



Charities Act 2006

2006 CHAPTER 50

PART 2

REGULATION OF CHARITIES

CHAPTER 1

THE CHARITY COMMISSION

Establishment of Charity Commission

6 The Charity Commission

(1) After section 1 of the 1993 Act insert—

“1A The Charity Commission

- (1) There shall be a body corporate to be known as the Charity Commission for England and Wales (in this Act referred to as “the Commission”).
- (2) In Welsh the Commission shall be known as “Comisiwn Elusennau Cymru a Lloegr”.
- (3) The functions of the Commission shall be performed on behalf of the Crown.
- (4) In the exercise of its functions the Commission shall not be subject to the direction or control of any Minister of the Crown or other government department.
- (5) But subsection (4) above does not affect—
 - (a) any provision made by or under any enactment;
 - (b) any administrative controls exercised over the Commission’s expenditure by the Treasury.

Status: This is the original version (as it was originally enacted).

- (6) The provisions of Schedule 1A to this Act shall have effect with respect to the Commission.”
- (2) Schedule 1 (which inserts the new Schedule 1A into the 1993 Act) has effect.
- (3) The office of Charity Commissioner for England and Wales is abolished.
- (4) The functions of the Charity Commissioners for England and Wales and their property, rights and liabilities are by virtue of this subsection transferred to the Charity Commission for England and Wales.
- (5) Any enactment or document has effect, so far as necessary for the purposes of or in consequence of the transfer effected by subsection (4), as if any reference to the Charity Commissioners for England and Wales or to any Charity Commissioner for England and Wales were a reference to the Charity Commission for England and Wales.
- (6) Section 1 of, and Schedule 1 to, the 1993 Act cease to have effect.
- (7) Schedule 2 (which contains supplementary provision relating to the establishment of the Charity Commission for England and Wales) has effect.

Commission’s objectives, general functions etc.

7 **The Commission’s objectives, general functions and duties**

After section 1A of the 1993 Act (inserted by section 6 above) insert—

“1B The Commission’s objectives

- (1) The Commission has the objectives set out in subsection (2).
- (2) The objectives are—
- (1) The public confidence objective.
 - (2) The public benefit objective.
 - (3) The compliance objective.
 - (4) The charitable resources objective.
 - (5) The accountability objective.
- (3) Those objectives are defined as follows—
- (1) The public confidence objective is to increase public trust and confidence in charities.
 - (2) The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.
 - (3) The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
 - (4) The charitable resources objective is to promote the effective use of charitable resources.
 - (5) The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

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

- (4) In this section “the public benefit requirement” means the requirement in section 2(1)(b) of the Charities Act 2006 that a purpose falling within section 2(2) of that Act must be for the public benefit if it is to be a charitable purpose.

1C The Commission’s general functions

- (1) The Commission has the general functions set out in subsection (2).
- (2) The general functions are—
- (1) Determining whether institutions are or are not charities.
 - (2) Encouraging and facilitating the better administration of charities.
 - (3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.
 - (4) Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.
 - (5) Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its objectives.
 - (6) Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission’s functions or meeting any of its objectives.
- (3) The Commission’s fifth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under section 3 below.
- (4) The Commission’s sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions.
- (5) In this section “public charitable collection” and “public collections certificate” have the same meanings as in Chapter 1 of Part 3 of the Charities Act 2006.

1D The Commission’s general duties

- (1) The Commission has the general duties set out in subsection (2).
- (2) The general duties are—
- (1) So far as is reasonably practicable the Commission must, in performing its functions, act in a way—
 - (a) which is compatible with its objectives, and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
 - (2) So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—
 - (a) all forms of charitable giving, and
 - (b) voluntary participation in charity work.

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

- (3) In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.
- (4) In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).
- (5) In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.
- (6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

1E The Commission’s incidental powers

- (1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.
- (2) However, nothing in this Act authorises the Commission—
 - (a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or
 - (b) otherwise to be directly involved in the administration of a charity.
- (3) Subsection (2) does not affect the operation of section 19A or 19B below (power of Commission to give directions as to action to be taken or as to application of charity property).”

CHAPTER 2

THE CHARITY TRIBUNAL

8 The Charity Tribunal

- (1) After section 2 of the 1993 Act insert—

“PART 1A

THE CHARITY TRIBUNAL

2A The Charity Tribunal

- (1) There shall be a tribunal to be known as the Charity Tribunal (in this Act referred to as “the Tribunal”).
- (2) In Welsh the Tribunal shall be known as “Tribiwnlys Elusennau”.
- (3) The provisions of Schedule 1B to this Act shall have effect with respect to the constitution of the Tribunal and other matters relating to it.

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- (4) The Tribunal shall have jurisdiction to hear and determine—
- (a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission, and
 - (b) such matters as may be referred to the Tribunal in accordance with Schedule 1D to this Act by the Commission or the Attorney General.
- (5) Such appeals, applications and matters shall be heard and determined by the Tribunal in accordance with those Schedules, or any such enactment, taken with section 2B below and rules made under that section.

2B Practice and procedure

- (1) The Lord Chancellor may make rules—
- (a) regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it;
 - (b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.
- (2) Rules under subsection (1)(a) above may, in particular, make provision—
- (a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);
 - (b) specifying the period following the Commission's final decision, direction or order within which such appeals or applications may be made;
 - (c) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission;
 - (d) specifying the manner in which appeals, applications or references to the Tribunal are to be made.
- (3) Rules under subsection (1)(b) above may, in particular, make provision—
- (a) for the President or a legal member of the Tribunal (see paragraph 1(2)(b) of Schedule 1B to this Act) to determine preliminary, interlocutory or ancillary matters;
 - (b) for matters to be determined without an oral hearing in specified circumstances;
 - (c) for the Tribunal to deal with urgent cases expeditiously;
 - (d) about the disclosure of documents;
 - (e) about evidence;
 - (f) about the admission of members of the public to proceedings;
 - (g) about the representation of parties to proceedings;
 - (h) about the withdrawal of appeals, applications or references;
 - (i) about the recording and promulgation of decisions;
 - (j) about the award of costs.
- (4) Rules under subsection (1)(a) or (b) above may confer a discretion on—
- (a) the Tribunal,
 - (b) a member of the Tribunal, or

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- (c) any other person.
- (5) The Tribunal may award costs only in accordance with subsections (6) and (7) below.
- (6) If the Tribunal considers that any party to proceedings before it has acted vexatiously, frivolously or unreasonably, the Tribunal may order that party to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.
- (7) If the Tribunal considers that a decision, direction or order of the Commission which is the subject of proceedings before it was unreasonable, the Tribunal may order the Commission to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.
- (8) Rules of the Lord Chancellor under this section—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Section 86(3) below applies in relation to rules of the Lord Chancellor under this section as it applies in relation to regulations and orders of the Minister under this Act.

2C Appeal from Tribunal

- (1) A party to proceedings before the Tribunal may appeal to the High Court against a decision of the Tribunal.
- (2) Subject to subsection (3) below, an appeal may be brought under this section against a decision of the Tribunal only on a point of law.
- (3) In the case of an appeal under this section against a decision of the Tribunal which determines a question referred to it by the Commission or the Attorney General, the High Court—
 - (a) shall consider afresh the question referred to the Tribunal, and
 - (b) may take into account evidence which was not available to the Tribunal.
- (4) An appeal under this section may be brought only with the permission of—
 - (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the High Court.
- (5) For the purposes of subsection (1) above—
 - (a) the Commission and the Attorney General are to be treated as parties to all proceedings before the Tribunal, and
 - (b) rules under section 2B(1) above may include provision as to who else is to be treated as being (or not being) a party to proceedings before the Tribunal.

2D Intervention by Attorney General

- (1) This section applies to any proceedings—

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- (a) before the Tribunal, or
 - (b) on an appeal from the Tribunal,
- to which the Attorney General is not a party.
- (2) The Tribunal or, in the case of an appeal from the Tribunal, the court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General.
- (3) A direction under subsection (2) may be made by the Tribunal or court—
- (a) of its own motion, or
 - (b) on the application of any party to the proceedings.
- (4) The Attorney General may—
- (a) intervene in the proceedings in such manner as he thinks necessary or expedient, and
 - (b) argue before the Tribunal or court any question in relation to the proceedings which the Tribunal or court considers it necessary to have fully argued.
- (5) Subsection (4) applies whether or not the Tribunal or court has given a direction under subsection (2).”
- (2) Schedule 3 (which inserts the new Schedule 1B into the 1993 Act) has effect.
- (3) Schedule 4 (which inserts the new Schedules 1C and 1D into the 1993 Act) has effect.

CHAPTER 3

REGISTRATION OF CHARITIES

General

9 Registration of charities

For section 3 of the 1993 Act substitute—

“3 Register of charities

- (1) There shall continue to be a register of charities, which shall be kept by the Commission.
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain—
 - (a) the name of every charity registered in accordance with section 3A below (registration), and
 - (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.
- (4) The Commission shall remove from the register—
 - (a) any institution which it no longer considers is a charity, and
 - (b) any charity which has ceased to exist or does not operate.

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

- (5) If the removal of an institution under subsection (4)(a) above is due to any change in its trusts, the removal shall take effect from the date of that change.
- (6) A charity which is for the time being registered under section 3A(6) below (voluntary registration) shall be removed from the register if it so requests.
- (7) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times.
- (8) Where any information contained in the register is not in documentary form, subsection (7) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (9) If the Commission so determines, subsection (7) shall not apply to any particular information contained in the register that is specified in the determination.
- (10) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 3B below (applications for registration etc.) shall, so long as the charity remains on the register—
 - (a) be kept by the Commission, and
 - (b) be open to public inspection at all reasonable times.

3A Registration of charities

- (1) Every charity must be registered in the register of charities unless subsection (2) below applies to it.
- (2) The following are not required to be registered—
 - (a) any exempt charity (see Schedule 2 to this Act);
 - (b) any charity which for the time being—
 - (i) is permanently or temporarily excepted by order of the Commission, and
 - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000;
 - (c) any charity which for the time being—
 - (i) is, or is of a description, permanently or temporarily excepted by regulations made by the Secretary of State, and
 - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000; and
 - (d) any charity whose gross income does not exceed £5,000.
- (3) For the purposes of subsection (2)(b) above—
 - (a) any order made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day has effect as from that day as if made under subsection (2)(b) (and may be varied or revoked accordingly); and
 - (b) no order may be made under subsection (2)(b) so as to except on or after the appointed day any charity that was not excepted immediately before that day.
- (4) For the purposes of subsection (2)(c) above—

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- (a) any regulations made or having effect as if made under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day have effect as from that day as if made under subsection (2)(c) (and may be varied or revoked accordingly);
 - (b) such regulations shall be made under subsection (2)(c) as are necessary to secure that all of the formerly specified institutions are excepted under that provision (subject to compliance with any conditions of the exception and the financial limit mentioned in that provision); but
 - (c) otherwise no regulations may be made under subsection (2)(c) so as to except on or after the appointed day any description of charities that was not excepted immediately before that day.
- (5) In subsection (4)(b) above “formerly specified institutions” means—
- (a) any institution falling within section 3(5B)(a) or (b) of this Act as in force immediately before the appointed day (certain educational institutions); or
 - (b) any institution ceasing to be an exempt charity by virtue of section 11 of the Charities Act 2006 or any order made under that section.
- (6) A charity within—
- (a) subsection (2)(b) or (c) above, or
 - (b) subsection (2)(d) above,
- must, if it so requests, be registered in the register of charities.
- (7) The Minister may by order amend—
- (a) subsection (2)(b) and (c) above, or
 - (b) subsection (2)(d) above,
- by substituting a different sum for the sum for the time being specified there.
- (8) The Minister may only make an order under subsection (7) above—
- (a) so far as it amends subsection (2)(b) and (c), if he considers it expedient to so with a view to reducing the scope of the exception provided by those provisions;
 - (b) so far as it amends subsection (2)(d), if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception provided by that provision,
- and no order may be made by him under subsection (7)(a) unless a copy of a report under section 73 of the Charities Act 2006 (report on operation of that Act) has been laid before Parliament in accordance with that section.
- (9) In this section “the appointed day” means the day on which subsections (1) to (5) above come into force by virtue of an order under section 79 of the Charities Act 2006 relating to section 9 of that Act (registration of charities).
- (10) In this section any reference to a charity’s “gross income” shall be construed, in relation to a particular time—
- (a) as a reference to the charity’s gross income in its financial year immediately preceding that time, or
 - (b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity’s gross income in such financial year of the charity as is specified in the determination.

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

- (11) The following provisions of this section—
- (a) subsection (2)(b) and (c),
 - (b) subsections (3) to (5), and
 - (c) subsections (6)(a), (7)(a), (8)(a) and (9),
- shall cease to have effect on such day as the Minister may by order appoint for the purposes of this subsection.

3B Duties of trustees in connection with registration

- (1) Where a charity required to be registered by virtue of section 3A(1) above is not registered, it is the duty of the charity trustees—
- (a) to apply to the Commission for the charity to be registered, and
 - (b) to supply the Commission with the required documents and information.
- (2) The “required documents and information” are—
- (a) copies of the charity’s trusts or (if they are not set out in any extant document) particulars of them,
 - (b) such other documents or information as may be prescribed by regulations made by the Minister, and
 - (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees)—
- (a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and
 - (b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts.
- (4) Nothing in subsection (3) above requires a person—
- (a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court,
 - (b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or
 - (c) if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document.
- (5) Where a copy of a document relating to a registered charity—
- (a) is not required to be supplied to the Commission as the result of subsection (4) above, but
 - (b) is in the possession of the Commission,
- a copy of the document shall be open to inspection under section 3(10) above as if supplied to the Commission under this section.”

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

10 Interim changes in threshold for registration of small charities

- (1) At any time before the appointed day, the Minister may by order amend section 3 of the 1993 Act (the register of charities) so as to—
 - (a) replace section 3(5)(c) (threshold for registration of small charities) with a provision referring to a charity whose gross income does not exceed such sum as is prescribed in the order, and
 - (b) define “gross income” for the purposes of that provision.
- (2) Subsection (1) does not affect the existing power under section 3(12) of that Act to increase the financial limit specified in section 3(5)(c).
- (3) This section ceases to have effect on the appointed day.
- (4) In this section “the appointed day” means the day on which section 3A(1) to (5) of the 1993 Act (as substituted by section 9 of this Act) come into force by virtue of an order under section 79 of this Act.

Exempt charities: registration and regulation

11 Changes in exempt charities

- (1) Schedule 2 to the 1993 Act (exempt charities) is amended as follows.
- (2) In paragraph (a) (general exemption by reference to law existing prior to Charities Act 1960 (c. 58)) after “1855” insert “(but see Note 1)”.
- (3) In paragraph (b) (certain specified universities, colleges and schools)—
 - (a) before “Queen Mary and Westfield College” insert “and”; and
 - (b) omit “and the colleges of Winchester and Eton”.
- (4) Before paragraph (i) insert—

“(h) a higher education corporation;”.
- (5) After paragraph (i) insert—

“(j) a further education corporation;”.
- (6) In paragraph (w) (exemption for institutions administered by or on behalf of institutions exempted under preceding provisions) after “last-mentioned institution” insert “(but see Note 2)”.
- (7) Omit paragraph (x) (Church Commissioners and institutions administered by them).
- (8) In paragraph (y) (industrial and provident societies etc.) for the words from “and any” onwards substitute “and which is also registered in the register of social landlords under Part 1 of the Housing Act 1996;”.
- (9) At the end insert—

Notes

- 1 Paragraph (a) above does not include—
 - (a) any Investment Fund or Deposit Fund within the meaning of the Church Funds Investment Measure 1958,
 - (b) any investment fund or deposit fund within the meaning of the Methodist Church Funds Act 1960, or

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- (c) the representative body of the Welsh Church or property administered by it.

2 Paragraph (w) above does not include any students' union.”

- (10) In section 24 of the 1993 Act (schemes to establish common investment funds), in subsection (8) (fund is to be a charity and, if the scheme admits only exempt charities, an exempt charity) omit the words from “; and if the scheme” onwards.
- (11) The Minister may by order make such further amendments of Schedule 2 to the 1993 Act as he considers appropriate for securing—
- (a) that (so far as they are charities) institutions of a particular description become or (as the case may be) cease to be exempt charities, or
 - (b) that (so far as it is a charity) a particular institution becomes or (as the case may be) ceases to be an exempt charity,
- or for removing from that Schedule an institution that has ceased to exist.
- (12) An order under subsection (11) may only be made for the purpose mentioned in paragraph (a) or (b) of that subsection if the Minister is satisfied that the order is desirable in the interests of ensuring appropriate or effective regulation of the charities or charity concerned in connection with compliance by the charity trustees of the charities or charity with their legal obligations in exercising control and management of the administration of the charities or charity.
- (13) The Minister may by order make such amendments or other modifications of any enactment as he considers appropriate in connection with—
- (a) charities of a particular description becoming, or ceasing to be, exempt charities, or
 - (b) a particular charity becoming, or ceasing to be, an exempt charity,
- by virtue of any provision made by or under this section.
- (14) In this section “exempt charity” has the same meaning as in the 1993 Act.

12 Increased regulation of exempt charities under 1993 Act

The 1993 Act is amended in accordance with Schedule 5 (which has effect for increasing the extent to which exempt charities are subject to regulation under that Act).

13 General duty of principal regulator in relation to exempt charity

- (1) This section applies to any body or Minister of the Crown who is the principal regulator in relation to an exempt charity.
- (2) The body or Minister must do all that it or he reasonably can to meet the compliance objective in relation to the charity.
- (3) The compliance objective is to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity.
- (4) In this section—
 - (a) “exempt charity” has the same meaning as in the 1993 Act; and

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

- (b) “principal regulator”, in relation to an exempt charity, means such body or Minister of the Crown as is prescribed as its principal regulator by regulations made by the Minister.
- (5) Regulations under subsection (4)(b) may make such amendments or other modifications of any enactment as the Minister considers appropriate for the purpose of facilitating, or otherwise in connection with, the discharge by a principal regulator of the duty under subsection (2).

14 Commission to consult principal regulator before exercising powers in relation to exempt charity

After section 86 of the 1993 Act insert—

“86A Consultation by Commission before exercising powers in relation to exempt charity

Before exercising in relation to an exempt charity any specific power exercisable by it in relation to the charity, the Commission must consult the charity’s principal regulator.”

CHAPTER 4

APPLICATION OF PROPERTY *CY-PRÈS*

Cy-près occasions

15 Application *cy-près* by reference to current circumstances

- (1) Section 13 of the 1993 Act (occasions for applying property *cy-près*) is amended as follows.
- (2) In subsection (1)(c), (d) and (e)(iii), for “the spirit of the gift” substitute “the appropriate considerations”.
- (3) After subsection (1) insert—
 - “(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.”

16 Application *cy-près* of gifts by donors unknown or disclaiming

- (1) Section 14 of the 1993 Act (application *cy-près* of gifts of donors unknown or disclaiming) is amended as follows.
- (2) In subsection (4) (power of court to direct that property is to be treated as belonging to donors who cannot be identified) after “court”, in both places, insert “or the Commission”.

17 **Application cy-près of gifts made in response to certain solicitations**

After section 14 of the 1993 Act insert—

“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.
- (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—

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

- (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.”

Schemes

18 Cy-près schemes

After section 14A of the 1993 Act (inserted by section 17 above) insert—

“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.

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

- (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.”

CHAPTER 5

ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

Suspension or removal of trustees etc. from membership

19 Power to suspend or remove trustees etc. from membership of charity

After section 18 of the 1993 Act insert—

“18A Power to suspend or remove trustees etc. from membership of charity

- (1) This section applies where the Commission makes—
 - (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.”

Directions by Commission

20 Power to give specific directions for protection of charity

After section 19 of the 1993 Act insert—

“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.
- (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.”

21 Power to direct application of charity property

After section 19A of the 1993 Act (inserted by section 20 above) insert—

“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.

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

- (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.
- (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.”

Publicity relating to schemes

22 Relaxation of publicity requirements relating to schemes etc.

For section 20 of the 1993 Act substitute—

“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,
 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.

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

- (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.

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.

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

- (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.”

Common investment schemes

23 Participation of Scottish and Northern Irish charities in common investment schemes etc.

- (1) After section 24(3) of the 1993 Act (common investment schemes) insert—
- “(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) 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 (3A) above, “charity” includes an appropriate body.

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

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

(2) In section 25(2) of that Act (application of provisions of section 24 to common deposit funds) for “subsections (2) to (4)” substitute “subsections (2), (3) and (4)”.

(3) At the end of section 25 add—

“(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.”

(4) After section 25 insert—

“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 section 505 of the Income and Corporation Taxes Act 1988 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 section 505 of the Income and Corporation Taxes Act 1988 in respect of income of the institution which is applicable and applied to charitable purposes only.”

(5) In section 100(4) of the 1993 Act (provisions extending to Northern Ireland) for “extends” substitute “and sections 24 to 25A extend”.

Advice or other assistance

24 Power to give advice and guidance

For section 29 of the 1993 Act substitute—

“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.”

25 Power to determine membership of charity

After section 29 of the 1993 Act (as substituted by section 24 of this Act) insert—

“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.”

Powers of entry etc.

26 Power to enter premises and seize documents etc.

- (1) After section 31 of the 1993 Act insert—

“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;
 - (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;

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- (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.
- (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.”

- (2) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 applies), after paragraph 56 insert—

“Charities Act 1993 (c. 10)

- 56A The power of seizure conferred by section 31A(3) of the Charities Act 1993 (seizure of material for the purposes of an inquiry under section 8 of that Act).”

Mortgages of charity land

27 Restrictions on mortgaging

- (1) Section 38 of the 1993 Act (restrictions on mortgaging) is amended as follows.

- (2) For subsections (2) and (3) substitute—

“(2) Subsection (1) above shall not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (3A) below (as the case may be).

- (3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—

- (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant;
- (b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
- (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.

- (3A) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity’s purposes.

- (3B) Subsection (3) or (as the case may be) subsection (3A) above applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—

- (a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or
- (b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

- (3C) Subsection (3D) below applies where—

- (a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2) above, and

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- (b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (3D) In such a case, the charity trustees must not after that date enter into any transaction involving—
- (a) the payment of any such sums, or
 - (b) the undertaking of any such obligations,
- unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (3A) above (as the case may be).”
- (3) In subsection (4) (meaning of “proper advice”)—
- (a) for “subsection (2) above” substitute “this section”; and
 - (b) for “the making of the loan in question” substitute “relation to the loan, grant or other transaction in connection with which his advice is given”.

CHAPTER 6

AUDIT OR EXAMINATION OF ACCOUNTS WHERE CHARITY IS NOT A COMPANY

28 Annual audit or examination of accounts of charities which are not companies

- (1) Section 43 of the 1993 Act (annual audit or examination of accounts of charities which are not companies) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Subsection (2) below applies to a financial year of a charity if—
- (a) the charity’s gross income in that year exceeds £500,000; or
 - (b) the charity’s gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.
- “The accounts threshold” means £100,000 or such other sum as is for the time being specified in section 42(3) above.”
- (3) In subsection (2) (accounts required to be audited) for paragraph (a) substitute—
- “(a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the charity were a company, or”.
- (4) In subsection (3) (independent examinations instead of audits)—
- (a) for the words from “and its gross income” to “subsection (4) below)” substitute “but its gross income in that year exceeds £10,000,”; and
 - (b) at the end insert—
- “This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.”
- (5) After subsection (3) insert—
- “(3A) If subsection (3) above applies to the accounts of a charity for a year and the charity’s gross income in that year exceeds £250,000, a person qualifies as an

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independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is—

- (a) a member of a body for the time being specified in section 249D(3) of the Companies Act 1985 (reporting accountants);
- (b) a member of the Chartered Institute of Public Finance and Accountancy; or
- (c) a Fellow of the Association of Charity Independent Examiners.”

(6) For subsection (8) substitute—

“(8) The Minister may by order—

- (a) amend subsection (1)(a) or (b), (3) or (3A) above by substituting a different sum for any sum for the time being specified there;
- (b) amend subsection (3A) by adding or removing a description of person to or from the list in that subsection or by varying any entry for the time being included in that list.”

29 Duty of auditor etc. of charity which is not a company to report matters to Commission

(1) After section 44 of the 1993 Act insert—

“44A Duty of auditors etc. to report matters to Commission

(1) This section applies to—

- (a) a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above,
- (b) a person acting as an auditor or examiner appointed under section 43A(2) or (3) above, and
- (c) the Auditor General for Wales acting under section 43B(2) or (3) above.

(2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter—

- (a) which relates to the activities or affairs of the charity or of any connected institution or body, and
- (b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under section 8 or 18 above,

he must immediately make a written report on the matter to the Commission.

(3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter—

- (a) which does not appear to him to be one that he is required to report under subsection (2) above, but
- (b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

he may make a report on the matter to the Commission.

(4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity.

- (5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.
 - (6) In this section “connected institution or body”, in relation to a charity, means—
 - (a) an institution which is controlled by, or
 - (b) a body corporate in which a substantial interest is held by,
 the charity or any one or more of the charity trustees acting in his or their capacity as such.
 - (7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.”
- (2) In section 46 of the 1993 Act (special provisions as respects accounts and annual reports of exempt and excepted charities)—
- (a) in subsection (1) for “sections 41 to 45” substitute “sections 41 to 44 or section 45”; and
 - (b) after subsection (2) insert—
 - “(2A) Section 44A(2) to (7) above shall apply in relation to a person appointed to audit, or report on, the accounts of an exempt charity which is not a company as they apply in relation to a person such as is mentioned in section 44A(1).
 - (2B) But section 44A(2) to (7) so apply with the following modifications—
 - (a) any reference to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting as a person appointed as mentioned in subsection (2A) above; and
 - (b) any reference to the Commission or to any of its functions is to be read as a reference to the charity’s principal regulator or to any of that person’s functions in relation to the charity as such.”

30 Group accounts

- (1) After section 49 of the 1993 Act insert—

“49A Group accounts

The provisions of Schedule 5A to this Act shall have effect with respect to—

- (a) the preparation and auditing of accounts in respect of groups consisting of parent charities and their subsidiary undertakings (within the meaning of that Schedule), and
 - (b) other matters relating to such groups.”
- (2) Schedule 6 (which inserts the new Schedule 5A into the 1993 Act) has effect.

CHAPTER 7

CHARITABLE COMPANIES

31 Relaxation of restriction on altering memorandum etc. of charitable company

(1) Section 64 of the 1993 Act (alteration of objects clause etc.) is amended as follows.

(2) For subsection (2) substitute—

“(2) Where a charity is a company, any regulated alteration by the company—

- (a) requires the prior written consent of the Commission, and
- (b) is ineffective if such consent has not been obtained.

(2A) The following are “regulated alterations”—

- (a) any alteration of the objects clause in the company’s memorandum of association,
- (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and
- (c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(2B) For the purposes of subsection (2A) above—

- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section; and
- (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(5) and (6) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.”

(3) In subsection (3) (documents required to be delivered to registrar of companies), for “any such alteration” substitute “a regulated alteration”.

32 Annual audit or examination of accounts of charitable companies

(1) In section 249A(4) of the Companies Act 1985 (c. 6) (circumstances in which charitable company’s accounts may be subject to an accountant’s report instead of an audit)—

- (a) in paragraph (b) (gross income between £90,000 and £250,000) for “£250,000” substitute “£500,000”; and
- (b) in paragraph (c) (balance sheet total not more than £1.4 million) for “£1.4 million” substitute “£2.8 million”.

(2) In section 249B(1C) of that Act (circumstances in which parent company or subsidiary not disqualified for exemption from auditing requirement), in paragraph (b) (group’s aggregate turnover not more than £350,000 net or £420,000 gross in case of charity), for “£350,000 net (or £420,000 gross)” substitute “£700,000 net (or £840,000 gross)”.

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

33 Duty of auditor etc. of charitable company to report matters to Commission

After section 68 of the 1993 Act insert—

“68A Duty of charity’s auditors etc. to report matters to Commission

- (1) Section 44A(2) to (7) above shall apply in relation to a person acting as—
 - (a) an auditor of a charitable company appointed under Chapter 5 of Part 11 of the Companies Act 1985 (auditors), or
 - (b) a reporting accountant appointed by a charitable company for the purposes of section 249C of that Act (report required instead of audit),
 as they apply in relation to a person such as is mentioned in section 44A(1).
- (2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as a reference to his acting in the capacity mentioned in subsection (1) of this section.
- (3) In this section “charitable company” means a charity which is a company.”

CHAPTER 8

CHARITABLE INCORPORATED ORGANISATIONS

34 Charitable incorporated organisations

Schedule 7, which makes provision about charitable incorporated organisations, has effect.

CHAPTER 9

CHARITY TRUSTEES ETC.

Waiver of disqualification

35 Waiver of trustee’s disqualification

In section 72 of the 1993 Act (disqualification for being trustee of a charity) after subsection (4) insert—

“(4A) If—

- (a) a person disqualified under subsection (1)(d) or (e) makes an application under subsection (4) above five years or more after the date on which his disqualification took effect, and
- (b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.”

Remuneration of trustees etc.

36 Remuneration of trustees etc. providing services to charity

After section 73 of the 1993 Act insert—

“73A Remuneration of trustees etc. providing services to charity

- (1) This section applies to remuneration for services provided by a person to or on behalf of a charity where—
- (a) he is a charity trustee or trustee for the charity, or
 - (b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7) below.

- (2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity.
- (3) Condition A is that the amount or maximum amount of the remuneration—
- (a) is set out in an agreement in writing between—
 - (i) the charity or its charity trustees (as the case may be), and
 - (ii) the relevant person,under which the relevant person is to provide the services in question to or on behalf of the charity, and
 - (b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.
- (4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.
- (5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—
- (a) a person in respect of whom an agreement within subsection (3) above is in force, or
 - (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or
 - (c) a person connected with a person falling within paragraph (a) or (b) above,
- the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.
- (6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.
- (7) Nothing in this section applies to—
- (a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or

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

- (b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).
- (8) The provisions or orders within this subsection are—
 - (a) any provision contained in the trusts of the charity,
 - (b) any order of the court or the Commission,
 - (c) any statutory provision contained in or having effect under an Act of Parliament other than this section.
- (9) Section 73B below applies for the purposes of this section.

73B Supplementary provisions for purposes of section 73A

- (1) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.
- (2) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).
- (3) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.
- (4) In section 73A—
 - “benefit” means a direct or indirect benefit of any nature;
 - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;
 - “remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);
 - “services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.
- (5) For the purposes of section 73A the following persons are “connected” with a charity trustee or trustee for a charity—
 - (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
 - (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
 - (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
 - (d) an institution which is controlled—
 - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together;
 - (e) a body corporate in which—
 - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

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

- (6) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (5) above as they apply for the purposes of provisions of that Schedule.”

37 Disqualification of trustee receiving remuneration by virtue of section 36

After section 73B of the 1993 Act (inserted by section 36 above) insert—

“73C Disqualification of trustee receiving remuneration under section 73A

- (1) This section applies to any charity trustee or trustee for a charity—
- (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or
 - (b) who is connected with a person who is or would be so entitled.
- (2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.
- (3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.
- (4) Where the Commission is satisfied—
- (a) that a person (“the disqualified trustee”) has done any act which he was disqualified from doing by virtue of subsection (2) above, and
 - (b) that the disqualified trustee or a person connected with him has received or is to receive from the charity any remuneration under the agreement in question,
- it may make an order under subsection (5) or (6) below (as appropriate).
- (5) An order under this subsection is one requiring the disqualified trustee—
- (a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b) above;
 - (b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.
- (6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b) above.
- (7) If the Commission makes an order under subsection (5) or (6) above, the disqualified trustee or (as the case may be) connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires him to reimburse to the charity or (as the case may be) as it directs is not to be paid to him.
- (8) Subsections (4) to (6) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.”

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

Liability of trustees etc.

38 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty

After section 73C of the 1993 Act (inserted by section 37 above) insert—

“73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty

- (1) This section applies to a person who is or has been—
 - (a) a charity trustee or trustee for a charity,
 - (b) a person appointed to audit a charity’s accounts (whether appointed under an enactment or otherwise), or
 - (c) an independent examiner, reporting accountant or other person appointed to examine or report on a charity’s accounts (whether appointed under an enactment or otherwise).
- (2) If the Commission considers—
 - (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but
 - (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,
 the Commission may make an order relieving him wholly or partly from any such liability.
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.
- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) For the purposes of this section and section 73E below—
 - (a) subsection (1)(b) above is to be read as including a reference to the Auditor General for Wales acting as auditor under section 43B above, and
 - (b) subsection (1)(c) above is to be read as including a reference to the Auditor General for Wales acting as examiner under that section;
 and in subsection (1)(b) and (c) any reference to a charity’s accounts is to be read as including any group accounts prepared by the charity trustees of a charity.
- (6) This section does not affect the operation of—
 - (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees),
 - (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
 - (c) section 73E below (which extends section 727 to auditors etc. of charities which are not companies).

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

73E Court’s power to grant relief to apply to all auditors etc. of charities which are not companies

- (1) Section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor by a company.
- (2) This section applies to—
 - (a) a person acting in a capacity within section 73D(1)(b) or (c) above in a case where, apart from this section, section 727 would not apply in relation to him as a person so acting, and
 - (b) a charity trustee of a CIO.””

39 Trustees' indemnity insurance

After section 73E of the 1993 Act (inserted by section 38 above) insert—

“73F Trustees' indemnity insurance

- (1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—
 - (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or
 - (b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—
 - (a) any liability incurred by him to pay—
 - (i) a fine imposed in criminal proceedings, or
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
 - (b) any liability incurred by him in defending any criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or
 - (c) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not.
- (3) For the purposes of subsection (2)(b) above—
 - (a) the reference to any such conviction is a reference to one that has become final;
 - (b) a conviction becomes final—

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

- (i) if not appealed against, at the end of the period for bringing an appeal, or
- (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
- (c) an appeal is disposed of—
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.
- (4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.
- (5) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision.
- (6) The Minister may by order make such amendments of subsections (2) and (3) above as he considers appropriate.
- (7) No order may be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) This section—
 - (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but
 - (b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.”

CHAPTER 10

POWERS OF UNINCORPORATED CHARITIES

40 Power to transfer all property

For section 74 of the 1993 Act substitute—

“74 Power to transfer all property of unincorporated charity

- (1) This section applies to a charity if—
 - (a) its gross income in its last financial year did not exceed £10,000,
 - (b) it does not hold any designated land, and
 - (c) it is not a company or other body corporate.
 - “Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) The charity trustees of such a charity may resolve for the purposes of this section—
 - (a) that all the property of the charity should be transferred to another charity specified in the resolution, or

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

- (b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.
- (3) Any charity so specified may be either a registered charity or a charity which is not required to be registered.
- (4) But the charity trustees of a charity (“the transferor charity”) do not have power to pass a resolution under subsection (2) above unless they are satisfied—
 - (a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and
 - (b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.
- (7) Having received the copy of the resolution, the Commission—
 - (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
 - (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.
- (8) 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.
- (9) Subject to the provisions of section 74A below, a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.
- (10) Where such a resolution has taken effect, the charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred—
 - (a) is to be held by the charity to which it is transferred (“the transferee charity”) in accordance with subsection (11) below, but
 - (b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity;and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.

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

- (11) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.

But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property.

- (12) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—
- (a) in the transferee charity, in its charity trustees or in any trustee for that charity, or
 - (b) in any other person nominated by those charity trustees to hold property in trust for that charity.

- (13) The Minister may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.

- (14) 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 charity trustees may determine.

- (15) Where a charity has a permanent endowment, this section has effect in accordance with section 74B.

74A Resolution not to take effect or to take effect at later date

- (1) This section deals with circumstances in which a resolution under section 74(2) above either—
- (a) does not take effect under section 74(9) above, or
 - (b) takes effect at a time later than that mentioned in section 74(9).
- (2) A resolution does not take effect under section 74(9) above if before the end of—
- (a) the period of 60 days mentioned in section 74(9) (“the 60-day period”), or
 - (b) that period as modified by subsection (3) or (4) below,

the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.

“On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 74 above has not been complied with in connection with the resolution.

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

- (3) If under section 74(7) above the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—
 - (a) as from the date on which the direction is given to the charity trustees, and
 - (b) until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.
- (4) If under section 74(8) above the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—
 - (a) as from the date on which the direction is given to the charity trustees, and
 - (b) until the date on which the information or explanations is or are provided to the Commission.
- (5) Subsection (6) below applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (3) and (4) above exceeds 120 days.
- (6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

74B Transfer where charity has permanent endowment

- (1) This section provides for the operation of section 74 above where a charity within section 74(1) has a permanent endowment (whether or not the charity's trusts contain provision for the termination of the charity).
- (2) In such a case section 74 applies as follows—
 - (a) if the charity has both a permanent endowment and other property (“unrestricted property”)—
 - (i) a resolution under section 74(2) must relate to both its permanent endowment and its unrestricted property, and
 - (ii) that section applies in relation to its unrestricted property in accordance with subsection (3) below and in relation to its permanent endowment in accordance with subsections (4) to (11) below;
 - (b) if all of the property of the charity is comprised in its permanent endowment, that section applies in relation to its permanent endowment in accordance with subsections (4) to (11) below.
- (3) Section 74 applies in relation to unrestricted property of the charity as if references in that section to all or any of the property of the charity were references to all or any of its unrestricted property.
- (4) Section 74 applies in relation to the permanent endowment of the charity with the following modifications.
- (5) References in that section to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.

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

- (6) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.
- (7) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 74(4)(b)) be satisfied—
 - (a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and
 - (b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.
- (8) In the case of a transfer to which subsection (7) above applies, the resolution under section 74(2) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Commission for the purposes of this section.
- (9) The requirement in section 74(11) shall apply in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of any such guidance.
- (10) Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.
- (11) For the purposes of sections 74 and 74A above, any reference to any obligation imposed on the charity trustees by or under section 74 includes a reference to any obligation imposed on them by virtue of any of subsections (6) to (8) above.
- (12) Section 74(14) applies for the purposes of this section as it applies for the purposes of section 74.”

41 Power to replace purposes

After section 74B of the 1993 Act (inserted by section 40 above) insert—

“74C Power to replace purposes of unincorporated charity

- (1) This section applies to a charity if—
 - (a) its gross income in its last financial year did not exceed £10,000,
 - (b) it does not hold any designated land, and
 - (c) it is not a company or other body corporate.

“Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

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

- (2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.
- (3) The other purposes so specified must be charitable purposes.
- (4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) above unless they are satisfied—
 - (a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and
 - (b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.
- (7) Having received the copy of the resolution, the Commission—
 - (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
 - (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.
- (8) 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.
- (9) Subject to the provisions of section 74A above (as they apply in accordance with subsection (10) below), a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.
- (10) Section 74A above applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 74 above, except that any reference to section 74(7), (8) or (9) is to be read as a reference to subsection (7), (8) or (9) above.
- (11) As from the time when a resolution takes effect under subsection (9) above, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.
- (12) The Minister may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.”

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

42 Power to modify powers or procedures

After section 74C of the 1993 Act (inserted by section 41 above) insert—

“74D Power to modify powers or procedures of unincorporated charity

- (1) This section applies to any charity which is not a company or other body corporate.
- (2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—
 - (a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
 - (b) regulating the procedure to be followed in any respect in connection with its administration,
 should be modified in such manner as is specified in the resolution.
- (3) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.
- (4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body either—
 - (a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or
 - (b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.
- (5) Where—
 - (a) the charity trustees have passed a resolution under subsection (2), and
 - (b) (if subsection (4) applies) a further resolution has been passed under that subsection,
 the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.
- (6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution under subsection (2), or (if later) the date when any such further resolution was passed under subsection (4).”

CHAPTER 11

POWERS TO SPEND CAPITAL AND MERGERS

Spending of capital

43 Power to spend capital

For section 75 of the 1993 Act substitute—

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

“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.
- (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.

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

- (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
 - (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—

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

- (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).

(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

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

- (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,
 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—

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

- (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.
- (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.

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

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.
- (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.

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

- (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—
 - (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.”