

CHARITIES ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Section 44: Merger of charities

179. [Section 42](#) inserts four new sections, 75C, 75D, 75E and 75F, into the 1993 Act.
180. New section 75C establishes the register of mergers. *Subsection (3)* provides for the register to contain only those mergers which are notified to the Commission. *Subsection (4)* defines the two types of merger that can be registered: the first is a merger in which a charity (or more than one charity) – say charity A - transfers all its property to another charity – charity B - then, on or after the transfer, ceases to exist. The second is where two or more charities – charities C and D - create a new charity – charity E - then transfer all their property to the new charity and, on or after the transfer, go out of existence. Mergers of both types may only be registered once all of the charities transferring their property to another charity have completed the transfer of all of their property (*subsection 6*). Mergers of charities which have both permanent endowment and unrestricted property are provided for by *subsection (5)*. *Subsection (7)* makes registration of the merger a requirement for any charities making use of the vesting declaration provided for by new section 75E.
181. New section 75D makes supplementary provision about the register of charity mergers. *Subsection (2)* gives the Charity Commission the power to decide what information, in addition to the date on which property was transferred to the merged charity, should appear in the register about each merger. The register must be open to the public (*subsection (3)*) and the information on it must be made available in legible form even if the Commission holds the information not in a legible form (such as on a computer) (*subsection (4)*). This group of provisions for the register of mergers closely follows the provisions for the content and availability of the register of charities kept by the Commission.
182. New section 75E provides a mechanism for ensuring the automatic transfer of property which is being transferred in the course of a merger. This mechanism is available for both types of merger. It enables a vesting declaration to be made by the charity trustees of a transferring charity (which, in the examples given in paragraph 181 above, are charity A and charities C and D) before any transfer takes place. The effect of making a vesting declaration which fulfils the requirements of *subsection (1)* is as described in *subsection (2)*. The only property that cannot be transferred by operation of the vesting declaration is property of the sort described by *subsection (3)*. *Subsection (4)* makes it clear that transferred land must still be registered with the Land Registry where there is such a requirement.
183. Section 75F deals with a gift to a charity where the gift takes effect after the date of registration of a merger affecting the charity. In the example of a merger in which charity A transfers all its property to charity B then ceases to exist, there might later be gifts – such as legacies under wills written before the merger – which fall due to charity

*These notes refer to the Charities Act 2006 (c.50)
which received Royal Assent on 8 November 2006*

A after it has ceased to exist. *Subsection (2)* provides that such a gift takes effect as if the gift had originally been made to charity B rather than charity A. *Subsection (3)* provides an exclusion from this provision for gifts that are to be held as permanent endowment.