



# Charities Act 2011

## 2011 CHAPTER 25

### PART 6

#### CY-PRÈS POWERS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

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

#### **96 Power to make common investment schemes**

- (1) The court or the Commission may by order make and bring into effect schemes for the establishment of common investment funds under trusts which provide—
  - (a) 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
  - (b) 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) In this section and sections 97 to 99 “common investment scheme” means a scheme under subsection (1).
- (3) The court or the Commission may make a common investment scheme on the application of any two or more charities.

#### **97 Bodies which may participate in common investment schemes**

- (1) A common investment scheme—
  - (a) may be made in terms admitting any charity to participate, or
  - (b) may restrict the right to participate in any manner.

*Changes to legislation: Charities Act 2011, Cross Heading: Establishment of common investment or deposit funds is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) 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.
- (3) In this section “appropriate body” means—
- (a) a Scottish recognised body,<sup>F1</sup>...
  - (b) a Northern Ireland charity<sup>F2</sup>; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.]

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (2), “charity” includes an appropriate body.

- (4) The relevant provisions are—
- (a) section 96(1) (power to make common investment schemes),
  - (b) section 98 (provisions which may be included in common investment schemes),
  - (c) section 99(1) (provisions relating to rights of participating charity etc.), and
  - (d) (in relation only to a Northern Ireland charity) section 99(2) (power to participate in common investment schemes).

#### Textual Amendments

- F1** Word in s. 97(3)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(a\)](#)
- F2** S. 97(3)(c) and preceding word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(b\)](#)

## 98 Provisions which may be included in common investment schemes

- (1) 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 even though the person 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

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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.
- (2) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity is to 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 is to be entitled—
- (a) to repayment of the sums deposited, and
  - (b) to interest on them at a rate determined by or under the scheme.
- (3) Where a scheme makes any such provision it must 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—
- (a) for the repayment of deposits, and
  - (b) for the interest on deposits,
- including amounts required by way of reserve.

## **99 Further provisions relating to common investment schemes and funds**

- (1) Except in so far as a common investment scheme provides to the contrary—
- (a) the rights under it of a participating charity are not capable of being assigned or charged;
  - (b) a trustee or other person concerned in the management of the common investment fund is not required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (2) The powers of investment of every charity 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.
- (3) A common investment fund is to be treated for all purposes as being a charity.
- (4) Subsection (3) applies not only to common investment funds established under section 96, 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 charities.

## **100 Power to make common deposit schemes**

- (1) The court or the Commission may by order make and bring into effect 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 on them at a rate determined under the scheme.

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- (2) In this section and sections 101 to 103 “common deposit scheme” means a scheme under subsection (1).
- (3) The court or the Commission may make a common deposit scheme on the application of any two or more charities.

### 101 Bodies which may participate in common deposit schemes

- (1) A common deposit scheme—
- (a) may be made in terms admitting any charity to participate, or
  - (b) may restrict the right to participate in any manner.
- (2) 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.
- (3) In this section “appropriate body” means—
- (a) a Scottish recognised body,<sup>F3</sup> ...
  - (b) a Northern Ireland charity [<sup>F4</sup>; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.]
- and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (2), “charity” includes an appropriate body.
- (4) The relevant provisions are—
- (a) section 100(1) (power to make common deposit schemes),
  - (b) section 102 (provisions which may be included in common deposit schemes),
  - (c) section 103(1) (provisions relating to rights of participating charity etc.), and
  - (d) (in relation only to a Northern Ireland charity) section 103(2) (power to participate in common deposit schemes).

#### Textual Amendments

- F3** Word in s. 101(3)(a) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(a\)](#)
- F4** S. 101(3)(c) and preceding word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 44\(b\)](#)

### 102 Provisions which may be included in common deposit schemes

A common deposit scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common deposit 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 even though the person is also a charity trustee of or trustee for a participating charity;

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- (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;
- (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.

### **103 Further provisions relating to common deposit schemes and funds**

- (1) Except in so far as a common deposit scheme provides to the contrary—
  - (a) the rights under it of a participating charity are not capable of being assigned or charged;
  - (b) a trustee or other person concerned in the management of the common deposit fund is not required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (2) The powers of investment of every charity include power to participate in common deposit schemes unless the power is excluded by a provision specifically referring to common deposit schemes in the trusts of the charity.
- (3) A common deposit fund is to be treated for all purposes as being a charity.
- (4) Subsection (3) applies not only to common deposit funds established under section 100, 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 charities.

### **104 Meaning of “Scottish recognised body” and “Northern Ireland charity”**

- (1) In sections 97 and 101 “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 HMRC have given intimation, which has not subsequently been withdrawn, that tax relief is due in respect of income of the body which is applicable and applied to charitable purposes only.
- (2) In sections 97 and 101 “Northern Ireland charity” means an institution—
  - (a) which is a charity under the law of Northern Ireland, and
  - (b) to which HMRC have given intimation, which has not subsequently been withdrawn, that tax relief is due in respect of income of the institution which is applicable and applied to charitable purposes only.
- (3) For the purposes of this section—

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“HMRC” means the Commissioners for Her Majesty's Revenue and Customs;

“tax relief” means relief under—

- (a) Part 10 of the Income Tax Act 2007, or
- (b) any provision of Part 11 of the Corporation Tax Act 2010 other than sections 480 (exemption for profits of small-scale trades) and 481 (exemption from charges under provisions to which section 1173 applies).

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 106(1)-(1B) substituted for s. 106(1) by [2022 c. 6 s. 16\(a\)](#)
- s. 322(2)(ea) inserted by [2022 c. 6 Sch. 2 para. 26](#)
- s. 331A331B and cross-heading inserted by [2022 c. 6 s. 15](#)