etc. (not altering text)

C21 S. 38 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Publicity relating to schemes

39.—(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 Department for an order giving it effect,

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 or any such communication takes place 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 scheme if it is satisfied that—

(a) by reason of the nature of the scheme, or

(b) for any other reason,

compliance with the requirement is unnecessary.

(5) Where the Commission gives public notice of any proposals under this section, the Commission—

(a) must take into account any representations made to it within the period specified in the notice, and

(b) 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 at the Commission's office.

(7) 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.

Modifications etc. (not altering text)

C22 S. 39 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Publicity for orders relating to trustees or other individuals

40.—(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 33(1)(ii),

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 to remove, without the consent of the person concerned, a person who is—

(a) a charity trustee or trustee for a charity, or

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

the Commission must give to that 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.

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

(a) must take into account any representations made to it within the period specified in the notice, and

(b) 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.

Modifications etc. (not altering text)

C23 S. 40 (except s. 40(1)(a)) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I19 S. 40 partly in operation; s. 40 not in operation at Royal Assent see s. 185(1); s. 40 (except s. 40(1)(a)) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

PROSPECTIVE

Property vested in official custodian

Entrusting charity property to official custodian, and termination of trust

41.—(1) The Court may by order—

(a) vest in the official custodian any land held by or in trust for a charity;

(b) authorise or require the persons in whom any such land is vested to transfer it to the official custodian; or

(c) appoint any person to transfer any such land to the official custodian;

but this subsection does not apply to any interest in land by way of mortgage or other security.

(2) 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.

(3) Where the official custodian is discharged from 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.

(4) No person shall be liable for any loss occasioned by acting in conformity with an order under this section or by giving effect to anything done in pursuance of such an order, or be excused from so doing by reason of the order having been in any respect improperly obtained.

Supplementary provisions as to property vested in official custodian

42.—[[F25](1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, the official custodian shall not exercise any powers of management, but regulations made by the Department may provide that the official custodian shall as trustee of any property—

(a) have such powers, duties and liabilities, and be entitled to such rights and immunities, as may be prescribed by the regulations, and

(b) be subject to the control and orders of the Court as the regulations may provide.**]**

(2) Subject to subsection (3), where any land is vested in the official custodian in trust for a charity, the charity trustees shall have power in the name of, and on behalf of, the official custodian to 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) If any land is so vested in the official custodian by virtue of an order under section 33, the power conferred on the charity trustees by subsection (2) shall not be 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.

(4) Where any land is vested in the official custodian in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the official custodian

by reason of the land being vested in the official custodian shall be enforceable by or against the charity trustees as if the land were vested in them.

(5) In relation to a corporate charity, subsections (2), (3) and (4) shall apply with the substitution of references to the charity for references to the charity trustees.

(6) Subsections (2), (3) and (4) shall not authorise any charity trustees or charity to impose any personal liability on the official custodian.

(7) 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 thereby incurring any liability.

Textual Amendments

F25 S. 42(1) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 11**

PROSPECTIVE

Establishment of common investment or deposit funds

Schemes to establish common investment funds

43.—(1) The Court or the Commission may by order make and bring into effect schemes (in this section referred to as "common investment 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) The Court or the Commission may make a common investment scheme on the application of any two or more charities.

(3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.

(4) 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.

(5) In this section "appropriate body" means—

(a) a Scottish recognised body, [F26]...

(b) an England and Wales charity,**[**[F27]; or**]**

[[F27](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 (4), "charity" includes an appropriate body.

"The relevant provisions" are subsections (1) and (6) to (8) and (in relation only to a charity within paragraph (b)) subsection (9).

(6) 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 notwithstanding that 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;

(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.

(7) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall 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 shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme; and where a scheme makes any such provision it shall 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 for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.

(8) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.

(9) The powers of investment of every charity shall 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.

(10) A common investment fund shall be deemed for all purposes to be a charity.

(11) Subsection (10) shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any statutory provision relating to any particular charities or class of charity.

Textual Amendments

F26 Word in s. 43(5)(a) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 43(a)**

F27 S. 43(5)(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. 43(b)**

Schemes to establish common deposit funds

44.—(1) The Court or the Commission may by order make and bring into effect schemes (in this section referred to as "common deposit 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

(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 thereon at a rate determined under the scheme.

(2) Subject to subsection (3), the following provisions of section 43, namely—

(a) subsections (2), (3) and (6), and

(b) subsections (8) to (11),

shall have effect in relation to common deposit schemes and common deposit funds as they have effect in relation to common investment schemes and common investment funds.

(3) In its application in accordance with subsection (2), subsection (6) of section 43 shall have effect with the substitution for paragraphs (b) and (c) of the following paragraphs—

"(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;".

(4) 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.

(5) In this section "appropriate body" means—

(a) a Scottish recognised body, or

(b) an England and Wales charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4), "charity" includes an appropriate body.

(6) "The relevant provisions" are—

(a) subsection (1), and

(b) subsections (6) and (8) of section 43, as they apply in accordance with subsections (2) and (3), and

(c) (in relation only to a charity within subsection (5)(b)) subsection (9) of that section, as it so applies.

Meaning of "Scottish recognised body" and "England and Wales charity" in sections 43 and 44

45.—(1) In sections 43 and 44 "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 the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under ***[***[F28]*section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or****]*** Part 10 of the Income Tax Act 2007 (c. 3) **[**[F29], or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,**]** in respect of income of the body which is applicable and applied to charitable purposes only.

(2) In those sections "England and Wales charity" means an institution—

(a) which is a charity under the law of England and Wales, and

(b) to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under ***[***[F30]*section 505 of the Income and Corporation Taxes Act 1988 or****]*** Part 10 of the Income Tax Act 2007 **[**[F31], or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,**]** in respect of income of the institution which is applicable and applied to charitable purposes only.

[[F32](3) For the purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than—

(a) section 480 (exemption for profits of small-scale trades), and

(b) section 481 (exemption from charges under provisions to which section 1173 applies),

is qualifying relief under that Part.**]**

Textual Amendments

F28 Words in s. 45(1) repealed (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1181(1), 1184(1), Sch. 1 para. 587(2)(a), **Sch. 3 Pt. 1** (with saving in Sch. 2) (but this amendment cannot take effect until the commencement of 2008 (c. 12) (N.I.), s. 45)

F29 Words in s. 45(1) inserted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), **Sch. 1 para. 587(2)(b)** (with saving in Sch. 2) (but this amendment cannot take effect until the commencement of 2008 (c. 12) (N.I.), s. 45)

F30 Words in s. 45(2)(b) repealed (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1181(1), 1184(1), Sch. 1 para. 587(3)(a), **Sch. 3 Pt. 1** (with saving in Sch. 2) (but this amendment cannot take effect until the commencement of 2008 (c. 12) (N.I.), s. 45)

F31 Words in s. 45(2)(b) inserted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), **Sch. 1 para. 587(3)(b)** (with saving in Sch. 2) (but this amendment cannot take effect until the commencement of 2008 (c. 12) (N.I.), s. 45)

F32 S. 45(3) inserted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), **Sch. 1 para. 587(4)** (with saving in Sch. 2) (but this amendment cannot take effect until the commencement of 2008 (c. 12) (N.I.), s. 45)

Additional powers of Commission

Power to authorise dealings with charity property, etc.

46.—(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; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section 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 (without prejudice to the generality of subsection (1)) 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.

(3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action **[**[F33]authorised by the order**]**; and where anything is done in pursuance of an authority given by any such order, any directions given in connection **[**[F34]with that authority**]** shall be binding on the charity trustees for the time being as if contained in the trusts of the charity; but any such directions may on the application of the charity be modified or superseded by a further order.

(4) Without prejudice to the generality of subsection (3), the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.

(5) An order under this section may authorise an act notwithstanding that the trusts of the charity provide for the act to be done by or under the authority of

the Court; but no such order authorises the doing of any act expressly prohibited by any statutory provision or by the trusts of the charity or shall extend or alter the purposes of the charity.

(6) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that 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).

Textual Amendments

F33 Words in s. 46(3) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 12(2)**

F34 Words in s. 46(3) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 12(3)**

Modifications etc. (not altering text)

C24 S. 46 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to authorise ex gratia payments, etc.

47.—(1) Subject to subsection (3), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—

(a) to make any application of property of the charity, or

(b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,

in a case where the charity trustees—

(i) (apart from this subsection) have no power to do so, but

(ii) in all the circumstances regard themselves as being under a moral obligation to do so.

(2) The power conferred on the Commission by subsection (1) shall be exercisable by the Commission under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require the Commission, in such circumstances as are specified in the directions—

(a) to refrain from exercising that power; or

(b) to consult the Attorney General before exercising it.

(3) Where—

(a) an application is made to the Commission for it to exercise that power 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 shall refer the application to the Attorney General.

(4) It is hereby declared that where, in the case of any application made to the Commission as mentioned in subsection (3)(a), the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (1)(a) or (b), that refusal shall not preclude the Attorney General, on an application subsequently made to the Attorney General by the trustees, from authorising the trustees to take that action.

Modifications etc. (not altering text)

C25 S. 47 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to give directions about dormant bank accounts of charities

48.—(1) Where the Commission—

(a) 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) is unable, after making reasonable inquiries, to locate that charity or any of its trustees,

it may give a direction under subsection (2).

(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 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 the Commission shall not so specify any charity unless it has received from the

charity trustees 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 shall be received by the charity on terms that—

(a) it shall be held and applied by the charity for the purposes of the charity, but

(b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity.

(5) Where—

(a) the Commission has been informed as mentioned in subsection (1)(a) by any relevant institution, and

(b) before any transfer is made by the institution in pursuance of a direction under subsection (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,

the institution shall forthwith notify those circumstances in writing to the Commission; and, if it appears to the Commission that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) which has previously been given by them to the institution with respect to the relevant charity.

(6) 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 shall be complete discharge of the institution in respect of that amount.

(7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commission for the purpose of enabling them to discharge their functions under this section.

(8) For the purposes of this section—

(a) an account is dormant if no transaction, other than—

(i) a transaction consisting in a payment into the account, or

(ii) 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 paragraph (a) of subsection (1);

(b) "relevant institution" means—

(i) a person who has permission under **[**[F35]Part 4A**]** of the Financial Services and Markets Act 2000 (c. 8) to accept deposits,

(ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits,

and this definition must be read with section 22 of and Schedule 2 to that Act and any relevant order under that section; and

(c) references to the transfer of any amount to a charity are references to its transfer—

(i) to the charity trustees, or

(ii) to any trustee for the charity,

as the charity trustees may determine (and any reference to any amount received by a charity shall be construed accordingly).

(9) For the purpose of determining the matters in respect of which any of the powers conferred by section 22 or 23 may be exercised it shall be assumed that the Commission has no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of the Commission under this section, be required under section 22(3)(a) to **[**[F36]provide**]** any statements, or answer any question or inquiries, with respect to any such accounts held by the institution).

This subsection applies to accounts which are dormant accounts by virtue of subsection (8)(a) but would not be such accounts if sub-paragraph (i) of that provision were omitted.

Textual Amendments

F35 Words in s. 48(8)(b)(i) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 143(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F36 Word in s. 48(9) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(c)**

Modifications etc. (not altering text)

C26 S. 48 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to give advice and guidance

49.—(1) The Commission may, on the application of any charity trustee or trustee for a charity, give that person (T) its opinion or advice in relation to any matter—

(a) relating to the performance of any of T's duties, as such a trustee, in relation to the charity concerned, or

(b) otherwise relating to the proper administration of the charity.

(2) Where T acts in accordance with any opinion or advice given by the Commission under subsection (1) (whether to T or to another trustee) T is to be taken, as regards T's responsibility for so acting, to have acted in accordance with T's trust.

(3) But subsection (2) does not apply to T if, when so acting, either—

(a) T 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.

(4) The Commission may, in connection with its second general function mentioned in section 8(2), give such advice or guidance with respect to the administration of charities as it considers appropriate.

(5) Any advice or guidance so given may relate to—

(a) charities generally,

(b) any class of charities, or

(c) any particular charity,

and may take such form, and be given in such manner, as the Commission considers appropriate.

Modifications etc. (not altering text)

C27 S. 49 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to determine membership of charity

50.—(1) The Commission may—

(a) on the application of a charity, or

(b) at any time after the institution of an inquiry under section 22 with respect to a charity,

determine who are the members of the charity.

(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.

Modifications etc. (not altering text)

C28 S. 50 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Powers for preservation of charity documents

51.—(1) The Commission may provide books in which any deed, will or other document relating to a charity may be enrolled.

(2) The Commission may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commission deposit them with the Commission for safe keeping, except in the case of documents required by some other statutory provision to be kept elsewhere.

(3) Where a document is enrolled by the Commission or is for the time being deposited with the Commission under this section, evidence of its contents may be given by means of a copy certified by any member of staff of the Commission generally or specially authorised by the Commission to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.

(4) Regulations made by the Department may make provision for such documents deposited with the Commission under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.

(5) Subsections (3) and (4) shall apply to any document transmitted to the Commission under section 23 and kept by the Commission under subsection (3) of that section, as if the document had been deposited with the Commission for safe keeping under this section.

Modifications etc. (not altering text)

C29 S. 51(3)-(5) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I20 S. 51 partly in operation; s. 51 not in operation at Royal Assent see s. 185(1); s. 51(3)-(5) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Power to enter premises

52.—(1) A lay magistrate may issue a warrant under this section if satisfied, on a complaint by a member of the Commission's staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.

(2) The conditions are—

(a) that an inquiry has been instituted under section 22;

(b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or **[**[F37]provided**]** under section 23(1); and

(c) that, if the Commission were to make an order requiring the document or information to be so produced or **[**[F38]provided**]**—

(i) the order would not be complied with, or

(ii) the document or information would be removed, tampered with, concealed or destroyed.

(3) A warrant under this section is a warrant authorising the member of the Commission's staff (A) who is named in it—

(a) to enter and search the premises specified in it;

(b) to take on to the premises such other persons as the Commission considers are needed to assist A in doing anything that A is authorised to do under the warrant;

(c) to take possession of any documents which appear to fall within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;

(d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;

(e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);

(f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;

(g) to require any such person to give A such assistance as A may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

(4) Entry and search under such a warrant must be at a reasonable hour and within one month of the date of its issue.

(5) A must, if required to do so, produce—

(a) the warrant, and

(b) documentary evidence that A is a member of the Commission's staff,

for inspection by the occupier of the premises or anyone acting on the occupier's behalf.

(6) A must make a written record of—

(a) the date and time of entering the premises;

(b) the number of persons (if any) who accompanied A onto the premises;

(c) the period for which A (and any such persons) remained on the premises;

(d) what A (and any such persons) did while on the premises; and

(e) any document or device of which A took possession while there.

(7) If required to do so, A must give a copy of the record to the occupier of the premises or someone acting on the occupier's behalf.

(8) Unless it is not reasonably practicable to do so, A must comply with the following requirements before leaving the premises, namely—

(a) the requirements of subsection (6), and

(b) any requirement made under subsection (7) before A leaves the premises.

(9) Where possession of any document or device is taken under this section—

(a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 22, or

(b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry,

as the case may be.

(10) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable—

(a) to the person from whose possession it was taken, or

(b) to any of the charity trustees of the charity to which it belonged or related.

(11) A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence and liable on summary conviction—

(a) to imprisonment for a term not exceeding 6 months, or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.

Textual Amendments

F37 Word in s. 52(2)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(2)(b)**

F38 Word in s. 52(2)(c) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(2)(b)**

Modifications etc. (not altering text)

C30 S. 52 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Legal proceedings relating to charities

Proceedings by Commission

53.—(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 95(1) 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) shall be 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 shall be taken to require the Attorney General to be a party to any such proceedings.

(5) The powers exercisable by the Commission by virtue of this section shall be exercisable by the Commission of its own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

Modifications etc. (not altering text)

C31 S. 53 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Proceedings by other persons

54.—(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, but not by any other person.

(2) Subject to the following provisions of this section, no charity proceedings relating to a charity shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.

(3) The Commission shall 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 53.

(4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.

(5) Where the foregoing provisions of this section 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 the foregoing subsections shall apply to the taking of proceedings by the Attorney General, with or without a relator, or to the taking of proceedings by the Commission in accordance with section 53.

(7) Where it appears to the Commission, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity or its property or affairs, and for the proceedings to be taken by the Attorney General, the Commission shall 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 Northern Ireland brought under the court's jurisdiction with respect to charities, or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

Modifications etc. (not altering text)

C32 S. 54 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Report of section 22 inquiry to be evidence in certain proceedings

55.—(1) A copy of the report of the person conducting an inquiry under section 22 shall, if certified by the Commission to be a true copy, be admissible in any proceedings to which this section applies—

(a) as evidence of any fact stated in the report; and

(b) as evidence of the opinion of that person as to any matter referred to in it.

(2) This section applies to—

(a) any legal proceedings instituted by the Commission under this Part; and

(b) any legal proceedings instituted by the Attorney General in respect of a charity.

(3) A document purporting to be a certificate issued for the purposes of subsection (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

Modifications etc. (not altering text)

C33 S. 55 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Property held on behalf of English, Welsh and Scottish charities

Powers in relation to certain English, Welsh and Scottish charities

56.—(1) Subsection (2) applies where the Charity Commission for England and Wales or the Scottish Charity Regulator informs the Commission that a relevant financial institution or other person in Northern Ireland holds moveable property on behalf of a body—

(a) which is registered as a charity in England and Wales **[**[F39]in the register kept under section 29 of the Charities Act 2011, or which, by virtue of section 30(2) of that Act, is not required to be registered in that register**]**; or

(b) which is registered in the Scottish Charity Register under section 3 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(2) The Court may, on an application by the Charity Commission for England and Wales or the Scottish Charity Regulator, make an order requiring the relevant financial institution or other person not to part with the property without the Court's consent.

(3) An order under subsection (2) may be made subject to conditions and may be varied or revoked.

(4) Where the Court has made an order under subsection (2) and, on an application by the Commission, it is satisfied as to the matters set out in subsection (5) it may transfer the property to a charity specified in the application—

(a) which has purposes which are the same as or which resemble closely the purposes of the body whose property is transferred, and

(b) which has intimated that it is prepared to receive the property.

(5) Those matters are—

(a) that there has been misconduct in the administration of the body, and

(b) that it is necessary or desirable to transfer the property for the purpose of protecting it or securing a proper application of it for the purposes of the body from which it is to be transferred.

(6) In proceedings before it under this section in relation to a charity, the Court may, instead of awarding costs against a charity, award costs against a charity trustee of the charity or against any two or more of its charity trustees jointly and severally.

(7) In this section "relevant financial institution" means—

(a) a person who has permission under **[**[F40]Part 4A**]** of the Financial Services and Markets Act 2000 (c. 8) to accept deposits,

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits,

and this definition must be read with section 22 of and Schedule 2 to that Act and any relevant order under that section.

Textual Amendments

F39 Words in s. 56(1)(a) substituted (14.3.2012) by Charities Act 2011 (c. 25), ss. 354(1), 355, **Sch. 7 para. 137** (with s. 20(2), Sch. 8)

F40 Words in s. 56(7)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 143(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C34 S. 56 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

PROSPECTIVE

PART 7

CHARITY LAND

Restriction on dispositions

57.—(1) Subject to the following provisions of this section and section 59, no land held by or in trust for a charity shall be disposed of without an order of the Court or of the Commission.

(2) Subsection (1) shall not apply to a disposition of such land if—

(a) the disposition is made to a person who is not—

(i) a connected person (as defined in Schedule 5), or

(ii) a trustee for, or nominee of, a connected person; and

(b) the requirements of subsection (3) or (5) have been complied with in relation to it.

(3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5), the requirements mentioned in subsection (2)(b) are that the charity trustees must, before entering into an agreement for the disposition of the land—

(a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;

(b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless the surveyor has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and

(c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(4) For the purposes of subsection (3) a person is a qualified surveyor if—

(a) that person is a fellow or professional associate of the Royal Institution of Chartered Surveyors [F41]... or satisfies such other requirement or requirements as may be prescribed by regulations made by the Department; and

(b) that person is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

(5) Where the proposed disposition is the granting of a lease for a term ending not more than 7 years after it is granted (other than one granted wholly or partly in consideration of a fine), the requirements mentioned in subsection (2)(b) are that the charity trustees must, before entering into an agreement for the lease—

(a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and

(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(6) Where—

(a) any land is held by or in trust for a charity, and

(b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,

then (subject to subsections (8) and (9) and without prejudice to the operation of the preceding provisions of this section) the land shall not be disposed of unless the charity trustees have before the relevant time—

(i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and

(ii) taken into consideration any representations made to them within that time about the proposed disposition.

(7) In subsection (6) "the relevant time" means—

(a) where the charity trustees enter into an agreement to dispose of the land, the time when they entered into that agreement, and

(b) in any other case, the time of the disposition.

(8) Subsection (6) shall not apply to any such disposition of land as is there mentioned if—

(a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or

(b) the disposition is the granting of a lease for a term ending not more than 2 years after it is granted (other than one granted wholly or partly in consideration of a fine).

(9) The Commission may direct—

(a) that subsection (6) shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or

(b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,

if, on an application made to the Commission in writing by or on behalf of the charity or charities in question, the Commission is satisfied that it would be in the interests of the charity or charities for the Commission to give the direction.

(10) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—

(a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the Court) by or under any statutory provision or by any scheme legally established; or

(b) to any disposition of land held by or in trust for a charity which—

(i) is made to another charity otherwise than for the best price that can reasonably be obtained, and

(ii) is authorised to be so made by the trusts of the first-mentioned charity; or

(c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—

(i) is granted otherwise than for the best rent that can reasonably be obtained; and

(ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

Textual Amendments

F41 Words in s. 57(4)(a) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 13, **2**

Supplementary provisions relating to dispositions

58.—(1) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

(i) that the land is held by or in trust for a charity,

(ii) whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (10) of section 57, and

(iii) if the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.

(2) Where any land held by or in trust for a charity is disposed of by a disposition to which subsection (1) or (2) of section 57 applies, the charity trustees shall certify in the instrument by which the disposition is effected—

(a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the Court or of the Commission (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.

(3) Where subsection (2) has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an estate in the land for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) any land held by or in trust for a charity is disposed of by a disposition to which subsection (1) or (2) of section 57 applies, but

(b) subsection (2) has not been complied with in relation to the disposition,

then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an estate in the land for money or money's worth, the disposition shall be valid whether or not—

(i) the disposition has been sanctioned by an order of the Court or of the Commission, or

(ii) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.

(5) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

(i) that the land will, as a result of the disposition, be held by or in trust for a charity, and

(ii) that the restrictions on disposition imposed by section 57 will apply to the land (subject to subsection (10) of that section).

Release of charity rentcharges

59.—(1) Section 57(1) and section 58 shall not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than 9 times the annual amount of the rentcharge.

(2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £500, any costs incurred by the charity in connection with proving its title to the rentcharge shall be recoverable by the charity from the person or persons in whose favour the rentcharge is being released.

(3) The Department may by order—

(a) amend subsection (1) by substituting a different multiplier for the multiplier for the time being specified there, or

(b) amend subsection (2) by substituting a different sum for the sum for the time being specified there.

Restrictions on mortgaging

60.—(1) Subject to subsection (2), no mortgage of land held by or in trust for a charity shall be granted without an order of the Court or of the Commission.

(2) Subsection (1) shall not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (4) (as the case may be).

(3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—

(a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant;

(b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and

(c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.

(4) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.

(5) Subsection (3) or (as the case may be) subsection (4) applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—

(a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or

(b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(6) Subsection (7) applies where—

(a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2), and

(b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(7) In such a case, the charity trustees must not after that date enter into any transaction involving—

(a) the payment of any such sums, or

(b) the undertaking of any such obligations,

unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (4) (as the case may be).

(8) For the purposes of this section proper advice is the advice of a person—

(a) who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters; and

(b) who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given;

and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of employment as an officer or employee of the charity or of the charity trustees.

(9) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 57(10)(a).

Supplementary provisions relating to mortgaging

61.—(1) Any mortgage of land held by or in trust for a charity shall state—

(a) that the land is held by or in trust for a charity,

(b) whether the mortgage is one falling within subsection (9) of section 60, and

(c) if the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply.

(2) Where subsection (1) or (2) of section 60 applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—

(a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the Court or of the Commission (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.

(3) Where subsection (2) has been complied within in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) subsection (1) or (2) of section 60 applies to any mortgage of land held by or in trust for a charity, but

(b) subsection (2) has not been complied with in relation to the mortgage,

then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—

(i) the mortgage has been sanctioned by an order of the Court or of the Commission, or

(ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

Interpretation of Part 7

62.—(1) In this Part—

"land" means land in Northern Ireland;

"mortgage" includes a charge; and

"rentcharge" means a periodical payment charged on land.

(2) Nothing in section 57 or 58 applies to any disposition of land by way of mortgage or other security.

PART 8

CHARITY ACCOUNTS, REPORTS AND RETURNS

Duty to keep accounting records

63.—(1) The charity trustees of a charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to—

(a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time, and

(b) enable the trustees to ensure that, where any statements of accounts are prepared by them under section 64(1), those statements of accounts comply with the requirements of regulations under that provision.

(2) The accounting records shall in particular contain—

(a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and

(b) a record of the assets and liabilities of the charity.

(3) The charity trustees of a charity shall preserve any accounting records made for the purposes of this section in respect of the charity for at least 6 years from the end of the financial year of the charity in which they are made.

(4) Where a charity ceases to exist within the period of 6 years mentioned in subsection (3) as it applies to any accounting records, the obligation to preserve those records in accordance with that subsection shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the records being destroyed or otherwise disposed of.

(5) Nothing in this section applies to a charity which is a company.

Annual statements of accounts

64.—(1) The charity trustees of a charity shall (subject to subsection (3)) prepare in respect of each financial year of the charity a statement of accounts complying with such requirements as to its form and contents as may be prescribed by regulations made by the Department.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision—

(a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;

(b) as to any information to be provided by way of notes to the accounts;

and regulations under that subsection may also make provision for determining the financial years of a charity for the purposes of this Act and any regulations made under it.

(3) Where a charity's gross income in any financial year does not exceed £100,000, the charity trustees may, in respect of that year, elect to prepare the following, namely—

(a) a receipts and payments account, and

(b) a statement of assets and liabilities,

instead of a statement of accounts under subsection (1).

(4) The charity trustees of a charity shall preserve—

(a) any statement of accounts prepared by them under subsection (1), or

(b) any account and statement prepared by them under subsection (3);

for at least 6 years from the end of the financial year to which any such statement relates or (as the case may be) to which any such account and statement relate.

(5) Subsection (4) of section 63 shall apply in relation to the preservation of any such statement or account and statement as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being read as references to subsection (4) above).

(6) The Department may by order amend subsection (3) by substituting a different sum for the sum for the time being specified there.

(7) Nothing in this section applies to a charity which is a company.

(8) Provisions about the preparation of accounts in respect of groups consisting of certain charities and their subsidiary undertakings, and about other matters relating to such groups, are contained in Schedule 6 (see section 72).

Modifications etc. (not altering text)

C35 Ss. 64-70 restricted (retrospectively) by Charities Act (Northern Ireland) 2022 (c. 11), **ss. 1(9)(12)**, 4(2)

C36 S. 64(1)(2) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I22 S. 64 partly in operation; s. 64 not in operation at Royal Assent see s. 185(1); s. 64(1)(2) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Annual audit or examination of charity accounts

65.—(1) Subsection (2) applies to a financial year of a charity if the charity's gross income in that year exceeds £500,000.

(2) If this subsection applies to a financial year of a charity, the accounts of the charity for that year shall be audited by a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 (c. 46); or

(b) is a member of a body for the time being specified in regulations under section 66 and is under the rules of that body eligible for appointment as auditor of the charity.

(3) If subsection (2) does not apply to a financial year of a charity, the accounts of the charity for that year shall, at the election of the charity trustees, either—

(a) be examined by an independent examiner, that is to say an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts, or

(b) be audited by such a person as is mentioned in subsection (2).

This is subject to the requirements of subsection (4) where the gross income exceeds £100,000, and to any order under subsection (6).

(4) If subsection (3) applies to the accounts of a charity for a year and the charity's gross income in that year exceeds £100,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) that person is an independent person who is—

(a) a member of one of the bodies listed in subsection (5); or

(b) a **[**[F42]full member**]** of the Association of Charity Independent Examiners.

(5) The bodies referred to in subsection (4)(a) are—

(a) the Insitute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Institute of Chartered Accountants in Ireland;

(d) the Association of Chartered Certified Accountants;

(e) the Association of Authorised Public Accountants;

(f) the Association of Accounting Technicians;

(g) the Association of International Accountants;

(h) the Chartered Institute of Management Accountants;

(i) the Institute of Chartered Secretaries and Administrators;

(j) the Chartered Institute of Public Finance and Accountancy.

(6) Where it appears to the Commission—

(a) that subsection (2), or (as the case may be) subsection (3), has not been complied with in relation to a financial year of a charity within 10 months from the end of that year, or

(b) that, although subsection (2) does not apply to a financial year of a charity, it would nevertheless be desirable for the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection,

the Commission may by order require the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection.

(7) If the Commission makes an order under subsection (6) with respect to a charity, then unless—

(a) the order is made by virtue of paragraph (b) of that subsection, and

(b) the charity trustees themselves appoint an auditor in accordance with the order,

the auditor shall be a person appointed by the Commission.

(8) The expenses of any audit carried out by an auditor appointed by the Commission under subsection (7), including the auditor's remuneration, shall be recoverable by the Commission—

(a) from the charity trustees of the charity concerned, who shall be personally liable, jointly and severally, for those expenses; or

(b) to the extent that it appears to the Commission not to be practical to seek recovery of those expenses in accordance with paragraph (a), from the funds of the charity.

(9) The Commission may—

(a) give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner;

(b) give such directions as it thinks appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(a);

and any such guidance or directions may either be of general application or apply to a particular charity only.

(10) The Department may by order—

(a) amend subsection (1), (3) or (4) by substituting a different sum for any sum for the time being specified there;

(b) amend subsection (4) or (5) by adding or removing a body to or from the list in that subsection or by varying any entry for the time being included in that list.

(11) Nothing in this section applies in relation to the accounts **[**[F43]for a financial year of a charity which is a company**]** if those accounts are required to be audited in accordance with Part 16 of the Companies Act 2006 (c. 46).

Textual Amendments

F42 Words in s. 65(4)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 14(a)**

F43 Words in s. 65(11) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 14(b)**

Modifications etc. (not altering text)

C35 Ss. 64-70 restricted (retrospectively) by Charities Act (Northern Ireland) 2022 (c. 11), **ss. 1(9)(12)**, 4(2)

C37 S. 65(10)(b) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I23 S. 65 partly in operation; s. 65 not in operation at Royal Assent see s. 185(1); s. 65(10)(b) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Supplementary provisions relating to audits, etc.

66.—(1) The Department may by regulations make provision—

(a) specifying one or more bodies for the purposes of section 65(2)(b);

(b) with respect to the duties of an auditor carrying out an audit under section 65, including provision with respect to the making of a report on—

(i) the statement of accounts prepared for the financial year in question under section 64(1),

(ii) the account and statement so prepared under section 64(3), or

(iii) the accounts so prepared under section 394 of the Companies Act 2006 (duty to prepare individual accounts),

as the case may be;

(c) with respect to the making of a report by an independent examiner in respect of an examination carried out under section 65;

(d) conferring on such an auditor or on an independent examiner a right of access with respect to books, documents and other records (however kept) which relate to the charity concerned;

(e) entitling such an auditor or an independent examiner to require, in the case of a charity, information and explanations from past or present charity trustees or trustees for the charity, or from past or present officers or employees of the charity;

(f) enabling the Commission, in circumstances specified in the regulations, to dispense with the requirements of section 65(2) or (3) in the case of a particular charity or in the case of any particular financial year of a charity.

(2) If any person fails to afford an auditor or an independent examiner any facility to which the auditor or independent examiner is entitled by virtue of subsection (1)(d) or (e), the Commission may by order give—

(a) to that person, or

(b) to the charity trustees for the time being of the charity concerned,

such directions as the Commission thinks appropriate for securing that the default is made good.

Modifications etc. (not altering text)

C35 Ss. 64-70 restricted (retrospectively) by Charities Act (Northern Ireland) 2022 (c. 11), **ss. 1(9)(12)**, 4(2)

C38 S. 66(1) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I24 S. 66 partly in operation; s. 66 not in operation at Royal Assent see s. 185(1); s. 66(1) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Duty of auditors, etc. to report matters to Commission

67.—(1) This section applies to a person (A) acting as an auditor or independent examiner appointed by or in relation to a charity under section 65.

(2) If, in the course of acting in the capacity mentioned in subsection (1), A becomes aware of a matter—

(a) which relates to the activities or affairs of the charity or of any connected institution or body, and

(b) which A has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under section 22 or 33,

A must immediately make a written report on the matter to the Commission.

(3) If, in the course of acting in the capacity mentioned in subsection (1), A becomes aware of any matter—

(a) which does not appear to be one that A is required to report under subsection (2), but

(b) which A has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

A may make a report on the matter to the Commission.

(4) Where the duty or power under subsection (2) or (3) has arisen in relation to A, the duty or power is not affected by A subsequently ceasing to act in that capacity.

(5) Where A makes a report as required or authorised by subsection (2) or (3), no duty to which A is subject is to be regarded as contravened merely because of any information or opinion contained in the report.

(6) In this section "connected institution or body", in relation to a charity, means—

(a) an institution which is controlled by, or

(b) a body corporate in which a substantial interest is held by,

the charity or any one or more of the charity trustees acting in a capacity as such.

(7) Paragraphs 3 and 4 of Schedule 5 apply for the purposes of subsection (6) as they apply for the purposes of provisions of that Schedule.

Annual reports

68.—(1) The charity trustees of a charity shall prepare in respect of each financial year of the charity an annual report containing—

(a) such a report by the trustees on the activities of the charity during that year, and

(b) such other information relating to the charity or to its trustees or officers,

as may be prescribed by regulations made by the Department.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision—

(a) for any such report as is mentioned in paragraph (a) of that subsection to be prepared in accordance with such principles as are specified or referred to in the regulations;

(b) enabling the Commission to dispense with any requirement prescribed by virtue of subsection (1)(b) in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

(3) A copy of the annual report required to be prepared under this section in respect of a financial year shall be transmitted to the Commission by the charity trustees—

(a) within 10 months from the end of that year, or

(b) within such longer period as the Commission may for any special reason allow in the case of that report.

(4) Subject to subsection (5), a copy of an annual report transmitted to the Commission under this section shall have attached to it a copy of the statement of accounts prepared for the financial year in question under section 64(1) or (as the case may be) a copy of the account and statement so prepared under section 64(3), together with—

(a) where the accounts of the charity for that year have been audited under section 65, a copy of the report made by the auditor on that statement of accounts or (as the case may be) on that account and statement;

(b) where the accounts of the charity for that year have been examined under section 65, a copy of the report made by the independent examiner in respect of the examination carried out under that section.

(5) Subsection (4) does not apply to a charity which is a company, and a copy of an annual report transmitted by the charity trustees of such a charity under this section shall instead have attached to it a copy of the charity's annual accounts prepared for the financial year in question under Part 15 of the Companies Act 2006 (c. 46), together with—

(a) where the accounts of the charity for that year have been audited under Part 16 of that Act, a copy of the report made by the auditor on those accounts;

(b) where the accounts of the charity for that year have been audited under section 65, a copy of the report made by the auditor on those accounts;

(c) where the accounts of the charity for that year have been examined under that section, a copy of the report made by the person carrying out the examination.

(6) Any copy of an annual report transmitted to the Commission under this section, together with the documents attached to it, shall be kept by the Commission for such period as it thinks fit.

Modifications etc. (not altering text)

C35 Ss. 64-70 restricted (retrospectively) by Charities Act (Northern Ireland) 2022 (c. 11), **ss. 1(9)(12)**, 4(2)

C39 S. 68(1)(b) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I26 S. 68 not in operation at Royal Assent see s. 185(1); s. 68(1)(b) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Public inspection of annual reports, etc.

69.—(1) Subject to subsection (2), any document kept by the Commission in pursuance of section 68(6) shall be open to public inspection at all reasonable times—

(a) during the period for which it is so kept; or

(b) if the Commission so determines, during such lesser period as it may specify.

(2) The Commission may direct that subsection (1) does not apply—

(a) in relation to any document specified, or of a description specified, in the direction, or

(b) in such circumstances as are so specified.

(3) Subject to subsection (4), where any person—

(a) requests the charity trustees of a charity in writing to be provided with a copy of the charity's most recent accounts or (if subsection (6) applies) of its most recent annual report, and

(b) pays them such reasonable fee (if any) as they may require in respect of the costs of complying with the request,

those trustees shall comply with the request within the period of 2 months beginning with the date on which it is made.

(4) The Commission may direct that subsection (3) does not apply—

(a) in relation to charity trustees specified, or of a description specified, in the direction, or

(b) in such circumstances as are so specified.

(5) In subsection (3) the reference to a charity's most recent accounts is—

(a) in the case of a charity other than one falling within paragraph (b), a reference to the statement of accounts or account and statement prepared in pursuance of section 64(1) or (3) in respect of the last financial year of the charity in respect of which a statement of accounts or account and statement has or have been so prepared;

(b) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under Part 15 of the Companies Act 2006 (c. 46) in relation to which any of the following conditions is satisfied—

(i) they have been audited;

(ii) they have been examined by an independent examiner under section 65(3)(a); or

(iii) they relate to a year in respect of which the company is exempt from audit under Part 16 of the Companies Act 2006 and neither section 65(2) nor section 65(3) applied to them.

(6) This subsection applies if an annual report has been prepared in respect of any financial year of a charity in pursuance of section 68(1).

(7) In subsection (3) the reference to a charity's most recent annual report is a reference to the annual report prepared in pursuance of section 68(1) in respect of the last financial year of the charity in respect of which an annual report has been so prepared.

Annual returns by charities

70.—(1) Every charity shall prepare in respect of each of its financial years an annual return in such form, and containing such information, as may be prescribed by regulations made by the **[**[F44]Commission**]**.

(2) Any such return shall be transmitted to the Commission by the date by which the charity trustees are, by virtue of section 68(3), required to transmit to the Commission the annual report required to be prepared in respect of the financial year in question.

(3) The Commission may dispense with the requirements of subsection (1) in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

Textual Amendments

F44 Word in s. 70(1) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 15**

Modifications etc. (not altering text)

C35 Ss. 64-70 restricted (retrospectively) by Charities Act (Northern Ireland) 2022 (c. 11), **ss. 1(9)(12)**, 4(2)

C40 S. 70(1) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I28 S. 70 partly in operation; s. 70 not in operation at Royal Assent see s. 185(1); s. 70(1) in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Offences

71.—(1) If any requirement imposed—

(a) by section 68(3) (taken with section 68(4) and (5), as applicable), or

(b) by section 69(3) or 70(2),

is not complied with, each person who immediately before the date for compliance specified in the section in question was a charity trustee of the charity is guilty of an offence and liable on summary conviction to the penalty mentioned in subsection (2).

(2) The penalty is—

(a) a fine not exceeding level 4 on the standard scale, and

(b) for continued contravention, a daily default fine not exceeding one-tenth of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that that person took all reasonable steps for securing that the requirement in question would be complied with in time.

Group accounts

72 The provisions of Schedule 6 shall have effect with respect to—

(a) the preparation and auditing of accounts in respect of groups consisting of parent charities and their subsidiary undertakings (within the meaning of that Schedule), and

(b) other matters relating to such groups.

PART 9

CHARITY TRUSTEES

PROSPECTIVE

CHAPTER 1

INCORPORATION OF CHARITY TRUSTEES

Incorporation of trustees of a charity

73.—(1) Where—

(a) the trustees of a charity, in accordance with section 75, apply to the Commission for a certificate of incorporation of the trustees as a body corporate, and

(b) the Commission considers that the incorporation of the trustees would be in the interests of the charity,

the Commission may grant such a certificate, subject to such conditions or directions as the Commission thinks fit to insert in it.

(2) On the grant of such a certificate—

(a) the trustees of the charity shall become a body corporate by such name as is specified in the certificate; and

(b) (without prejudice to the operation of section 77) any relevant rights or liabilities of those trustees shall become rights or liabilities of that body.

(3) After their incorporation the trustees—

(a) may sue and be sued in their corporate name; and

(b) shall have the same powers, and be subject to the same restrictions and limitations, as respects the holding, acquisition and disposal of property

for or in connection with the purposes of the charity as they had or were subject to while unincorporated;

and any relevant legal proceedings that might have been continued or commenced by or against the trustees may be continued or commenced by or against them in their corporate name.

(4) A body incorporated under this section need not have a common seal.

(5) In this section—

"relevant rights or liabilities" means rights or liabilities in connection with any property vesting in the body in question under section 74; and

"relevant legal proceedings" means legal proceedings in connection with any such property.

Estate to vest in body corporate

74 The certificate of incorporation shall vest in the body corporate all real and personal estate, of whatever nature or tenure, belonging to or held by any person or persons in trust for the charity, and thereupon any person or persons in whose name or names any stocks, funds or securities are standing in trust for the charity, shall transfer them into the name of the body corporate, except that the foregoing provisions shall not apply to property vested in the official custodian.

Applications for incorporation

75.—(1) Every application to the Commission for a certificate of incorporation under this Chapter shall—

(a) be in writing and signed by the trustees of the charity concerned; and

(b) be accompanied by such documents or information as the Commission may require for the purpose of the application.

(2) The Commission may require—

(a) any statement contained in any such application, or

(b) any document or information supplied under subsection (1)(b),

to be verified in such manner as it may specify.

Nomination of trustees, and filling up vacancies

76.—(1) Before a certificate of incorporation is granted under this Chapter, trustees of the charity must have been effectually appointed to the satisfaction of the Commission.

(2) Where a certificate of incorporation is granted vacancies in the number of the trustees of the charity shall from time to time be filled up so far as required by the constitution or settlement of the charity, or by any conditions

or directions in the certificate, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as required by such conditions or directions.

Liability of trustees and others, notwithstanding incorporation

77 After a certificate of incorporation has been granted under this Chapter all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected.

Certificate to be evidence of compliance with requirements for incorporation

78 A certificate of incorporation granted under this Chapter shall be conclusive evidence that all the preliminary requirements for incorporation under this Chapter have been complied with, and the date of incorporation mentioned in the certificate shall be deemed to be the date at which incorporation has taken place.

Power of Commission to amend certificate of incorporation

79.—(1) The Commission may amend a certificate of incorporation either on the application of the incorporated body to which it relates or of the Commission's own motion.

(2) Before making any such amendment of the Commission's own motion, the Commission shall by notice in writing—

(a) inform the trustees of the relevant charity of its proposals, and

(b) invite those trustees to make representations to it within a time specified in the notice, being not less than one month from the date of the notice.

(3) The Commission shall take into consideration any representations made by those trustees within the time so specified, and may then (without further notice) proceed with its proposals either without modification or with such modifications as appear to it to be desirable.

(4) The Commission may amend a certificate of incorporation either—

(a) by making an order specifying the amendment; or

(b) by issuing a new certificate of incorporation taking account of the amendment.

Records of applications and certificates

80.—(1) The Commission shall keep a record of all applications for, and certificates of, incorporation under this Chapter **[**[F45]and documents sent to the Commission under this Chapter shall be kept by the Commission for such period as it thinks fit.**]**

[[F46](2) Subject to subsection (3), documents kept under this section shall be open to public inspection at all reasonable times; and any person who is provided with a copy or extract of any document kept under this section may require it to be certified by a certificate signed by a member of the staff of the Commission.**]**

(3) If the Commission so determines, subsection (2) shall not apply to any particular document, or to any document of a description, specified in the determination.

Textual Amendments

F45 Words in s. 80(1) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 16(2)**

F46 S. 80(2) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 16(3)**

Enforcement of orders and directions

81 All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the charity, and section 174 shall apply to any trustee who fails to perform or observe any such condition or direction as it applies to a person guilty of disobedience to any such order of the Commission as is mentioned in that section.

Gifts to charity before incorporation to have same effect afterwards

82 After the incorporation of the trustees of any charity under this Chapter every donation, gift and disposition of property, real or personal, lawfully made before the incorporation but not having actually taken effect, or thereafter lawfully made, by deed, will or otherwise to or in favour of the charity, or the trustees of the charity, or otherwise for the purposes of the charity, shall take effect as if made to or in favour of the incorporated body or otherwise for the like purposes.

Execution of documents by incorporated body

83.—(1) This section has effect as respects the execution of documents by an incorporated body.

(2) If an incorporated body has a common seal, a document may be executed by the body by the affixing of its common seal.

(3) Whether or not it has a common seal, a document may be executed by an incorporated body either—

(a) by being signed by a majority of the trustees of the relevant charity and expressed (in whatever form of words) to be executed by the body; or

(b) by being executed in pursuance of an authority given under subsection (4).

(4) For the purposes of subsection (3)(b) the trustees of the relevant charity in the case of an incorporated body may, subject to the trusts of the charity, confer on any 2 or more of their number—

(a) a general authority, or

(b) an authority limited in such manner as the trustees think fit,

to execute in the name and on behalf of the body documents for giving effect to transactions to which the body is a party.

(5) An authority under subsection (4)—

(a) shall suffice for any document if it is given in writing or by resolution of a meeting of the trustees of the relevant charity, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;

(b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;

(c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the trustees of the relevant charity, have effect as a continuing authority given by the trustees from time to time of the charity and exercisable by such trustees.

(6) In any authority under subsection (4) to execute a document in the name and on behalf of an incorporated body there shall, unless the contrary intention appears, be implied authority also to execute it for the body in the name and on behalf of the official custodian or of any other person, in any case in which the trustees could do so.

(7) A document duly executed by an incorporated body which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(8) In favour of a purchaser a document shall be deemed to have been duly executed by such a body if it purports to be signed—

(a) by a majority of the trustees of the relevant charity, or

(b) by such of the trustees of the relevant charity as are authorised by the trustees of that charity to execute it in the name and on behalf of the body,

and, where the document makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

For this purpose "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

Power of Commission to dissolve incorporated body

84.—(1) Where the Commission is satisfied—

(a) that an incorporated body has no assets or does not operate, or

(b) that the relevant charity in the case of an incorporated body has ceased to exist, or

(c) that the institution previously constituting, or treated by the Commission as constituting, any such charity has ceased to be, or (as the case may be) was not at the time of the body's incorporation, a charity, or

(d) that the purposes of the relevant charity in the case of an incorporated body have been achieved so far as is possible or are in practice incapable of being achieved,

the Commission may of its own motion make an order dissolving the body as from such date as is specified in the order.

(2) Where the Commission is satisfied, on the application of the trustees of the relevant charity in the case of an incorporated body, that it would be in the interests of the charity for that body to be dissolved, the Commission may make an order dissolving the body as from such date as is specified in the order.

(3) Subject to subsection (4), an order made under this section with respect to an incorporated body shall have the effect of vesting in the trustees of the relevant charity, in trust for that charity, all property for the time being vested—

(a) in the body, or

(b) in any other person (apart from the official custodian),

in trust for that charity.

(4) If the Commission so directs in the order—

(a) all or any specified part of that property shall, instead of vesting in the trustees of the relevant charity, vest—

(i) in a specified person as trustee for, or nominee of, that charity, or

(ii) in such persons (other than the trustees of the relevant charity) as may be specified;

(b) any specified investments, or any specified class or description of investments, held by any person in trust for the relevant charity shall be transferred—

(i) to the trustees of that charity, or

(ii) to any such person or persons as is or are mentioned in paragraph (a) (i) or (ii);

and for this purpose "specified" means specified by the Commission in the order.

(5) Where an order to which this subsection applies is made with respect to an incorporated body—

(a) any rights or liabilities of the body shall become rights or liabilities of the trustees of the relevant charity; and

(b) any legal proceedings that might have been continued or commenced by or against the body may be continued or commenced by or against those trustees.

(6) Subsection (5) applies to any order under this section by virtue of which—

(a) any property vested as mentioned in subsection (3) is vested—

(i) in the trustees of the relevant charity, or

(ii) in any person as trustee for, or nominee of, that charity; or

(b) any investments held by any person in trust for the relevant charity are required to be transferred—

(i) to the trustees of that charity, or

(ii) to any person as trustee for, or nominee of, that charity.

Interpretation of Chapter 1

85 In this Chapter—

"incorporated body" means a body incorporated under section 73;

"the relevant charity", in relation to an incorporated body, means the charity the trustees of which have been incorporated as that body;

"the trustees", in relation to a charity, means the charity trustees.

CHAPTER 2

OTHER PROVISIONS RELATING TO CHARITY TRUSTEES

Persons disqualified for being trustees of a charity

86.—(1) Subject to the following provisions of this section, a person (D) shall be disqualified for being a charity trustee or trustee for a charity if—

(a) D has been convicted of any offence involving dishonesty or deception;

(b) D has been adjudged bankrupt or sequestration of D's estate has been awarded and (in either case) D has not been discharged**[**[F47]or D is the subject of a bankruptcy restrictions order**]**;

(c) D has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it;

(d) D has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the Commission under section 33(2)(i), or

(ii) by the Court,

on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;

(e) D has been removed from the office of charity trustee or trustee of a charity by an order made—

(i) by the Charity Commission for England and Wales under **[**[F48]section 79(2)(a) of the Charities Act 2011 or**]** section 18(2)(i) of the Charities Act 1993 (c. 10), or

(ii) by the Charity Commissioners for England and Wales under **[**[F49]section 18(2)(i) of the 1993 Act**]** (as in force before the commencement of section 6 of the Charities Act 2006 (c. 50)), under section 20(1A)(i) of the Charities Act 1960 (c. 58) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41), or

(iii) by Her Majesty's High Court of Justice in England;

on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;

(f) D has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(g) D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) or the Company Directors Disqualification Act 1986 (c. 46).

[[F50](h) D is subject to—

(i) a moratorium period under a debt relief order; or

(ii) a debt relief restrictions order.**]**

(2) In subsection (1)—

(a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (NI 27);

(b) paragraph (b) applies whether the adjudication of bankruptcy **[**[F51], the sequestration or the making of the bankruptcy restrictions order**]** occurred before or after the commencement of that subsection;

(c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and

(d) paragraphs (d) to **[**[F52](h)**]** apply in relation to orders made and removals effected before or after the commencement of that subsection.

(3) Where (apart from this subsection) D is disqualified under subsection (1)(b)**[**[F53]or (h)**]** for being a charity trustee or trustee for any charity which is a company, D shall not be so disqualified if leave has been granted under Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) or section 11 of the Company Directors Disqualification Act 1986 (c. 46) (undischarged bankrupts) for D to act as director of the charity; and similarly D shall not be disqualified under subsection (1)(g) for being a charity trustee or trustee for such a charity if—

(a) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, leave for the purpose of Article 3(1)(a) or 4(1)(a) of that Order has been granted for D to act as director of the charity,

(b) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986, leave for the purpose of section 1(1)(a) or 1A(1)(a) of that Act has been granted for D to act as a director of the charity.

(4) The Commission may, on the application by D, waive D's disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—

(a) D is for the time being prohibited, by virtue of—

(i) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, or

(ii) Article 15(1), 16(2) or 17 of that Order (undischarged bankrupts; failure to pay under administration order, etc.),

from acting as director of the charity; and

(b) leave has not been granted for D to act as director of any other company.

(5) If—

(a) D is disqualified under subsection (1)(d), (e) or (f) and makes an application under subsection (4) five years or more after the date on which D's disqualification took effect, and

(b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.

(6) Any waiver under subsection (4) shall be notified in writing to D.

(7) For the purposes of this section the Commission shall keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) either—

(a) by an order of the Commission, or

(b) by an order of the Court;

and, where any person is so removed from office by an order of the Court, the Court shall notify the Commission of the removal.

(8) The entries in the register kept under subsection (7) shall be available for public inspection in legible form at all reasonable times.

Textual Amendments

F47 Words in s. 86(1)(b) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(3)(a)(i)**, 10(1)

F48 Words in s. 86(1)(e)(i) inserted (14.3.2012) by Charities Act 2011 (c. 25), ss. 354(1), 355, **Sch. 7 para. 138(a)** (with s. 20(2), Sch. 8)

F49 Words in s. 86(1)(e)(ii) substituted (14.3.2012) by Charities Act 2011 (c. 25), ss. 354(1), 355, **Sch. 7 para. 138(b)** (with s. 20(2), Sch. 8)

F50 S. 86(1)(h) added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(3)(a)(ii)**, 10(1)

F51 Words in s. 86(2)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(3)(b)(i)**, 10(1)

F52 Word in s. 86(2)(d) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(3)(b)(ii)**, 10(1)

F53 Words in s. 86(3) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(3)(c)**, 10(1)

Modifications etc. (not altering text)

C41 S. 86 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Person acting as charity trustee while disqualified

87.—(1) Subject to subsection (2), any person who acts as a charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86 is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(2) Subsection (1) shall not apply where—

(a) the charity concerned is a company; and

(b) the disqualified person is disqualified by virtue only of paragraph (b) **[**[F54], (g) or (h)**]** of section 86(1).

(3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 86 shall not be invalid by reason only of that disqualification.

(4) Where the Commission is satisfied that any person—

(a) has acted as charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86, and

(b) has, while so acting, received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity,

the Commission may by order direct that person to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commission) of any such benefit.

(5) Subsection (4) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity.

Textual Amendments

F54 Words in s. 87(2)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), **ss. 3(4)**, 10(1)

Modifications etc. (not altering text)

C42 S. 87 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Remuneration of trustees, etc. providing services to charity

88.—(1) This section applies to remuneration for services provided to or on behalf of a charity by a person—

(a) who is a charity trustee or trustee for the charity, or

(b) who is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7).

(2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services ("the relevant person") is entitled to receive the remuneration out of the funds of the charity.

(3) Condition A is that the amount or maximum amount of the remuneration—

(a) is set out in an agreement in writing between—

(i) the charity or its charity trustees (as the case may be), and

(ii) the relevant person,

under which the relevant person is to provide the services in question to or on behalf of the charity, and

(b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.

(4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.

(5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—

(a) a person in respect of whom an agreement within subsection (3) is in force, or

(b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or

(c) a person connected with a person falling within paragraph (a) or (b),

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

(6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.

(7) Nothing in this section applies to—

(a) any remuneration for services provided by a person in the capacity of a charity trustee or trustee for a charity or under a contract of employment, or

(b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).

(8) The provisions or orders within this subsection are—

(a) any provision contained in the trusts of the charity,

(b) any order of the Court or the Commission,

(c) any statutory provision other than this section.

(9) Section 89 applies for the purposes of this section.

Modifications etc. (not altering text)

C43 S. 88 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Supplementary provisions for purposes of section 88

89.—(1) Before entering into an agreement within section 88(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.

(2) The duty of care in section 1(1) of the Trustee Act (Northern Ireland) 2001 (c. 14) applies to a charity trustee when making such a decision as is mentioned in section 88(4).

(3) For the purposes of section 88(5) an agreement within section 88(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.

(4) In section 88—

"benefit" means a direct or indirect benefit of any nature;

"maximum amount", in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;

"remuneration" includes any benefit in kind (and "amount" accordingly includes monetary value);

"services", in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.

(5) For the purposes of section 88 the following persons are "connected" with a charity trustee or trustee for a charity—

(a) a child, parent, grandchild, grandparent, brother or sister of the trustee;

(b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);

(c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);

(d) an institution which is controlled—

(i) by the trustee or by any person falling within paragraph (a), (b) or (c), or

(ii) by two or more persons falling within sub-paragraph (i) when taken together;

(e) a body corporate in which—

(i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or

(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(6) Paragraphs 2 to 4 of Schedule 5 apply for the purposes of subsection (5) as they apply for the purposes of provisions of that Schedule.

Modifications etc. (not altering text)

C44 S. 89 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Disqualification of trustee receiving remuneration under section 88

90.—(1) This section applies to any charity trustee or trustee for a charity—

(a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 88(3), or

(b) who is connected with a person who is or would be so entitled.

(2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.

(3) But any act done by a person who is disqualified from doing it by virtue of subsection (2) shall not be invalid by reason only of that disqualification.

(4) Where the Commission is satisfied—

(a) that a person ("the disqualified trustee") who was disqualified from doing any act by virtue of subsection (2) has done that act, and

(b) that the disqualified trustee or a person connected with the disqualified trustee has received or is to receive from the charity any remuneration under the agreement in question,

it may make an order under subsection (5) or (6) (as appropriate).

(5) An order under this subsection is one requiring the disqualified trustee—

(a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b);

(b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.

(6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b).

(7) If the Commission makes an order under subsection (5) or (6), the disqualified trustee or (as the case may be) connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires to be reimbursed to the charity or (as the case may be) as it directs is not to be paid to the disqualified trustee or connected person.

(8) Subsections (4) to (6) of section 89 apply for the purposes of this section as they apply for the purposes of section 88.

Modifications etc. (not altering text)

C45 S. 90 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Power to relieve trustees, auditors, etc. from liability for breach of trust or duty

91.—(1) This section applies to a person who is or has been—

(a) a charity trustee or trustee for a charity,

(b) a person appointed to audit a charity's accounts (whether appointed under a statutory provision or otherwise), or

(c) an independent examiner[F55]... or other person appointed to examine or report on a charity's accounts (whether appointed under a statutory provision or otherwise).

(2) If the Commission considers—

(a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in the capacity of a person within paragraph (a), (b) or (c) of subsection (1), but

(b) that the person has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,

the Commission may make an order relieving that person wholly or partly from any such liability.

(3) An order under subsection (2) may grant the relief on such terms as the Commission thinks fit.

(4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.

(5) In subsection (1)(b) and (c) any reference to a charity's accounts is to be read as including any group accounts prepared by the charity trustees of a charity.

(6) This section does not affect the operation of—

(a) section 61 of the Trustee Act (Northern Ireland) 1958 (c. 23) (power of court to grant relief to trustees),

(b) section 1157 of the Companies Act 2006 (c. 46) (power of court to grant relief to officers or auditors of companies), or

(c) section 92(2) (which extends section 1157 to auditors, etc. of charities which are not companies).

Textual Amendments

F55 Words in s. 91(1)(c) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 17, **2**

Commencement Information

I31 S. 91(1)(a)(3)(4)(6)(a) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

I32 S. 91(2) in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

PROSPECTIVE

Court's power to grant relief to apply to all auditors, etc. of charities which are not companies

92.—(1) Section 1157 of the Companies Act 2006 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as auditor by a company.

(2) This section applies to—

(a) a person acting in a capacity within section 91(1)(b) or (c) in a case where, apart from this section, section 1157 of the Companies Act 2006 would not apply to that person as a person so acting, and

(b) a charity trustee of a CIO.

Trustees' indemnity insurance

93.—(1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—

(a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or

(b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.

(2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—

(a) any liability incurred by that person to pay—

(i) a fine imposed in criminal proceedings, or

(ii) a sum payable to a regulator authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);

(b) any liability incurred by that person in defending any criminal proceedings in which that person is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by that person; or

(c) any liability incurred by that person to the charity that arises out of any conduct which that person knew (or must reasonably be assumed to have known) was not in the interest of the charity or in the case of which that person did not care whether it was in the best interests of the charity or not.

(3) For the purposes of subsection (2)(b)—

(a) the reference to any such conviction is a reference to one that has become final;

(b) a conviction becomes final—

(i) if not appealed against, at the end of the period for bringing an appeal, or

(ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and

(c) an appeal is disposed of—

(i) if it is determined and the period for bringing any further appeal has ended, or

(ii) if it is abandoned or otherwise ceases to have effect.

(4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.

(5) The duty of care in section 1(1) of the Trustee Act (Northern Ireland) 2001 (c. 14) applies to a charity trustee when making such a decision.

(6) The Department may by order make such amendments of subsections (2) and (3) as it considers appropriate.

(7) No order may be made under subsection (6) unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(8) This section—

(a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but

(b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.

Modifications etc. (not altering text)

C46 S. 93 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

PROSPECTIVE

Trustees

94.—(1) The Trustee Act (Northern Ireland) 2001 (c. 14) shall be amended as follows.

(2) In section 17 (power to appoint custodians), after subsection (3) add—

"(4) This section does not apply in relation to any assets vested in the official custodian for charities.".

(3) In section 18 (investment in bearer securities), after subsection (3) add—

"(4) This section does not apply in relation to any assets vested in the official custodian for charities.".

(4) For section 41 (common investment schemes) substitute—

"**41 Common investment schemes for charities, etc.**

41 Parts 2 to 4 do not apply to—

(a) trustees managing a fund under a common investment scheme made, or having effect as if made, under section 43 of the Charities Act (Northern Ireland) 2008, other than such a fund the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are trustees appointed to manage the fund, or

(b) trustees managing a fund under a common deposit scheme made, or having effect as if made under section 44 of that Act.".

PART 10

CHARITABLE COMPANIES

PROSPECTIVE

Winding up

95.—(1) Where a charity may be wound up by the High Court under the Insolvency (Northern Ireland) Order 1989 (NI 19), a petition for it to be wound up under that Order may be presented by the Attorney General, as well as by any person authorised by that Order.

(2) Where a charity may be so wound up by the High Court, such a petition may also be presented by the Commission if, at any time after it has instituted an inquiry under section 22 with respect to the charity, it is satisfied as mentioned in section 33(1)(a) or (b).

[[F56](3) The Commission may make an application under section 1029 of the Companies Act 2006 (application to court for restoration to the register of companies) to restore a charitable company to the register of companies.**]**

(5) The powers exercisable by the Commission by virtue of this section shall be exercisable by the Commission of its own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

(6) In this section "charitable company" means a company which is a charity.

Textual Amendments

F56 S. 95(3) substituted for s. 95(3)(4) (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 18**

Alteration of objects [F57]...

96.—(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—

(a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,

(b) any property representing income which has accrued before the alteration is made, or

(c) the income from any such property as aforesaid.

(2) Where a charity is a company, any regulated alteration by the company—

(a) requires the prior written consent of the Commission, and

(b) is ineffective if such consent has not been obtained.

(3) The following are "regulated alterations"—

[[F58](a) an amendment of the company's articles of association adding, removing or altering a statement of the company's objects,**]**

(b) any alteration of any provision of its **[**[F59]articles of association**]** directing the application of property of the company on its dissolution, and

(c) any alteration of any provision of its **[**[F60]articles of association**]** where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(4) For the purposes of subsection (3)—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 88) whose receipt may be authorised under that section; and

(b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 89(5) and (6), for determining whether a person is connected with a charity trustee for the purposes of section 88.

[[F61](5) Where a company that has made a regulated alteration in accordance with subsection (2) is required—

(a) by section 26 of the Companies Act to send to the registrar of companies a copy of its articles as amended,

(b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or

(c) by section 31 of that Act to give notice to the registrar of the amendment,

the copy or notice must be accompanied by a copy of the Commission's consent.

(5A) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(6) Section 30(2) to (4) of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (5) as in relation to a failure to comply with that section.**]**

Textual Amendments

F57 Word in s. 96 heading repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 19(2), **2**

F58 S. 96(3)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 19(3)(a)**

F59 Words in s. 96(3)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 19(3)(b)**

F60 Words in s. 96(3)(c) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 19(3)(b)**

F61 S. 96(5)(5A)(6) substituted for s. 96(5)(6) (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 19(4)**

Commencement Information

I33 S. 96 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

PROSPECTIVE

Invalidity of certain transactions

[F62]97 . . . . . .

Textual Amendments

F62 S. 97 repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 20, **2**

Consent of Commission required for approval etc by members of charitable companies

98.—(1) Where a company is a charity—

(a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2), and

(b) any affirmation given by members of the company under section 196 or 214 of that Act (affirmation of unapproved property transactions and loans),

is ineffective without the prior written consent of the Commission.

(2) The provisions are—

(a) section 188 (directors' long-term service contracts);

(b) section 190 (substantial property transactions with directors etc);

(c) section 197, 198 or 200 (loans and quasi-loans to directors etc);

(d) section 201 (credit transactions for benefit of directors etc);

(e) section 203 (related arrangements);

(f) section 217 (payments to directors for loss of office);

(g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

Commencement Information

I34 S. 98 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Consent of Commission required for certain acts of charitable company

99.—(1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.

(2) This section applies to an act that—

(a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but

(b) would require such approval but for an exemption in the provision in question that disapplies the need for approval on the part of the members of a body corporate which is a wholly owned subsidiary of another body corporate.

(3) The reference to a listed provision is a reference to a provision listed in section 98(2).

(4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) shall be treated as of no effect in relation to the act.

Commencement Information

I35 S. 99 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Requirement to disclose charitable status

100.—(1) Where a company is a charity and its name does not include the word "charity" or "charitable", the fact that the company is a charity must be stated in legible characters—

(a) in every location, and in every description of document or communication, in which it is required by regulations under section 82 of the Companies Act 2006 (c. 46) to state its registered name, and

(b) in all conveyances purporting to be executed by the company.

(2) In subsection (1)(b) "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

Commencement Information

I36 S. 100 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Civil consequences of failure to make required disclosure

101.—(1) This section applies to any legal proceedings brought by a company to which section 100 applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that section.

(2) The proceedings shall be dismissed if the defendant to the proceedings ("D") shows—

(a) that D has a claim against the claimant arsing out of the contract or conveyance that D has been unable to pursue by reason of the failure to comply with section 100, or

(b) that D has suffered some financial loss in connection with the contract or conveyance by reason of the failure to comply with that section,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This section does not affect the right of any person to enforce such rights as that person may have against another in any proceedings brought by that person.

Commencement Information

I37 S. 101 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Criminal consequences of failure to make required disclosure

102.—(1) Where a company fails, without reasonable excuse, to comply with section 100, an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(2) For this purpose a shadow director of the company is treated as an officer of the company if the failure is to comply with section 100(1)(a) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under section 82 of the Companies Act 2006 (c. 46).

(3) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(4) Expressions used in this section have the same meaning as in section 84 of the Companies Act 2006 (criminal consequences of failure to disclose company's registered name).

Commencement Information

I38 S. 102 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

VALID FROM 01/01/2016

Duty of charity's auditors, etc. to report matters to Commission

103.—(1) Section 67(2) to (7) shall apply in relation to a person acting as an auditor of a charitable company appointed under Chapter 2 of Part 16 of the Companies Act 2006 (c. 46) (appointment of auditors) as they apply in relation to a person such as is mentioned in section 67(1).

(2) For this purpose any reference in section 67 to a person acting in the capacity mentioned in section 67(1) is to be read as a reference to that person acting in the capacity mentioned in subsection (1) of this section.

(3) In this section "charitable company" means a charity which is a company.

VALID FROM 01/01/2016

Investigation of accounts

104.—(1) In the case of a charity which is a company the Commission may by order require that the condition and relevant accounts of the charity for such period as the Commission thinks fit shall be investigated and audited by an auditor appointed by the Commission, being a person eligible for

appointment as a statutory auditor under Part 42 of the Companies Act 2006 (c. 46).

(2) "Relevant accounts" means accounts required to be audited under Part 16 of the Companies Act 2006.

(3) An auditor acting under subsection (1)—

(a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;

(b) shall be entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the charity such information and explanation as the auditor thinks necessary for the performance of the auditor's duties;

(c) shall at the conclusion or during the progress of the audit make such reports to the Commission about the audit or about the accounts or affairs of the charity as the auditor thinks the case requires, and shall send a copy of any such report to the charity trustees.

(4) The expenses of any audit under subsection (1), including the remuneration of the auditor, shall be paid by the Commission.

(5) If any person fails to afford an auditor any facility to which the auditor is entitled under subsection (3) the Commission may by order give to that person or to the charity trustees for the time being such directions as the Commission thinks appropriate for securing that the default is made good.

PROSPECTIVE

PART 11

CHARITABLE INCORPORATED ORGANISATIONS

Nature and constitution

Nature and constitution

105.—(1) In this Act, a charitable incorporated organisation is referred to as a "CIO".

(2) A CIO shall be a body corporate.

(3) A CIO shall have a constitution.

(4) A CIO shall have a principal office, which shall be in Northern Ireland.

(5) A CIO shall have one or more members.

(6) The members may be either—

(a) not liable to contribute to the assets of the CIO if it is wound up, or

(b) liable to do so up to a maximum amount each.

Constitution

106.—(1) A CIO's constitution shall state—

(a) its name,

(b) its purposes, and

(c) whether or not its members are liable to contribute to its assets if it is wound up, and (if they are) up to what amount.

(2) A CIO's constitution shall make provision—

(a) about who is eligible for membership, and how a person becomes a member,

(b) about the appointment of one or more persons who are to be charity trustees of the CIO, and about any conditions of eligibility for appointment, and

(c) containing directions about the application of property of the CIO on its dissolution.

(3) A CIO's constitution shall also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Department.

(4) A CIO's constitution shall be in the form specified in regulations made by the Commission, or as near to that form as the circumstances admit.

(5) Subject to anything in a CIO's constitution: a charity trustee of the CIO may, but need not, be a member of it; a member of the CIO may, but need not, be one of its charity trustees; and those who are members of the CIO and those who are its charity trustees may, but need not, be identical.

Name and status

107.—(1) The name of a CIO must appear in legible characters—

(a) in every location, and in every description of document or communication, in which a charitable company would be required by regulations under section 82 of the Companies Act 2006 (c. 46) to state its registered name; and

(b) in all conveyances purporting to be executed by the CIO.

(2) In subsection (1)(b), "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Subsection (4) applies if the name of a CIO does not include—

(a) "charitable incorporated organisation", or

(b) "CIO", with or without full stops after each letter,

and it is irrelevant, in any such case, whether or not capital letters are used.

(4) If this subsection applies, the fact that a CIO is a CIO shall be stated in legible characters in all the locations, documents, communications and conveyances mentioned in subsection (1).

Civil consequences of failure to disclose name and status

108.—(1) This section applies to any legal proceedings brought by a CIO to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with section 107.

(2) The proceedings shall be dismissed if the defendant to the proceedings ("D") shows—

(a) that D has a claim against the CIO arising out of the contract or conveyance that D has been unable to pursue by reason of the failure to comply with section 107, or

(b) that D has suffered some financial loss in connection with the contract or conveyance by reason of the failure to comply with that section,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This section does not affect the right of any person to enforce such rights as that person may have against another in any proceedings brought by that person.

Offences connected with name and status

109.—(1) In the case of failure, without reasonable excuse, to comply with section 107 an offence is committed by—

(a) every charity trustee of the CIO who is in default, and

(b) any other person who on the CIO's behalf—

(i) signs or authorises the signing of the offending document, communication or conveyance, or

(ii) otherwise commits or authorises the offending act or omission.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(3) The reference in subsection (1) to a charity trustee being "in default", and the reference in subsection (2) to a daily default fine, have the same meaning as

in the Companies Acts (see sections 1121 to 1123 and 1125 of the Companies Act 2006 (c. 46)).

(4) A person who holds any body out as being a CIO when it is not (however the person does this) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) It is a defence for a person charged with an offence under subsection (4) to prove that the person believed on reasonable grounds that the body was a CIO.

Registration

Application for registration

110.—(1) Any one or more persons ("the applicants") may apply to the Commission for a CIO to be constituted and for its registration as a charity.

(2) The applicants shall supply the Commission with—

(a) a copy of the proposed constitution of the CIO,

(b) such other documents or information as may be prescribed by regulations made by the Department, and

(c) such other documents or information as the Commission may require for the purposes of the application.

(3) The Commission shall refuse such an application if—

(a) it is not satisfied that the CIO would be a charity at the time it would be registered, or

(b) the CIO's proposed constitution does not comply with one or more of the requirements of section 106 and any regulations made under that section.

(4) The Commission may refuse such an application if—

(a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not), or

(b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 20(2) (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on).

Effect of registration

111.—(1) If the Commission grants an application under section 110 it shall register the CIO to which the application relates as a charity in the register of charities.

(2) Upon the registration of the CIO in the register of charities, it becomes by virtue of the registration a body corporate—

(a) whose constitution is that proposed in the application,

(b) whose name is that specified in the constitution, and

(c) whose first member is, or first members are, the applicants referred to in section 110.

(3) All property for the time being vested in the applicants (or, if more than one, any of them) on trust for the charitable purposes of the CIO (when incorporated) shall by virtue of this subsection becomes vested in the CIO upon its registration.

(4) The entry relating to the charity's registration in the register of charities shall include—

(a) the date of the charity's registration, and

(b) a note saying that it is constituted as a CIO.

(5) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

Conversion, amalgamation and transfer

Conversion of charitable company or [[F63]registered society]

112.—(1) The following may apply to the Commission to be converted into a CIO, and for the CIO's registration as a charity, in accordance with this section—

(a) a charitable company,

(b) a charity which is a registered society within the meaning of **[**[F64]the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 ("the 1969 Act")**]** (c. 24).

(2) But such an application may not be made by a company or registered society having a share capital if any of the shares are not fully paid up.

(3) Such an application is referred to in this section and sections 113 and 114 as an "application for conversion".

(4) The Commission shall notify the following of any application for conversion—

(a) the appropriate registrar, and

(b) such other persons (if any) as the Commission thinks appropriate in the particular case.

(5) The company or registered society shall supply the Commission with—

(a) a copy of a resolution of the company or registered society that it be converted into a CIO,

(b) a copy of the proposed constitution of the CIO,

(c) a copy of a resolution of the company or registered society adopting the proposed constitution of the CIO,

(d) such other documents or information as may be prescribed by regulations made by the Department, and

(e) such other documents or information as the Commission may require for the purposes of the application.

(6) The resolution referred to in subsection (5)(a) shall be—

(a) a special resolution of the company or registered society, or

(b) a unanimous resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.

(7) In the case of a company, Chapter 3 of Part 3 of the Companies Act 2006 (c. 46) does not apply to such a resolution.

(8) In the case of a registered society, "special resolution" has the meaning given in section 61(3) of **[**[F65]the 1969 Act **]** .

(9) In the case of a company limited by guarantee which makes an application for conversion (whether or not it also has a share capital), the proposed constitution of the CIO shall (unless subsection (11) applies) provide for the CIO's members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable.

(10) That amount shall not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up.

(11) If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less, the guarantee shall be extinguished on the conversion of the company into a CIO, and the requirements of subsections (9) and (10) do not apply.

(12) In subsection (4), and in sections 113 and 114, "the appropriate registrar" means—

(a) in the case of an application for conversion by a charitable company, the registrar of companies,

(b) in the case of an application for conversion by a registered society, the registrar for the purposes of **[**[F66]the 1969 Act**]** (c. 24).

(13) In this section, "charitable company" means a company which is a charity.

Textual Amendments

F63 Words in s. 112 heading substituted (6.4.2018) by Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), s. 17(2), **Sch. 1 para. 34(5)**; S.R. 2017/217, art. 2(d)

F64 Words in s. 112(1)(b) substituted (6.4.2018) by Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), s. 17(2), **Sch. 1 para. 34(2)**; S.R. 2017/217, art. 2(d)

F65 Words in s. 112(8) substituted (6.4.2018) by Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), s. 17(2), **Sch. 1 para. 34(3)**; S.R. 2017/217, art. 2(d)

F66 Words in s. 112(12)(b) substituted (6.4.2018) by Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), s. 17(2), **Sch. 1 para. 34(4)**; S.R. 2017/217, art. 2(d)

Conversion: consideration of application

113.—(1) The Commission shall consult those to whom it has given notice of an application for conversion under section 112(4) about whether the application should be granted.

(2) The Commission shall refuse an application for conversion if—

(a) it is not satisfied that the CIO would be a charity at the time it would be registered,

(b) the CIO's proposed constitution does not comply with one or more of the requirements of section 106 and any regulations made under that section, or

(c) in the case of an application for conversion made by a company limited by guarantee, the CIO's proposed constitution does not comply with the requirements of subsections (9) and (10) of section 112.

(3) The Commission may refuse an application for conversion if—

(a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not),

(b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 20(2) (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on), or

(c) having considered any representations received from those whom it has consulted under subsection (1), the Commission considers (having

regard to any regulations made under subsection (4)) that it would not be appropriate to grant the application.

(4) The Department may make provision in regulations about circumstances in which it would not be appropriate to grant an application for conversion.

(5) If the Commission refuses an application for conversion, it shall so notify the appropriate registrar (see section 112(12)).

Conversion: supplementary

114.—(1) If the Commission grants an application for conversion, it shall—

(a) register the CIO to which the application related in the register of charities, and

(b) send to the appropriate registrar (see section 112(12)) a copy of each of the resolutions of the converting company or registered society referred to in section 112(5)(a) and (c), and a copy of the entry in the register relating to the CIO.

(2) The registration of the CIO in the register shall be provisional only until the appropriate registrar cancels the registration of the company or registered society as required by subsection (3)(b).

(3) The appropriate registrar shall—

(a) register the documents received under subsection (1)(b), and

(b) cancel the registration of the company in the register of companies, or of the society in the register maintained under **[**[F67]the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969**]** (c. 24),

and shall notify the Commission of having done so.

(4) When the appropriate registrar cancels the registration of the company or of the registered society, the company or registered society is thereupon converted into a CIO, being a body corporate—

(a) whose constitution is that proposed in the application for conversion,

(b) whose name is that specified in the constitution, and

(c) whose first members are the members of the converting company or society immediately before the moment of conversion.

(5) If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall by virtue of this subsection be cancelled, and no former holder of any cancelled share shall have any right in respect of it after its cancellation.

(6) Subsection (5) does not affect any right which accrued in respect of a share before its cancellation.

(7) The entry relating to the charity's registration in the register shall include—

(a) a note that it is constituted as a CIO,

(b) the date on which it became so constituted, and

(c) a note of the name of the company or society which was converted into the CIO,

but the matters mentioned in paragraphs (a) and (b) are to be included only when the appropriate registrar has notified the Commission as required by subsection (3).

(8) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

(9) The conversion of a charitable company or of a registered society into a CIO does not affect, in particular, any liability to which the company or registered society was subject by virtue of its being a charitable company or registered society.

Textual Amendments

F67 Words in s. 114(3)(b) substituted (6.4.2018) by Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), s. 17(2), **Sch. 1 para. 35**; S.R. 2017/217, art. 2(d)

Conversion of community interest company

115.—(1) The Department may by regulations make provision for the conversion of a community interest company into a CIO, and for the CIO's registration as a charity.

(2) The regulations may, in particular, apply, or apply with modifications specified in the regulations, or disapply, anything in sections 53 to 55 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 or in sections 112 to 114 above.

Amalgamation of CIOs

116.—(1) Any two or more CIOs ("the old CIOs") may, in accordance with this section, apply to the Commission to be amalgamated, and for the incorporation and registration as a charity of a new CIO ("the new CIO") as their successor.

(2) Such an application is referred to in this section and section 117 as an "application for amalgamation".

(3) Subsections (2) to (4) of section 110 apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, but in those subsections—

(a) "the applicants" shall be construed as meaning the old CIOs, and

(b) references to the CIO are to the new CIO.

(4) In addition to the documents and information referred to in section 110(2), the old CIOs shall supply the Commission with—

(a) a copy of a resolution of each of the old CIOs approving the proposed amalgamation, and

(b) a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO.

(5) The resolutions referred to in subsection (4) must have been passed—

(a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or

(b) unanimously by the CIO's members, otherwise than at a general meeting.

(6) The date of passing of such a resolution is—

(a) the date of the general meeting at which it was passed, or

(b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 of Schedule 7 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).

(7) Each old CIO shall—

(a) give notice of the proposed amalgamation in the way (or ways) that in the opinion of its charity trustees will make it most likely to come to the attention of those who would be affected by the amalgamation, and

(b) send a copy of the notice to the Commission.

(8) The notice shall invite any persons who consider that they would be affected by the proposed amalgamation to make representations to the Commission not later than a date determined by the Commission and specified in the notice.

(9) In addition to being required to refuse it on one of the grounds mentioned in section 110(3) as applied by subsection (3) of this section, the Commission shall refuse an application for amalgamation if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes.

(10) The Commission may refuse an application for amalgamation if it is not satisfied that the provision in the constitution of the new CIO about the matters mentioned in subsection (11) is the same, or substantially the same, as the provision about those matters in the constitutions of each of the old CIOs.

(11) The matters are—

(a) the purposes of the CIO,

(b) the application of property of the CIO on its dissolution, and

(c) authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.

(12) For the purposes of subsection (11)(c)—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 88) whose receipt may be authorised under that section, and

(b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 89(5) and (6), for determining whether a person is connected with a charity trustee for the purposes of section 88.

Amalgamation: supplementary

117.—(1) If the Commission grants an application for amalgamation, it shall register the new CIO in the register of charities.

(2) Upon the registration of the new CIO it thereupon becomes by virtue of the registration a body corporate—

(a) whose constitution is that proposed in the application for amalgamation,

(b) whose name is that specified in the constitution, and

(c) whose first members are the members of the old CIOs immediately before the new CIO was registered.

(3) Upon the registration of the new CIO—

(a) all the property, rights and liabilities of each of the old CIOs shall become by virtue of this paragraph the property, rights and liabilities of the new CIO, and

(b) each of the old CIOs shall be dissolved.

(4) Any gift which—

(a) is expressed as a gift to one of the old CIOs, and

(b) takes effect on or after the date of registration of the new CIO,

takes effect as a gift to the new CIO.

(5) The entry relating to the registration in the register of the charity constituted as the new CIO shall include—

(a) a note that it is constituted as a CIO,

(b) the date of the charity's registration, and

(c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs.

(6) A copy of the entry in the register shall be sent to the charity at the principal office of the new CIO.

Transfer of CIO's undertaking

118.—(1) A CIO may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution.

(2) Where a CIO has passed such a resolution, it shall send to the Commission—

(a) a copy of the resolution, and

(b) a copy of a resolution of the transferee CIO agreeing to the transfer to it.

(3) Subsections (5) and (6) of section 116 apply to the resolutions referred to in subsections (1) and (2)(b) as they apply to the resolutions referred to in section 116(4).

(4) Having received the copy resolutions referred to in subsection (2), the Commission—

(a) may direct the transferor CIO to give public notice of its resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO.

(5) The resolution**[**[F68]of the transferor CIO**]** shall not take effect until confirmed by the Commission.

(6) The Commission shall refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor CIO.

(7) The Commission may refuse to confirm the resolution if it is not satisfied that the provision in the constitution of the transferee CIO about the matters mentioned in section 116(11) is the same, or substantially the same, as the provision about those matters in the constitution of the transferor CIO.

(8) If the Commission does not notify the transferor CIO within the relevant period that it is either confirming or refusing to confirm the resolution, the resolution is to be treated as confirmed by the Commission on the day after the end of that period.

(9) Subject to subsection (10), "the relevant period" means—

(a) in a case where the Commission directs the transferor CIO under subsection (4) to give public notice of its resolution, the period of 6 months beginning with the date when that notice is given, or

(b) in any other case, the period of 6 months beginning with the date when both of the copy resolutions referred to in subsection (2) have been received by the Commission.

(10) The Commission may at any time within the period of 6 months mentioned in subsection (9)(a) or (b) give the transferor CIO a notice extending the relevant period by such period (not exceeding 6 months) as is specified in the notice.

(11) A notice under subsection (10) must set out the Commission's reasons for the extension.

(12) If the resolution is confirmed (or treated as confirmed) by the Commission—

(a) all the property, rights and liabilities of the transferor CIO shall become by virtue of this subsection the property, rights and liabilities of the transferee CIO in accordance with the resolution, and

(b) the transferor CIO shall be dissolved.

(13) Any gift which—

(a) is expressed as a gift to the transferor CIO, and

(b) takes effect on or after the date on which the resolution is confirmed (or treated as confirmed),

takes effect as a gift to the transferee CIO.

Textual Amendments

F68 Words in s. 118(5) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 21**

Winding up, insolvency and dissolution

Regulations about winding up, insolvency and dissolution

119.—(1) The Department may by regulations make provision about—

(a) the winding up of CIOs,

(b) their insolvency,

(c) their dissolution, and

(d) their revival and restoration to the register following dissolution.

(2) The regulations may, in particular, make provision—

(a) about the transfer on the dissolution of a CIO of its property and rights (including property and rights held on trust for the CIO) to the official custodian or another person or body,

(b) requiring any person in whose name any stocks, funds or securities are standing in trust for a CIO to transfer them into the name of the official custodian or another person or body,

(c) about the disclaiming, by the official custodian or other transferee of a CIO's property, of title to any of that property,

(d) about the application of a CIO's property cy-près,

(e) about circumstances in which charity trustees may be personally liable for contributions to the assets of a CIO or for its debts,

(f) about the reversal on a CIO's revival of anything done on its dissolution.

(3) The regulations may—

(a) apply any statutory provision which would not otherwise apply, either without modification or with modifications specified in the regulations,

(b) disapply, or modify (in ways specified in the regulations) the application of, any statutory provision which would otherwise apply.

(4) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of the Assembly.

Miscellaneous

Power to transfer all property of unincorporated charity to one or more CIOs

120 Section 123 (power to transfer all property of unincorporated charity) applies with the omission of paragraph (a) of subsection (1) in relation to a resolution by the charity trustees of a charity to transfer all its property to a CIO or to divide its property between two or more CIOs.

Further provision about CIOs

121 The provisions of Schedule 7 shall have effect with respect to CIOs.

Regulations

122.—(1) The Department may by regulations make further provision about applications for registration of CIOs, the administration of CIOs, the conversion of charitable companies, registered societies and community interest companies into CIOs, the amalgamation of CIOs, and in relation to CIOs generally.

(2) The regulations may, in particular, make provision about—

(a) the execution of deeds and documents,

(b) the electronic communication of messages or documents relevant to a CIO or to any dealing with the Commission in relation to one,

(c) the maintenance of registers of members and of charity trustees,

(d) the maintenance of other registers (for example, a register of charges over the CIO's assets).

(3) The regulations may, in relation to charities constituted as CIOs—

(a) disapply any of sections 16 to 18,

(b) modify the application of any of those sections in ways specified in the regulations.

(4) Subsections (3) and (4) of section 119 apply for the purposes of this section as they apply for the purposes of that section.

PART 12

POWERS OF UNINCORPORATED CHARITIES

Transfer of property

Power to transfer all property of unincorporated charity

123.—(1) This section applies to a charity if—

(a) its gross income in its last financial year did not exceed £10,000,

(b) either—

(i) it does not hold any designated land; or

(ii) the total market value of all designated land which it holds does not exceed £90,000; and

(c) it is not a company or other body corporate.

"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

(2) The charity trustees of such a charity may resolve for the purposes of this section—

(a) that all the property of the charity should be transferred to another charity specified in the resolution, or

(b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.

(3) But the charity trustees of a charity ("the transferor charity") do not have power to pass a resolution under subsection (2) unless they are satisfied—

(a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and

(b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.

(4) Any resolution under subsection (2) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.

(5) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

(6) Having received the copy of the resolution, the Commission—

(a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(8) Subject to the provisions of section 124, a resolution under subsection (2) takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

(9) Where such a resolution has taken effect, the charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred—

(a) is to be held by the charity to which it is transferred ("the transferee charity") in accordance with subsection (10), but

(b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity;

and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.

(10) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.

But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property.

(11) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—

(a) in the transferee charity, in its charity trustees or in any trustee for that charity, or

(b) in any other person nominated by those charity trustees to hold property in trust for that charity.

(12) The Department may by order amend subsection (1) by substituting a different sum for any sum for the time being specified there.

(13) In this section references to the transfer of property to a charity are references to its transfer—

(a) to the charity, or

(b) to the charity trustees, or

(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 charity trustees may determine.

(14) In this section "market value", in relation to any land held by a charity, means—

(a) the market value of the land as recorded in the accounts for the last financial year of the charity, or

(b) if no such value was so recorded, the current market value of the land as determined on a valuation carried out for the purpose.

(15) Where a charity has a permanent endowment, this section has effect in accordance with section 125.

Commencement Information

I39 S. 123 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Resolution not to take effect or to take effect at later date

124.—(1) This section deals with circumstances in which a resolution under section 123(2) either—

(a) does not take effect under section 123(8), or

(b) takes effect at a time later than that mentioned in section 123(8).

(2) A resolution does not take effect under section 123(8) if before the end of—

(a) the period of 60 days mentioned in section 123(8) ("the 60-day period"), or

(b) that period as modified by subsection (3) or (4),

the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.

"On procedural grounds" means on the grounds that any obligation imposed on the charity trustees by or under section 123 has not been complied with in connection with the resolution.

(3) If under section 123(6) the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—

(a) as from the date on which the direction is given to the charity trustees, and

(b) 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.

(4) If under section 123(7) the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—

(a) as from the date on which the direction is given to the charity trustees, and

(b) until the date on which the information or explanations is or are provided to the Commission.

(5) Subsection (6) applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (3) and (4) exceeds 120 days.

(6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

Commencement Information

I40 S. 124 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Transfer where charity has permanent endowment

125.—(1) This section provides for the operation of section 123 where a charity within section 123(1) has a permanent endowment (whether or not the charity's trusts contain provision for the termination of the charity).

(2) In such a case section 123 applies as follows—

(a) if the charity has both a permanent endowment and other property ("unrestricted property")—

(i) a resolution under section 123(2) must relate to both its permanent endowment and its unrestricted property, and

(ii) that section applies in relation to its unrestricted property in accordance with subsection (3) and in relation to its permanent endowment in accordance with subsections (4) to (11);

(b) if all of the property of the charity is comprised in its permanent endowment, that paragraph applies in relation to its permanent endowment in accordance with subsections (4) to (11).

(3) Section 123 applies in relation to unrestricted property of the charity as if references in that section to all or any of the property of the charity were references to all or any of its unrestricted property.

(4) Section 123 applies in relation to the permanent endowment of the charity with the following modifications.

(5) References in that section to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.

(6) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 123(3)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.

(7) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 123(3)(b)) be satisfied—

(a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and

(b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.

(8) In the case of a transfer to which subsection (7) applies, the resolution under section 123(2) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Commission for the purposes of this section.

(9) The requirement in section 123(10) shall apply in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of any such guidance.

(10) Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.

(11) For the purposes of sections 123 and 124, **[**[F69]the references in sections 123(7)(b) and 124(2) to any obligation imposed on the charity trustees by or under section 123 include**]** a reference to any obligation imposed on them by virtue of any of subsections (6) to (8) above.

(12) Section 123(13) applies for the purposes of this section as it applies for the purposes of section 123.

Textual Amendments

F69 Words in s. 125(11) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 22**

Commencement Information

I41 S. 125 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Modification of purposes, powers or procedure

Power to replace purposes of unincorporated charity

126.—(1) This section applies to a charity if—

(a) its gross income in its last financial year did not exceed £10,000,

(b) it does not hold any designated land, and

(c) it is not a company or other body corporate.

"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

(2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.

(3) The other purposes so specified must be charitable purposes.

(4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) unless they are satisfied—

(a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and

(b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.

(5) Any resolution under subsection (2) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.

(6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

(7) Having received the copy of the resolution, the Commission—

(a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(8) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(9) Subject to the provisions of section 124 (as they apply in accordance with subsection (10) below), a resolution under subsection (2) takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

(10) Section 124 applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 123, except that any reference to subsection (6), (7) or (8) is to be read as a reference to subsection (7), (8) or (9) above.

(11) As from the time when a resolution takes effect under subsection (9), the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.

(12) The Department may by order amend subsection (1) by substituting a different sum for the sum for the time being specified there.

Commencement Information

I42 S. 126 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Power to modify powers or procedures of unincorporated charity

127.—(1) This section applies to any charity which is not a company or other body corporate.

(2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—

(a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or

(b) regulating the procedure to be followed in any respect in connection with its administration,

should be modified in such manner as is specified in the resolution.

(3) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.

(4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body either—

(a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or

(b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.

(5) Where—

(a) the charity trustees have passed a resolution under paragraph (2), and

(b) (if subsection (4) applies) a further resolution has been passed under that subsection,

the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.

(6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution under subsection (2), or (if later) the date when any such further resolution was passed under subsection (4).

Commencement Information

I43 S. 127 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Spending of capital

Power of unincorporated charities to spend capital: general

128.—(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.

(2) But this section does not apply to a fund if section 129 (power of larger charities to spend capital given for particular purpose) applies to it.

(3) Where the condition in subsection (4) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition in this subsection 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 capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) Once the charity trustees have passed a resolution under subsection (3), the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.

(6) The fund or portion may be so expended as from such date as is specified for the purpose in the resolution.

(7) 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.

Commencement Information

I44 S. 128 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Power of larger unincorporated charities to spend capital given for particular purpose

129.—(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—

(a) the capital of the fund consists entirely of property given—

(i) by a particular individual,

(ii) by a particular institution (by way of grant or otherwise), or

(iii) by two or more individuals or institutions in pursuit of a common purpose, and

(b) the financial condition in subsection (2) is met.

(2) The financial condition in this subsection is met if—

(a) the relevant charity's gross income in its last financial year exceeded £1,000, and

(b) the market value of the endowment fund exceeds £10,000.

(3) Where the condition in subsection (4) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trust to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) The charity trustees—

(a) must send a copy of any resolution under subsection (3) to the Commission, together with a statement of their reasons for passing it, and

(b) may not implement the resolution except in accordance with the following provisions of this section.

(6) Having received the copy of the resolution the Commission may—

(a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—

(a) the circumstances in and by reference to which they have decided to act under this section, or

(b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.

(8) When considering whether to concur with the resolution the Commission must take into account—

(a) any evidence available to it as to the wishes of the donor or donors mentioned in subsection (1)(a), and

(b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).

(9) The Commission must not concur with the resolution unless it is satisfied—

(a) that its implementation would accord with the spirit of the gift or gifts mentioned in subsection (1)(a) (even though it would be inconsistent with the restrictions mentioned in subsection (3)), and

(b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution.

(10) Before the end of the period of 3 months beginning with the relevant date, the Commission must notify the charity trustees in writing either—

(a) that the Commission concurs with the resolution, or

(b) that it does not concur with it.

(11) In subsection (10) "the relevant date" means—

(a) in a case where the Commission directs the charity trustees under subsection (6) to give public notice of the resolution, the date when that notice is given, and

(b) in any other case, the date on which the Commission receives the copy of the resolution in accordance with subsection (5).

(12) Where—

(a) the charity trustees are notified by the Commission that it concurs with the resolution, or

(b) the period of 3 months mentioned in subsection (10) has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (3).

(13) The Department may by order amend subsection (2) by substituting a different sum for any sum specified there.

(14) In this section—

(a) "available endowment fund" has the same meaning as in section 128,

(b) "market value", in relation to an endowment fund, means—

(i) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or

(ii) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose, and

(c) the reference in subsection (1) to the giving of property by an individual includes giving it under a will.

Commencement Information

I45 S. 129 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Power to spend capital subject to special trusts

130.—(1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 1(4), is to be treated as a separate charity ("the relevant charity") for the purposes of this section.

(2) Where the condition in subsection (3) is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(3) The condition in this subsection 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 capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—

(a) by a particular individual,

(b) by a particular institution (by way of grant or otherwise), or

(c) by two or more individuals or institutions in pursuit of a common purpose,

subsections (5) to (11) of section 129 apply in relation to the resolution and that gift or gifts as they apply in relation to a resolution under section 129(3) and the gift or gifts mentioned in section 129(1)(a).

(5) Where—

(a) the charity trustees have passed a resolution under subsection (2), and

(b) (in a case where section 129(5) to (11) apply in accordance with subsection (4) above) either—

(i) the charity trustees are notified by the Commission that it concurs with the resolution, or

(ii) the period of 3 months mentioned in section 129(10) has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (2).

(6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

(7) The Department may by order amend subsection (4) by substituting a different sum for the sum specified there.

(8) In this section—

(a) "available endowment fund" has the same meaning as in section 128,

(b) "market value" has the same meaning as in section 129, and

(c) the reference in subsection (4) to the giving of property by an individual includes giving it under a will.

Commencement Information

I46 S. 130 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

PART 13

FUNDING OF CHARITABLE INSTITUTIONS

PROSPECTIVE

CHAPTER 1

PUBLIC CHARITABLE COLLECTIONS

Preliminary

Regulation of public charitable collections

131.—(1) This Chapter regulates public charitable collections, which are of the following two types—

(a) collections in a public place; and

(b) door to door collections.

(2) For the purposes of this Part—

(a) "public charitable collection" means (subject to section 132) a charitable appeal which is made—

(i) in any public place, or

(ii) by means of visits to houses or business premises (or both);

(b) "charitable appeal" means an appeal to members of the public which is—

(i) an appeal to them to give money or other property, or

(ii) an appeal falling within subsection (4),

(or both) and which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes;

(c) a "collection in a public place" is a public charitable collection that is made in a public place, as mentioned in paragraph (a)(i);

(d) a "door to door collection" is a public charitable collection that is made by means of visits to houses or business premises (or both), as mentioned in paragraph (a)(ii).

(3) For the purposes of subsection (2)(b)—

(a) the reference to the giving of money is to doing so by whatever means; and

(b) it does not matter whether the giving of money or other property is for consideration or otherwise.

(4) An appeal falls within this subsection if it consists in or includes—

(a) the making of an offer to sell goods or to supply services, or

(b) the exposing of goods for sale,

to members of the public.

(5) In this section—

"business premises" means any premises used for business or other commercial purposes;

"house" includes any part of a building constituting a separate dwelling;

"public place" means—

(a) any road within the meaning of the Road Traffic (Northern Ireland) Order 1995 (NI 18), and

(b) (subject to subsection (6)) any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either—

(i) is not within a building, or

(ii) if within a building, is a public area within any station, airport or shopping precinct or any other similar public area.

(6) In subsection (5), paragraph (b) of the definition of "public place" does not include—

(a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or

(b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question.

Charitable appeals that are not public charitable collections

132.—(1) A charitable appeal is not a public charitable collection if the appeal—

(a) is made in the course of a public meeting; or

(b) is made—

(i) on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or

(ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it,

where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise); or

(c) is made on land to which members of the public have access only—

(i) by virtue of the express or implied permission of the occupier of the land, or

(ii) by virtue of any statutory provision,

and the occupier is the promoter of the collection; or

(d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.

(2) For the purposes of subsection (1)(c) "the occupier", in relation to unoccupied land, means the person entitled to occupy it.

(3) For the purposes of subsection (1)(d) a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.

Other definitions for purposes of this Chapter

133 In this Chapter—

"prescribed" means prescribed by regulations under section 148;

"proceeds", in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to the charitable appeal in question;

"promoter", in relation to a public charitable collection, means—

(a) a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or

(b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection.

Restrictions on conducting collections

Restrictions on conducting collections in a public place

134.—(1) A collection in a public place shall not be conducted unless—

(a) the promoters of the collection hold a public collections certificate in force under section 138 in respect of the collection, and

(b) the collection is conducted in accordance with a permit issued under section 144.

(2) Subsection (1) does not apply to a public charitable collection which is an exempt collection by virtue of section 136 (local, short-term collections).

(3) Where—

(a) a collection in a public place is conducted in contravention of subsection (1), and

(b) the circumstances of the case do not fall within section 136(6),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Restrictions on conducting door to door collections

135.—(1) A door to door collection shall not be conducted unless—

(a) the promoters of the collection hold a public collections certificate in force under section 138 in respect of the collection,

(b) the collection is conducted in accordance with a permit issued under section 144; and

(c) the promoters of the collection have within the prescribed period falling before the day (or the first of the days) on which the collection takes place—

(i) notified the Commission of the matters mentioned in subsection (3), and

(ii) provided the Commission with a copy of the certificate mentioned in paragraph (a).

(2) Subsection (1) does not apply to a door to door collection which is an exempt collection by virtue of section 136 (local, short-term collections).

(3) The matters referred to in subsection (1)(c)(i) are—

(a) the purpose for which the proceeds of the appeal are to be applied;

(b) the prescribed particulars of when the collection is to be conducted;

(c) the locality within which the collection is to be conducted; and

(d) such other matters as may be prescribed.

(4) Where—

(a) a door to door collection is conducted in contravention of subsection (1), and

(b) the circumstances of the case do not fall within section 136(6),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

This is subject to subsection (5).

(5) Where—

(a) a door to door collection is conducted in contravention of subsection (1),

(b) the appeal is for goods only, and

(c) the circumstances of the case do not fall within section 136(6),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In subsection (5) "goods" includes all personal chattels other than things in action and money.

Exemption for local, short-term collections

136.—(1) A public charitable collection is an exempt collection if—

(a) it is a local, short-term collection (see subsection (2)), and

(b) the promoters notify the Commission of the matters mentioned in subsection (3) within the prescribed period falling before the day (or the first of the days) on which the collection takes place,

unless, within the prescribed period beginning with the date when it is so notified, the Commission serves a notice under subsection (4) on the promoters.

(2) A public charitable collection is a local, short-term collection if—

(a) the appeal is local in character; and

(b) the duration of the appeal does not exceed the prescribed period of time.

(3) The matters referred to in subsection (1)(b) are—

(a) the purpose for which the proceeds of the appeal are to be applied;

(b) the date or dates on which the collection is to be conducted;

(c) the place at which, or the locality within which, the collection is to be conducted; and

(d) such other matters as may be prescribed.

(4) Where it appears to the Commission—

(a) that the collection is not a local, short-term collection, or

(b) that the promoters or any of them have or has on any occasion—

(i) breached any provision of regulations made under section 148, or

(ii) been convicted of an offence within section 139(2)(a)(i) to (v),

the Commission shall serve on the promoters written notice of its decision to that effect and the reasons for its decision.

(5) That notice shall also state the right of appeal conferred by section 147(1) and the time within which such an appeal must be brought.

(6) Where—

(a) a collection in a public place is conducted otherwise than in accordance with section 134(1) or a door to door collection is conducted otherwise than in accordance with section 135(1), and

(b) the collection is a local, short-term collection but the promoters do not notify the Commission as mentioned in subsection (1)(b),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Public collections certificates

Applications for certificates

137.—(1) A person or persons proposing to promote public charitable collections (other than exempt collections) may apply to the Commission for a public collections certificate in respect of those collections.

(2) The application shall be made—

(a) within the specified period falling before the first of the collections is to commence, or

(b) before such later date as the Commission may allow in the case of that application.

(3) The application shall—

(a) be made in such form as may be specified,

(b) state the period for which the certificate is sought (which must be no more than 5 years), and

(c) contain such other information as may be specified.

(4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Chapter, in the context of such certificates, to public charitable collections are to be read accordingly.

(5) In subsections (2) and (3) "specified" means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate.

(6) In this section "exempt collection" means a public charitable collection which is an exempt collection by virtue of section 136.

Determination of applications and issue of certificates

138.—(1) On receiving an application for a public collections certificate made in accordance with section 137, the Commission may make such inquiries (whether under section 140 or otherwise) as it thinks fit.

(2) The Commission shall, after making any such inquiries, determine the application by either—

(a) issuing a public collections certificate in respect of the collections, or

(b) refusing the application on one or more of the grounds specified in section 139(1).

(3) A public collections certificate—

(a) shall specify such matters as may be prescribed, and

(b) shall (subject to section 142) be in force for—

(i) the period specified in the application in accordance with section 137(3)(b), or

(ii) such shorter period as the Commission thinks fit.

(4) The Commission may, at the time of issuing a public collections certificate, attach to the certificate such conditions as it thinks fit.

(5) Conditions attached under subsection (4) may include conditions prescribed for the purposes of that subsection.

(6) The Commission shall secure that the terms of any conditions attached under subsection (4) are consistent with the provisions of any regulations under section 148 (whether or not prescribing conditions for the purposes of that subsection).

(7) Where the Commission—

(a) refuses to issue a certificate, or

(b) attaches any condition to it,

it shall serve on the applicant written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

Grounds for refusing to issue a certificate

139.—(1) The grounds on which the Commission may refuse an application for a public collections certificate are—

(a) that the applicant has been convicted of a relevant offence;

(b) where the applicant is a person other than a charitable institution for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections;

(c) that it appears to the Commission that the applicant, in promoting any other collection authorised under this Chapter, failed to exercise the required due diligence;

(d) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections;

(e) that it appears to the Commission that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds of the collections;

(f) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances;

(g) that the applicant has failed to provide information—

(i) required for the purposes of the application for the certificate or a previous application, or

(ii) in response to a request under section 140(1);

(h) that it appears to the Commission that information so provided to it by the applicant is false or misleading in a material particular;

(i) that it appears to the Commission that the applicant or any person authorised by the applicant—

(i) has breached any conditions attached to a previous public collections certificate, or

(ii) has persistently breached any conditions attached to a permit issued under section 144;

(j) that it appears to the Commission that the applicant or any person authorised by the applicant has on any occasion breached any provision of regulations made under section 148(1)(b).

(2) For the purposes of subsection (1)—

(a) a "relevant offence" is—

(i) an offence under section 5 of the 1916 Act;

(ii) an offence under the 1952 Act;

(iii) an offence under this Chapter;

(iv) an offence involving dishonesty; or

(v) an offence of a kind the commission of which would, in the opinion of the Commission, be likely to be facilitated by the issuing to the applicant of a public collections certificate; and

(b) the "required due diligence" is due diligence—

(i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were (or will be) fit and proper persons;

(ii) to secure that such persons complied (or will comply) with the provisions of regulations under section 148(1)(b); or

(iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised.

(3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) is to be construed as a reference to any of the applicants.

(4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 148(1)(b).

(5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised—

(a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or

(b) under the 1952 Act (collection of money or other property by means of visits from house to house),

as it applies to the conduct of the applicant in relation to a collection authorised under this Chapter, but subject to the modifications set out in subsection (6).

(6) The modifications are—

(a) in the case of a collection authorised under regulations made under the 1916 Act—

(i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to the regulations under which the collection in question was authorised, and

(ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to any written authority provided to a collector pursuant to those regulations; and

(b) in the case of a collection authorised under the 1952 Act—

(i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to regulations under section 4 of that Act, and

(ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to badges or certificates of authority in a form prescribed by such regulations.

(7) In subsections (1)(c) and (5) a reference to a collection authorised under this Chapter is a reference to a public charitable collection that—

(a) is conducted in accordance with section 134 or 135 (as the case may be), or

(b) is an exempt collection by virtue of section 136.

(8) In this section—

"the 1916 Act" means the Police, Factories &c. (Miscellaneous Provisions) Act 1916 (c. 31); and

"the 1952 Act" means the House to House Collections Act (Northern Ireland) 1952 (c. 6).

Power to call for information and documents

140.—(1) The Commission may request—

(a) any applicant for a public collections certificate, or

(b) any person to whom such a certificate has been issued,

to provide it with any information in the possession of that applicant or person, or document in the custody or under the control of that applicant or person, which is relevant to the exercise of any of its functions under this Chapter.

(2) Nothing in this section affects the power conferred on the Commission by section 23.

Transfer of certificate between trustees of unincorporated charity

141.—(1) One or more individuals to whom a public collections certificate has been issued ("the holders") may apply to the Commission for a direction that the certificate be transferred to one or more other individuals ("the recipients").

(2) An application under subsection (1) shall—

(a) be in such form as may be specified, and

(b) contain such information as may be specified.

(3) The Commission may direct that the certificate be transferred if it is satisfied that—

(a) each of the holders is or was a trustee of a charity which is not a body corporate;

(b) each of the recipients is a trustee of that charity and consents to the transfer; and

(c) the charity trustees consent to the transfer.

(4) Where the Commission refuses to direct that a certificate be transferred, it shall serve on the holders written notice of—

(a) its decision, and

(b) the reasons for its decision.

(5) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

(6) Subsection (5) of section 137 applies for the purposes of subsection (2) of this section as it applies for the purposes of subsection (3) of that section.

(7) Except as provided by this section, a public collections certificate is not transferable.

Withdrawal or variation, etc. of certificates

142.—(1) Where subsection (2), (3) or (4) applies, the Commission may—

(a) withdraw a public collections certificate,

(b) suspend such a certificate,

(c) attach any condition (or further condition) to such a certificate, or

(d) vary any existing condition of such a certificate.

(2) This subsection applies where the Commission—

(a) has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate, and

(b) is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions.

(3) This subsection applies where—

(a) the holder of a certificate has unreasonably refused to provide any information or document in response to a request under section 140(1), or

(b) the Commission has reason to believe that information provided to it by the holder of a certificate (or, where there is more than one holder, by any of them) for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular.

(4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing.

(5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the certificate or by varying an existing condition) must be one that it would be appropriate for the Commission to attach to the certificate under section 138(4) if the holder was applying for it in the circumstances prevailing at that time.

(6) The exercise by the Commission of the power conferred by paragraph (b), (c) or (d) of subsection (1) on one occasion does not prevent it from exercising any of the powers conferred by that paragraph on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to

the time when the Commission issued the certificate is a reference to the time when it last exercised any of those powers.

(7) Where the Commission—

(a) withdraws or suspends a certificate,

(b) attaches a condition to a certificate, or

(c) varies an existing condition of a certificate,

it shall serve on the holder written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

(9) If the Commission—

(a) considers that the interests of the public require a decision by it under this section to have immediate effect, and

(b) includes a statement to that effect and the reasons for it in the notice served under subsection (7),

the decision takes effect when that notice is served on the holder.

(10) In any other case the certificate shall continue to have effect as if it had not been withdrawn or suspended or (as the case may be) as if the condition had not been attached or varied—

(a) until the time for bringing an appeal has expired, or

(b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

(11) A certificate suspended under this section shall (subject to any appeal and any withdrawal of the certificate) remain suspended until—

(a) such time as the Commission may by notice direct that the certificate is again in force, or

(b) the end of the period of 6 months beginning with the date on which the suspension takes effect,

whichever is the sooner.

Permits

Applications for permits to conduct public charitable collections

143.—(1) A person or persons proposing to promote a public charitable collection (other than an exempt collection) may apply to the Commission for a permit to conduct that collection.

(2) The application shall be made within the prescribed period falling before the day (or the first of the days) on which the collection is to take place, except as provided in subsection (4).

(3) The application shall—

(a) specify the date or dates in respect of which it is desired that the permit, if issued, should have effect (which, in the case of two or more dates, must not span a period of more than 12 months);

(b) be accompanied by a copy of the public collections certificate in force under section 138 in respect of the proposed collection; and

(c) contain such information as may be prescribed.

(4) Where an application ("the certificate application") has been made in accordance with section 137 for a public collections certificate in respect of the collection and either—

(a) the certificate application has not been determined by the end of the period mentioned in subsection (2), or

(b) the certificate application has been determined by the issue of such a certificate but at a time when there is insufficient time remaining for the application mentioned in subsection (2) ("the permit application") to be made by the end of that period,

the permit application shall be made as early as practicable before the day (or the first of the days) on which the collection is to take place.

(5) In this section "exempt collection" means a collection which is an exempt collection by virtue of section 136.

Determination of applications and issue of permits

144.—(1) On receiving an application made in accordance with section 143 for a permit in respect of a collection in a public place, the Commission shall determine the application within the prescribed period by either—

(a) issuing a permit in respect of the collection, or

(b) refusing the application on the ground specified in section 145(1).

(2) Where the Commission issues such a permit, it shall (subject to section 146) have effect in respect of the date or dates specified in the application in accordance with section 143(3)(a).

(3) At the time of issuing a permit under this section, the Commission may attach to it such conditions within paragraphs (a) to (d) below as the Commission thinks fit, having regard to the local circumstances of the collection—

(a) conditions specifying the day of the week, date, time or frequency of the collection;

(b) conditions specifying the locality or localities in which the collection may be conducted;

(c) conditions regulating the manner in which the collection is to be conducted;

(d) such other conditions as may be prescribed for the purposes of this paragraph.

(4) The Commission shall secure that the terms of any conditions attached under subsection (3) are consistent with the provisions of any regulations under section 148 (whether or not prescribing conditions for the purposes of that subsection).

(5) Where the Commission—

(a) refuses to issue a permit, or

(b) attaches any condition to it,

the Commission shall serve on the applicant written notice of its decision and the reasons for its decision.

(6) That notice shall also state the right of appeal conferred by section 147(2) and the time within which such an appeal must be brought.

Refusal of permits

145.—(1) The only ground on which the Commission may refuse an application for a permit to conduct a public charitable collection is that it appears to the Commission that the collection would cause undue inconvenience to members of the public or the occupants of houses or business premises (or both) by reason of—

(a) the day or the week or date on or in which,

(b) the time at which,

(c) the frequency with which, or

(d) the locality or localities in which,

it is proposed to be conducted.

(2) In making a decision under subsection (1), the Commission may have regard to the fact (where it is the case) that the collection is proposed to be conducted—

(a) wholly or partly in a locality in which another public charitable collection is already authorised to be conducted under this Chapter, and

(b) on a day on which that other collection is already so authorised, or on the day falling immediately before, or immediately after, any such day.

(3) The Commission shall not, however, have regard to the matters mentioned in subsection (2) if it appears to the Commission—

(a) that the proposed collection would be a collection in a public place and would be conducted only in one location, which is on land to which members of the public would have access only—

(i) by virtue of the express or implied permission of the occupier of the land, or

(ii) by virtue of any statutory provision, and

(b) that the occupier of the land consents to that collection being conducted there;

and for this purpose "the occupier", in relation to unoccupied land, means the person entitled to occupy it.

(4) In subsection (3) a reference to a collection in a public place authorised under this Chapter is a reference to a collection in a public place that—

(a) is conducted in accordance with section 134, or

(b) is an exempt collection by virtue of section 136.

Withdrawal or variation, etc. of permits

146.—(1) Where subsection (2), (3) or (4) applies, the Commission may—

(a) withdraw the permit,

(b) attach any condition (or further condition) to the permit, or

(c) vary any existing condition of the permit.

(2) This subsection applies where the Commission—

(a) has reason to believe that there has been a change in the circumstances which prevailed at the time when it issued the permit, and

(b) is of the opinion that, if the application for the permit had been made in the new circumstances, the Commission would not have issued the permit or would have issued it subject to different or additional conditions.

(3) This subsection applies where the Commission has reason to believe that any information provided to it by the holder of a permit (or, where there is more than one holder, by any of them) for the purposes of the application for the permit was false or misleading in a material particular.

(4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a permit issued by it, or that a breach of such a condition is continuing.

(5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the permit or by varying an existing condition) must be one that it would be appropriate for the Commission to attach to the permit under section 144(3) if the holder was applying for it in the circumstances prevailing at that time.

(6) The exercise by the Commission of the power conferred by paragraph (b) or (c) of subsection (1) on one occasion does not prevent the Commission from exercising any of the powers conferred by that paragraph on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the Commission issued the permit is a reference to the time when it last exercised any of those powers.

(7) Where under this section the Commission—

(a) withdraws a permit,

(b) attaches a condition to a permit, or

(c) varies an existing condition of a permit,

the Commission shall serve on the holder written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by section 147(3) and the time within which such an appeal must be brought.

(9) Where the Commission under this section withdraws a permit, attaches any condition to a permit, or varies an existing condition of a permit, the permit shall continue to have effect as if it had not been withdrawn or (as the case may be) as if the condition had not been attached or varied—

(a) until the time for bringing an appeal under section 147(3) has expired, or

(b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

Appeals against decisions of Commission

147.—(1) A person who, in relation to a public charitable collection, has duly notified the Commission of the matters mentioned in section 136(3) may appeal to a court of summary jurisdiction against a decision of the Commission under section 136(4)—

(a) that the collection is not a local, short-term collection, or

(b) that the promoters or any of them has breached any such provision, or been convicted of any such offence, as is mentioned in paragraph (b) of that subsection.

(2) A person who has duly applied to the Commission for a permit to conduct a public charitable collection may appeal to a court of summary jurisdiction against a decision of the Commission under section 144—

(a) to refuse to issue a permit, or

(b) to attach any condition to it.

(3) A person to whom a permit has been issued may appeal to a court of summary jurisdiction against a decision of the Commission under section 146—

(a) to withdraw the permit,

(b) to attach a condition to the permit, or

(c) to vary an existing condition of the permit.

(4) An appeal under subsection (1), (2) or (3) shall be by way of complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(5) Any such appeal shall be brought within 14 days of the date of service on the person in question of the relevant notice under section 136(4), section 144(5) or (as the case may be) section 146(7); and for the purposes of this section an appeal shall be taken to be brought when the complaint is made.

(6) On an appeal under this section, the court may confirm, vary or reverse the Commission's decision and generally give such directions as it thinks fit, having regard to the provisions of this Chapter and of any regulations under section 148.

(7) On an appeal against a decision of the Commission under section 136(4), directions under subsection (6) may include a direction that the collection may be conducted—

(a) on the date or dates notified in accordance with section 136(3)(b), or

(b) on such other date or dates as may be specified in the direction;

and if so conducted the collection is to be regarded as one that is an exempt collection by virtue of section 136.

(8) It shall be the duty of the Commission to comply with any directions given by the court under subsection (6); but the Commission need not comply with any directions given by a court of summary jurisdiction—

(a) until the time for bringing an appeal against the court's decision has expired, or

(b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

Supplementary

Regulations

148.—(1) The Department may make regulations—

(a) prescribing the matters which the Commission is to take into account in determining whether a collection is local in character for the purposes of section 136(2)(a);

(b) for the purpose of regulating the conduct of public charitable collections;

(c) prescribing anything falling to be prescribed by virtue of any provision of this Chapter.

(2) The matters which may be prescribed by regulations under subsection (1)(a) include—

(a) the extent of the area within which the appeal is to be conducted;

(b) whether the appeal forms part of a series of appeals;

(c) the number of collectors making the appeal and whether they are acting for remuneration or otherwise;

(d) the financial resources (of any description) of any charitable institution for whose benefit the appeal is to be conducted;

(e) where the promoters live or have any place of business.

(3) Regulations under subsection (1)(b) may make provision—

(a) about the keeping and publication of accounts;

(b) for the prevention of annoyance to members of the public;

(c) with respect to the use by collectors of badges and certificates of authority, or badges incorporating such certificates, including, in particular, provision—

(i) prescribing the form of such badges and certificates;

(ii) requiring a collector, on request, to permit a badge, or any certificate of authority held by the collector of the purposes of the collection, to be inspected by a constable or a duly authorised officer of the Commission, or by an occupier of any premises visited by the collector in the course of the collection;

(d) for prohibiting persons under a prescribed age from acting as collectors, and prohibiting others from causing them so to act.

(4) Nothing in subsection (2) or (3) prejudices the generality of subsection (1)(a) or (b).

(5) Regulations under this section may provide that any failure to comply with a specified provision of the regulations is to be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

(6) Before making regulations under this section the Department must consult such persons or bodies of persons as it considers appropriate.

Offences

149.—(1) A person commits an offence if, in connection with any charitable appeal, that person displays or uses—

(a) a prescribed badge or prescribed certificate of authority which is not for the time being held by that person for the purposes of the appeal pursuant to regulations under section 148, or

(b) any badge or article, or any certificate or other document, so nearly resembling a prescribed badge or (as the case may be) a prescribed certificate of authority as to be likely to deceive a member of the public.

(2) A person commits an offence if—

(a) for the purposes of an application made under section 137 or section 143, or

(b) for the purposes of section 135 or section 136,

that person knowingly or recklessly **[**[F70]provides**]** any information which is false or misleading in a material particular.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In subsection (1) "prescribed badge" and "prescribed certificate of authority" mean respectively a badge and a certificate of authority in such form as may be prescribed by regulations under section 148.

Textual Amendments

F70 Word in s. 149(2) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(3)**

CHAPTER 2

CONTROL OF FUND-RAISING FOR CHARITABLE INSTITUTIONS

Control of fund-raising

PROSPECTIVE

Prohibition on professional fund-raiser, etc. raising funds for charitable institution without an agreement in prescribed form

150.—(1) It shall be unlawful for a professional fund-raiser to solicit money or other property for the benefit of a charitable institution except in accordance with an agreement with the institution satisfying the prescribed requirements.

(2) It shall be unlawful for a commercial participator to represent that charitable contributions are to be given to or applied for the benefit of a charitable institution except in accordance with an agreement with the institution satisfying the prescribed requirements.

(3) Where on the application of a charitable institution the Court is satisfied—

(a) that any person has contravened or is contravening subsection (1) or (2) in relation to the institution, and

(b) that, unless restrained, any such contravention is likely to continue or be repeated,

the Court may grant an injunction restraining the contravention; and compliance with subsection (1) or (2) shall not be enforceable otherwise than in accordance with this subsection.

(4) Where—

(a) a charitable institution makes any agreement with a professional fund-raiser or a commercial participator by virtue of which—

(i) the professional fund-raiser is authorised to solicit money or other property for the benefit of the institution, or

(ii) the commercial participator is authorised to represent that charitable contributions are to be given to or applied for the benefit of the institution,

as the case may be, but

(b) the agreement does not satisfy the prescribed requirements in any respect,

the agreement shall not be enforceable against the institution except to such extent (if any) as may be provided by an order of the Court.

(5) A professional fund-raiser or commercial participator who is a party to such an agreement as is mentioned in subsection (4)(a) shall not be entitled to receive any amount by way of remuneration or expenses in respect of anything done in pursuance of the agreement unless—

(a) the professional fund-raiser or commercial participator is so entitled under any provision of the agreement, and

(b) either—

(i) the agreement satisfies the prescribed requirements, or

(ii) any such provision has effect by virtue of an order of the Court under subsection (4).

(6) In this section "the prescribed requirements" means such requirements as are prescribed by regulations made by virtue of section 157.

PROSPECTIVE

Professional fund-raisers, etc. required to indicate institutions benefiting and arrangements for remuneration

151.—(1) Where a professional fund-raiser solicits money or other property for the benefit of one or more particular charitable institutions, the solicitation shall be accompanied by a statement clearly indicating—

(a) the name or names of the institution or institutions concerned;

(b) if there is more than one institution concerned, the proportions in which the institutions are respectively to benefit; and

(c) the method by which the fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(2) Where a professional fund-raiser solicits money or other property for charitable, benevolent or philanthropic purposes of any description (rather than for the benefit of one or more particular charitable institutions), the solicitation shall be accompanied by a statement clearly indicating—

(a) the fact that the professional fund-raiser is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions;

(b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions; and

(c) the method by which the professional fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(3) Where any representation is made by a commercial participator to the effect that charitable contributions are to be given to or applied for the benefit of one or more particular charitable institutions, the representation shall be accompanied by a statement clearly indicating—

(a) the name or names of the institution or institutions concerned;

(b) if there is more than one institution concerned, the proportions in which the institutions are respectively to benefit; and

(c) the notifiable amount of whichever of the following sums is applicable in the circumstances—

(i) the sum representing so much of the consideration given for goods or services sold or supplied by the commercial participator as is to be given to or applied for the benefit of the institution or institutions concerned,

(ii) the sum representing so much of any other proceeds of a promotional venture undertaken by the commercial participator as is to be so given or applied, or

(iii) the sum of the donations by the commercial participator in connection with the sale or supply of any such goods or services which are to be so given or supplied.

(4) In subsections (1) to (3) a reference to the "notifiable amount" of any remuneration or other sum is a reference—

(a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; and

(b) otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.

(5) If any such solicitation or representation as is mentioned in any of subsections (1) to (3) is made—

(a) in the course of a radio or television programme, and

(b) in association with an announcement to the effect that payment may be made, in response to the solicitation or representation, by means of a credit or debit card,

the statement required by virtue of subsection (1), (2) or (3) (as the case may be) shall include full details of the right to have refunded under section 154(1) any payment of £50 or more which is so made.

(6) If any such solicitation or representation as is mentioned in any of subsections (1) to (3) is made orally but is not made—

(a) by speaking directly to the particular person or persons to whom it is addressed and in the presence of that person or those persons, or

(b) in the course of any radio or television programme,

the professional fund-raiser or commercial participator concerned shall, within 7 days of any payment of £50 or more being made to the professional fund-raiser or commercial participator in response to the solicitation or representation, give to the person making the payment a written statement—

(i) of the matters specified in paragraphs (a) to (c) of that subsection; and

(ii) including full details of the right to cancel under section 154(2) an agreement made in response to the solicitation or representation, and the right to have refunded under section 154(2) or (3) any payment of £50 or more made in response thereto.

(7) In subsection (6) the reference to the making of a payment is a reference to the making of a payment of whatever nature and by whatever means, including a payment made by means of a credit card or a debit card; and for the purposes of that subsection—

(a) where the person making any such payment makes it in person, it shall be regarded as made at the time when it is so made;

(b) where the person making any such payment sends it by post, it shall be regarded as made at the time when it is posted; and

(c) where the person making any such payment makes it by giving, by telephone or by means of any other electronic communications apparatus, authority for an account to be debited with the payment, it shall be regarded as made at the time when any such authority is given.

(8) Where any requirement of subsections (1) to (6) is not complied with in relation to any solicitation or representation, the professional fund-raiser or commercial participator concerned is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) It shall be a defence for a person charged with any such offence to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) Where the commission by any person of an offence under subsection (8) is due to the act or default of some other person, that other person is guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(11) In this section "the appeal", in relation to any solicitation by a professional fund-raiser, means the campaign or other fund-raising venture in the course of which the solicitation is made.

PROSPECTIVE

Other persons making appeals required to indicate institutions benefiting and arrangements for remuneration

152.—(1) Subsections (1) and (2) of section 151 apply to a person acting for reward as a collector in respect of a public charitable collection as they apply to a professional fund-raiser.

(2) But those subsections do not so apply to a person excluded by virtue of—

(a) subsection (3), or

(b) section 153(1) (exclusion of lower-paid collectors).

(3) Those subsections do not so apply to a person if—

(a) section 151(1) or (2) applies apart from subsection (1) (by virtue of the exception in section 159(2)(c) for persons treated as promoters), or

(b) subsection (4) or (5) applies,

in relation to that person acting for reward as a collector in respect of the collection mentioned in subsection (1) above.

(4) Where a person within subsection (6) solicits money or other property for the benefit of one or more particular charitable institutions, the solicitation shall be accompanied by a statement clearly indicating—

(a) the name or names of the institution or institutions for whose benefit the solicitation is being made;

(b) if there is more than one such institution, the proportions in which the institutions are respectively to benefit;

(c) the fact that the person is an officer, employee or trustee of the institution or company mentioned in subsection (6); and

(d) the fact that the person is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.

(5) Where a person within subsection (6) solicits money or other property for charitable, benevolent or philanthropic purposes of any description (rather than for the benefit of one or more particular charitable institutions), the solicitation shall be accompanied by a statement clearly indicating—

(a) the fact that the person is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions;

(b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions;

(c) the fact that the person is an officer, employee or trustee of the institution or company mentioned in subsection (6); and

(d) the fact that the person is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.

(6) A person is within this subsection if—

(a) the person is an officer or employee of a charitable institution or a company connected with any such institution, or a trustee of any such institution,

(b) the person is acting as a collector in that capacity, and

(c) the person receives remuneration either in a capacity as officer, employee or trustee or for acting as a collector.

(7) But a person is not within subsection (6) if that person is excluded by virtue of section 153(4).

(8) Where any requirement of—

(a) subsection (1) or (2) of section 151, as it applies by virtue of subsection (1) above, or

(b) subsection (4) or (5) above,

is not complied with in relation to any solicitation, the collector concerned is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) Section 151(9) and (10) apply in relation to an offence under subsection (8) above as they apply in relation to an offence under section 151(8).

(10) In this section "the appeal", in relation to any solicitation by a collector, means the campaign or other fund-raising venture in the course of which the solicitation is made.

PROSPECTIVE

Exclusion of lower-paid collectors from provisions of section 152

153.—(1) Section 151(1) and (2) do not apply (by virtue of section 152(1)) to a person who is under the earnings limit in subsection (2).

(2) A person is under the earnings limit in this subsection if the person does not receive—

(a) more than—

(i) £5 per day, or

(ii) £500 per year,

by way of remuneration for acting as a collector in relation to relevant collections, or

(b) more than £500 by way of remuneration for acting as a collector in relation to the collection mentioned in section 152(1).

(3) In subsection (2) "relevant collections" means public charitable collections conducted for the benefit of—

(a) the charitable institution or institutions, or

(b) the charitable, benevolent or philanthropic purposes,

for whose benefit the collection mentioned in section 152(1) is conducted.

(4) A person is not within section 152(6) if that person is under the earnings limit in subsection (5) below.

(5) A person is under the earnings limit in this subsection if the remuneration received by that person as mentioned in section 152(6)(c)—

(a) is not more than—

(i) £5 per day, or

(ii) £500 per year, or

(b) if a lump sum, is not more than £500.

(6) The Department may by order amend subsections (2) and (5) by substituting a different sum for any sum for the time being specified there.

PROSPECTIVE

Cancellation of payments and agreements made in response to appeals

154.—(1) Where—

(a) a person ("the donor"), in response to any such solicitation or representation as is mentioned in any of subsections (1) to (3) of section 152 which is made in the course of a radio or television programme, makes any payment of £50 or more to the relevant fund-raiser by means of a credit card or a debit card, but

(b) before the end of the period of 7 days beginning with the date of the solicitation or representation, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment,

the donor shall (subject to subsection (4)) be entitled to have the payment refunded forthwith by the relevant fund-raiser.

(2) Where—

(a) a person ("the donor"), in response to any solicitation or representation falling within subsection (6) of section 151, enters into an agreement with the relevant fund-raiser under which the donor is, or may be, liable to make any payment or payments to the relevant fund-raiser, and the amount or aggregate amount which the donor is, or may be, liable to pay to that person under the agreement is £50 or more, but

(b) before the end of the period of 7 days beginning with the date when the donor is given any such written statement as is referred to in that subsection, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the agreement,

the notice shall operate, as from the time when it is so served, to cancel the agreement and any liability of any person other than the donor in connection with the making of any such payment or payments, and the donor shall (subject to subsection (4)) be entitled to have any payment of £50 or more made by the donor under the agreement refunded forthwith by the relevant fund-raiser.

(3) Where, in response to any solicitation or representation falling within subsection (6) of section 151, a person ("the donor")—

(a) makes any payment of £50 or more to the relevant fund-raiser, but

(b) does not enter into any such agreement as is mentioned in subsection (2) above,

then, if before the end of the period of 7 days beginning with the date when the donor is given any such written statement as is referred to in subsection (6) of that section, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment, the donor shall (subject to subsection (4)) be entitled to have the payment refunded forthwith by the relevant fund-raiser.

(4) The right of any person to have a payment refunded under any of subsections (1) to (3)—

(a) is a right to have refunded the amount of the payment less than administrative expenses reasonably incurred by the relevant fund-raiser in connection with—

(i) the making of the refund, or

(ii) (in the case of a refund under subsection (2)) dealing with the notice of cancellation served by that person; and

(b) shall, in the case of a payment for goods already received, be conditional upon restitution being made by that person of the goods in question.

(5) Nothing in subsections (1) to (3) has effect in relation to any payment made or to be made in respect of services which have been supplied at the time when the relevant notice is served.

(6) In this section any reference to the making of a payment is a reference to the making of a payment of whatever nature and (in the case of subsection (2) or (3)) a payment made by whatever means, including a payment made by means of a credit card or a debit card; and subsection (7) of section 151 shall have effect for determining when a payment is made for the purposes of this section as it has effect for determining when a payment is made for the purposes of subsection (6) of that section.

(7) In this section, “the relevant fund-raiser”, in relation to any solicitation or representation, means the professional fund-raiser or commercial participator by whom it is made.

(8) The Department may by order—

(a) amend any provision of this section by substituting a different sum for the sum for the time being specified there; and

(b) make such consequential amendments in section 151 as it considers appropriate.

PROSPECTIVE

Right of charitable institution to prevent unauthorised fund-raising

155.—(1) Where on the application of any charitable institution—

(a) the Court is satisfied that any person has done or is doing either of the following, namely—

(i) soliciting money or other property for the benefit of the institution, or

(ii) representing that charitable contributions are to be given to or applied for the benefit of the institution,

and that, unless restrained, that person is likely to do further acts of that nature, and

(b) the Court is also satisfied as to one or more of the matters specified in subsection (2),

then (subject to subsection (3)) the Court may grant an injunction restraining the doing of any such acts.

(2) The matters referred to in subsection (1)(b) are—

(a) that the person in question is using methods of fund-raising to which the institution objects;

(b) that that person is not a fit and proper person to raise funds for the institution; and

(c) where the conduct complained of is the making of such representations as are mentioned in subsection (1)(a)(ii), that the institution does not wish to be associated with the particular promotional or other fund-raising venture in which that person is engaged.

(3) The power to grant an injunction under subsection (1) shall not be exercisable on the application of a charitable institution unless the institution has, not less than 28 days before making the application, served on the person in question a notice in writing—

(a) requesting that person to cease forthwith—

(i) soliciting money or other property for the benefit of the institution, or

(ii) representing that charitable contributions are to be given to or applied for the benefit of the institution,

as the case may be; and

(b) stating that, if that person does not comply with the notice, the institution will make an application under this section for an injunction.

(4) Where—

(a) a charitable institution has served on any person a notice under subsection (3) ("the relevant notice") and that person has complied with the notice, but

(b) that person has subsequently begun to carry on activities which are the same, or substantially the same, as those in respect of which the relevant notice was served,

the institution shall not, in connection with an application made by it under this section in respect of the activities carried on by that person, be required by virtue of that subsection to serve a further notice on that person, if the application is made not more than 12 months after the date of service of the relevant notice.

(5) This section shall not have the effect of authorising a charitable institution to make an application under this section in respect of anything done by a professional fund-raiser or commercial participator in relation to the institution.

False statements relating to institutions which are not registered charities

156.—(1) Where—

(a) a person solicits money or other property for the benefit of an institution in association with a representation that the institution is a registered charity, and

(b) the institution is not such a charity,

that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that the accused believed on reasonable grounds that the institution was a registered charity.

(3) In this section "registered charity" means a charity which is for the time being registered in the register of charities kept under section 16.

Commencement Information

I47 S. 156 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

PROSPECTIVE

Supplementary

Regulations about fund-raising

157.—(1) The Department may make such regulations as appear to it to be necessary or desirable for any purposes connected with any of the preceding provisions of this Chapter.

(2) Without prejudice to the generality of subsection (1), any such regulations may—

(a) prescribe the form and content of—

(i) agreements made for the purposes of section 150, and

(ii) notices served under section 155(3);

(b) require professional fund-raisers or commercial participators who are parties to such agreements with charitable institutions to make available to the institutions books, documents or other records (however kept) which relate to the institutions;

(c) specify the manner in which money or other property acquired by professional fund-raisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charitable institutions is to be transmitted to such institutions;

(d) provide for any provisions of section 153 or 154 having effect in relation to solicitations or representations made in the course of radio or television programmes to have effect, subject to any modifications specified in the regulations, in relation to solicitations or representations made in the course of such programmes—

(i) by charitable institutions, or

(ii) by companies connected with such institutions,

and, in that connection, provide for any other provisions of this Part to have effect for the purposes of the regulations subject to any modifications so specified;

(e) make other provision regulating the raising of funds for charitable, benevolent or philanthropic purposes (whether by professional fund-raisers or commercial participators or otherwise).

(3) In subsection (2)(c) the reference to such money or other property as is there mentioned includes a reference to money or other property which, in the case of a professional fund-raiser or commercial participator—

(a) has been acquired by the professional fund-raiser or commercial participator otherwise than in accordance with an agreement with a charitable institution, but

(b) by reason of any solicitation or representation in consequence of which it has been acquired, is held by the professional fund-raiser or commercial participator on trust for such an institution.

(4) Regulations under this section may provide that any failure to comply with a specified provision of the regulations is an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

Reserve power to control fund-raising by charitable institutions

158.—(1) The Department may make such regulations as appear to it to be necessary or desirable for or in connection with regulating charity fund-raising.

(2) In this section "charity fund-raising" means activities which are carried on by—

(a) charitable institutions,

(b) persons managing charitable institutions, or

(c) persons or companies connected with such institutions,

and involve soliciting or otherwise procuring funds for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes.

But "activities" does not include primary purpose trading.

(3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where—

(a) those institutions,

(b) the persons managing them, or

(c) persons or companies connected with such institutions,

are engaged in charity fund-raising.

(4) A "good practice requirement" is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that—

(a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;

(b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;

(c) it does not result in undue pressure being placed on persons to donate funds;

(d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).

(5) The matters are—

(a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution;

(b) any use to which funds donated in response to the fund-raising are to be put by such an institution or company;

(c) the activities, achievements or finances of such an institution or company.

(6) Regulations under this section may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) For the purposes of this section—

(a) "funds" means money or other property;

(b) "general charitable, benevolent or philanthropic purposes" means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions;

(c) the persons "managing" a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution; and

(d) a person is "connected" with a charitable institution if the person is an employee or agent of—

(i) the institution,

(ii) the persons managing it, or

(iii) a company connected with it,

or the person is a volunteer acting on behalf of the institution or such a company.

(8) In this section "primary purpose trading", in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where—

(a) the trade is carried on in the course of the actual carrying out of a primary purpose of the institution; or

(b) the work in connection with the trade is mainly carried out by beneficiaries of the institution.

(9) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

Interpretation

Interpretation of Chapter 2

159.—(1) In this Chapter—

"charitable contributions", in relation to any representation made by any commercial participator or other person, means—

(a) the whole or part of—

(i) the consideration given for goods or services sold or supplied by the commercial participator or other person, or

(ii) any proceeds (other than such consideration) of a promotional venture undertaken by the commercial participator or other person, or

(b) sums given by the commercial participator or other person by way of donation in connection with the sale or supply of any such goods or services (whether the amount of such sums is determined by reference to the value of any such goods or services or otherwise);

"commercial participator", in relation to any charitable institution, means any person (apart from a company connected with the institution) who—

(a) carries on for gain a business other than a fund-raising business, but

(b) in the course of that business, engages in any promotional venture in the course of which it is represented that charitable contributions are to be given to or applied for the benefit of the institution;

"credit card" means a card which is a credit-token within the meaning of the Consumer Credit Act 1974 (c. 39);

"debit card" means a card the use of which by its holder to make a payment results in a current account of the holder at a bank, or at any other institution providing banking services, being debited with the payment;

"fund-raising business" means any business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, benevolent or philanthropic purposes;

"professional fund-raiser" means—

(a) any person (apart from a charitable institution or a company connected with such an institution) who carries on a fund-raising business, or

(b) any other person (apart from a person excluded by virtue of subsection (2) or (3)) who for reward solicits money or other property for the benefit of a charitable institution, if that person does so otherwise than in the course of any fund-raising venture undertaken by a person falling within paragraph (a);

"promotional venture" means any advertising or sales campaign or any other venture undertaken for promotional purposes;

"radio or television programme" includes any item included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42).

(2) In subsection (1), paragraph (b) of the definition of "professional fund-raiser" does not apply to any of the following, namely—

(a) any charitable institution or any company connected with any such institution;

(b) any officer or employee of any such institution or company, or any trustee of any such institution, acting (in each case) in a capacity as such;

(c) any person acting as a collector in respect of a public charitable collection (apart from a person who is a promoter of such a collection as defined in section 133(1);

(d) any person who in the course of a relevant programme, that is to say a radio or television programme in the course of which a fund-raising venture is undertaken by—

(i) a charitable institution, or

(ii) a company connected with such an institution,

makes any solicitation at the instance of that institution or company; or

(e) any commercial participator.

(3) In addition, paragraph (b) of the definition of "professional fund-raiser" does not apply to a person if the person does not receive—

(a) more than—

(i) £5 per day, or

(ii) £500 per year,

by way of remuneration in connection with soliciting money or other property for the benefit of the charitable institution referred to in that paragraph; or

(b) more than £500 by way of remuneration in connection with any fund-raising venture in the course of which the person solicits money or other property for the benefit of that institution.

(4) In this Chapter any reference to charitable purposes, where occurring in the context of a reference to charitable, benevolent or philanthropic purposes, is a reference to charitable purposes as defined in section 2(1).

(5) For the purposes of this Chapter a company is connected with a charitable institution if—

(a) the institution, or

(b) the institution and one or more other charitable institutions, taken together,

is or are entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, the whole of the voting power at any general meeting of the company.

(6) In this Chapter—

(a) "represent" and "solicit" mean respectively represent and solicit in any manner whatever, whether expressly or impliedly and whether done—

(i) by speaking directly to the person or persons to whom the representation or solicitation is addressed (whether when that or those persons are in the presence of the speaker or not), or

(ii) by means of a statement published in any newspaper, film or radio or television programme,

or otherwise, and references to a representation or solicitation shall be construed accordingly; and

(b) any reference to soliciting or otherwise procuring money or other property is a reference to soliciting or otherwise procuring money or other property whether any consideration is, or is to be, given in return for the money or other property or not.

(7) Where—

(a) any solicitation of money or other property for the benefit of a charitable institution is made in accordance with arrangements between any person and that institution, and

(b) under those arrangements that person will be responsible for receiving on behalf of the institution money or other property given in respect to the solicitation,

then (if that person would not be so regarded apart from this subsection) that person shall be regarded for the purposes of this Chapter as soliciting money or other property for the benefit of the institution.

(8) Where any fund-raising venture is undertaken by a professional fund-raiser in the course of a radio or television programme, any solicitation which is made by a person in the course of the programme at the instance of the fund-raiser shall be regarded for the purposes of this Part as made by the fund-raiser and not by that person (and shall be so regarded whether or not the solicitation is made by that person for any reward).

(9) In this Chapter "services" includes facilities, and in particular—

(a) access to any premises or event;

(b) membership of any organisation;

(c) the provision of advertising space; and

(d) the provision of any financial facilities;

and references to the supply of services shall be construed accordingly.

(10) The Department may by order amend subsection (3) by substituting a different sum for any sum for the time being specified there.

Commencement Information

I48 S. 159(1)(6) in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

PROSPECTIVE

CHAPTER 3

INTERPRETATION OF PART 13

Interpretation of Part 13

160.—(1) In this Part—

"charitable institution" means—

(a) a charity, or

(b) an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes; and

"collector", in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made by that person alone or with others and whether made by that person for remuneration or otherwise).

(2) In this Part, "charitable appeal", "collection in a public place", "door to door collection" and "public charitable collection" shall be construed in accordance with section 131(2).

PART 14

MISCELLANEOUS AND SUPPLEMENTARY

Merger of charities

Register of charity mergers

161.—(1) The Commission shall establish and maintain a register of charity mergers.

(2) The register shall be kept by the Commission in such manner as it thinks fit.

(3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with subsections (6) to (9) and such procedures as it may determine.

(4) In this section "relevant charity merger" means—

(a) a merger of two or more charities in connection with which one of them ("the transferee") has transferred to it all the property of the other or others, each of which (a "transferor") ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee, or

(b) a merger of two or more charities ("transferors") in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity ("the transferee").

(5) In the case of a merger involving the transfer of property of any charity which has both a permanent endowment and other property ("unrestricted property") and whose trusts do not contain provision for the termination of the charity, subsection (4)(a) or (b) applies in relation to any such charity as if—

(a) the reference to all of its property were a reference to all of its unrestricted property, and

(b) any reference to its ceasing to exist were omitted.

(6) A notification under subsection (3) may be given in respect of a relevant charity merger at any time after—

(a) the transfer of property involved in the merger has taken place, or

(b) (if more than one transfer of property is so involved) the last of those transfers has taken place.

(7) If a vesting declaration is made in connection with a relevant charity merger, a notification under subsection (3) must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (6) has taken place.

(8) A notification under subsection (3) is to be given by the charity trustees of the transferee and must—

(a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place;

(b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities; and

(c) in the case of a notification required by subsection (7), set out the matters mentioned in subsection (9).

(9) The matters are—

(a) the fact that the vesting declaration in question has been made;

(b) the date when the declaration was made; and

(c) the date on which the vesting of title under the declaration took place by virtue of section 163(2).

(10) In this section and section 162—

(a) any reference to a transfer of property includes a transfer effected by a vesting declaration; and

(b) "vesting declaration" means a declaration to which section 163(2) applies.

(11) Nothing in this section or section 163 or 164 applies in a case where section 116 (amalgamation of CIOs) or 118 (transfer of CIO's undertaking) applies.

Commencement Information

I49 S. 161(1)-(10) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Register of charity mergers: supplementary

162.—(1) Subsection (2) applies to the entry to be made in the register in respect of a relevant charity merger, as required by section 161(3).

(2) The entry must—

(a) specify the date when the transfer or transfers of property involved in the merger took place,

(b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 161(9), and

(c) contain such other particulars of the merger as the Commission thinks fit.

(3) The register shall be open to public inspection at all reasonable times.

(4) Where any information contained in the register is not in documentary form, subsection (3) shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

(5) In this section—

"the register" means the register of charity mergers;

"relevant charity merger" has the same meaning as in section 161.

Commencement Information

I50 S. 162 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Pre-merger vesting declarations

163.—(1) Subsection (2) applies to a declaration which—

(a) is made by deed for the purposes of this section by the charity trustees of the transferor,

(b) is made in connection with a relevant charity merger, and

(c) is to the effect that (subject to subsections (3) and (4)) all of the transferor's property is to vest in the transferee on such date as is specified in the declaration ("the specified date").

(2) The declaration operates on the specified date to vest the legal title to all of the transferor's property in the transferee, without the need for any further document transferring it.

This is subject to subsection (3).

(3) Subsection (2) does not apply to—

(a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock);

(b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor's interest without the consent of some other person, unless that consent has been obtained before the specified date; or

(c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any statutory provision.

(4) In this section "relevant charity merger" has the same meaning as in section 161.

(5) In this section—

(a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 161, and

(b) any reference to all of the transferor's property, where the transferor is a charity within section 161(5), is a reference to all of the transferor's unrestricted property (within the meaning of that provision).

(6) In this section any reference to the transferee, in relation to a relevant charity merger, is a reference to—

(a) the transferee (within the meaning of section 161), if it is a company or other body corporate, and

(b) otherwise, to the charity trustees of the transferee (within the meaning of that section).

Commencement Information

I51 S. 163 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Effect of registering charity merger on gifts to transferor

164.—(1) This section applies where a relevant charity merger is registered in the register of charity mergers.

(2) Any gift which—

(a) is expressed as a gift to the transferor, and

(b) takes effect on or after the date of registration of the merger,

takes effect as a gift to the transferee, unless it is an excluded gift.

(3) A gift is an "excluded gift" if—

(a) the transferor is a charity within section 161(5), and

(b) the gift is intended to be held subject to the trusts on which the whole or part of the charity's permanent endowment is held.

(4) In this section—

"relevant charity merger" has the same meaning as in section 161; and

"transferor" and "transferee" have the same meanings as in section 163.

Commencement Information

I52 S. 164 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Religious charities

Application of Act in relation to designated religious charities

165.—(1) Sections 33 to 36 do not apply to a designated religious charity.

(2) The Department may by order provide—

(a) that such other provisions made by or under this Act as may be specified, are not to apply to a designated religious charity; or

(b) that such other provisions made by or under this Act as may be specified, are to apply to a designated religious charity with such modifications as may be specified.

(3) No order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(4) In this section—

"designated religious charity"—

(a) means a charity in relation to which a designation under section 166 is made and has not been withdrawn, and

(b) includes any component element of such a charity which is itself a charity (whether or not having as its principal purpose the advancement of religion);

"specified" means specified in the order.

Commencement Information

I53 S. 165 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Designation, etc. of religious charities

166.—(1) The Commission may, on receiving an application from the charity trustees of a charity, make a designation under this section in relation to the charity.

(2) Subject to subsection (4), the Commission must not make such a designation unless it appears to the Commission that the conditions set out in subsection (3) are satisfied in relation to the charity.

(3) Those conditions are that the charity—

(a) has the advancement of religion as its principal purpose;

(b) has the regular holding of public worship as its principal activity;

(c) has been established in Northern Ireland for at least 5 years; and

(d) has an internal organisation such that—

(i) one or more authorities in Northern Ireland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and

(ii) those elements are subject to such requirements regarding the keeping of accounting records and auditing of accounts as appear to the Commission to correspond to those required by Part 8.

(4) The Commission may determine that subsection (3)(c) need not be satisfied in the case of a charity—

(a) created by the amalgamation of 2 or more charities each of which, immediately before the amalgamation—

(i) was designated under this section, or

(ii) was, in the Commission's opinion, eligible to be so designated, or

(b) constituted by persons who have removed themselves from membership of a charity which, immediately before the removal—

(i) was designated under this section, or

(ii) was, in the Commission's opinion, eligible to be so designated.

(5) The Commission may, by notice served on a charity in relation to which a designation has been made under this section, withdraw the designation where—

(a) it appears to the Commission that one or more of paragraphs (a) to (d) of subsection (3) is no longer satisfied in relation to the charity; or

(b) in consequence of an investigation of any component element of the charity under section 22, the Commission considers that it is no longer appropriate for the charity to be designated under this section.

Commencement Information

I54 S. 166 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

PROSPECTIVE

Institutions which are not charities under the law of Northern Ireland

Institutions which are not charities under the law of Northern Ireland

167.—(1) This section applies to any institution—

(a) which is not a charity under the law of Northern Ireland, but

(b) which operates for charitable purposes in or from Northern Ireland.

(2) In this section, an institution to which this section applies is referred to as "a section 167 institution".

(3) The trustees of a section 167 institution shall prepare in respect of each financial year of the institution—

(a) a financial statement, and

(b) a statement of activities,

relating to its operations for charitable purposes in or from Northern Ireland.

(4) The financial statement and the statement of activities shall comply with such requirements as to their form and contents as may be prescribed by regulations made by the Department.

(5) The Department may by order make such provision as it considers appropriate with respect to section 167 institutions in relation to their operations for charitable purposes in or from Northern Ireland.

(6) Without prejudice to the generality of subsection (5), an order under that subsection may—

(a) require the Commission to keep a register of section 167 institutions;

(b) apply to section 167 institutions any statutory provision which would otherwise not so apply, either without modification or with modifications specified in the order;

(c) disapply, or modify (in ways specified in the order) the application of, any statutory provision which would otherwise apply to section 167 institutions.

(7) No order may be made under this section unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(8) Nothing in this section prejudices the generality of section 182.

Other matters

VALID FROM 01/04/2014

Manner of giving notice of charity meetings, etc.

168.—(1) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents), all notices which are required or authorised by the trusts of a charity to be given to a person who is a charity trustee, member or subscriber may be sent by post, and, if sent by post, may be addressed to any address given as that person's address in the list of charity trustees, members or subscribers for the time being in use at the office or principal office of the charity.

(2) No notice required to be given as aforesaid of any meeting or election need be given to any person who is a charity trustee, member or subscriber, if in the list above mentioned that person has no address in the United Kingdom.

VALID FROM 01/04/2014

Manner of executing [F71documents]

169.—(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees **[**F72documents**]** for giving effect to transactions to which the trustees are a party; and any **[**F73document**]** executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.

(2) An authority under subsection (1)—

(a) shall suffice for any **[**[F73]document**]** if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;

(b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;

(c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the charity trustees, have effect as a continuing authority given by the charity trustees from time to time of the charity and exercisable by such trustees.

(3) In any authority under this section to execute a **[**[F73]document**]** in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority also to execute it for them in the name and on behalf of the official custodian or of any other person, in any case in which the charity trustees could do so.

(4) Where a **[**[F73]document**]** purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.

(5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

Textual Amendments

F71 Word in s. 169 heading substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 23(4)**

F72 Word in s. 169(1) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 23(2)**

F73 Word in s. 169(1)(2)(a)(3)(4) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 23(3)**

VALID FROM 01/04/2014

Transfer and evidence of title to property vested in trustees

170.—(1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient

evidence of that fact if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting and is attested by two persons present at the meeting.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1), if executed as a deed, shall have the like operation under section 39 of the Trustee Act (Northern Ireland) 1958 (c. 23) (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees) as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of section 1 of the Charities Act (Northern Ireland) 1964 (c. 33) (20th October 1964).

(5) This section shall apply in relation to any institution to which the Literary and Scientific Institutions Act 1854 (c. 112) applies as it applies in relation to a charity.

Supply by Commission of copies of documents open to public inspection

171 The Commission shall, at the request of any person, **[**[F74]provide**]** that person with copies of, or extracts from, any document in the Commission's possession which is for the time being open to inspection under this Act.

Textual Amendments

F74 Word in s. 171 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(1)(d)**

Commencement Information

I55 S. 171 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Fees and other amounts payable to Commission

172.—(1) The Department may by regulations require the payment to the Commission of such fees as may be prescribed by the regulations in respect of—

(a) the discharge by the Commission of such functions under the statutory provisions relating to charities as may be so prescribed;

(b) the inspection of the register of charities or of other material kept by the Commission under those statutory provisions, or the **[**[F75]provision**]** of copies of or extracts from documents so kept.

(2) Regulations under this section may—

(a) confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee;

(b) provide for the remission or refunding of a prescribed fee (in whole or in part) in circumstances prescribed by the regulations.

(3) Any regulations under this section which require the payment of a fee in respect of any matter for which no fee was previously payable shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(4) The Commission may impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it.

(5) Any fees and other payments received by the Commission by virtue of this section shall be paid to the Department.

Textual Amendments

F75 Word in s. 172(1)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(4)(a)**

Modifications etc. (not altering text)

C47 S. 172 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Enforcement of requirements by order of Commission

173.—(1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2)) the Commission may by order give that person such directions as it considers appropriate for securing that the default is made good.

(2) Subsection (1) does not apply to any such requirement if—

(a) a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty; or

(b) the requirement is imposed—

(i) by an order of the Commission to which section 174 applies, or

(ii) by a direction of the Commission to which that section applies by virtue of section 176(2).

Modifications etc. (not altering text)

C48 S. 173 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Enforcement of orders of Commission

174 A person guilty of disobedience—

(a) to an order of the Commission under section 23(1), 36, 37, 66(2), 84, 87 or 90; or

(b) to an order of the Commission under section 31 or 33 requiring a transfer of property or payment to be called for or made; or

(c) to an order of the Commission requiring a default under this Act to be made good;

may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court.

Modifications etc. (not altering text)

C49 S. 174 modified (except in so far as it applies to sections 33(1)(b)(iii), 66(2) and 84) (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I56 S. 174 partly in operation; s. 174 not in operation at Royal Assent see s. 185(1); s. 174 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Other provisions as to orders of Commission

175.—(1) Any order made by the Commission under this Act may include such incidental or supplementary provisions as the Commission thinks expedient for carrying into effect the objects of the order, and where the Commission exercises any jurisdiction to make such an order on an application or reference to it, it may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion.

(2) Where the Commission makes an order under this Act, then [F76]... the Commission may itself give such public notice as it thinks fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity affected by the order.

(3) The Commission at any time within 12 months after it has made an order under any provision of this Act other than section 84, if it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in

conformity with this Act, may with or without any application or reference to it discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.

(4) Except for the purposes of subsection (3) or of an appeal under this Act, an order made by the Commission under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

(5) An order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made**[**[F77]and may include transitional provisions or savings**]**.

Textual Amendments

F76 Words in s. 175(2) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 24(2), **2**

F77 Words in s. 175(5) added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 24(3)**

Modifications etc. (not altering text)

C50 S. 175 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Directions of the Commission

176.—(1) Any direction given by the Commission under any provision contained in this Act—

(a) may be varied or revoked by a further direction given under that provision; and

(b) shall be given in writing.

(2) Sections 174 and 175(1), (2) and (4) shall apply to any such directions as they apply to an order of the Commission.

(3) In subsection (1) the reference to the Commission includes, in relation to a direction under subsection (3) of section 22, a reference to any person conducting an inquiry under that section.

(4) Nothing in this section shall be read as applying to any directions contained in an order made by the Commission under section 173(1).

Modifications etc. (not altering text)

C51 S. 176 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Miscellaneous provisions as to evidence

177.—(1) Where, in any proceedings to recover or compel payment of any rentcharge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rentcharge or other periodical payment has at any time been paid for 12 consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income, and no proof of its origin shall be necessary.

(2) Evidence of any order, certificate or other document issued by the Commission may be given by means of a copy which it retained, or which is taken from a copy so retained, and evidence of an entry in any register kept by it may be given by means of a copy of the entry, if (in each case) the copy is certified in accordance with subsection (3).

(3) The copy shall be certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for that purpose.

(4) A document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.

Modifications etc. (not altering text)

C52 S. 177 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Restriction on institution of proceedings for certain offences

178.—(1) No proceedings for an offence under this Act to which this section applies shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) This section applies to any offence under—

(a) section 19;

(b) section 25;

(c) section 33(11);

(d) section 71; or

(e) section 87.

Modifications etc. (not altering text)

C53 S. 178 (except s. 178(2)(a)(d)) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I57 S. 178 partly in operation; s. 178 not in operation at Royal Assent see s. 185(1); s. 178 (except s. 178(2)(a)(d)) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

I58 S. 178(2)(a) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

Supplementary

Orders and regulations

179.—(1) Except as otherwise provided by subsection (2) or (3), any order or regulations made by the Department under this Act shall be subject to negative resolution.

(2) Subsection (1) does not apply—

(a) to an order under section [F78]... 93(6), 165, 167, 181 or 185, paragraph 10 of Schedule 1 or paragraph 6 of Schedule 3;

(b) to regulations under section 119, 122 or 158; or

(c) to any regulations to which section 172(3) applies.

(3) Subsection (1) applies subject to **[**[F79]sections 32(3) and**]** 182(4).

(4) Before making any regulations under section 64, 66, 68, 119, 122, 157, 158 or 167 or Schedule 6 the Department shall consult such persons or bodies of persons as it considers appropriate.

(5) Any regulations made by the Department or the Commission under this Act may make such supplemental, incidental, consequential or transitional provision or savings as the Department, or as the case may be, the Commission, considers appropriate.

(6) Any regulations made by the Commission under this Act shall be published in such manner as the Commission thinks fit.

Textual Amendments

F78 Word in s. 179(2)(a) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 25(2), **2**

F79 Words in s. 179(3) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 25(3)**

General interpretation

180.—(1) In this Act—

"charitable purposes" means purposes which are exclusively charitable purposes as defined by section 2;

"charity" has the meaning given in section 1;

"charity trustees" means the persons having the general control and management of the administration of a charity;

"CIO" means charitable incorporated organisation;

"the Commission" means the Charity Commission for Northern Ireland;

"company" means a company **[**[F80]registered under the Companies Act 2006 in Northern Ireland**]**;

"the Court", subject to Article 14(b) of the County Courts (Northern Ireland) Order 1980 (NI 3), means the High Court;

"the Department" means the Department for Social Development;

"financial year"—

(a) in relation to a charity which is a company, shall be construed in accordance with section 390 of the Companies Act 2006 (c. 46), and

(b) in relation to any other charity, shall be construed in accordance with regulations made by virtue of section 64(2)**[**[F81]but this is subject to any provision of regulations made by virtue of paragraph 3(5) of Schedule 6 (financial years of subsidiary undertakings)**]**;

"gross income", in relation to a charity, means its gross recorded income from all sources including special trusts;

"independent examiner", in relation to a charity, means such a person as is mentioned in section 65(3)(a);

"institution" means any institution whether incorporated or not and includes a trust or undertaking;

"members", in relation to a charity with a body of members distinct from the charity trustees, means any of those members;

"modifications" includes additions, omissions and amendments;

"the official custodian" means the official custodian for charities (see section 11);

"permanent endowment" shall be construed in accordance with section 1(3);

"public benefit" shall be construed in accordance with section 3;

[[F82]"the public benefit requirement" has the meaning given by section 3(1);**]**

"public charitable collection" has the meaning given by section 131(2);

"public collections certificate" means a certificate issued under section 138;

"the register" means the register of charities kept under section 16, and "registered" shall be construed accordingly;

"special trust" means property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and

administered on separate trusts relating only to that property but a special trust shall not, by itself, constitute a charity for the purposes of Part 8;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

"the Tribunal" means the Charity Tribunal for Northern Ireland;

"trusts" in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning.

(2) In this Act, "document" includes information recorded in any form, and, in relation to information recorded otherwise than in legible form—

(a) any reference to its production shall be construed as a reference to the **[**[F83]provision**]** of a copy of it in legible form; and

(b) any reference to the **[**[F84]provision**]** of a copy of, or extract from, it shall accordingly be construed as a reference to the **[**[F84]provision**]** of a copy of, or extract from, it in legible form.

(3) No vesting or transfer of any property in pursuance of any provision of Part 6, 9, 11, 12 or 14 shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Textual Amendments

F80 Words in s. 180(1) in the definition of "company" substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 26(2)**

F81 Words in s. 180(1) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 26(3)**

F82 Words in s. 180(1) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 26(4)**

F83 Word in s. 180(2)(a) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(4)(b)**

F84 Word in s. 180(2)(b) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 6(4)(b)**

Amendments reflecting changes in company law

181.—(1) The Department may by order make such amendments of this Act as it considers appropriate—

(a) in consequence of, or in connection with, the extension of the Companies Acts to Northern Ireland by section 1284 of the Companies Act 2006 (c. 46);

(b) in consequence of, or in connection with, any changes made or to be made by any statutory provision to the provisions of company law relating to the accounts of charitable companies or to the auditing of, or preparation of reports in respect of, such accounts; or

(c) for the purposes of, or in connection with, applying provisions of Schedule 6 (group accounts) to charitable companies that are not required to produce group accounts under company law.

(2) In this section—

"accounts" includes group accounts;

"amendments" includes modifications and repeals;

"charitable companies" means companies which are charities;

"company law" means statutory provisions relating to companies.

(3) An order under this section shall not be made unless a draft of the order is laid before and approved by a resolution of the Assembly.

Further provision

182.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Act;

(b) in consequence of any provision made by or under this Act, or for giving full effect to it.

(2) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with—

(a) the coming into operation of any provision of this Act; or

(b) any provision made by an order under subsection (1).

(3) An order under this section may amend, modify or repeal any statutory provision (including a statutory provision restating, with or without modifications, a statutory provision amended by this Act).

(4) An order which does so shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(5) The powers conferred by this section are not restricted by any other provision of this Act.

Minor and consequential amendments

183 The statutory provisions mentioned in Schedule 8 shall have effect with the minor and consequential amendments specified there.

Commencement Information

I59 S. 183 in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

Repeals

184 Subject to any savings or transitional provisions made by or under this Act, the statutory provisions mentioned in Schedule 9 are repealed to the extent specified there.

Commencement Information

I60 S. 184 in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

Commencement

185.—(1) This Act, except section 180, this section and section 186, comes into operation on such day or days as the Department may by order appoint.

(2) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (statutory powers and duties generally), an order under subsection (1) may provide that provisions are to come into operation on different days in relation to charities of different descriptions.

Subordinate Legislation Made

P1 S. 185(1) power partly exercised: 27.3.2009 appointed for specified provisions by S.R. 2009/138, art. 2, **Sch.**;
25.9.2009 appointed for specified provisions by S.R. 2009/324, **art. 2**;
18.2.2011 appointed for specified provisions by S.R. 2011/11, art. 2, **Sch.**

Short title

186 This Act may be cited as the Charities Act (Northern Ireland) 2008.

SCHEDULES

SCHEDULE 1

Section 6(7).

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Terms of appointment

1 The members of the Commission shall hold and vacate office as such in accordance with the terms of their respective appointments.

2.—(1) An appointment of a person to hold office as a member of the Commission shall be for a term not exceeding 5 years.

(2) A person holding office as a member of the Commission—

(a) may resign that office by giving notice in writing to the Department, and

(b) may be removed from office by the Department on the ground of incapacity or misbehaviour.

(3) Before removing a member of the Commission, the Department shall consult the Commission.

Remuneration, etc.

3 The Department may, with the approval of the Department of Finance and Personnel, pay to or in respect of members of the Commission—

(a) remuneration;

(b) allowances and fees; and

(c) sums for the provision of pensions.

Staff

4.—(1) The Commission may with the approval of the Department and the Department of Finance and Personnel as to numbers and as to remuneration and other terms and conditions of employment—

(a) employ such staff as the Commission considers necessary;

(b) employ the services of such other persons as the Commission considers expedient for any particular purpose.

(2) The Commission may, in the case of such of its staff as may be determined by it with the approval of the Department and the Department of Finance and

Personnel, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.

(3) Payments made or expenses incurred under this paragraph shall be defrayed out of money appropriated by Act of the Assembly.

5.—(1) The Commission may make arrangements with the Department for persons employed in the Northern Ireland civil service to be seconded to the Commission.

(2) Such arrangements require the consent of the Department of Finance and Personnel.

Annual report

6.—(1) The Commission shall, as soon as reasonably practicable after the end of each financial year, make a report to the Department on—

(a) the discharge of its functions,

(b) the extent to which, in its opinion, its objectives (see section 7) have been met,

(c) the performance of its general duties (see section 9), and

(d) the management of its affairs.

(2) In sub-paragraph (1), "financial year" means—

(a) the period beginning with the date on which the Commission is established and ending with the next 31st March following that date, and

(b) each successive period of 12 months ending with 31st March.

(3) Sub-paragraph (4) applies if there is a period of one or more days which—

(a) began on the day after the end of the last year for which the Department made a report under section 34 of the Charities Act (Northern Ireland) 1964; and

(b) ended on the day before the coming into operation of section 6.

(4) The first report published by the Commission under this paragraph shall also be a report on the operations of the Department under that Act and the Charities (Northern Ireland) Order 1987 (NI 19) during the period mentioned in sub-paragraph (3).

(5) The Department shall lay a copy of the report before the Assembly.

Money

7.—(1) Expenditure incurred by the Commission may be defrayed as expenses of the Department if authorised by that Department and the Department of Finance and Personnel.

(2) Expenditure defrayed under this paragraph shall be defrayed out of money appropriated by Act of the Assembly and an authorisation for the purposes of this paragraph may be general or specific.

8.—(1) The Commission shall keep accounts and financial records in a form approved by the Department.

(2) The Commission shall—

(a) prepare a statement of accounts in respect of each financial year containing such information, and in such form, as is directed by the Department with the consent of the Department of Finance and Personnel; and

(b) send a copy to the Department and to the Comptroller and Auditor General for Northern Ireland within such period after the end of the financial year as the Department directs.

(3) The Comptroller and Auditor General for Northern Ireland shall—

(a) examine, certify and report on the statement of accounts; and

(b) send a copy of the statement of accounts and of the report to the Department.

(4) The Department shall lay a copy of the statement of accounts and the Comptroller and Auditor General's report before the Assembly.

(5) For the purposes of this paragraph—

(a) a financial year is a period of 12 months ending on 31st March; but

(b) the first financial year is the period beginning with the day on which section 6 comes into operation and ending with the first 31st March which falls at least 6 months after that day.

Procedure

9.—(1) In determining its own procedure the Commission may, in particular, make provision about—

(a) the discharge of its functions by committees (which may include persons who are not members of the Commission);

(b) a quorum for meetings of the Commission or a committee.

(2) The validity of any proceedings of the Commission or a committee shall not be affected by—

(a) a vacancy in the office of chair or deputy chair; or

(b) a defect in the appointment of a member.

Power to transfer property

10.—(1) This paragraph applies where the Department—

(a) acts as trustee of any property for a charity, and

(b) is of the opinion that the official custodian should so act in exercise of any function conferred on the official custodian by or under this Act.

(2) The Department may by order transfer to the official custodian any such property, and any rights and liabilities to which the Department is entitled or subject in connection with that property.

(3) Sub-paragraph (2)—

(a) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than under that sub-paragraph; but

(b) does not apply to rights or liabilities under a contract of employment.

(4) The Statutory Rules (Northern Ireland) Order 1979 (NI 12) shall not apply to any order made under sub-paragraph (2).

Status

11 The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and property of the Commission shall not be regarded as property of, or held on behalf of, the Crown.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

12 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified), at the appropriate place insert — " The Charity Commission for Northern Ireland ".

The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)

13 In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation) at the appropriate place insert—

"The Charity Commission for Northern Ireland".

The Freedom of Information Act 2000 (c. 36)

14 In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (bodies, etc. which are public authorities for the purposes of the Act) at the appropriate place insert— " The Charity Commission for Northern Ireland ".

SCHEDULE 2

Section 12(2).

THE CHARITY TRIBUNAL

Membership

1.—(1) The Tribunal shall consist of the President and its other members.

(2) The **[**[F85]Northern Ireland Judicial Appointments Commission**]** shall appoint—

(a) a President of the Tribunal,

(b) legal members of the Tribunal, and

(c) ordinary members of the Tribunal.

(3) A person may be appointed as the President or a legal member of the Tribunal only if that person is a barrister or solicitor of not less than 7 years' standing.

(4) A person may be appointed as an ordinary member of the Tribunal only if it appears to the **[**[F86]Department of Justice**]** that the person has appropriate knowledge or experience relating to charities.

Textual Amendments

F85 Words in Sch. 2 para. 1(2) substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(2)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

F86 Words in Sch. 2 para. 1(4) substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 20**; S.R. 2010/147, **art. 2(2)** (this amendment supersedes that by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(3)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2** which provided that for the words "First Minister and deputy First Minister acting jointly" the words "justice department (within the meaning of the Justice (Northern Ireland) Act 2002)" are substituted (12.4.2010))

2 The Lord Chief Justice may designate a legal member of the Tribunal to carry out the functions of the President when the President is unable to act or when the office is vacant.

Terms of appointment

3.—(1) The members of the Tribunal shall hold and vacate office as such in accordance with the terms of their respective appointments.

[[F87](1A) The terms mentioned in sub-paragraph (1) are to be determined by the Northern Ireland Judicial Appointments Commission with the agreement of the **[**[F88]Department of Justice**].]**

(2) A person holding office as a member of the Tribunal may resign that office by giving notice in writing to the **[**[F89]Northern Ireland Judicial Appointments Commission**]** .

(3) A previous appointment as a member of the Tribunal does not affect a person's eligibility for re-appointment as a member of the Tribunal.

Textual Amendments

F87 Sch. 2 para. 3(1A) inserted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(4)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

F88 Words in Sch. 2 para. 3(1A) substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 20**; S.R. 2010/147, **art. 2(2)**

F89 Words in Sch. 2 para. 3(2) substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(5)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

4.—(1) A person shall not hold office as a member of the Tribunal after reaching the age of 70.

(2) Section 26(5) and (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75) apply in relation to a member of the Tribunal as they apply in relation to a holder of a relevant office.

Remuneration, etc.

[[F90]**5** The **[**[F91]Department of Justice**]** may pay to the members of the Tribunal such remuneration and other allowances as that department may determine.**]**

Textual Amendments

F90 Sch. 2 para. 5 substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(6)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

F91 Words in Sch. 2 para. 5 substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 20**; S.R. 2010/147, **art. 2(2)**

Staff and facilities

6 The **[**[F92]Department of Justice**]** may make staff and facilities available to the Tribunal.

Textual Amendments

F92 Words in Sch. 2 para. 6 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 171** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Modifications etc. (not altering text)

C54 Sch. 2 para. 6: functions transferred from Lord Chancellor to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 58(b)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

Panels

7.—(1) The functions of the Tribunal shall be exercised by panels of the Tribunal.

(2) Panels of the Tribunal shall sit at such times and in such places as the President may direct.

(3) More than one panel may sit at a time.

8.—(1) The President shall make arrangements for determining which of the members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function.

(2) Those arrangements shall, in particular, ensure that each panel is constituted in one of the following ways—

(a) as the President sitting alone,

(b) as a legal member sitting alone,

(c) as the President sitting with two other members,

(d) as a legal member sitting with two other members,

(e) as the President sitting with one other member,

(f) as a legal member sitting with one other member,

(and references in heads (d) and (f) to other members do not include the President).

Practice and procedure

9.—(1) Decisions of the Tribunal may be taken by majority vote.

(2) In the case of a panel constituted in accordance with paragraph 8(2)(e), the President shall have a casting vote.

(3) In the case of a panel constituted in accordance with paragraph 8(2)(f) which consists of a legal member and an ordinary member, the legal member shall have a casting vote.

(4) The President shall make arrangements as to who is to have a casting vote in the case of a panel constituted in accordance with paragraph 8(2)(f) which consists of two legal members.

10 The President may, subject to rules under section 13, give directions about the practice and procedure of the Tribunal.

[F93 Transitory provision]

Textual Amendments

F93 Sch. 2 para. 11 and heading omitted (12.4.2010) by virtue of Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(7)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

11 F94 . . . . . .

Textual Amendments

F94 Sch. 2 para. 11 and heading omitted (12.4.2010) by virtue of Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 47(7)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

12 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified) at the appropriate place insert — " The Charity Tribunal for Northern Ireland ".

SCHEDULE 3

Section 12(3)(a).

APPEALS AND APPLICATIONS TO TRIBUNAL

Modifications etc. (not altering text)

C55 Sch. 3 modified (except in so far as para. 2(2)(b) relates to the official custodian) (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Appeals: general

1.—(1) Except in the case of a reviewable matter (see paragraph 3) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of the Table.

(2) Such an appeal may be brought by—

(a) the Attorney General, or

(b) any person specified in the corresponding entry in column 2 of the Table.

(3) The Commission shall be the respondent to such an appeal.

(4) In determining such an appeal the Tribunal—

(a) shall consider afresh the decision, direction or order appealed against, and

(b) may take into account evidence which was not available to the Commission.

(5) The Tribunal may—

(a) dismiss the appeal, or

(b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of the Table.

Appeals: orders under section 23

2.—(1) Paragraph 1(4)(a) does not apply in relation to an appeal against an order made under section 23.

(2) On such an appeal the Tribunal shall consider whether the information or document in question—

(a) relates to a charity;

(b) is relevant to the discharge of the functions of the Commission or the official custodian.

(3) The Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within either head (a) or (b) of sub-paragraph (2).

Commencement Information

I61 Sch. 3 para. 2 partly in operation; Sch. 3 para. 2 not in operation at Royal Assent see s. 185(1); Sch. 3 para. 2 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

Reviewable matters

3.—(1) In this Schedule references to "reviewable matters" are to—

(a) decisions on which sub-paragraph (2) applies, and

(b) orders to which sub-paragraph (3) applies.

(2) This sub-paragraph applies to decisions of the Commission—

(a) to institute an inquiry under section 22 with regard to a particular institution,

(b) to institute an inquiry under section 22 with regard to a class of institutions,

(c) not to make a common investment scheme under section 43,

(d) not to make a common deposit scheme under section 44,

(e) not to make an order under section 46 in relation to a charity,

(f) not to make an order under section 57 in relation to land held by or in trust for a charity,

(g) not to make an order under section 60 in relation to a mortgage of land held by or in trust for a charity.

(3) This sub-paragraph applies to an order made by the Commission under section 104(1) in relation to a company which is a charity.

Reviews

4.—(1) An application may be made to the Tribunal for the review of a reviewable matter.

(2) Such an application may be made by—

(a) the Attorney General, or

(b) any person mentioned in the entry in column 2 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.

(3) The Commission shall be the respondent to such an application.

(4) In determining such an application the Tribunal shall apply the principles which would be applied by the High Court on an application for judicial review.

(5) The Tribunal may—

(a) dismiss the application, or

(b) if it allows the application, exercise any power mentioned in the entry in column 3 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.

Interpretation: remission of matters to Commission

5 References in column 3 of the Table to the power to remit a matter to the Commission are to the power to remit the matter either—

(a) generally, or

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

TABLE

1	**2**	**3**
Decision of the Commission not to give a direction under section 1(4) or	The persons are the trustees of the institution or charity concerned.	Power to quash the decision and (if appropriate) remit the matter to the Commission.

(5) in relation to an institution or a charity.		
Decision of the Commission under section 16— (a) to enter or not to enter an institution in the register of charities, or (b) to remove or not to remove an institution from the register.	The persons are— (a) the persons who are or claim to be the charity trustees of the institution, (b) (if a body corporate) the institution itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to rectify the register.
Decision of the Commission not to make a determination under section 16(9) in relation to particular information contained in the register.	The persons are— (a) the charity trustees of the charity to which the information relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Direction given by the Commission under section 20 requiring the name of a charity to be changed.	The persons are— (a) the charity trustees of the charity to which the direction relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the direction.	Power to— (a) quash the direction and (if appropriate) remit the matter to the Commission, (b) substitute for the direction any other direction which could have been given by the Commission.

Decision of the Commission to institute an inquiry under section 22 with regard to a particular institution.	The persons are— (a) the persons who have control or management of the institution, and (b) (if a body corporate) the institution itself.	Power to direct the Commission to end the inquiry.
Decision of the Commission to institute an inquiry under section 22 with regard to a class of institutions.	The persons are— (a) the persons who have control or management of any institution which is a member of the class of institutions, and (b) (if a body corporate) any such institution.	Power to— (a) direct the Commission that the inquiry should not consider a particular institution (b) direct the Commission to end the inquiry.
Order made by the Commission under section 23 requiring a person to supply information or a document.	The persons are any person who is required to supply the information or document.	Power to— (a) quash the order, (b) substitute for all or part of the order any other order which could have been made by the Commission.
Order made by the Commission under section 31(1).	The persons are— (a) in a section 31(1)(a) case, the charity trustees of the charity to which the order relates or (if a body corporate) the charity itself, (b) in a section 31(1)(b) case, any person	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which

	discharged or removed by the order, and (c) any other person who is or may be affected by the order.	could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 33(1) in relation to a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, (c) in a section 33(1)(i) case, any person suspended by the order, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 33(2) in relation to a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, (c) in a section 33(2)(i) case, any person removed by the order, and (d) any other person who is or may be	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been

	affected by the order.	made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 33(4) removing a charity trustee.	The persons are— (a) the charity trustee, (b) the remaining charity trustees of the charity of which he was a charity trustee, (c) (if a body corporate) the charity itself, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 33(5) appointing a charity trustee.	The persons are— (a) the other charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been

		made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission— (a) to discharge an order following a review under section 33(10), or (b) not to discharge an order following such a review.	The persons are— (a) the charity trustees of the charity to which the order relates, (b) (if a body corporate) the charity itself, (c) if the order in question was made under section 33(1)(i), any person suspended by it, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) make the discharge of the order subject to savings or other transitional provisions, (c) remove any savings or other transitional provisions to which the discharge of the order was subject, (d) discharge the order in whole or in part (whether subject to any savings or other transitional provisions or not).
Order made by the Commission under section 34(2) which suspends a person's membership of a charity.	The persons are— (a) the person whose membership is suspended by the order, and	Power to quash the order and (if appropriate) remit the matter to the Commission.

	(b) any other person who is or may be affected by the order.	
Order made by the Commission under section 36(2) which directs a person to take action specified in the order.	The persons are any person who is directed by the order to take the specified action.	Power to quash the order and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 37(2) which directs a person to apply property in a specified manner.	The persons are any person who is directed by the order to apply the property in the specified manner.	Power to quash the order and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to make a common investment scheme under section 43.	The persons are— (a) the charity trustees of a charity which applied to the Commission for the scheme, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to make a common deposit scheme under section 44.	The persons are— (a) the charity trustees of a charity which applied to the Commission for the scheme, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be	Power to quash the decision and (if appropriate) remit the matter to the Commission.

	affected by the decision.	
Decision by the Commission not to make an order under section 46 in relation to a charity.	The persons are— (a) the charity trustees of the charity, and (b) (if a body corporate) the charity itself.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Direction given by the Commission under section 48 in relation to an account held in the name of or on behalf of a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the direction and (if appropriate) remit the matter to the Commission, (b) substitute for the direction any other direction which could have been given by the Commission, (c) add to the direction anything which could have been contained in a direction given by the Commission.
Decision of the Commission not to make an order under section 57 in relation to land held by or in trust for a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.

Decision of the Commission not to make an order under section 60 in relation to a mortgage of land held by or in trust for a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 65(6) requiring the accounts of a charity to be audited.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 66(2) in relation to a charity, or a decision of the Commission not to make such an order in relation to a charity.	The persons are— (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, (c) in the case of a decision not to make an order, the auditor, independent examiner or examiner, and (d) any other person who is or may be affected by	Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order of a kind the Commission could have made, (c) make any order which the Commission could have made.

	the order or the decision.	
Decision of the Commission not to dispense with the requirements of section 70(1) in relation to a charity or class of charities.	The persons are the charity trustees of any charity affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission— (a) to grant a certificate of incorporation under section 73(1) to the trustees of a charity, or (b) not to grant such a certificate.	The persons are— (a) the trustees of the charity[F95(within the meaning of section 85)], and (b) any other person who is or may be affected by the decision.	Power to quash— (a) the decision, (b) any conditions or directions inserted in the certificate, and (if appropriate) remit the matter to the Commission.
Decision of the Commission to amend a certificate of incorporation F96 ... under section 79(4).	The persons are— (a) the trustees of the charity[F95(within the meaning of section 85)], and (b) any other person who is or may be affected by the amended certificate of incorporation.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to amend a certificate of incorporation under section 79(4).	The persons are— (a) the trustees of the charity[F95(within the meaning of section 85)], and (b) any other person who is or may be affected by the decision not to amend the	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) make any order the Commission could have

	certificate of incorporation.	made under section 79(4).
Order of the Commission under section 84(1) or (2) which dissolves [F97] ... an incorporated body.	The persons are— (a) the trustees of the charity**[**[F95](within the meaning of section 85)**]**, (b) [F98]..., and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission, (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission under section 86(4) to waive, or not to waive, a person's disqualification.	The persons are— (a) the person who applied for the waiver, and (b) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) substitute for the decision any other decision of a kind which could have been made by the Commission.
Order made by the Commission under section 87(4) in relation to a person who has acted as charity trustee or trustee for a charity.	The persons are— (a) the person subject to the order, and (b) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission,

		(b) substitute for the order any other order which could have been made by the Commission.
Order made by the Commission under section 90(5) or (6) requiring a trustee or connected person to repay, or not to receive, remuneration.	The persons are— (a) the trustee or connected person, (b) the other charity trustees of the charity concerned, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission.
Decision of the Commission to give, or withhold, consent under section 96(2) F99 ... or 98(1) in relation to a body corporate which is a charity.	The persons are— (a) the charity trustees of the charity, (b) the body corporate itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Order made by the Commission under section 104(1) in relation to a company which is a charity.	The persons are— (a) the directors of the company, (b) the company itself, and (c) any other person who is or may be affected by the order.	Power to— (a) quash the order and (if appropriate) remit the matter to the Commission, (b) substitute for the order any other order which could have been made by the Commission,

		(c) add to the order anything which could have been contained in an order made by the Commission.
[[F100]Order made by the Commission under section 104(5) in relation to a charity which is a company, or a decision of the Commission not to make such an order in relation to such a charity.**]**	**[**[F100]The persons are— (a) the charity trustees of the charity; (b) the charity itself; (c) in the case of a decision not to make an order, the auditor; and (d) any other person who is or may be affected by the order or the decision.**]**	**[**[F100]Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made.**]**
Decision of the Commission under section 110 to grant an application for the constitution of a CIO and its registration as a charity.	The persons are any person (other than the persons who made the application) who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to rectify the register of charities.
Decision of the Commission under section 110 **[**[F101]to refuse**]** an application for the constitution of a CIO and its registration as a charity.	The persons are— (a) the persons who made the application, and (b) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission

		to grant the application.
Decision of the Commission under section 113 **[**[F102]to refuse**]** an application for the conversion of a charitable company or a registered society into a CIO and the CIO's registration as a charity.	The persons are— (a) the charity which made the application, (b) the charity trustees of the charity, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.
Decision of the Commission under section 116 to grant an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO as their successor.	The persons are any creditor of any of the CIOs being amalgamated.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under section 116 **[**[F103]to refuse**]** an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO as their successor.	The persons are— (a) the CIOs which applied for the amalgamation, (b) the charity trustees of the CIOs, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.
Decision of the Commission to confirm a resolution passed by a CIO under section 118(1).	The persons are any creditor of the CIO.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission **[**[F104]to refuse**]** a resolution	The persons are— (a) the CIO,	Power to— (a) quash the decision and

passed by a CIO under section 118(1).	(b) the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	(if appropriate) remit the matter to the Commission, (b) direct the Commission to confirm the resolution.
Decision of the Commission to notify charity trustees under section 124(2) that it objects to a resolution of the charity trustees under section 123(2) or 126(2).	The persons are— (a) the charity trustees, and (b) any other person who is or may be affected by the decision.	Power to quash the decision.
Decision of the Commission not to concur under section 129 with a resolution of charity trustees under section 129(3) or section 130(2).	The persons are— (a) the charity trustees, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision under section 138 to refuse to issue a public collections certificate or to attach any condition to such a certificate.	The person who applied for the certificate.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) substitute for the decision any other decision of a kind that the Commission could have made.
Decision of the Commission under section 141 not to	The persons are— (a) the person to whom the	Power to— (a) quash the decision and

direct that a public collections certificate be transferred.	certificate has been issued, and (b) any other person who is or may be affected by the decision.	(if appropriate) remit the matter to the Commission, (b) substitute for the decision any other decision of a kind that the Commission could have made.
Decision of the Commission under section 142— (a) to withdraw or suspend a public collections certificate, (b) to attach a condition to such a certificate, or (c) to vary an existing condition of such a certificate.	The person to whom the certificate has been issued.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) substitute for the decision any other decision of a kind that the Commission could have made.
Decision of the Commission to refuse to make a designation under section 166 in relation to a charity.	The persons are— (a) the charity trustees of the charity, and (b) (if a body corporate) the charity itself.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, and (b) direct the Commission to make a designation under section 166 in relation to the charity.
Decision of the Commission under section 166(5) to withdraw the designation of a	The persons are— (a) the charity trustees of the charity, and	Power to quash the decision and (if appropriate) remit the matter to the Commission.

charity as a designated religious charity.	(b) (if a body corporate) the charity itself.	
[[F105]Order made by the Commission under paragraph 6(5), or by virtue of paragraph 7(2), of Schedule 6 requiring the group accounts of the parent charity to be audited.**]**	**[**[F105]The persons are— (a) the charity trustees of the parent charity; (b) (if a body corporate) the parent charity itself; and (c) any other person who may be affected by the order.**]**	**[**[F105]Power to— (a) quash the order; (b) substitute for the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.**]**
[[F105]Order made by the Commission by virtue of paragraph 8(4) of Schedule 6 in relation to a member of a group, or a decision of the Commission not to make such an order in relation to a member of a group.**]**	**[**[F105]The persons are— (a) the charity trustees of the member of the group, (b) (if a body corporate) the member of the group itself, (c) in the case of a decision not to make an order, the auditor, independent examiner or examiner, and (d) any other person who is or may be affected by the order or the decision.**]**	**[**[F105]Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made.**]**
Decision of the Commission under paragraph 15 of Schedule 7 to refuse to	The persons are— (a) the CIO,	Power to quash the decision and (if appropriate)—

register an amendment to the constitution of a CIO.	(b) the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	(a) remit the matter to the Commission, (b) direct the Commission to register the amendment.
[[F106]Decision of the Commission to give or withhold consent under section 42(4) of the Companies Act 2006.**]**	**[**[F106]The persons are— (a) the charity trustees of the charity, (b) the company itself, and (c) any other person who is or may be affected by the decision.**]**	**[**[F106]Power to quash the decision and (if appropriate) remit the matter to the Commission.**]**

Textual Amendments

F95 Words in Sch. 3 inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(4)**

F96 Words in Sch. 3 omitted (19.1.2013) by virtue of Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 27(2), **2**

F97 Words in Sch. 3 omitted (19.1.2013) by virtue of Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 27(3)(a), **2**

F98 Words in Sch. 3 omitted (19.1.2013) by virtue of Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 27(3)(b), **2**

F99 Words in Sch. 3 omitted (19.1.2013) by virtue of Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 27(5), **2**

F100 Words in Sch. 3 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(6)**

F101 Words in Sch. 3 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(7)(a)**

F102 Words in Sch. 3 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(7)(b)**

F103 Words in Sch. 3 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(7)(c)**

F104 Words in Sch. 3 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(8)**

F105 Words in Sch. 3 inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(9)**

F106 Words in Sch. 3 added (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 27(10)**

Power to amend Table, etc.

6.—(1) The Department may by order—

(a) amend or otherwise modify an entry in the Table,

(b) add an entry to the Table, or

(c) remove an entry from the Table.

(2) An order under sub-paragraph (1) may make such amendments, repeals or other modifications of paragraphs 1 to 5 of this Schedule, or of a statutory provision which applies this Schedule, as the Department considers appropriate in consequence of any change in the Table made by the order.

(3) No order shall be made under this paragraph unless a draft of the order has been laid before and approved by a resolution of the Assembly.

SCHEDULE 4

Section 12(3)(b).

REFERENCES TO THE TRIBUNAL

Modifications etc. (not altering text)

C56 Sch. 4 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

References by the Commission

1.—(1) A question which—

(a) has arisen in connection with the exercise by the Commission of any of its functions, and

(b) involves either the operation of charity law in any respect or its application to a particular state of affairs,

may be referred to the Tribunal by the Commission if the Commission considers it desirable to refer the question to the Tribunal.

(2) The Commission may make such a reference only with the consent of the Attorney General.

(3) The Commission shall be a party to proceedings before the Tribunal on the reference.

(4) The following shall be entitled to be parties to proceedings before the Tribunal on the reference—

(a) the Attorney General, and

(b) with the Tribunal's permission—

(i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,

(ii) any such charity which is a body corporate, and

(iii) any other person who is likely to be so affected.

References by Attorney General

2.—(1) A question which involves either—

(a) the operation of charity law in any respect, or

(b) the application of charity law to a particular state of affairs,

may be referred to the Tribunal by the Attorney General if the Attorney General considers it desirable to refer the question to the Tribunal.

(2) The Attorney General shall be a party to proceedings before the Tribunal on the reference.

(3) The following shall be entitled to be parties to proceedings before the Tribunal on the reference—

(a) the Commission, and

(b) with the Tribunal's permission—

(i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,

(ii) any such charity which is a body corporate, and

(iii) any other person who is likely to be so affected.

Powers of Commission in relation to matters referred to Tribunal

3.—(1) This paragraph applies where a question which involves the application of charity law to a particular state of affairs has been referred to the Tribunal under paragraph 1 or 2.

(2) The Commission shall not take any steps in reliance on any view as to the application of charity law to that state of affairs until—

(a) proceedings on the reference (including any proceedings on appeal) have been concluded, and

(b) any period during which an appeal (or further appeal) may ordinarily be made has ended.

(3) Where—

(a) heads (a) and (b) of sub-paragraph (2) are satisfied, and

(b) the question has been decided in proceedings on the reference,

the Commission shall give effect to that decision when dealing with the particular state of affairs to which the reference related.

Suspension of time limits while reference in progress

4.—(1) Sub-paragraph (2) applies if—

(a) paragraph 3(2) prevents the Commission from taking any steps which it would otherwise be permitted or required to take, and

(b) the steps in question may be taken only during a period specified in a statutory provision ("the specified period").

(2) The running of the specified period is suspended for the period which—

(a) begins with the date on which the question is referred to the Tribunal, and

(b) ends with the date on which heads (a) and (b) of paragraph 3(2) are satisfied.

(3) Nothing in this paragraph or section 124 prevents the specified period being suspended concurrently by virtue of sub-paragraph (2) and that section.

Agreement for Commission to act while reference in progress

5.—(1) Paragraph 3(2) does not apply in relation to any steps taken by the Commission with the agreement of—

(a) the persons who are parties to the proceedings on the reference at the time when those steps are taken, and

(b) (if not within paragraph (a)) the charity trustees of any charity which—

(i) is likely to be directly affected by the taking of those steps, and

(ii) is not a party to the proceedings at that time.

(2) The Commission may take those steps despite the suspension in accordance with paragraph 4(2) of any period during which it would otherwise be permitted or required to take them.

(3) Paragraph 3(3) does not require the Commission to give effect to a decision as to the application of charity law to a particular state of affairs to the extent that the decision is inconsistent with any steps already taken by the Commission in relation to that state of affairs in accordance with this paragraph.

Appeals and applications in respect of matters determined on references

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

(2) This sub-paragraph applies to a person who was at any stage a party to the proceedings in which the question referred to the Tribunal was decided.

(3) Rules under section 13(1) may include provision as to who is to be treated for the purposes of sub-paragraph (2) as being (or not being) a party to the proceedings.

(4) Any statutory provision (including one contained in this Act) which provides for an appeal or application to be made to the Tribunal has effect subject to sub-paragraph (1).

Interpretation

7 In this Schedule "charity law" means—

(a) any statutory provision contained in, or made under, this Act,

(b) any other statutory provision specified in regulations made by the Department, and

(c) any rule of law which relates to charities.

SCHEDULE 5

Section 57(2).

MEANING OF "CONNECTED PERSONS" FOR PURPOSES OF SECTION 57(2)

Modifications etc. (not altering text)

C57 Sch. 5 modified (in so far as it is applied by s. 89(6)) (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

1.—(1) In section 57(2) "connected person", in relation to a charity, means any person who falls within sub-paragraph (2)—

(a) at the time of the disposition in question, or

(b) at the time of any contract for the disposition in question.

(2) The persons falling within this sub-paragraph are—

(a) a charity trustee or trustee for the charity;

(b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity);

(c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor;

(d) an officer, agent or employee of the charity;

(e) the spouse or civil partner of any person falling within any of heads (a) to (d);

(f) a person carrying on business in partnership with anyone falling within any of heads (a) to (e);

(g) an institution which is controlled—

(i) by any person falling within any of heads (a) to (f), or

(ii) by two or more such persons taken together; or

(h) a body corporate in which—

(i) any connected person falling within any of heads (a) to (g) has a substantial interest, or

(ii) two or more such persons, taken together, have a substantial interest.

Commencement Information

I62 Sch. 5 para. 1 partly in operation; Sch. 5 para. 1 not in operation at Royal Assent see s. 185(1); Sch. 5 para. 1 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

2.—(1) In paragraph 1(2)(c) "child" includes a stepchild.

(2) For the purposes of paragraph 1(2)(e) a person living with another as that person's husband or wife shall be treated as that person's spouse.

(3) Where two persons of the same sex are not civil partners but live together as if they were, each of them shall be treated for those purposes as the civil partner of the other.

Commencement Information

I63 Sch. 5 para. 2 partly in operation; Sch. 5 para. 2 not in operation at Royal Assent see s. 185(1); Sch. 5 para. 2 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

3 For the purposes of paragraph 1(2)(g) a person controls an institution if that person is able to secure that the affairs of the institution are conducted in accordance with the wishes of that person.

Commencement Information

I64 Sch. 5 para. 3 partly in operation; Sch. 5 para. 3 not in operation at Royal Assent see s. 185(1); Sch. 5 para. 3 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

4.—(1) For the purposes of paragraph 1(2)(h) any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question—

(a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or

(b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

(2) The rules set out in Schedule 1 to the Companies Act 2006 (c. 46) (rules for interpretation of certain provisions of that Act) shall apply for the purposes of sub-paragraph (1) as they apply for the purposes of section 254 of that Act ("connected persons" etc.).

(3) In this paragraph "equity share capital" and "share" have the same meaning as in that Act.

Commencement Information

I65 Sch. 5 para. 4 partly in operation; Sch. 5 para. 4 not in operation at Royal Assent see s. 185(1); Sch. 5 para. 4 in operation for certain purposes at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

VALID FROM 28/11/2015

SCHEDULE 6

Sections 64(8) & 72.

GROUP ACCOUNTS

VALID FROM 01/01/2016

Interpretation

1.—(1) This paragraph applies for the purposes of this Schedule.

(2) A charity is a "parent charity" if it is (or is to be treated as) a parent undertaking in relation to one or more other undertakings in accordance with the provisions of section 1162 of, and Schedule 7 to, the Companies Act 2006 (c. 46).

(3) Each undertaking in relation to which a parent charity is (or is to be treated as) a parent undertaking in accordance with those provisions is a "subsidiary undertaking" in relation to the parent charity.

(4) But sub-paragraph (3) does not have the result that any of the following is a "subsidiary undertaking"—

(a) any special trusts of a charity,

(b) any institution which, by virtue of a direction under section 1(4), is to be treated as forming part of a charity for the purposes of this Part of this Act, or

(c) any charity to which a direction under section 1(5) applies for those purposes.

(5) "The group", in relation to a parent charity, means that charity and its subsidiary undertaking or undertakings, and any reference to the members of the group is to be construed accordingly.

(6) For the purposes of—

(a) this paragraph, and

(b) the operation of the provisions mentioned in sub-paragraph (2) for the purposes of this paragraph,

"undertaking" has the meaning given by sub-paragraph (7).

(7) For those purposes "undertaking" means—

(a) an undertaking as defined by section 1161(1) of the Companies Act 2006 (c. 46), or

(b) a charity which is not an undertaking as so defined.

VALID FROM 01/01/2016

Accounting records

2.—(1) The charity trustees—

(a) of a parent charity, or

(b) of any charity which is a subsidiary undertaking,

must ensure that the accounting records kept in respect of the charity under section 63(1) or, as the case may be, section 386 of the Companies Act 2006 (duty to keep accounting records) not only comply with the requirements of that provision but also are such as to enable the charity trustees of the parent charity to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(2) If a parent charity has a subsidiary undertaking in relation to which the requirements of section 63(1) or section 386 of the Companies Act 2006 do not apply, the charity trustees of the parent charity must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the

trustees to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(3) In this paragraph "the relevant requirements" means the requirements of regulations under paragraph 3.

Preparation of group accounts

3.—(1) This paragraph applies in relation to a financial year of a charity if—

(a) the charity is a parent charity at the end of that year; and

(b) (where it is a company) it is not required to prepare consolidated accounts for that year under section 399 of the Companies Act 2006 (c. 46) (duty to prepare group accounts), whether or not such accounts are in fact prepared.

(2) The charity trustees of the parent charity must prepare group accounts in respect of that year.

(3) "Group accounts" means consolidated accounts—

(a) relating to the group, and

(b) complying with such requirements as to their form and contents as may be prescribed by regulations made by the Department.

(4) Without prejudice to the generality of sub-paragraph (3), regulations under that sub-paragraph may make provision—

(a) for any such accounts to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;

(b) for dealing with cases where the financial years of the members of the group do not all coincide;

(c) as to any information to be provided by way of notes to the accounts.

(5) Regulations under that sub-paragraph may also make provision—

(a) for determining the financial years of subsidiary undertakings for the purposes of this Schedule;

(b) for imposing on the charity trustees of a parent charity requirements with respect to securing that such financial years coincide with that of the charity.

(6) If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity (other than a parent charity which is a company) in relation to a financial year—

(a) that requirement so applies in addition to the requirement in section 64(1), and

(b) the option of preparing the documents mentioned in section 64(3) is not available in relation to that year (whatever the amount of the charity's gross income for that year).

(7) If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity in relation to a financial year and the charity is a company, that requirement so applies in addition to the requirement in section 394 of the Companies Act 2006 (duty to prepare individual accounts).

(8) Sub-paragraph (2) has effect subject to paragraph 4.

Exceptions relating to requirement to prepare group accounts

4.—(1) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if at the end of that year it is itself a subsidiary undertaking in relation to another charity.

(2) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if the aggregate gross income of the group for that year does not exceed such sum as is specified in regulations made by the Department.

(3) Regulations made by the Department may prescribe circumstances in which a subsidiary undertaking may or (as the case may be) must be excluded from group accounts required to be prepared under paragraph 3(2) for a financial year.

(4) Where, by virtue of such regulations, each of the subsidiary undertakings which are members of a group is either permitted or required to be excluded from any such group accounts for a financial year, the requirement in paragraph 3(2) does not apply to the charity trustees of the parent charity in relation to that year.

VALID FROM 01/01/2016

Preservation of group accounts

5.—(1) The charity trustees of a charity shall preserve any group accounts prepared by them under paragraph 3(2) for at least 6 years from the end of the financial year to which the accounts relate.

(2) Subsection (4) of section 63 shall apply in relation to the preservation of any such accounts as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being construed as references to sub-paragraph (1) above).

(3) For the purposes of sub-paragraph (2), section 63 applies as if subsection (5) of that section were omitted.

Audit accounts of larger groups

6.—(1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and—

(a) the aggregate gross income of the group in that year exceeds the relevant income threshold, or

(b) the aggregate gross income of the group in that year exceeds the relevant income threshold and at the end of the year the aggregate value of the assets of the group (before deduction of liabilities) exceeds the relevant assets threshold.

(2) In sub-paragraph (1)—

(a) the reference in head (a) or (b) to the relevant income threshold is a reference to the sum prescribed as the relevant income threshold for the purposes of that head, and

(b) the reference in head (b) to the relevant assets threshold is a reference to the sum prescribed as the relevant assets threshold for the purposes of that head.

"Prescribed" means prescribed by regulations made by the Department.

(3) This paragraph also applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and the appropriate audit provision applies in relation to the parent charity's own accounts for that year.

(4) If this paragraph applies in relation to a financial year of a parent charity by virtue of sub-paragraph (1) or (3), the group accounts for that year shall be audited by a person within section 65(2)(a) or (b).

(5) Where it appears to the Commission that sub-paragraph (4) has not been complied with in relation to that year within 10 months from the end of that year—

(a) the Commission may by order require the group accounts for that year to be audited by a person within section 65(2)(a) or (b), and

(b) if it so orders, the auditor shall be a person appointed by the Commission.

(6) Section 65(8) shall apply in relation to any such audit as it applies in relation to an audit carried out by an auditor appointed under section 65(6) (reading the reference to the funds of the charity as a reference to the funds of the parent charity).

(7) If this paragraph applies in relation to a financial year of a parent charity by virtue of sub-paragraph (1)—

(a) subject to head (b), the appropriate audit provision shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply);

(b) where the parent charity is a company and its own accounts for that year are not required to be audited in accordance with Part 16 of the Companies Act 2006 (c. 46), section 65(2) shall apply in relation to those accounts (whether or not it would otherwise so apply).

(8) In this paragraph, "the appropriate audit provision", in relation to a financial year of a parent company, means—

(a) subject to head (b), section 65(2);

(b) if the parent charity is a company, section 65(2) or Part 16 of the Companies Act 2006 (as the case may be).

VALID FROM 01/01/2016

Examination of accounts of smaller groups

7.—(1) This paragraph applies where—

(a) group accounts are prepared for a financial year of a parent charity under paragraph 3(2), and

(b) paragraph 6 does not apply in relation to that year.

(2) If this paragraph applies in relation to a financial year of a parent charity, subsections (3) to (9) of section 65 shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply, but subject to the modifications in sub-paragraph (3) below.

(3) The modifications are—

(a) any reference to the charity trustees of the charity is to be construed as a reference to the charity trustees of the parent charity;

(b) any reference to the charity's gross income in the financial year in question is to be construed as a reference to the aggregate gross income of the group in that year; and

(c) any reference to the funds of the charity is to be construed as a reference to the funds of the parent charity.

(4) If the group accounts for a financial year of a parent charity are to be examined or audited in accordance with section 65(3) (as applied by sub-paragraph (2) above), section 65(3) shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply).

Supplementary provisions relating to audits, etc.

8.—(1) Section 66(1) shall apply in relation to audits and examinations carried out under or by virtue of paragraph 6 or 7, but subject to the modifications in sub-paragraph (2) below.

(2) The modifications are—

(a) in paragraph (b), the reference to section 65 is to be construed as a reference to paragraph 6 above or to any of that section as applied by paragraph 7 above;

(b) also in paragraph (b), the reference to any such statement of accounts as is mentioned in sub-paragraph (i) of that paragraph is to be construed as a reference to group accounts prepared for a financial year under paragraph 3(2) above;

(c) in paragraph (c), any reference to section 65 is to be construed as a reference to that section as applied by paragraph 7 above;

(d) in paragraphs (d) and (e), any reference to the charity concerned or a charity is to be construed as a reference to any member of the group; and

(e) in paragraph (f), the reference to the requirements of section 65(2) or (3) is to be construed as a reference to the requirements of paragraph 6(4) **[**[F107]or of section 65(3) as applied**]** by paragraph 7(2) above.

(3) Without prejudice to the generality of section 66(1)(e), as modified by sub-paragraph (2)(d) above, regulations made under that provision may make provision corresponding or similar to any provision made by section 499 or 500 of the Companies Act 2006 (c. 46) in connection with the rights exercisable by an auditor of a company in relation to a subsidiary undertaking of the company.

(4) In section 66(2) the reference to section **[**[F108]66**]**(1)(d) or (e) includes a reference to that provision as it applies in accordance with this paragraph**[**[F109]and for this purpose the reference in section 66(2)(b) to the charity trustees for the time being of the charity concerned is to be construed as a reference to the charity trustees for the time being of such member of the group as the Commission thinks appropriate**]**.

Textual Amendments

F107 Words in Sch. 6 para. 8(2)(e) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 28(2)(a)**

F108 Word in Sch. 6 para. 8(4) substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 28(2)(b)**

F109 Words in Sch. 6 para. 8(4) inserted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 28(2)(c)**

VALID FROM 01/01/2016

Duty of auditors, etc. to report matters to Commission

9.—(1) Section 67(2) to (5) [F110]... shall apply in relation to a person appointed to audit, or report on, any group accounts under or by virtue of paragraph 6 or 7 as they apply in relation to a person such as is mentioned in section 67(1).

(2) In section 67(2)(a), as it applies in accordance with sub-paragraph (1), the reference to the charity or any connected institution or body is to be construed as a reference to the parent charity or any of its subsidiary undertakings.

Textual Amendments

F110 Words in Sch. 6 para. 9(1) repealed (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), Sch. 1 para. 28(3), **2**

Annual reports

10.—(1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2).

(2) The annual report prepared by the charity trustees of the parent charity in respect of that year under section 68 shall include—

(a) such a report by the trustees on the activities of the charity's subsidiary undertakings during that year, and

(b) such other information relating to any of those undertakings,

as may be prescribed by regulations made by the Department.

(3) Without prejudice to the generality of sub-paragraph (2), regulations under that sub-paragraph may make provision—

(a) for any such report as is mentioned in head (a) of that sub-paragraph to be prepared in accordance with such principles as are specified or referred to in the regulations;

(b) enabling the Commission to dispense with any requirement prescribed by virtue of sub-paragraph (2)(b) in the case of a particular subsidiary undertaking or a particular class of subsidiary undertaking.

(4) When transmitted to the Commission in accordance with section 68(3), the annual report shall have attached to it both the group accounts prepared for that year under paragraph 3(2) and—

(a) a copy of the report made by the auditor on those accounts; or

(b) where those accounts have been examined under section 65 (as applied by paragraph 7 above), a copy of the report made by the person carrying out the examination.

(5) The requirements in this paragraph are in addition to those in section 68.

VALID FROM 01/01/2016

Public inspection of annual reports, etc.

11 In section 69(3), the reference to a charity's most recent accounts includes, in relation to a charity whose charity trustees have prepared any group accounts under paragraph 3(2), the group accounts most recently prepared by them.

VALID FROM 01/01/2016

Offences

12.—(1) Section 71(1) applies in relation to a requirement within sub-paragraph (2) as it applies in relation to a requirement within section 71(1)(a).

(2) A requirement is within this sub-paragraph where it is imposed by section 68(3), taken with—

(a) section 68(4) and (5), and

(b) paragraph 10(4) above,

as applicable.

(3) In sub-paragraph (2) the reference to section 68(3) is a reference to that provision as applied by paragraph 10(4).

(4) In section 71(1)(b) the reference to section 69(3) includes a reference to that provision as extended by paragraph 11.

Aggregate gross income

13 The Department may by regulations make provision for determining for the purposes of this Schedule the amount of the aggregate gross income for a financial year of a group consisting of a parent charity and its subsidiary undertaking or undertakings.

PROSPECTIVE

SCHEDULE 7

Section 121.

FURTHER PROVISION ABOUT CHARITABLE INCORPORATED ORGANISATIONS

Powers

1.—(1) Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

(2) The CIO's charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO.

Constitutional requirements

2 A CIO shall use and apply its property in furtherance of its purposes and in accordance with its constitution.

3 If the CIO is one whose members are liable to contribute to its assets if it is wound up, its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract—

(a) to which the CIO and each of its members was a party, and

(b) which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution.

4 Money payable by a member to the CIO under the constitution is a debt due from the member to the CIO, and is of the nature of **[**[F111]an ordinary contract debt**]**.

Textual Amendments

F111 Words in Sch. 7 para. 4 substituted (19.1.2013) by Charities Act (Northern Ireland) 2013 (c. 3), s. 10(1), **Sch. 1 para. 29**

Third parties

5.—(1) Sub-paragraphs (2) and (3) are subject to sub-paragraph (4).

(2) The validity of an act done (or purportedly done) by a CIO shall not be called into question on the ground that it lacked constitutional capacity.

(3) The power of the charity trustees of a CIO to act so as to bind the CIO (or authorise others to do so) shall not be called into question on the ground of any constitutional limitations on their powers.

(4) But sub-paragraphs (2) and (3) apply only in favour of a person who gives full consideration in money or money's worth in relation to the act in question, and does not know—

(a) in a sub-paragraph (2) case, that the act is beyond the CIO's constitutional capacity, or

(b) in a sub-paragraph (3) case, that the act is beyond the constitutional powers of its charity trustees,

and (in addition) sub-paragraph (3) applies only if the person dealt with the CIO in good faith (which the person shall be presumed to have done unless the contrary is proved).

(5) A party to an arrangement or transaction with a CIO is not bound to inquire—

(a) whether it is within the CIO's constitutional capacity, or

(b) as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so.

(6) If a CIO purports to transfer or grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the CIO's act.

(7) In any proceedings arising out of sub-paragraphs (2) to (4), the burden of proving that a person knew that an act—

(a) was beyond the CIO's constitutional capacity, or

(b) was beyond the constitutional powers of its charity trustees,

lies on the person making that allegation.

(8) In this paragraph and paragraphs 6 to 8—

(a) references to a CIO's lack of "constitutional capacity" are to lack of capacity because of anything in its constitution, and

(b) references to "constitutional limitations" on the powers of a CIO's charity trustees are to limitations on their powers under its constitution, including limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO's members, and "constitutional powers" is to be construed accordingly.

6.—(1) Nothing in paragraph 5 prevents a person from bringing proceedings to restrain the doing of an act which would be—

(a) beyond the CIO's constitutional capacity, or

(b) beyond the constitutional powers of the CIO's charity trustees.

(2) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CIO.

(3) Sub-paragraph (2) does not prevent the Commission from exercising any of its powers.

7 Nothing in paragraph 5(3) affects any liability incurred by the CIO's charity trustees (or any one of them) for acting beyond the constitutional powers of the trust.

8 Nothing in paragraph 5 absolves the CIO's charity trustees from their duty to act within the CIO's constitution and in accordance with any constitutional limitations on their powers.

Duties

9 It is the duty of—

(a) each member of a CIO, and

(b) each charity trustee of a CIO,

to exercise powers, and (in the case of a charity trustee) to perform functions, in a capacity as such, in the way that member or trustee decides, in good faith, would be most likely to further the purposes of the CIO.

10.—(1) Subject to any provision of a CIO's constitution permitted by virtue of regulations made under sub-paragraph (2), each charity trustee of a CIO shall in the performance of functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular—

(a) to any special knowledge or experience that the trustee has or purports to have, and

(b) if the trustee acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) The Department may make regulations permitting a CIO's constitution to provide that the duty in sub-paragraph (1) does not apply, or does not apply in so far as is specified in the constitution.

(3) Regulations under sub-paragraph (2) may provide for limits on the extent to which, or the cases in which, a CIO's constitution may disapply the duty in sub-paragraph (1).

Personal benefit and payments

11.—(1) A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, the trustee did not disclose to all the charity trustees of the CIO any material interest in it or in any other person or body party to it (whether that interest is direct or indirect).

(2) Nothing in sub-paragraph (1) confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO.

12 A charity trustee of a CIO—

(a) is entitled to be reimbursed by the CIO, or

(b) may pay out of the CIO's funds,

expenses property incurred in the performance of functions as such.

Procedure

13.—(1) The Department may by regulations make provision about the procedure of CIOs.

(2) Subject to—

(a) any such regulations,

(b) any other requirement imposed by or by virtue of this Act or any other statutory provision, and

(c) anything in the CIO's constitution,

a CIO may regulate its own procedure.

(3) But a CIO's procedure shall include provision for the holding of a general meeting of its members, and the regulations referred to in sub-paragraph (1) may in particular make provision about such meetings.

Amendment of constitution

14.—(1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).

(2) Such a resolution must be passed—

(a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or

(b) unanimously by the CIO's members, otherwise than at a general meeting.

(3) The date of passing of such a resolution is—

(a) the date of the general meeting at which it was passed, or

(b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).

(4) The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO's ceasing to be a charity.

(5) Subject to paragraph 15(5), a resolution containing an amendment which would make any regulated alteration is to that extent ineffective unless the prior written consent of the Commission has been obtained to the making of the amendment.

(6) The following are regulated alterations—

(a) any alteration of the CIO's purposes,

(b) any alteration of any provision of the CIO's constitution directing the application of property of the CIO on its dissolution,

(c) any alteration of any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.

(7) For the purposes of sub-paragraph (6)(c)—

(a) "benefit" means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 88) whose receipt may be authorised under that section, and

(b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 89(5) and (6), for determining whether a person is connected with a charity trustee for the purposes of section 88.

Registration and coming into effect of amendments

15.—(1) A CIO shall send to the Commission a copy of a resolution containing an amendment to its constitution, together with—

(a) a copy of the constitution as amended, and

(b) such other documents and information as the Commission may require,

by the end of the period of 15 days beginning with the date of passing of the resolution (see paragraph 14(3)).

(2) An amendment to a CIO's constitution does not take effect until it has been registered.

(3) The Commission shall refuse to register an amendment if—

(a) in the opinion of the Commission the CIO had no power to make it (for example, because the effect of making it would be that the CIO ceased to

be a charity, or that the CIO or its constitution did not comply with any requirement imposed by or by virtue of this Act or any other statutory provision), or

(b) the amendment would change the name of the CIO, and the Commission could have refused an application under section 110 for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in subsection (4) of that section.

(4) The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the consent referred to in paragraph 14(5) had not been obtained.

(5) But if the Commission does register such an amendment, paragraph 14(5) does not apply.

SCHEDULE 8

Section 183.

MINOR AND CONSEQUENTIAL AMENDMENTS

PROSPECTIVE

The Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31)

1.—(1) Section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (regulation of street collections) is amended as follows.

(2) In subsection (1) for "the benefit of charitable or other purposes," substitute " any purposes in circumstances not involving the making of a charitable appeal, ".

(3) In paragraph (b) of the proviso to subsection (1) omit the words from ", and no representation" onwards.

(4) In subsection (4) before the definition of "street" insert—

""charitable appeal" has the same meaning as in Part 13 of the Charities Act (Northern Ireland) 2008;".

PROSPECTIVE

The Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24)

2 In section 38A(6) (power of registered societies to disapply section 38), for "the Charities Act (Northern Ireland) 1964 (c. 33)" substitute " the Charities Act (Northern Ireland) 2008 ".

PROSPECTIVE

The Administration of Estates (Northern Ireland) Order 1979 (NI 14)

3 In Article 9 (grant of representation to trust corporation) in paragraph (4)(a) after "High Court" insert " or the Charity Commission for Northern Ireland ".

PROSPECTIVE

The Education and Libraries (Northern Ireland) Order 1986 (NI 3)

4 In Article 90(7) (teachers' residences provided, etc. by statutory loan prior to 1st February 1922)—

(a) in sub-paragraph (a), for "under section 18 of the Charities Act (Northern Ireland) 1964" substitute " by an order under section 57 of the Charities Act (Northern Ireland) 2008 ", and

(b) in sub-paragraph (b), for "section 13 of that Act" substitute " section 29 of that Act ".

PROSPECTIVE

The Companies (Northern Ireland) Order 1986 (NI 6)

5 In Article 217(10)(a) (interests to be disregarded), after "under" insert " section 43 or 44 of the Charities Act (Northern Ireland) 2008, ".

6 In Schedule 13 (provisions supplementing and interpreting Articles 332 to 336), in paragraph 11(1)(b), after "under" insert " section 43 or 44 of the Charities Act (Northern Ireland) 2008, ".

PROSPECTIVE

The Street Trading Act (Northern Ireland) 2001 (c. 8)

7.—(1) Section 2(1) (activities which are not street trading) is amended as follows.

(2) In paragraph (d), omit sub-paragraph (ii) and the word "or" immediately preceding it.

(3) After that paragraph insert—

"(dd) conducting a public charitable collection that—

(i) is conducted in accordance with section 134 or 135 of the Charities Act (Northern Ireland) 2008, or

(ii) is an exempt collection by virtue of section 136 of that Act;".

The Trustee Act (Northern Ireland) 2001 (c. 14)

8 In section 43(1) (interpretation), in the definition of "charitable trust", for "the Charities Act (Northern Ireland) 1964 (c. 33)" substitute " the Charities Act (Northern Ireland) 2008 ".

Commencement Information

I66 Sch. 8 para. 8 in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

The Criminal Justice and Police Act 2001 (c. 16)

9 In Schedule 1 (powers of seizure to which section 50 applies), at the end of Part 1 insert—

"Charities Act (Northern Ireland) 2008

73H The power of seizure conferred by section 52(3) of the Charities Act (Northern Ireland) 2008 (seizure of material for the purposes of an inquiry under section 22 of that Act).".

Modifications etc. (not altering text)

C58 Sch. 8 para. 9 modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

The Housing (Northern Ireland) Order 2003 (NI 2)

10 In Article 119(6) (religious denominations, charities, &c.) for "the Charities Act (Northern Ireland) 1964" substitute " the Charities Act (Northern Ireland) 2008 ".

Commencement Information

I67 Sch. 8 para. 10 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

The Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)

11 In section 63(1) (interpretation), for the definition of "Northern Ireland charity" substitute—

""Northern Ireland charity" means a charity within the meaning of the Charities Act (Northern Ireland) 2008 (see section 1 of that Act);".

Commencement Information

I68 Sch. 8 para. 11 in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

The Pensions (Northern Ireland) Order 2005 (NI 1)

12 In Schedule 3 (disclosure for facilitating discharge of functions by other supervising authorities)—

(a) in the entry relating to the Department, omit the words "the Charities Act (Northern Ireland) 1964 (c. 33)"; and

(b) at the end add—

"The Charity Commission for Northern Ireland.	Functions under the Charities Act (Northern Ireland) 2008.".

Commencement Information

I69 Sch. 8 para. 12(b) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

The Companies Act 2006 (c. 46)

13.—(1) In section 21(2)(b) for "Article 9 of the Charities (Northern Ireland) Order 1987 (SI 1987/2048 (N.I.19))" substitute " section 96 of the Charities Act (Northern Ireland) 2008 ".

(2) In section 31(4)(b) for "Article 9 of the Charities (Northern Ireland) Order 1987 (SI 1987/2048 (N.I.19))" substitute " section 96 of the Charities Act (Northern Ireland) 2008 ".

(3) In section 1140(2)(c)(ii) after "Charities Act 1993 (c. 10)" insert " or section 33 of Charities Act (Northern Ireland) 2008 ".

(4) In section 1154(1)(b) after "Charities Act 1993 (c. 10)" insert " or section 33 of the Charities Act (Northern Ireland) 2008 ".

(5) In section 1154(2) after paragraph (b) insert—

"(bb) in the case of appointment of a receiver or manager under section 33 of the Charities Act (Northern Ireland) 2008, by the Charity Commission for Northern Ireland;".

(6) In Schedule 1, in paragraph 6(4) after "Charities Act 1993 (c. 10)" insert " , section 44 or 45 of the Charities Act (Northern Ireland) 2008 ".

Modifications etc. (not altering text)

C59 Sch. 8 para. 13(3)(4)(5) modified (18.2.2011) by Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 (S.R. 2011/12), **art. 2**, Sch.

Commencement Information

I70 Sch. 8 para. 13 partly in operation; Sch. 8 para. 13 not in operation at Royal Assent see s. 185(1); Sch. 8 para. 13(3)(4)(5) in operation at 18.2.2011 by S.R. 2011/11, **art. 2**, Sch.

I71 Sch. 8 para. 13(1)(2) in operation at 24.6.2013 by S.R. 2013/145, art. 2, **Sch.**

SCHEDULE 9

Section 184.

REPEALS

Commencement Information

I72 Sch. 9 in operation at 24.6.2013 for specified purposes by S.R. 2013/145, art. 2, **Sch.**

Short Title	Extent of repeal
The Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31).	In section 5(1), in paragraph (b) of the proviso, the words from ", and no representation" onwards.
The House to House Charitable Collections Act (Northern Ireland) 1952 (c. 6).	The whole Act.
The Charities Act (Northern Ireland) 1964 (c. 33).	The whole Act.
The Theft Act (Northern Ireland) 1969 (c. 16).	In Schedule 2, the entry relating to the House to House Charitable Collections Act (Northern Ireland) 1952.
The Judicature (Northern Ireland) Act 1978 (c. 23).	In Schedule 5, Part 2, the entry relating to the Charities Act (Northern Ireland) 1964.

The County Courts (Northern Ireland) Order 1980 (NI 3).	In Schedule 1, Part 2, the entry relating to the Charities Act (Northern Ireland) 1964 (c. 33).
The Charities (Northern Ireland) Order 1987 (NI 19).	The whole Order.
The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).	Article 47.
The Street Trading Act (Northern Ireland) 2001 (c. 8).	In section 2(1), paragraph (d)(ii) and the word “or” immediately preceding it.
The Pensions (Northern Ireland) Order 2005 (NI 1).	In Schedule 3, in the entry relating to the Department, the words “the Charities Act (Northern Ireland) 1964”.

Status:
Point in time view as at 19/08/2013. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Charities Act (Northern Ireland) 2008.