



# Charities Act 1993 (repealed)

## 1993 CHAPTER 10

### PART IV

#### APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT <sup>[F1]</sup>AND COMMISSION]

##### Textual Amendments

- F1** Words in Pt. IV heading substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 106](#); [S.I. 2007/309, art. 2, Sch.](#)

#### *Extended powers of court and variation of charters*

### 13 Occasions for applying property cy-près.

- (1) Subject to subsection (2) below, 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 <sup>[F2]</sup>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

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be suitable, regard being had to <sup>[F3]</sup>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 <sup>[F4]</sup>the appropriate considerations] .

<sup>[F5]</sup>(1A) In subsection (1) above “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.]
- (2) Subsection (1) above 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.
- (3) 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.
- (4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court’s jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in Schedule 3 to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.
- (5) 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.

#### **Textual Amendments**

- F2** Words in s. 13(1)(c) substituted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)
- F3** Words in s. 13(1)(d) substituted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)
- F4** Words in s. 13(1)(e)(iii) substituted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 15(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)
- F5** S. 13(1A) inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 15(3)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 5)

## **14 Application cy-près of gifts of donors unknown or disclaiming.**

- (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—

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- (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 his 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 him to be interested in it is received by them before the expiry of the period mentioned in subsection (1)(a)(ii) above.
- (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 [<sup>F6</sup>or the Commission] may by order direct that property not falling within subsection (3) above 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 [<sup>F6</sup>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 his 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) above—
  - (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 he makes a claim not later than six 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 his 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,

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then, if [<sup>F7</sup>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 his claim bears to the aggregate amount referred to in paragraph (b) above; 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 [<sup>F8</sup>the Commission]; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (1)(a) above, make provision as to the form and content of such advertisements as well as the manner in which they are to be published.
- (9) Any regulations made by [<sup>F9</sup>the Commission] under this section shall be published by [<sup>F9</sup>the Commission] in such manner as [<sup>F10</sup>it thinks fit].
- (10) In this section, except in so far as the context otherwise requires, 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.
- (11) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

#### **Textual Amendments**

- F6** Words in s. 14(4) inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 16(2)**, 79(2); S.I. 2008/751, art. 2, Sch. (with art. 6)
- F7** Words in s. 14(6) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 107(2)**; S.I. 2007/309, art. 2, Sch.
- F8** Words in s. 14(8) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 107(3)**; S.I. 2007/309, art. 2, Sch.
- F9** Words in s. 14(9) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 107(4)(a)**; S.I. 2007/309, art. 2, Sch.
- F10** Words in s. 14(9) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 107(4)(b)**; S.I. 2007/309, art. 2, Sch.

#### **[<sup>F11</sup>14A Application cy-près of gifts made in response to certain solicitations**

- (1) This section applies to property given—
  - (a) for specific charitable purposes, and
  - (b) in response to a solicitation within subsection (2) below.
- (2) A solicitation is within this subsection if—
  - (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.

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- (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, he wishes the trustees holding the property to give him 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) below apply if—
- (a) a person has given property as mentioned in subsection (1) above,
  - (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 he wishes to request the return of the property (or a sum equal to its value), and
  - (c) if within the prescribed period he makes such a request, returning the property (or such a sum) to him.
- (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 14(1) above 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) above,
  - (b) the specific charitable purposes fail, and
  - (c) the donor has not made a relevant declaration,
- section 14(1) above shall similarly apply to the property as if it belonged to a donor within 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 he proves otherwise.
- (9) In this section “prescribed” means prescribed by regulations made by the Commission, and any such regulations shall be published by the Commission in such manner as it thinks fit.
- (10) Subsections (7) and (10) of section 14 shall apply for the purposes of this section as they apply for the purposes of section 14.]

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#### Textual Amendments

- F11** S. 14A inserted (27.2.2007 for specified purposes, 18.3.2008 in so far as not already in force) by Charities Act 2006 (c. 50), ss. 17, 79(2); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch. (with art. 7)

### [<sup>F12</sup>14B Cy-près schemes

- (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.]

#### Textual Amendments

- F12** S. 14B inserted (18.3.2008) by Charities Act 2006 (c. 50), ss. 18, 79(2) (with Sch. 10 para. 3); S.I. 2008/751, art. 2, Sch.

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## 15 Charities governed by charter, or by or under statute.

- (1) 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.
- (2) Where under the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or under powers conferred by this Act or by any Northern Ireland legislation relating to charities, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the scheme, to amend any Royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in like manner as the charter it amends.
- (3) The jurisdiction of the court with respect to charities shall not be excluded or restricted in the case of a charity of any description mentioned in Schedule 4 to this Act by the operation of the enactments or instruments there mentioned in relation to that description, and a scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and may also make any such provision as is authorised by that Schedule.

### Extent Information

**E1** S. 15 extends to England and Wales; s. 15(2) extends also to Northern Ireland, see s. 100(4)

*[<sup>F13</sup>Powers of Commission] to make schemes and act for protection of charities etc.*

### Textual Amendments

**F13** Words in s. 16 cross-heading substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 108](#); [S.I. 2007/309](#), art. 2, Sch.

## 16 Concurrent jurisdiction with High Court for certain purposes.

- (1) Subject to the provisions of this Act, [<sup>F14</sup>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.

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- (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 [<sup>F15</sup>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 [<sup>F16</sup>the Commission] as if prepared under subsection (1) above and without any further order of the court.
- (3) [<sup>F17</sup>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, [<sup>F18</sup>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) above; or
  - (c) in the case of a charity other than an exempt charity, on the application of the Attorney General.
- (5) In the case of a charity which is not an exempt charity and whose [<sup>F19</sup>gross income does not] exceed £500 a year, [<sup>F20</sup>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; or
  - (c) of any two or more inhabitants of the area of the charity if it is a local charity.
- (6) Where in the case of a charity, other than an exempt charity, [<sup>F21</sup>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 [<sup>F22</sup>the Commission has] given the charity trustees an opportunity to make representations to them, [<sup>F23</sup>the Commission] may proceed as if an application for a scheme had been made by the charity but [<sup>F23</sup>the Commission] shall not have power in a case where [<sup>F24</sup>it acts] by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.
- (7) Where—
- (a) a charity cannot apply to [<sup>F25</sup>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 [<sup>F26</sup>the Commission considers] appropriate in the circumstances of the case,
- [<sup>F25</sup>the Commission] may nevertheless proceed as if the application were an application made by the charity.
- (8) [<sup>F27</sup>The Commission] may on the application of any charity trustee or trustee for a charity exercise [<sup>F28</sup>its jurisdiction] under this section for the purpose of discharging him from his trusteeship.
- (9) Before exercising any jurisdiction under this section otherwise than on an order of the court, [<sup>F29</sup>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 in the United Kingdom or who is party or privy to an application for the exercise of the jurisdiction;



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and any such notice may be given by post, and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.

- (10) [<sup>F30</sup>The Commission shall not exercise its] jurisdiction under this section in any case (not referred to them 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, [<sup>F31</sup>the Commission] may consider more fit to be adjudicated on by the court.

<sup>F32</sup>(11) .....

<sup>F32</sup>(12) .....

<sup>F32</sup>(13) .....

<sup>F32</sup>(14) .....

- (15) If the [<sup>F33</sup>Minister] 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 [<sup>F34</sup>the Commission may exercise its] jurisdiction under this section in accordance with subsection (5) above,

he may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

#### Textual Amendments

- F14** Words in s. 16(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(2)**; S.I. 2007/309, art. 2, Sch.
- F15** Words in s. 16(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(3)(a)**; S.I. 2007/309, art. 2, Sch.
- F16** Words in s. 16(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(3)(b)**; S.I. 2007/309, art. 2, Sch.
- F17** Words in s. 16(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(4)**; S.I. 2007/309, art. 2, Sch.
- F18** Words in s. 16(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(5)**; S.I. 2007/309, art. 2, Sch.
- F19** Words in s. 16(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(6)(a)**; S.I. 2007/309, art. 2, Sch.
- F20** Words in s. 16(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(6)(b)**; S.I. 2007/309, art. 2, Sch.
- F21** Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(a)**; S.I. 2007/309, art. 2, Sch.
- F22** Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(b)**; S.I. 2007/309, art. 2, Sch.
- F23** Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(c)**; S.I. 2007/309, art. 2, Sch.
- F24** Words in s. 16(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(7)(d)**; S.I. 2007/309, art. 2, Sch.
- F25** Words in s. 16(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(8)(a)**; S.I. 2007/309, art. 2, Sch.
- F26** Words in s. 16(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(8)(b)**; S.I. 2007/309, art. 2, Sch.
- F27** Words in s. 16(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(9)(a)**; S.I. 2007/309, art. 2, Sch.

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- F28** Words in s. 16(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(9)(b)**; S.I. 2007/309, art. 2, Sch.
- F29** Words in s. 16(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(10)**; S.I. 2007/309, art. 2, Sch.
- F30** Words in s. 16(10) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(11)(a)**; S.I. 2007/309, art. 2, Sch.
- F31** Words in s. 16(10) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(11)(b)**; S.I. 2007/309, art. 2, Sch.
- F32** S. 16(11)-(14) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 109(12), **Sch. 9**; S.I. 2008/751, art. 2, Sch. (with art. 4)
- F33** Word in s. 16(15) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(i)**
- F34** Words in s. 16(15)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 109(13)**; S.I. 2007/309, art. 2, Sch.

**Modifications etc. (not altering text)**

- C1** S. 16(3)(9)(11)-(14) applied (1.8.1993) by 1987 c. 3, **s. 5(8)** (as substituted (1.8.1993) by ss. 98, 99(1), Sch. 6 para. 23(1) of this Act)
- C2** S. 16(4) excluded (1.4.1997) by 1996 c. 14, s. 120, **Sch. 5, Pt. II paras. 6, 8** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**
- C3** S. 16(12) modified (temp.) (31.1.2007) by The Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007 (S.I. 2007/309), **art. 13**

**17 Further powers to make schemes or alter application of charitable property.**

- (1) Where it appears to [<sup>F35</sup>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 Parliament establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable [<sup>F36</sup>by the Commission] apart from this section, or that it is for any reason proper for the scheme to be subject to parliamentary review, then (subject to subsection (6) below) [<sup>F35</sup>the Commission] may settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by [<sup>F37</sup>the Commission] under this section may be given effect by order of the [<sup>F38</sup>Minister], and a draft of the order shall be laid before Parliament.
- (3) Without prejudice to the operation of section 6 of the <sup>M1</sup>Statutory Instruments Act 1946 in other cases, 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, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.
- (4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or [<sup>F39</sup>the Commission] as if it were a scheme brought into effect by order of [<sup>F39</sup>the Commission] under section 16 above.
- (5) Where subsection (3) above 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.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

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- (6) The [F40Commission] shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required [F41if the Commission was] proceeding (without an order of the court) under section 16 above; but on any application for a scheme, or in a case where [F42it acts] by virtue of subsection (6) or (7) of that section, the [F40Commission] may proceed under this section or that section as appears [F43to it] appropriate.
- (7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or [F44the Commission] be defrayed out of any moneys applicable for the purposes of a charity but this subsection shall not apply in the case of an exempt charity.
- (8) Where [F45the 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 [F46the 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) above shall not extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years.

#### Textual Amendments

- F35** Words in s. 17(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F36** Words in s. 17(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F37** Words in s. 17(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(3)**; S.I. 2007/309, art. 2, Sch.
- F38** Word in s. 17(2) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(j)**
- F39** Words in s. 17(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(4)**; S.I. 2007/309, art. 2, Sch.
- F40** Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(a)**; S.I. 2007/309, art. 2, Sch.
- F41** Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(b)**; S.I. 2007/309, art. 2, Sch.
- F42** Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(c)**; S.I. 2007/309, art. 2, Sch.
- F43** Words in s. 17(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(5)(d)**; S.I. 2007/309, art. 2, Sch.
- F44** Words in s. 17(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(6)**; S.I. 2007/309, art. 2, Sch.
- F45** Words in s. 17(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(7)(a)**; S.I. 2007/309, art. 2, Sch.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

**F46** Words in s. 17(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 110(7)(b)**; S.I. 2007/309, art. 2, Sch.

**Modifications etc. (not altering text)**

**C4** S. 17(1)-(5)(7) applied (1.8.1993) by 1987 c. 3, s. 5(8) (as substituted (1.8.1993) by ss. 98(1), 99(1), Sch. 6 para. 23(1) of this Act).

**Marginal Citations**

**M1** 1946 c. 36.

**18 Power to act for protection of charities.**

- (1) Where, at any time [<sup>F47</sup>after it has] instituted an inquiry under section 8 above with respect to any charity, [<sup>F48</sup>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,
- [<sup>F49</sup>the Commission may of its] own motion do one or more of the following things—
- (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 [<sup>F50</sup>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 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 [<sup>F51</sup>the Commission];
  - (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 [<sup>F51</sup>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 [<sup>F51</sup>the Commission];
    - (vii) by order appoint (in accordance with section 19 below) [<sup>F52</sup>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 [<sup>F53</sup>it has] instituted an inquiry under section 8 above with respect to any charity, [<sup>F54</sup>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,

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- [<sup>F55</sup>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 has by his conduct contributed to it or facilitated it;
  - (ii) by order establish a scheme for the administration of the charity.
- (3) The references in subsection (1) or (2) above 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) [<sup>F56</sup>The Commission] may also remove a charity trustee by order made of [<sup>F57</sup>its own motion]—
- (a) where, within the last five years, the trustee—
    - (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;
  - (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 <sup>M2</sup>Mental Health Act 1983;
  - (d) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (e) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (5) [<sup>F58</sup>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 [<sup>F59</sup>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 [<sup>F60</sup>the Commission is of] opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) where [<sup>F60</sup>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 England and Wales.
- (6) The powers of [<sup>F61</sup>the Commission] under this section to remove or appoint charity trustees of [<sup>F62</sup>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 [<sup>F61</sup>the Commission] could make on the removal or appointment of a charity trustee [<sup>F63</sup>by it] under section 16 above.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (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 16 above.
- <sup>F64</sup>(8) .....
- <sup>F64</sup>(9) .....
- <sup>F64</sup>(10) .....
- (11) The power of [<sup>F65</sup>the Commission] 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 89(1) below), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him 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.
- (12) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1) above, [<sup>F66</sup>the Commission] shall give notice of [<sup>F67</sup>its intention] to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (13) [<sup>F68</sup>The Commission] shall, at such intervals as [<sup>F69</sup>it thinks fit], review any order made [<sup>F70</sup>by it] under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears [<sup>F71</sup>to the Commission] that it would be appropriate to discharge the order in whole or in part, [<sup>F72</sup>the Commission shall] so discharge it (whether subject to any savings or other transitional provisions or not).
- (14) 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 level 5 on the standard scale.
- (15) Subsection (14) 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 (14) above or not).
- (16) This section shall not apply to an exempt charity.

#### Textual Amendments

- F47** Words in s. 18(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 111\(2\)\(a\)](#); [S.I. 2007/309](#), art. 2, Sch.
- F48** Words in s. 18(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 111\(2\)\(b\)](#); [S.I. 2007/309](#), art. 2, Sch.
- F49** Words in s. 18(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 111\(2\)\(c\)](#); [S.I. 2007/309](#), art. 2, Sch.
- F50** Words in s. 18(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 111\(2\)\(d\)](#); [S.I. 2007/309](#), art. 2, Sch.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- F51** Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2) (e)**; S.I. 2007/309, art. 2, Sch.
- F52** Words in s. 18(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(2) (f)**; S.I. 2007/309, art. 2, Sch.
- F53** Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3) (a)**; S.I. 2007/309, art. 2, Sch.
- F54** Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3) (b)**; S.I. 2007/309, art. 2, Sch.
- F55** Words in s. 18(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(3) (c)**; S.I. 2007/309, art. 2, Sch.
- F56** Words in s. 18(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(4) (a)**; S.I. 2007/309, art. 2, Sch.
- F57** Words in s. 18(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(4) (b)**; S.I. 2007/309, art. 2, Sch.
- F58** Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5) (a)**; S.I. 2007/309, art. 2, Sch.
- F59** Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5) (b)**; S.I. 2007/309, art. 2, Sch.
- F60** Words in s. 18(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(5) (c)**; S.I. 2007/309, art. 2, Sch.
- F61** Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6) (a)**; S.I. 2007/309, art. 2, Sch.
- F62** Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6) (b)**; S.I. 2007/309, art. 2, Sch.
- F63** Words in s. 18(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(6) (c)**; S.I. 2007/309, art. 2, Sch.
- F64** S. 18(8)-(10) repealed (18.3.2008) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 111(7), **Sch. 9**; S.I. 2008/751, art. 2, Sch. (with art. 4)
- F65** Words in s. 18(11) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(8)**; S.I. 2007/309, art. 2, Sch.
- F66** Words in s. 18(12) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(9) (a)**; S.I. 2007/309, art. 2, Sch.
- F67** Words in s. 18(12) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(9) (b)**; S.I. 2007/309, art. 2, Sch.
- F68** Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10) (a)**; S.I. 2007/309, art. 2, Sch.
- F69** Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10) (b)**; S.I. 2007/309, art. 2, Sch.
- F70** Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10) (c)**; S.I. 2007/309, art. 2, Sch.
- F71** Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10) (d)**; S.I. 2007/309, art. 2, Sch.
- F72** Words in s. 18(13) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 111(10) (e)**; S.I. 2007/309, art. 2, Sch.

#### Marginal Citations

**M2** 1983 c. 20.

### [<sup>F73</sup>18A Power to suspend or remove trustees etc. from membership of charity

(1) This section applies where the Commission makes—

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (a) an order under section 18(1) above suspending from his office or employment any trustee, charity trustee, officer, agent or employee of a charity, or
  - (b) an order under section 18(2) above removing from his 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 his office or employment, the Commission may also make an order suspending his membership of the charity for the period for which he is suspended from his office or employment.
- (3) If the order removes the person in question from his office or employment, the Commission may also make an order—
- (a) terminating his membership of the charity, and
  - (b) prohibiting him from resuming his membership of the charity without the Commission's consent.
- (4) If an application for the Commission's consent under subsection (3)(b) above is made five 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.]

#### **Textual Amendments**

**F73** S. 18A inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 19, 79(2)** (with [Sch. 10 para. 4](#)); [S.I. 2008/751](#), [art. 2](#), [Sch.](#)

### **19 Supplementary provisions relating to <sup>F74</sup>[interim manager] appointed for a charity.**

- <sup>F75</sup>(1) The Commission may under section 18(1)(vii) above appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.]
- (2) Without prejudice to the generality of section 89(1) below, any order made by <sup>F76</sup>[the Commission] under section 18(1)(vii) above may make provision with respect to the functions to be discharged by the <sup>F77</sup>[interim manager] appointed by the order; and those functions shall be discharged by him under the supervision of <sup>F76</sup>[the Commission].
- (3) In connection with the discharge of those functions any such order may provide—
- (a) for the <sup>F78</sup>[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 <sup>F78</sup>[interim 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 <sup>F79</sup>[interim manager] by any such order—
- (a) section 29 below 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



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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (b) [<sup>F80</sup>the Commission] 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 made by the [<sup>F81</sup>Minister] 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 [<sup>F82</sup>the Commission] by such persons.
- (7) Regulations under subsection (6) above may, in particular, authorise [<sup>F82</sup>the Commission]—
- (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.

#### Textual Amendments

- F74** Words in s. 19 heading substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(7)**; S.I. 2007/309, art. 2, Sch.
- F75** S. 19(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(2)**; S.I. 2007/309, art. 2, Sch.
- F76** Words in s. 19(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(3)(a)**; S.I. 2007/309, art. 2, Sch.
- F77** Words in s. 19(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(3)(b)**; S.I. 2007/309, art. 2, Sch.
- F78** Words in s. 19(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(4)**; S.I. 2007/309, art. 2, Sch.
- F79** Words in s. 19(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(5)(a)**; S.I. 2007/309, art. 2, Sch.
- F80** Words in s. 19(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(5)(b)**; S.I. 2007/309, art. 2, Sch.
- F81** Word in s. 19(6) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(k)**
- F82** Words in s. 19(6)(c) and (7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 112(6)**; S.I. 2007/309, art. 2, Sch.

#### [<sup>F83</sup>19A Power to give specific directions for protection of charity

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 8 above with respect to any charity, it is satisfied as mentioned in section 18(1)(a) or (b) above.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (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 Act of Parliament 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) above.
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.]

#### **Textual Amendments**

**F83** S. 19A inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 20, 79(2)** (with [Sch. 10 para. 5](#)); [S.I. 2008/751](#), [art. 2](#), [Sch.](#)

#### **[<sup>F84</sup>19B Power to direct application of charity property**

- (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 Act of Parliament 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) above.

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- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.]

#### Textual Amendments

**F84** S. 19B inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), ss. 21, 79(2); S.I. 2008/751, art. 2, Sch.

### [<sup>F85</sup>19C Copy of order under section 18, 18A, 19A or 19B, and Commission's reasons, to be sent to charity

- (1) Where the Commission makes an order under section 18, 18A, 19A or 19B, it must send the documents mentioned in subsection (2) below—
- (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) above 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 in the United Kingdom.
- (6) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, that person in the same way as an order made by the Commission under this Act could be served on him in accordance with section 91 below.]

#### Textual Amendments

**F85** S. 19C inserted (27.2.2007 for specified purposes, 18.3.2008 in so far as not already in force) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 113](#); S.I. 2007/309, art. 2, Sch.; S.I. 2008/751, art. 2, Sch.

### [<sup>F86</sup>20 Publicity relating to schemes

- (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 Minister for an order giving it effect,

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unless, before doing so, the Commission has complied with the publicity requirements in subsection (2) below.

This is subject to any disapplication of those requirements under subsection (4) below.

- (2) The publicity requirements are—
- (a) that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice; and
  - (b) that, in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish or in a community in Wales, the Commission must communicate a draft of the scheme to the parish or community council (or, where a parish has no council, to the chairman of the parish meeting).
- (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 either or both of the publicity requirements is or are 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 or requirements 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—
- (a) at the Commission's office, and
  - (b) if the charity is a local charity, at some convenient place in the area of the charity.
- Paragraph (b) does not apply if the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally.
- (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.

#### **Textual Amendments**

**F86** Ss. 20, 20A substituted (27.2.2007) for s. 20 by [Charities Act 2006 \(c. 50\)](#), **ss. 22, 79(2)**; [S.I. 2007/309](#), [art. 2](#), [Sch.](#)

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## **20A Publicity for orders relating to trustees or other individuals**

- (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 18(1)(ii) above,
- unless, before doing so, the Commission has complied with the publicity requirement in subsection (2) below.

This is subject to any disapplication of that requirement under subsection (4) below.

- (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 his consent—
- (a) a charity trustee or trustee for a charity, or
  - (b) an officer, agent or employee of a charity,
- the Commission must give him 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 in the United Kingdom.

- (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—
- (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 in the United Kingdom.]

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

### Textual Amendments

**F86** Ss. 20, 20A substituted (27.2.2007) for s. 20 by [Charities Act 2006 \(c. 50\)](#), **ss. 22, 79(2)**; [S.I. 2007/309](#), [art. 2](#), [Sch.](#)

### *Property vested in official custodian*

## 21 Entrusting charity property to official custodian, and termination of trust.

- (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 him; or
  - (c) appoint any person to transfer any such land to him;
 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 him from the trusteeship as respects all or any of that property.
- (3) Where the official custodian is discharged from his trusteeship of any property, or the trusts on which he 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 his acting in conformity with an order under this section or by his 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.

## 22 Supplementary provisions as to property vested in official custodian.

- (1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, he shall not exercise any powers of management, but he 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 a corporation appointed custodian trustee under section 4 of the <sup>M3</sup>Public Trustee Act 1906 except that he shall have no power to charge fees.
- (2) Subject to subsection (3) below, where any land is vested in the official custodian in trust for a charity, the charity trustees shall have power in his name and on his behalf 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 18 above, the power conferred on the charity trustees by subsection (2) above 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 [<sup>F87</sup>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

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the land as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land being vested in him 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) above shall apply with the substitution of references to the charity for references to the charity trustees.
- (6) Subsections (2), (3) and (4) above 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, he may permit them to be in the possession or under the control of the charity trustees without thereby incurring any liability.

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#### Textual Amendments

**F87** Words in s. 22(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 114](#); [S.I. 2007/309](#), art. 2, Sch.

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#### Marginal Citations

**M3** [1906 c. 55](#).

## 23 Divestment in the case of land subject to Reverter of Sites Act 1987.

- (1) Where—
  - (a) any land is vested in the official custodian in trust for a charity, and
  - (b) it appears to <sup>F88</sup>[the Commission] that section 1 of the <sup>M4</sup>Reverter of Sites Act 1987 (right of reverter replaced by <sup>F89</sup>trust) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances,

the jurisdiction which, under section 16 above, is exercisable by <sup>F88</sup>[the Commission] for the purpose of discharging a trustee for a charity may, at any time before section 1 of that Act (“the 1987 Act”) operates in relation to the land, be exercised <sup>F90</sup>by the Commission of its own] motion for the purpose of—

  - (i) making an order discharging the official custodian from his trusteeship of the land, and
  - (ii) making such vesting orders and giving such directions as <sup>F91</sup>appear to the Commission] to be necessary or expedient in consequence.
- (2) Where—
  - (a) section 1 of the 1987 Act has operated in relation to any land which, immediately before the time when that section so operated, was vested in the official custodian in trust for a charity, and
  - (b) the land remains vested in him but on the trust arising under that section,

the court or <sup>F92</sup>[the Commission (of its own motion)] may—

  - (i) make an order discharging the official custodian from his trusteeship of the land, and
  - (ii) (subject to the following provisions of this section) make such vesting orders and give such directions as appear to it <sup>F93</sup>... to be necessary or expedient in consequence.
- (3) Where any order discharging the official custodian from his trusteeship of any land—

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- (a) is made by the court under section 21(2) above, or by [<sup>F94</sup>the Commission] under section 16 above, on the grounds that section 1 of the 1987 Act will, or is likely to, operate in relation to the land, or
- (b) is made by the court or [<sup>F94</sup>the Commission] under subsection (2) above, the persons in whom the land is to be vested on the discharge of the official custodian shall be the relevant charity trustees (as defined in subsection (4) below), unless the court or (as the case may be) [<sup>F95</sup>the Commission is] satisfied that it would be appropriate for it to be vested in some other persons.
- (4) In subsection (3) above “the relevant charity trustees” means—
- (a) in relation to an order made as mentioned in paragraph (a) of that subsection, the charity trustees of the charity in trust for which the land is vested in the official custodian immediately before the time when the order takes effect, or
- (b) in relation to an order made under subsection (2) above, the charity trustees of the charity in trust for which the land was vested in the official custodian immediately before the time when section 1 of the 1987 Act operated in relation to the land.
- (5) Where—
- (a) section 1 of the 1987 Act has operated in relation to any such land as is mentioned in subsection (2)(a) above, and
- (b) the land remains vested in the official custodian as mentioned in subsection (2) (b) above,
- then (subject to subsection (6) below), all the powers, duties and liabilities that would, apart from this section, be those of the official custodian as [<sup>F89</sup>trustee] of the land shall instead be those of the charity trustees of the charity concerned; and those trustees shall have power in his name and on his behalf 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.
- (6) Subsection (5) above shall not be taken to require or authorise those trustees to sell the land at a time when it remains vested in the official custodian.
- (7) Where—
- (a) the official custodian has been discharged from his trusteeship of any land by an order under subsection (2) above, and
- (b) the land has, in accordance with subsection (3) above, been vested in the charity trustees concerned or (as the case may be) in any persons other than those trustees,
- the land shall be held by those trustees, or (as the case may be) by those persons, as [<sup>F89</sup>trustees] on the terms of the trust arising under section 1 of the 1987 Act.
- (8) The official custodian shall not be liable to any person in respect of any loss or misapplication of any land vested in him in accordance with that section unless it is occasioned by or through any wilful neglect or default of his or of any person acting for him; but the Consolidated Fund shall be liable to make good to any person any sums for which the official custodian may be liable by reason of any such neglect or default.
- (9) In this section any reference to section 1 of the 1987 Act operating in relation to any land is a reference to a [<sup>F89</sup>trust] arising in relation to the land under that section.



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#### Textual Amendments

- F88** Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F89** Words in s. 23(1)(b)(5)(7)(9) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 26(a)-(d)** (with s. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**
- F90** Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F91** Words in s. 23(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(2)(c)**; S.I. 2007/309, art. 2, Sch.
- F92** Words in s. 23(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(3)(a)**; S.I. 2007/309, art. 2, **Sch.**
- F93** Words in s. 23(2) repealed (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 115(3)(b), **Sch. 9**; S.I. 2007/309, art. 2, Sch.
- F94** Words in s. 23(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(4)(a)**; S.I. 2007/309, art. 2, Sch.
- F95** Words in s. 23(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 115(4)(b)**; S.I. 2007/309, art. 2, Sch.

#### Marginal Citations

- M4** 1987 c. 15.

### *Establishment of common investment or deposit funds*

#### 24 Schemes to establish common investment funds.

- (1) The court or [<sup>F96</sup>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—
- 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
  - 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 [<sup>F96</sup>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.
- [<sup>F97</sup>(3A) 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.
- (3B) In this section “appropriate body” means—
- a Scottish recognised body, or
  - a Northern Ireland charity,

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and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A) above, “charity” includes an appropriate body.

“The relevant provisions” are subsections (1) and (4) to (6) and (in relation only to a charity within paragraph (b)) subsection (7).]

- (4) 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 he is also a charity trustee of 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.
- (5) 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.
- (6) 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.
- (7) 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.

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- (8) A common investment fund shall be deemed for all purposes to be a charity; and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.
- (9) Subsection (8) above 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 enactment relating to any particular charities or class of charity.

#### Textual Amendments

- F96** Words in s. 24(1)(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 116**; S.I. 2007/309, art. 2, Sch.
- F97** S. 24(3A)(3B) inserted (27.2.2007) by Charities Act 2006 (c. 50), **ss. 23(1)**, 79(2); S.I. 2007/309, art. 2, Sch.

#### Modifications etc. (not altering text)

- C5** S. 24 excluded (6.2.2000) by 1999 c. 16, s. 122(4), **Sch. 19 Pt. IV para. 15(a)**
- C6** S. 24(8) modified (27.2.2010) by The Charities Act 2006 (Commencement No.7, Transitional and Transitory Provisions and Savings) Order 2010 (S.I. 2010/503), **Sch. 2 para. 13**

## 25 Schemes to establish common deposit funds.

- (1) The court or [<sup>F98</sup>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) below, the following provisions of section 24 above, namely—
- (a) [<sup>F99</sup>subsections (2), (3) and (4)] , and
  - (b) subsections (6) to (9),
- 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) above, subsection (4) of that section 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;”.

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[<sup>F100</sup>(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) a Northern Ireland charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4) above, “charity” includes an appropriate body.

(6) “The relevant provisions” are—

- (a) subsection (1) above, and
- (b) subsections (4) and (6) of section 24 above, as they apply in accordance with subsections (2) and (3) above, and
- (c) (in relation only to a charity within subsection (5)(b) above) subsection (7) of that section, as it so applies.]

#### Textual Amendments

**F98** Words in s. 25(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 117](#); S.I. 2007/309, art. 2, Sch.

**F99** Words in s. 25(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), [ss. 23\(2\)](#), 79(2); S.I. 2007/309, art. 2, Sch.

**F100** S. 25(4)-(6) added (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), [ss. 23\(3\)](#), 79(2); S.I. 2007/309, art. 2, Sch.

#### Modifications etc. (not altering text)

**C7** S. 25 excluded (6.2.2000) by [1993 c. 10](#), s. 122(4), [Sch. 19 Pt. IV para. 15\(b\)](#)

### [<sup>F101</sup>25A Meaning of “Scottish recognised body” and “Northern Ireland charity” in sections 24 and 25

(1) In sections 24 and 25 above “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 <sup>F102</sup>... [<sup>F103</sup>Part 10 of the Income Tax Act 2007] [<sup>F104</sup>, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,] in respect of income of the body which is applicable and applied to charitable purposes only.

(2) In those sections “Northern Ireland charity” means an institution—

- (a) which is a charity under the law of Northern Ireland, 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 <sup>F105</sup>... [<sup>F106</sup>Part 10 of the Income Tax Act 2007] [<sup>F107</sup>, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,] in respect of income of the institution which is applicable and applied to charitable purposes only.]

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- [<sup>F108</sup>(3) For the purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than—
- (a) section 480 (exemption for profits of small-scale trades), and
  - (b) section 481 (exemption from charges under provisions to which section 1173 applies),
- is qualifying relief under that Part.]

#### Textual Amendments

- F101** S. 25A inserted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), [ss. 23\(4\)](#), 79(2); S.I. 2007/309, [art. 2](#), [Sch.](#)
- F102** Words in s. 25A(1) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 275\(2\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F103** Words in s. 25A(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 353](#) (with [Sch. 2](#))
- F104** Words in s. 25A(1) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 275\(2\)\(b\)](#) (with [Sch. 2](#))
- F105** Words in s. 25A(2) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 275\(3\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F106** Words in s. 25A(2) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 353](#) (with [Sch. 2](#))
- F107** Words in s. 25A(2) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 275\(3\)\(b\)](#) (with [Sch. 2](#))
- F108** S. 25A(3) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 275\(4\)](#) (with [Sch. 2](#))

#### [<sup>F109</sup>Additional powers of Commission]

#### Textual Amendments

- F109** S. 26 heading substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), [s. 79\(2\)](#), [Sch. 8 para. 118](#); S.I. 2007/309, [art. 2](#), [Sch.](#)

## 26 Power to authorise dealings with charity property etc.

- (1) Subject to the provisions of this section, where it appears to [<sup>F110</sup>the Commission] that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, [<sup>F111</sup>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) above) 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

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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) above, 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 any act notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below or 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 shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity or shall extend or alter the purposes of the charity.
- [<sup>F112</sup>(5A) 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).]
- (6) The Acts referred to in subsection (5) above as the disabling Acts are the <sup>M5</sup>Ecclesiastical Leases Act 1571, the <sup>M6</sup>Ecclesiastical Leases Act 1572, the <sup>M7</sup>Ecclesiastical Leases Act 1575 and the <sup>M8</sup>Ecclesiastical Leases Act 1836.
- (7) An order under this section shall not confer any authority in relation to a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect under the Union of Benefices Measures 1923 to 1952, the Reorganisation Areas Measures 1944 and 1954, the <sup>M9</sup>Pastoral Measure 1968 or the <sup>M10</sup>Pastoral Measure 1983, the reference to a building being taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

#### Textual Amendments

- F110** Words in s. 26(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 119\(a\)](#); [S.I. 2007/309](#), art. 2, [Sch.](#)
- F111** Words in s. 26(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 119\(b\)](#); [S.I. 2007/309](#), art. 2, [Sch.](#)
- F112** S. 26(5A) inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), [ss. 181\(4\)](#), 1300(2); [S.I. 2007/2194](#), art. 2(1)(d) (with [arts. 712Sch. 1 para. 9](#)) (which transitional provisions in [Sch. 1](#) are revoked (1.10.2008) by [S.I. 2007/3495](#), art. 10(2)(b))

#### Marginal Citations

- M5** 1571 c. 10.  
**M6** 1572 c. 11.  
**M7** 1575 c. 11.  
**M8** 1836 c. 20.  
**M9** 1968 No.1.  
**M10** 1983 No.1.

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## 27 Power to authorise ex gratia payments etc.

- (1) Subject to subsection (3) below, [F113the 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 section) 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 [F114the Commission] by subsection (1) above shall be exercisable [F115by 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 [F114the 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 [F116the Commission for it] to exercise that power in a case where [F117it is not] precluded from doing so by any such directions, but
  - (b) [F118the Commission considers] that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than [F119by the Commission],
- [F120the Commission shall] refer the application to the Attorney General.
- (4) It is hereby declared that where, in the case of any application made [F121to the Commission] as mentioned in subsection (3)(a) above, [F122the Commission determines] the application by refusing to authorise charity trustees to take any action falling within subsection (1)(a) or (b) above, that refusal shall not preclude the Attorney General, on an application subsequently made to him by the trustees, from authorising the trustees to take that action.

### Textual Amendments

- F113** Words in s. 27(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(2\)](#); [S.I. 2007/309](#), art. 2, Sch.
- F114** Words in s. 27(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(3\)](#) (a); [S.I. 2007/309](#), art. 2, Sch.
- F115** Words in s. 27(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(3\)](#) (b); [S.I. 2007/309](#), art. 2, Sch.
- F116** Words in s. 27(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(4\)](#) (a); [S.I. 2007/309](#), art. 2, Sch.
- F117** Words in s. 27(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(4\)](#) (b); [S.I. 2007/309](#), art. 2, Sch.
- F118** Words in s. 27(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(4\)](#) (c); [S.I. 2007/309](#), art. 2, Sch.
- F119** Words in s. 27(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 120\(4\)](#) (d); [S.I. 2007/309](#), art. 2, Sch.

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- F120** Words in s. 27(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 120(4) (e); S.I. 2007/309, art. 2, Sch.
- F121** Words in s. 27(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 120(5) (a); S.I. 2007/309, art. 2, Sch.
- F122** Words in s. 27(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 120(5) (b); S.I. 2007/309, art. 2, Sch.

## 28 Power to give directions about dormant bank accounts of charities.

- (1) Where [<sup>F123</sup>the Commission] —
  - (a) [<sup>F124</sup>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) [<sup>F125</sup>is unable], after making reasonable inquiries, to locate that charity or any of its trustees,

[<sup>F126</sup>it may give] a direction under subsection (2) below.
- (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) below; 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 [<sup>F127</sup>Commission] may specify in a direction under subsection (2) above such other charity or charities as [<sup>F128</sup>it considers] appropriate, having regard, in a case where the purposes of the relevant charity are known [<sup>F129</sup>to the Commission], to those purposes and to the purposes of the other charity or charities; but the [<sup>F127</sup>Commission] shall not so specify any charity unless [<sup>F130</sup>it has received] from the charity trustees written 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) [<sup>F131</sup>the Commission has been] informed as mentioned in subsection (1)(a) above by any relevant institution, and
  - (b) before any transfer is made by the institution in pursuance of a direction under subsection (2) above, 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,



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the institution shall forthwith notify those circumstances in writing to [<sup>F132</sup>the Commission] ; and, if it appears to [<sup>F132</sup>the Commission] that the account or accounts in question is or are no longer dormant, [<sup>F133</sup>it shall revoke] any direction under subsection (2) above which has previously been given [<sup>F134</sup>by it] 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 a 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 [<sup>F135</sup>the Commission] for the purpose of enabling [<sup>F136</sup>the Commission to discharge its 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 five years immediately preceding the date when [<sup>F137</sup>the Commission is informed] as mentioned in paragraph (a) of subsection (1) above;

(b) a “relevant institution” means—

(i) the Bank of England;

[<sup>F138</sup>(ii) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;

(iii) 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; or

(iv) such other person who may lawfully accept deposits in the United Kingdom as may be prescribed by the [<sup>F139</sup>Minister].]

(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).

[<sup>F140</sup>(8A) Sub-paragraphs (ii) to (iv) of the definition of “relevant institution” in subsection (8) (b) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.]

(9) For the purpose of determining the matters in respect of which any of the powers conferred by section 8 or 9 above may be exercised it shall be assumed that [<sup>F141</sup>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 [<sup>F142</sup>the Commission] under this section, be required

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under section 8(3)(a) above to furnish any statements, or answer any questions 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) above but would not be such accounts if sub-paragraph (i) of that provision were omitted.

- (10) Subsection (1) above shall not apply to any account held in the name of or on behalf of an exempt charity.

#### **Textual Amendments**

- F123** Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F124** Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F125** Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(c)**; S.I. 2007/309, art. 2, Sch.
- F126** Words in s. 28(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(2)(d)**; S.I. 2007/309, art. 2, Sch.
- F127** Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(a)**; S.I. 2007/309, art. 2, Sch.
- F128** Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(b)**; S.I. 2007/309, art. 2, Sch.
- F129** Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(c)**; S.I. 2007/309, art. 2, Sch.
- F130** Words in s. 28(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(3)(d)**; S.I. 2007/309, art. 2, Sch.
- F131** Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(a)**; S.I. 2007/309, art. 2, Sch.
- F132** Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(b)**; S.I. 2007/309, art. 2, Sch.
- F133** Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(c)**; S.I. 2007/309, art. 2, Sch.
- F134** Words in s. 28(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(4)(d)**; S.I. 2007/309, art. 2, Sch.
- F135** Words in s. 28(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(5)(a)**; S.I. 2007/309, art. 2, Sch.
- F136** Words in s. 28(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(5)(b)**; S.I. 2007/309, art. 2, Sch.
- F137** Words in s. 28(8)(a) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(6)**; S.I. 2007/309, art. 2, Sch.
- F138** S. 28(8)(b)(ii)-(iv) substituted (1.12.2001) for s. 28(8)(b)(ii)-(v) by S.I. 2001/3649, **arts. 1, 339(2)**
- F139** Word in s. 28(8)(b) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(m)**
- F140** S. 28(8A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 339(3)**
- F141** Words in s. 28(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(7)(a)**; S.I. 2007/309, art. 2, Sch.
- F142** Words in s. 28(9) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 121(7)(b)**; S.I. 2007/309, art. 2, Sch.

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## [<sup>F143</sup>29 Power to give advice and guidance

- (1) The Commission may, on the written application of any charity trustee or trustee for a charity, give that person its opinion or advice in relation to any matter—
  - (a) relating to the performance of any duties of his, as such a trustee, in relation to the charity concerned, or
  - (b) otherwise relating to the proper administration of the charity.
- (2) A charity trustee or trustee for a charity who acts in accordance with any opinion or advice given by the Commission under subsection (1) above (whether to him or to another trustee) is to be taken, as regards his responsibility for so acting, to have acted in accordance with his trust.
- (3) But subsection (2) above does not apply to a person if, when so acting, either—
  - (a) he 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 1C(2) above, 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.]

### Textual Amendments

**F143** S. 29 substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), **ss. 24, 79(2)**; S.I. 2007/309, art. 2, Sch.

## [<sup>F144</sup>29A Power to determine membership of charity

- (1) The Commission may—
  - (a) on the application of a charity, or
  - (b) at any time after the institution of an inquiry under section 8 above 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.]

### Textual Amendments

**F144** S. 29A inserted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), **ss. 25, 79(2)**; S.I. 2007/309, art. 2, Sch.

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### 30 Powers for preservation of charity documents.

- (1) [<sup>F145</sup>The Commission] may provide books in which any deed, will or other document relating to a charity may be enrolled.
- (2) The [<sup>F146</sup>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 [<sup>F146</sup>Commission] deposit them with the [<sup>F146</sup>Commission] for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.
- (3) Where a document is enrolled by [<sup>F147</sup>the Commission] or is for the time being deposited [<sup>F148</sup>with the Commission] under this section, evidence of its contents may be given by means of a copy certified by any [<sup>F149</sup>member of the 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 [<sup>F150</sup>Minister] may make provision for such documents deposited with [<sup>F151</sup>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) above shall apply to any document transmitted to [<sup>F152</sup>the Commission] under section 9 above and kept [<sup>F153</sup>by the Commission] under subsection (3) of that section, as if the document had been deposited [<sup>F154</sup>with the Commission] for safe keeping under this section.

#### Textual Amendments

- F145** Words in s. 30(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(2); S.I. 2007/309, art. 2, Sch.
- F146** Words in s. 30(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(3); S.I. 2007/309, art. 2, Sch.
- F147** Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(4) (a); S.I. 2007/309, art. 2, Sch.
- F148** Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(4) (b); S.I. 2007/309, art. 2, Sch.
- F149** Words in s. 30(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(4) (c); S.I. 2007/309, art. 2, Sch.
- F150** Word in s. 30(4) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), Sch. para. 4(n)
- F151** Words in s. 30(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(5); S.I. 2007/309, art. 2, Sch.
- F152** Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(6) (a); S.I. 2007/309, art. 2, Sch.
- F153** Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(6) (b); S.I. 2007/309, art. 2, Sch.
- F154** Words in s. 30(5) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 122(6) (c); S.I. 2007/309, art. 2, Sch.

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### 31 Power to order taxation of solicitor's bill.

- (1) [<sup>F155</sup>The Commission] may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, shall be taxed, together with the costs of the taxation, by a taxing officer in such division of the High Court as may be specified in the order, or by the taxing officer of any other court having jurisdiction to order the taxation of the bill.
- (2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the taxing officer shall have the same powers and duties, and the costs of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are taxed.
- (3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill unless [<sup>F156</sup>the Commission is] of opinion that it contains exorbitant charges; and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the High Court by reason either of an agreement as to his remuneration or the lapse of time since payment of the bill.

#### Textual Amendments

**F155** Words in s. 31(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 123\(2\); S.I. 2007/309, art. 2, Sch.](#)

**F156** Words in s. 31(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 123\(3\); S.I. 2007/309, art. 2, Sch.](#)

### [<sup>F157</sup>31A Power to enter premises

- (1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by a member of the Commission's staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) below is satisfied.
- (2) The conditions are—
  - (a) that an inquiry has been instituted under section 8 above;
  - (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 9(1) above; 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 who is named in it—
  - (a) to enter and search the premises specified in it;
  - (b) to take such other persons with him as the Commission considers are needed to assist him in doing anything that he is authorised to do under the warrant;
  - (c) to take possession of any documents which appear to fall within subsection (2) (b) above, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (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 him such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (e) above.
- (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) The member of the Commission's staff who is authorised under such a warrant (“the authorised person”) must, if required to do so, produce—
- (a) the warrant, and
  - (b) documentary evidence that he is a member of the Commission's staff, for inspection by the occupier of the premises or anyone acting on his behalf.
- (6) The authorised person must make a written record of—
- (a) the date and time of his entry on the premises;
  - (b) the number of persons (if any) who accompanied him onto the premises, and the names of any such persons;
  - (c) the period for which he (and any such persons) remained on the premises;
  - (d) what he (and any such persons) did while on the premises; and
  - (e) any document or device of which he took possession while there.
- (7) If required to do so, the authorised person must give a copy of the record to the occupier of the premises or someone acting on his behalf.
- (8) Unless it is not reasonably practicable to do so, the authorised person 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 he 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 8 above, 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.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (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 51 weeks, or
  - (b) to a fine not exceeding level 5 on the standard scale,
- or to both.]

#### Textual Amendments

**F157** S. 31A inserted (27.2.2007) by Charities Act 2006 (c. 50), ss. 26(1), 79(2) (with Sch. 10 para. 6); S.I. 2007/309, art. 2, Sch.

#### Modifications etc. (not altering text)

**C8** S. 31A(3) power of seizure extended by 2001 c. 16, Sch. 1 para. 56A (as inserted (27.2.2007) by Charities Act 2006 (c. 50), ss. 26(2), 79(2); S.I. 2007/309, art. 2, Sch.)

**C9** S. 31A(11) modified (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 10 para. 6; S.I. 2007/309, art. 2, Sch.

### *Legal proceedings relating to charities*

## 32 Proceedings by <sup>F158</sup>Commission]

- (1) Subject to subsection (2) below, <sup>F159</sup>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) above does not apply to the power of the Attorney General under section 63(1) below 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 <sup>F160</sup>the Commission] under subsection (1) above 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 <sup>F161</sup>the Commission] by virtue of this section shall be exercisable <sup>F162</sup>by the Commission of its own] motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

#### Textual Amendments

**F158** Words in s. 32 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 124(4); S.I. 2007/309, art. 2, Sch.

**F159** Words in s. 32(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 124(2); S.I. 2007/309, art. 2, Sch.

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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- F160** Words in s. 32(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 124(2)**; [S.I. 2007/309](#), art. 2, Sch.
- F161** Words in s. 32(5) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 124(3)(a)**; [S.I. 2007/309](#), art. 2, Sch.
- F162** Words in s. 32(5) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 124(3)(b)**; [S.I. 2007/309](#), art. 2, Sch.

### 33 Proceedings by other persons.

- (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, or by any two or more inhabitants of the area of the charity if it is a local charity, but not by any other person.
- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of [<sup>F163</sup>the Commission].
- (3) [<sup>F164</sup>The Commission] shall not, without special reasons, authorise the taking of charity proceedings where in [<sup>F165</sup>its opinion] the case can be dealt with [<sup>F166</sup>by the Commission] under the powers of this Act other than those conferred by section 32 above.
- (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 [<sup>F167</sup>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 [<sup>F167</sup>the Commission] in accordance with section 32 above.
- (7) Where it appears to [<sup>F168</sup>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 (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney General, [<sup>F168</sup>the Commission] shall so inform the Attorney General, and send him such statements and particulars as [<sup>F169</sup>the Commission thinks] necessary to explain the matter.
- (8) In this section “charity proceedings” means proceedings in any court in England or Wales 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.

#### Textual Amendments

- F163** Words in s. 33(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 125(2)**; [S.I. 2007/309](#), art. 2, Sch.



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*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- F164** Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(3) (a); S.I. 2007/309, art. 2, Sch.
- F165** Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(3) (b); S.I. 2007/309, art. 2, Sch.
- F166** Words in s. 33(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(3) (c); S.I. 2007/309, art. 2, Sch.
- F167** Words in s. 33(5)(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(4); S.I. 2007/309, art. 2, Sch.
- F168** Words in s. 33(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(5) (a); S.I. 2007/309, art. 2, Sch.
- F169** Words in s. 33(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 125(5) (b); S.I. 2007/309, art. 2, Sch.

### 34 Report of s. 8 inquiry to be evidence in certain proceedings.

- (1) A copy of the report of the person conducting an inquiry under section 8 above shall, if certified by [<sup>F170</sup>the Commission] to be a true copy, be admissible in any proceedings to which this section applies—
- as evidence of any fact stated in the report; and
  - as evidence of the opinion of that person as to any matter referred to in it.
- (2) This section applies to—
- any legal proceedings instituted by [<sup>F170</sup>the Commission] under this Part of this Act; and
  - 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.

#### Textual Amendments

- F170** Words in s. 34(1)(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 126; S.I. 2007/309, art. 2, Sch.

#### *Meaning of “trust corporation”*

### 35 Application of provisions to trust corporations appointed under s. 16 or 18.

- (1) In the definition of “trust corporation” contained in the following provisions—
- section 117(xxx) of the <sup>M11</sup>Settled Land Act 1925,
  - section 68(18) of the <sup>M12</sup>Trustee Act 1925,
  - section 205(xxviii) of the <sup>M13</sup>Law of Property Act 1925,
  - section 55(xxvi) of the <sup>M14</sup>Administration of Estates Act 1925, and
  - section 128 of the <sup>M15</sup>[<sup>F171</sup>Senior Courts Act 1981],

the reference to a corporation appointed by the court in any particular case to be a trustee includes a reference to a corporation appointed by [<sup>F172</sup>the Commission] under this Act to be a trustee.

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*Changes to legislation: There are currently no known outstanding effects for  
the Charities Act 1993 (repealed), Part IV. (See end of Document for details)*

- (2) This section shall be deemed always to have had effect; but the reference to section 128 of the [<sup>F171</sup>Senior Courts Act 1981] shall, in relation to any time before 1st January 1982, be construed as a reference to section 175(1) of the <sup>M16</sup>Supreme Court of Judicature (Consolidation) Act 1925.

#### Textual Amendments

**F171** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, art. 2(d)

**F172** Words in s. 35(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 127](#); S.I. 2007/309, art. 2, Sch.

#### Commencement Information

**II** As from Royal Assent, this section shall be deemed to always have had effect.

#### Marginal Citations

**M11** 1925 c. 18.

**M12** 1925 c. 19.

**M13** 1925 c. 20.

**M14** 1925 c. 23.

**M15** 1981 c. 54.

**M16** 1925 c. 49.

**Status:**

Point in time view as at 01/04/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Charities Act 1993 (repealed), Part IV.