



Charities Act 1993

1993 CHAPTER 10

PART VIII

CHARITABLE COMPANIES

63 Winding up

- (1) Where a charity may be wound up by the High Court under the Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.
- (2) Where a charity may be so wound up by the High Court, such a petition may also be presented by the Commissioners if, at any time after they have instituted an inquiry under section 8 above with respect to the charity, they are satisfied as mentioned in section 18(1)(a) or (b) above.
- (3) Where a charitable company is dissolved, the Commissioners may make an application under section 651 of the Companies Act 1985 (power of court to declare dissolution of company void) for an order to be made under that section with respect to the company; and for this purpose subsection (1) of that section shall have effect in relation to a charitable company as if the reference to the liquidator of the company included a reference to the Commissioners.
- (4) Where a charitable company's name has been struck off the register of companies under section 652 of the Companies Act 1985 (power of registrar to strike defunct company off register), the Commissioners may make an application under section 653(2) of that Act (objection to striking off by person aggrieved) for an order restoring the company's name to that register; and for this purpose section 653(2) shall have effect in relation to a charitable company as if the reference to any such person aggrieved as is there mentioned included a reference to the Commissioners.
- (5) The powers exercisable by the Commissioners by virtue of this section shall be exercisable by them of their own motion, but shall be exercisable only with the agreement of the Attorney General on each occasion.

Status: This is the original version (as it was originally enacted).

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

64 Alteration of objects clause

- (1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (2) Where a charity is a company, any alteration by it—
- (a) of the objects clause in its memorandum of association, or
 - (b) of any other provision in its memorandum of association, or any provision in its articles of association, which is a provision directing or restricting the manner in which property of the company may be used or applied,
- is ineffective without the prior written consent of the Commissioners.
- (3) Where a company has made any such alteration in accordance with subsection (2) above and—
- (a) in connection with the alteration is required by virtue of—
 - (i) section 6(1) of the Companies Act 1985 (delivery of documents following alteration of objects), or
 - (ii) that provision as applied by section 17(3) of that Act (alteration of condition in memorandum which could have been contained in articles),
 to deliver to the registrar of companies a printed copy of its memorandum, as altered, or
 - (b) is required by virtue of section 380(1) of that Act (registration etc. of resolutions and agreements) to forward to the registrar a printed or other copy of the special resolution effecting the alteration,
- the copy so delivered or forwarded by the company shall be accompanied by a copy of the Commissioner’s consent.
- (4) Section 6(3) of that Act (offences) shall apply to any default by a company in complying with subsection (3) above as it applies to any such default as is mentioned in that provision.

65 Invalidity of certain transactions

- (1) Sections 35 and 35A of the Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
- (a) gives full consideration in money or money’s worth in relation to the act in question, and

- (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors, or who does not know at the time the act is done that the company is a charity.
- (2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) above the burden of proving—
 - (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,lies on the person making that allegation.
- (4) Where a company is a charity, the ratification of an act under section 35(3) of the Companies Act 1985, or the ratification of a transaction to which section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commissioners.

66 Requirement of consent of Commissioners to certain acts

- (1) Where a company is a charity—
 - (a) any approval given by the company for the purposes of any of the provisions of the Companies Act 1985 specified in subsection (2) below, and
 - (b) any affirmation by it for the purposes of section 322(2)(c) of that Act (affirmation of voidable arrangements under which assets are acquired by or from a director or person connected with him),is ineffective without the prior written consent of the Commissioners.
- (2) The provisions of the Companies Act 1985 referred to in subsection (1)(a) above are—
 - (a) section 312 (payment to director in respect of loss of office or retirement);
 - (b) section 313(1) (payment to director in respect of loss of office or retirement made in connection with transfer of undertaking or property of company);
 - (c) section 319(3) (incorporation in director's service contract of term whereby his employment will or may continue for a period of more than five years);
 - (d) section 320(1) (arrangement whereby assets are acquired by or from director or person connected with him);
 - (e) section 337(3)(a) (provision of funds to meet certain expenses incurred by director).

67 Name to appear on correspondence etc

Section 30(7) of the Companies Act 1985 (exemption from requirements relating to publication of name etc.) shall not, in its application to any company which is a charity, have the effect of exempting the company from the requirements of section 349(1) of that Act (company's name to appear in its correspondence etc.)

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

68 Status to appear on correspondence etc

- (1) Where a company is a charity and its name does not include the word “charity” or the word “charitable”, the fact that the company is a charity shall be stated in English in legible characters—
 - (a) in all business letters of the company,
 - (b) in all its notices and other official publications,
 - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the company,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all bills rendered by it and in all its invoices, receipts, and letters of credit.
- (2) In subsection (1)(d) above “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.
- (3) Subsections (2) to (4) of section 349 of the Companies Act 1985 (offences in connection with failure to include required particulars in business letters etc.) shall apply in relation to a contravention of subsection (1) above, taking the reference in subsection (3)(b) of that section to a bill of parcels as a reference to any such bill as is mentioned in subsection (1)(e) above.

69 Investigation of accounts

- (1) In the case of a charity which is a company the Commissioners may by order require that the condition and accounts of the charity for such period as they think fit shall be investigated and audited by an auditor appointed by them, being a person eligible for appointment as a company auditor under section 25 of the Companies Act 1989.
- (2) An auditor acting under subsection (1) above—
 - (a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;
 - (b) shall be entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the charity such information and explanation as he thinks necessary for the performance of his duties;
 - (c) shall at the conclusion or during the progress of the audit make such reports to the Commissioners about the audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity trustees.
- (3) The expenses of any audit under subsection (1) above, including the remuneration of the auditor, shall be paid by the Commissioners.
- (4) If any person fails to afford an auditor any facility to which he is entitled under subsection (2) above the Commissioners may by order give to that person or to the charity trustees for the time being such directions as the Commissioners think appropriate for securing that the default is made good.