



Charities Act 1992

1992 CHAPTER 41

PART I

CHARITIES

Supervision and control by Commissioners

6 General power to institute inquiries

- (1) Section 6 of the 1960 Act (general power to institute inquiries) shall be amended as follows.
- (2) In subsection (3)—
 - (a) for the words from “may by order” to “require” there shall be substituted “, or a person appointed by them to conduct it, may direct”; and
 - (b) for paragraph (b) there shall be substituted—
 - “(b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;
 - (c) to attend at a specified time and place and give evidence or produce any such documents.”
- (3) In subsection (5), for “an order or precept under paragraph (b)” there shall be substituted “a direction under paragraph (c)”.
- (4) Subsection (6) (exemption for person claiming to hold property adversely to a charity) shall be omitted.
- (5) For subsection (7) there shall be substituted—
 - “(7) Where an inquiry has been held under this section, the Commissioners may either—

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- (a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as they think fit, to be printed and published, or
- (b) publish any such report or statement in some other way which is calculated in their opinion to bring it to the attention of persons who may wish to make representations to them about the action to be taken.”

(6) Subsection (9) (which is superseded by section 54(2) below) shall be omitted.

7 Power of Commissioners to obtain information and documents

(1) Section 7 of the 1960 Act (power to call for documents and search records) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) The Commissioners may by order—

- (a) require any person to furnish them with any information in his possession which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian for charities;
- (b) require any person who has in his custody or under his control any document which relates to any charity and is relevant to the discharge of their functions or of the functions of the official custodian for charities—
 - (i) to furnish them with a copy of or extract from the document, or
 - (ii) (unless the document forms part of the records or other documents of a court or of a public or local authority) to transmit the document itself to them for their inspection.”

(3) Subsection (4) (exemption for person claiming to hold property adversely to a charity) shall be omitted.

(4) At the end of the section there shall be added—

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

8 Power to act for protection of charities

(1) Section 20 of the 1960 Act (power to act for protection of charities) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are 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 Commissioners may of their own motion do one or more of the following things, namely—

- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
- (ii) by order appoint such number of additional charity trustees as they consider 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 for charities, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;
- (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 Commissioners;
- (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;
- (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 Commissioners;
- (vii) by order appoint (in accordance with section 20A of this Act) a receiver and manager in respect of the property and affairs of the charity.

(1A) Where, at any time after they have instituted an inquiry under section 6 of this Act with respect to any charity, the Commissioners are 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 Commissioners may of their own motion do either or both of the following things, namely—

- (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 has by his conduct contributed to it or facilitated it;
- (ii) by order establish a scheme for the administration of the charity.”

(3) In subsection (2), after “subsection (1)” there shall be inserted “or (1A)”.

(4) In subsection (3), for paragraph (a) there shall be substituted—
“(a) where, within the last five years, the trustee—

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- (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or
 - (ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;
 - (aa) where the trustee is a corporation in liquidation;
 - (ab) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act 1983;”.
- (5) For subsection (7) there shall be substituted—
 - “(7) Subject to subsection (7A) below, subsections (10) and (11) of section 18 of this Act shall apply to orders under this section as they apply to orders under that section.
 - (7A) The requirement to obtain any such certificate or leave as is mentioned in the proviso to section 18(11) shall not apply to—
 - (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity’s property and affairs, or
 - (b) an appeal by a person against an order under subsection (1A)(i) or (3)(a) above removing him from his office or employment.
 - (7B) Subsection (12) of section 18 of this Act shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.”
- (6) In subsection (8), for the words from the beginning to “the suspension” there shall be substituted “The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than twelve months; but (without prejudice to the generality of section 40(1) of this Act) any such order made in the case of any person may make provision as respects the period of his suspension”.
- (7) In subsection (9), after “section” there shall be inserted “otherwise than by virtue of subsection (1) above”.
- (8) After subsection (9) there shall be inserted—
 - “(9A) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).”
- (9) For subsection (10) there shall be substituted—
 - “(10) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
 - (10A) Subsection (10) above 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) above (whether proceedings in respect of the contravention are brought against him under subsection (10) above or not).”

(10) Section 20 of the 1960 Act, as amended by this section, and with the omission of repealed provisions, is set out in Schedule 1 to this Act.

9 Supplementary provisions relating to receiver and manager appointed for a charity

After section 20 of the 1960 Act there shall be inserted—

“20A Supplementary provisions relating to receiver and manager appointed for a charity

- (1) The Commissioners may under section 20(1)(vii) of this Act appoint to be receiver and manager in respect of the property and affairs of a charity such person (other than an officer or employee of theirs) as they think fit.
- (2) Without prejudice to the generality of section 40(1) of this Act, any order made by the Commissioners under section 20(1)(vii) of this Act may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by him under the supervision of the Commissioners.
- (3) In connection with the discharge of those functions any such order may provide—
 - (a) for the receiver and 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 receiver and manager by virtue of paragraph (a) above to be exercisable or performed by him to the exclusion of those trustees.
- (4) Where a person has been appointed receiver and manager by any such order—
 - (a) section 24 of this Act shall apply to him and to his functions as a person so appointed as it applies to a charity trustee of the charity concerned and to his duties as such; and
 - (b) the Commissioners may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (5) The High Court may on an application under subsection (4)(b) above—
 - (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 may make provision with respect to—
 - (a) the appointment and removal of persons appointed in accordance with this section;

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(b) the remuneration of such persons out of the income of the charities concerned;

(c) the making of reports to the Commissioners by such persons.

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

(a) to require security for the due discharge of his functions to be given by a person so appointed;

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

(c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.”

10 Additional powers exercisable by Commissioners in relation to charitable companies

(1) At the end of section 30 of the 1960 Act (charitable companies: winding up) there shall be added—

“(2) Where a charity may be so wound up by the High Court, such a petition may also be presented by the Commissioners if, at any time after they have instituted an inquiry under section 6 of this Act with respect to the charity, they are satisfied as mentioned in section 20(1)(a) or (b) of this Act.

(3) Where a charitable company is dissolved, the Commissioners may make an application under section 651 of the Companies Act 1985 (power of court to declare dissolution of company void) for an order to be made under that section with respect to the company; and for this purpose subsection (1) of that section shall have effect in relation to a charitable company as if the reference to the liquidator of the company included a reference to the Commissioners.

(4) Where a charitable company's name has been struck off the register of companies under section 652 of the Companies Act 1985 (power of registrar to strike defunct company off register), the Commissioners may make an application under section 653(2) of that Act (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose section 653(2) shall have effect in relation to a charitable company as if the reference to any such person aggrieved as is there mentioned included a reference to the Commissioners.

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

(6) In this section “charitable company” means a company which is a charity.”

(2) The existing provisions of section 30 of the 1960 Act (as amended by the Companies Act 1989) shall accordingly constitute subsection (1) of that section.

11 Report of inquiry held by Commissioners to be evidence in certain proceedings

After section 28 of the 1960 Act there shall be inserted—

“28A Report of s.6 inquiry to be evidence in certain proceedings

- (1) A copy of the report of the person conducting an inquiry under section 6 of this Act shall, if certified by the Commissioners 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 Commissioners under this Part of this Act; 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) above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.”

12 Supervision by Commissioners of certain Scottish charities

- (1) The following provisions of the 1960 Act (as amended by this Act), namely—
- (a) sections 6 and 7,
 - (b) section 20 (except subsection (1A)(ii)), and
 - (c) section 20A,
- shall have effect in relation to any recognised body which is managed or controlled wholly or mainly in or from England or Wales as they have effect in relation to a charity; and in paragraph 3(6) of Schedule 1 to that Act (constitution etc. of Commissioners) the reference to sections 6, 20 and 20A of that Act includes a reference to those sections as applied by this subsection.
- (2) Where—
- (a) a recognised body is managed or controlled wholly or mainly in or from Scotland, but
 - (b) any person in England and Wales holds any property on behalf of the body or of any person concerned in its management or control,
- then, if the Commissioners are satisfied as to the matters mentioned in subsection (3), they may make an order requiring the person holding the property not to part with it without their approval.
- (3) The matters referred to in subsection (2) are—
- (a) that there has been any misconduct or mismanagement in the administration of the body; and
 - (b) that it is necessary or desirable to make an order under that subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body;
- and the reference in that subsection to the Commissioners being satisfied as to those matters is a reference to their being so satisfied on the basis of such information as may be supplied to them by the Lord Advocate.

- (4) Where—

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- (a) any person in England and Wales holds any property on behalf of a recognised body or of any person concerned in the management or control of such a body, and
 - (b) the Commissioners are satisfied (whether on the basis of such information as may be supplied to them by the Lord Advocate or otherwise)—
 - (i) that there has been any misconduct or mismanagement in the administration of the body, and
 - (ii) that it is necessary or desirable to make an order under this subsection for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body,the Commissioners may by order vest the property in such recognised body or charity as is specified in the order in accordance with subsection (5), or require any persons in whom the property is vested to transfer it to any such body or charity, or appoint any person to transfer the property to any such body or charity.
- (5) The Commissioners may specify in an order under subsection (4) such other recognised body or such charity as they consider appropriate, being a body or charity whose purposes are, in the opinion of the Commissioners, as similar in character to those of the body referred to in paragraph (a) of that subsection as is reasonably practicable; but the Commissioners shall not so specify any body or charity unless they have received—
- (a) from the persons concerned in the management or control of the body, or
 - (b) from the charity trustees of the charity,
- as the case may be, written confirmation that they are willing to accept the property.
- (6) In this section “recognised body” has the same meaning as in Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (Scottish charities).