



2008 CHAPTER 12

PART 10

CHARITABLE COMPANIES

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).

(3) Where a charitable company is dissolved, the Commission may make an application under Article 602 of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#) (power of court to declare dissolution of company void) for an order to be made under that Article with respect to the company; and for this purpose paragraph (1) of that Article shall have effect in relation to a charitable company as if the reference to the liquidator of the company included a reference to the Commission.

(4) Where a charitable company's name has been struck off the register of companies under Article 603 of the [Companies \(Northern Ireland\) Order 1986](#) (power of registrar to strike defunct company off register), the Commission may make an application under Article 603(2) of that Order (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose Article 603(2) shall have effect in relation to a charitable

company as if the reference to any such person aggrieved as is there mentioned included a reference to the Commission.

(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.

Alteration of objects clause

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”—

- (a) any alteration of the objects clause in the company’s memorandum of association,
- (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and
- (c) any alteration of any provision of its memorandum or 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.

(5) Where a company has made a regulated alteration in accordance with subsection (2) and—

- (a) in connection with the alteration is required by virtue of—
 - (i) Article 17(1) of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#) (delivery of documents following alteration of objects), or
 - (ii) that provision as applied by Article 28(3) of that Order (alteration of condition in memorandum which could have been contained in articles),to deliver to the registrar of companies a printed copy of its memorandum, as altered, or
- (b) is required by section 30 of the Companies Act 2006 (c. 46) (copies of resolutions affecting a company's constitution) to forward to the registrar a copy of the special resolution effecting the alteration,

the copy so delivered or forwarded by the company shall be accompanied by a copy of the Commission's consent.

(6) Article 17(3) of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#) (offences) shall apply to any default by a company in complying with subsection (5) as it applies to any such default as is mentioned in that provision.

Invalidity of certain transactions

97.—(1) Articles 45 and 45A of the Companies (Northern Ireland) Order 1986 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—

- (a) gives full consideration in money or money's worth in relation to the act in question, and
- (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, 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 company's act.

(3) In any proceedings arising out of subsection (1) the burden of proving—

- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or

(b) that a person knew that the company was a charity,
lies on the person making that allegation.

(4) Where a company is a charity, the ratification of an act under Article 45(3) of the Companies (Northern Ireland) Order 1986, or the ratification of a transaction to which Article 330A of that Order applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commission.

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).

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

Status: This is the original version (as it was originally enacted).

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.

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.

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 arising 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.

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).

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.

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.