



2008 CHAPTER 12

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.

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(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.

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.

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

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- (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, any reference to any obligation imposed on the charity trustees by or under section 123 includes 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.

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.

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).

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.

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.

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.