



Charities Act 2006

2006 CHAPTER 50

PART 2

REGULATION OF CHARITIES

CHAPTER 11

POWERS TO SPEND CAPITAL AND MERGERS

Spending of capital

43 Power to spend capital

For section 75 of the 1993 Act substitute—

“75 Power of unincorporated charities to spend capital: general

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.
- (2) But this section does not apply to a fund if section 75A below (power of larger charities to spend capital given for particular purpose) applies to it.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

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- (5) Once the charity trustees have passed a resolution under subsection (3) above, the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) In this section “available endowment fund”, in relation to a charity, means—
 - (a) the whole of the charity’s permanent endowment if it is all subject to the same trusts, or
 - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

75A Power of larger unincorporated charities to spend capital given for particular purpose

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—
 - (a) the capital of the fund consists entirely of property given—
 - (i) by a particular individual,
 - (ii) by a particular institution (by way of grant or otherwise), or
 - (iii) by two or more individuals or institutions in pursuit of a common purpose, and
 - (b) the financial condition in subsection (2) below is met.
- (2) The financial condition in this subsection is met if—
 - (a) the relevant charity’s gross income in its last financial year exceeded £1,000, and
 - (b) the market value of the endowment fund exceeds £10,000.
- (3) Where the condition in subsection (4) below is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (5) The charity trustees—
 - (a) must send a copy of any resolution under subsection (3) above to the Commission, together with a statement of their reasons for passing it, and
 - (b) may not implement the resolution except in accordance with the following provisions of this section.
- (6) Having received the copy of the resolution the Commission may—
 - (a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

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- (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (7) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
 - (a) the circumstances in and by reference to which they have decided to act under this section, or
 - (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (8) When considering whether to concur with the resolution the Commission must take into account—
 - (a) any evidence available to it as to the wishes of the donor or donors mentioned in subsection (1)(a) above, and
 - (b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- (9) The Commission must not concur with the resolution unless it is satisfied—
 - (a) that its implementation would accord with the spirit of the gift or gifts mentioned in subsection (1)(a) above (even though it would be inconsistent with the restrictions mentioned in subsection (3) above), and
 - (b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution.
- (10) Before the end of the period of three months beginning with the relevant date, the Commission must notify the charity trustees in writing either—
 - (a) that the Commission concurs with the resolution, or
 - (b) that it does not concur with it.
- (11) In subsection (10) “the relevant date” means—
 - (a) in a case where the Commission directs the charity trustees under subsection (6) above to give public notice of the resolution, the date when that notice is given, and
 - (b) in any other case, the date on which the Commission receives the copy of the resolution in accordance with subsection (5) above.
- (12) Where—
 - (a) the charity trustees are notified by the Commission that it concurs with the resolution, or
 - (b) the period of three months mentioned in subsection (10) above has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (3).

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- (13) The Minister may by order amend subsection (2) above by substituting a different sum for any sum specified there.
- (14) In this section—
- (a) “available endowment fund” has the same meaning as in section 75 above,
 - (b) “market value”, in relation to an endowment fund, means—
 - (i) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or
 - (ii) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose, and
 - (c) the reference in subsection (1) to the giving of property by an individual includes his giving it under his will.

75B Power to spend capital subject to special trusts

- (1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity (“the relevant charity”) for the purposes of this section.
- (2) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—
- (a) by a particular individual,
 - (b) by a particular institution (by way of grant or otherwise), or
 - (c) by two or more individuals or institutions in pursuit of a common purpose,
- subsections (5) to (11) of section 75A above apply in relation to the resolution and that gift or gifts as they apply in relation to a resolution under section 75A(3) and the gift or gifts mentioned in section 75A(1)(a).
- (5) Where—
- (a) the charity trustees have passed a resolution under subsection (2) above, and
 - (b) (in a case where section 75A(5) to (11) above apply in accordance with subsection (4) above) either—
 - (i) the charity trustees are notified by the Commission that it concurs with the resolution, or
 - (ii) the period of three months mentioned in section 75A(10) has elapsed without the Commission notifying them that it does not concur with the resolution,

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the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in subsection (2).

- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) The Minister may by order amend subsection (4) above by substituting a different sum for the sum specified there.
- (8) In this section—
 - (a) “available endowment fund” has the same meaning as in section 75 above,
 - (b) “market value” has the same meaning as in section 75A above, and
 - (c) the reference in subsection (4) to the giving of property by an individual includes his giving it under his will.”

Mergers

44 Merger of charities

After section 75B of the 1993 Act (inserted by section 43 above) insert—

“Mergers

75C Register of charity mergers

- (1) The Commission shall establish and maintain a register of charity mergers.
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with subsections (6) to (9) and such procedures as it may determine.
- (4) In this section “relevant charity merger” means—
 - (a) a merger of two or more charities in connection with which one of them (“the transferee”) has transferred to it all the property of the other or others, each of which (a “transferor”) ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee, or
 - (b) a merger of two or more charities (“transferors”) in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity (“the transferee”).
- (5) In the case of a merger involving the transfer of property of any charity which has both a permanent endowment and other property (“unrestricted property”) and whose trusts do not contain provision for the termination of the charity, subsection (4)(a) or (b) applies in relation to any such charity as if—
 - (a) the reference to all of its property were a reference to all of its unrestricted property, and
 - (b) any reference to its ceasing to exist were omitted.

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- (6) A notification under subsection (3) above may be given in respect of a relevant charity merger at any time after—
- (a) the transfer of property involved in the merger has taken place, or
 - (b) (if more than one transfer of property is so involved) the last of those transfers has taken place.
- (7) If a vesting declaration is made in connection with a relevant charity merger, a notification under subsection (3) above must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (6) above has taken place.
- (8) A notification under subsection (3) is to be given by the charity trustees of the transferee and must—
- (a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place;
 - (b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities; and
 - (c) in the case of a notification required by subsection (7), set out the matters mentioned in subsection (9).
- (9) The matters are—
- (a) the fact that the vesting declaration in question has been made;
 - (b) the date when the declaration was made; and
 - (c) the date on which the vesting of title under the declaration took place by virtue of section 75E(2) below.
- (10) In this section and section 75D—
- (a) any reference to a transfer of property includes a transfer effected by a vesting declaration; and
 - (b) “vesting declaration” means a declaration to which section 75E(2) below applies.
- (11) Nothing in this section or section 75E or 75F applies in a case where section 69K (amalgamation of CIOs) or 69M (transfer of CIO’s undertaking) applies.

75D Register of charity mergers: supplementary

- (1) Subsection (2) applies to the entry to be made in the register in respect of a relevant charity merger, as required by section 75C(3) above.
- (2) The entry must—
- (a) specify the date when the transfer or transfers of property involved in the merger took place,
 - (b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 75C(9) above, and
 - (c) contain such other particulars of the merger as the Commission thinks fit.
- (3) The register shall be open to public inspection at all reasonable times.

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- (4) Where any information contained in the register is not in documentary form, subsection (3) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (5) In this section—
“the register” means the register of charity mergers;
“relevant charity merger” has the same meaning as in section 75C.

75E Pre-merger vesting declarations

- (1) Subsection (2) below applies to a declaration which—
- (a) is made by deed for the purposes of this section by the charity trustees of the transferor,
 - (b) is made in connection with a relevant charity merger, and
 - (c) is to the effect that (subject to subsections (3) and (4)) all of the transferor’s property is to vest in the transferee on such date as is specified in the declaration (“the specified date”).
- (2) The declaration operates on the specified date to vest the legal title to all of the transferor’s property in the transferee, without the need for any further document transferring it.

This is subject to subsections (3) and (4).

- (3) Subsection (2) does not apply to—
- (a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock);
 - (b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor’s interest without the consent of some other person, unless that consent has been obtained before the specified date; or
 - (c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment.
- (4) In its application to registered land within the meaning of the Land Registration Act 2002, subsection (2) has effect subject to section 27 of that Act (dispositions required to be registered).
- (5) In this section “relevant charity merger” has the same meaning as in section 75C.
- (6) In this section—
- (a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 75C above, and
 - (b) any reference to all of the transferor’s property, where the transferor is a charity within section 75C(5), is a reference to all of the transferor’s unrestricted property (within the meaning of that provision).
- (7) In this section any reference to the transferee, in relation to a relevant charity merger, is a reference to—

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- (a) the transferee (within the meaning of section 75C above), if it is a company or other body corporate, and
- (b) otherwise, to the charity trustees of the transferee (within the meaning of that section).

75F Effect of registering charity merger on gifts to transferor

- (1) This section applies where a relevant charity merger is registered in the register of charity mergers.
- (2) Any gift which—
 - (a) is expressed as a gift to the transferor, and
 - (b) takes effect on or after the date of registration of the merger, takes effect as a gift to the transferee, unless it is an excluded gift.
- (3) A gift is an “excluded gift” if—
 - (a) the transferor is a charity within section 75C(5), and
 - (b) the gift is intended to be held subject to the trusts on which the whole or part of the charity’s permanent endowment is held.
- (4) In this section—
 - “relevant charity merger” has the same meaning as in section 75C;
 - and
 - “transferor” and “transferee” have the same meanings as in section 75E.”