



2008 CHAPTER 12

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.

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 such claim.
- (6) Where—
- (a) any sum is, in accordance with any such directions, set aside for meeting any such claims, 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.

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—

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- (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.

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.

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.

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.

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, and a draft of the order shall be laid before the Assembly.

(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, the order shall not be made unless the draft has been approved by 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.

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

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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;

- (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).

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.

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 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 allow any amount of remuneration in such circumstances as are prescribed by the regulations.

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.

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.

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.

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.

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—

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- (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.

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.—(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 shall as trustee of any property have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as the Department may by regulations prescribe.

(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.

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, 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.

“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 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.

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 section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or Part 10 of the Income Tax Act 2007 (c. 3) 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 section 505 of the Income and Corporation Taxes Act 1988 or Part 10 of the Income Tax Act 2007 in respect of income of the institution which is applicable and applied to charitable purposes only.

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 thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith 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).

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.

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 Part 4 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 furnish 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.

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.

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.

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.

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 furnished 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 furnished—
 - (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

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(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.

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.

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.

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.

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 under section 3 of the Charities Act 1993 (c. 10), or which, by virtue of section 3A(2) of that Act, is not required to register as a charity under that section; 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 Part 4 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.