

SCHEDULES

SCHEDULE 1

Minor and consequential amendments

The 2008 Act

2. In section 4 (guidance as to operation of public benefit requirement), in subsection (1) add at the end “(see paragraph 2 in section 7(3))”.
3. In section 11(1) (the official custodian for charities in Northern Ireland), for “by that name a corporation sole having perpetual succession and using an official seal which” substitute “a corporation sole whose official seal”.
4. In section 20 (power of Commission to require charity’s name to be changed), omit subsection (7).
5. In section 21 (effect of direction under section 20 where charity is a company), in subsection (3)(a) for “subject to Article 36 of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#) (prohibition on registration of certain names)” substitute “if satisfied that the new name complies with the requirements of Part 5 of the Companies Act 2006”.
- 6.—(1) In the following provisions for “furnish” substitute “provide”—
 - (a) section 22(3)(a) and (b);
 - (b) section 23(1)(a) and (b)(i);
 - (c) section 48(9);
 - (d) section 171.(2) In the following provisions for “furnished” substitute “provided”—
 - (a) section 23(3);
 - (b) section 52(2)(b) and (c).(3) In section 149(2) for “furnishes” substitute “provides”.
- (4) In the following provisions for “furnishing” substitute “provision”—
 - (a) section 172(1)(b);
 - (b) section 180(2)(a) and (in both places) (b).
- 7.—(1) Amend section 27 (application *cy-près* of gifts of donors unknown or disclaiming) as follows.

(2) In subsection (5)(c) for “such claim” substitute “claims made in accordance with paragraph (b)”.

(3) In subsection (6)(a) for “any such claims” substitute “claims made in accordance with subsection (5)(b)”.

8. In section 29 (cy-près schemes), after subsection (6) add—

“(7) In this section references to the original purposes of a gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.”.

9.—(1) Amend section 32 (further powers to make schemes or alter application of charitable property) as follows.

(2) In subsection (2) omit “and a draft of the order shall be laid before the Assembly”.

(3) In subsection (3) for “the order shall not be made unless the draft has been approved by” substitute “no order shall be made unless a draft of the order has been laid before and approved by a”.

10.—(1) Amend section 35 (supplementary provisions relating to interim manager appointed for charity) as follows.

(2) In subsection (1), after “such person” insert “(other than a member of its staff)”.

(3) In subsection (7)(c), for “allow” substitute “disallow”.

11. In section 42 (supplementary provisions as to property vested in official custodian), for subsection (1) substitute the following subsection—

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

- (a) have such powers, duties and liabilities, and be entitled to such rights and immunities, as may be prescribed by the regulations, and
- (b) be subject to the control and orders of the Court as the regulations may provide.”.

12.—(1) Amend section 46(3) (power to authorise dealings with charity property, etc.) as follows.

(2) For “thereby authorised” substitute “authorised by the order”.

(3) For “therewith” substitute “with that authority”.

13. In section 57 (restriction on dispositions), in subsection (4)(a) omit “or of the Incorporated Society of Valuers and Auctioneers”.

14. In section 65 (annual audit or examination of charity accounts)—

- (a) in subsection (4)(b) for “Fellow” substitute “full member”;
- (b) in subsection (11) for “of a charity for a financial year” substitute “for a financial year of a charity which is a company”.

15. In section 70 (annual returns by charities), in subsection (1) for “Department” substitute “Commission”.

16.—(1) Amend section 80 (records of applications and certificates) as follows.

(2) In subsection (1) for “and shall preserve all documents sent to it under this Chapter” substitute “and documents sent to the Commission under this Chapter shall be kept by the Commission for such period as it thinks fit.”.

(3) For subsection (2) substitute—

“(2) Subject to subsection (3), documents kept under this section shall be open to public inspection at all reasonable times; and any person who is provided with a copy or extract of any document kept under this section may require it to be certified by a certificate signed by a member of the staff of the Commission.”.

17. In section 91 (power to relieve trustees, auditors, etc. from liability for breach of trust or duty), in subsection (1)(c) omit “, reporting accountant”.

18. In section 95 (winding up), for subsections (3) and (4) substitute—

“(3) The Commission may make an application under section 1029 of the Companies Act 2006 (application to court for restoration to the register of companies) to restore a charitable company to the register of companies.”.

19.—(1) Amend section 96 (alteration of objects clause) as follows.

(2) In the heading omit “clause”.

(3) In subsection (3)—

(a) for paragraph (a) substitute—

“(a) an amendment of the company’s articles of association adding, removing or altering a statement of the company’s objects,”;

(b) in paragraphs (b) and (c) for “memorandum or articles of association” substitute “articles of association”.

(4) For subsections (5) and (6) substitute—

“(5) Where a company that has made a regulated alteration in accordance with subsection (2) is required—

- (a) by section 26 of the Companies Act to send to the registrar of companies a copy of its articles as amended,
- (b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or
- (c) by section 31 of that Act to give notice to the registrar of the amendment,

the copy or notice must be accompanied by a copy of the Commission's consent.

(5A) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(6) Section 30(2) to (4) of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (5) as in relation to a failure to comply with that section.”

20. Omit section 97 (invalidity of certain transactions).

21. In section 118 (transfer of CIO's undertaking), in subsection (5) after “The resolution” insert “of the transferor CIO”.

22. In section 125 (transfer where charity has permanent endowment), in subsection (11) for “any reference to any obligation imposed on the charity trustees by or under section 123 includes” substitute “the references in sections 123(7)(b) and 124(2) to any obligation imposed on the charity trustees by or under section 123 include”.

23.—(1) Amend section 169 (manner of executing instruments) as follows.

(2) In subsection (1) for “assurances or other deeds or other instruments” substitute “documents”.

(3) In subsections (1), (2)(a), (3) and (4) for “deed or instrument” substitute “document”.

(4) In the heading for “instruments” substitute “documents”.

24.—(1) Amend section 175 (other provisions as to orders of Commission) as follows.

(2) In subsection (2) omit “(without prejudice to the requirements of this Act where the order is subject to appeal)”.

(3) In subsection (5) after “so made” add “and may include transitional provisions or savings”.

25.—(1) Amend section 179 (orders and regulations) as follows.

(2) In subsection (2)(a) omit “32(2),”.

(3) In subsection (3) for “section” substitute “sections 32(3) and”.

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

26.—(1) In section 180 (general interpretation), amend subsection (1) as follows.

(2) In the definition of “company”, for the words from “formed” to the end substitute “registered under the Companies Act 2006 in Northern Ireland”.

(3) In the definition of “financial year”, after paragraph (b) insert “but this is subject to any provision of regulations made by virtue of paragraph 3(5) of Schedule 6 (financial years of subsidiary undertakings)”.

(4) After the definition of “public benefit” insert the following definition—

““the public benefit requirement” has the meaning given by section 3(1);”.

27.—(1) In Schedule 3 (appeals and applications to Tribunal), amend the Table as follows.

(2) In the first entry relating to section 79(4), in column 1 omit “of a charity”.

(3) In the entry relating to section 84(1) or (2)—

(a) in column 1 omit “a charity which is”;

(b) in column 2 omit “(b) the charity itself”.

(4) In each of the entries relating to sections 73(1), 79(4) and 84(1) or (2), in column 2 after “trustees of the charity” insert “(within the meaning of section 85)”.

(5) In the entry relating to decisions under section 96(2), 97(4) or 98(1), in the first column omit “, 97(4)”.

(6) For the entry relating to section 104(4) substitute—

“1	2	3
Order made by the Commission under section 104(5) in relation to a charity which is a company, or a decision of the Commission not to make such an order in relation to such a charity.	The persons are— (a) the charity trustees of the charity; (b) the charity itself; (c) in the case of a decision not to make an order, the auditor; and (d) any other person who is or may be affected by the order or the decision.	Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made. ”.

(7) In—

(a) the second entry relating to section 110, in column 1,

(b) the entry relating to section 113, in column 1, and

(c) the second entry relating to section 116, in column 1,

for “not to grant” substitute “to refuse”.

(8) In the second entry relating to section 118(1), in column 1, for “not to confirm” substitute “to refuse”.

(9) After the entry relating to section 166(5) insert—

“1	2	3
Order made by the Commission under paragraph 6(5), or by virtue of paragraph 7(2), of Schedule 6 requiring the group accounts of the parent charity to be audited.	The persons are— (a) the charity trustees of the parent charity; (b) (if a body corporate) the parent charity itself; and (c) any other person who may be affected by the order.	Power to— (a) quash the order; (b) substitute for the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission by virtue of paragraph 8(4) of Schedule 6 in relation to a member of a group, or a decision of the Commission not to make such an order in relation to a member of a group.	The persons are— (a) the charity trustees of the member of the group, (b) (if a body corporate) the member of the group itself, (c) in the case of a decision not to make an order, the auditor, independent examiner or examiner, and (d) any other person who is or may be affected by the order or the decision.	Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made.”.

(10) At the end add—

“1	2	3
Decision of the Commission to give or withhold consent under section 42(4) of the Companies Act 2006.	The persons are— (a) the charity trustees of the charity, (b) the company itself, and	Power to quash the decision and (if appropriate) remit the matter to the Commission.”.

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

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(c) any other person who is
or may be affected by
the decision.

28.—(1) Amend Schedule 6 (group accounts) as follows.

(2) In paragraph 8—

- (a) in sub-paragraph (2)(e), for “or those applied” substitute “or of section 65(3) as applied”;
- (b) in sub-paragraph (4), for “65” substitute “66”;
- (c) at the end of sub-paragraph (4) insert “and for this purpose the reference in section 66(2)(b) to the charity trustees for the time being of the charity concerned is to be construed as a reference to the charity trustees for the time being of such member of the group as the Commission thinks appropriate”.

(3) In paragraph 9(1), omit “and (7)”.

29. In Schedule 7 (further provision about charitable incorporated organisations), in paragraph 4 for “a specialty debt” substitute “an ordinary contract debt”.