



# Charities Act 2011

## 2011 CHAPTER 25

### PART 18

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Administrative provisions about charities*

#### **332 Manner of giving notice of charity meetings, etc.**

- (1) All notices which are required or authorised by the trusts of a charity to be given to a charity trustee, member or subscriber—
  - (a) may be sent by post, and
  - (b) if sent by post, may be addressed to any address given as the address of the charity trustee, member or subscriber in the list of such persons for the time being in use at the office or principal office of the charity.
- (2) Subsections (3) and (4) apply where a notice is required by the trusts of the charity to be given to a charity trustee, member or subscriber.
- (3) If the notice is given by post, it is to be treated as having been given by the time at which the letter containing it would be delivered in the ordinary course of post.
- (4) If the notice is a notice of any meeting or election, the notice need not be given to any charity trustee, member or subscriber who, in the list mentioned in subsection (1)(b), has no address in the United Kingdom.

#### **333 Conferral of authority to execute documents**

- (1) Charity trustees may, subject to the trusts of the charity, confer on any two or more of their body—
  - (a) a general authority, or
  - (b) an authority limited in such manner as the charity trustees think fit,

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to execute in the names and on behalf of the charity trustees documents for giving effect to transactions to which the charity trustees are a party.

- (2) Any document executed in pursuance of an authority under subsection (1) is of the same effect as if executed by the whole body.
- (3) An authority under subsection (1)—
  - (a) suffices for any document if it is given in writing or by resolution of a meeting of the charity trustees, despite the want of any formality that would be required in giving an authority apart from that subsection;
  - (b) may be given so as to make the powers conferred exercisable by any of the charity trustees, or may be restricted to named persons or in any other way;
  - (c) subject to any such restriction, and until it is revoked, has effect, despite any change in the charity trustees, as a continuing authority given by the charity trustees from time to time of the charity and exercisable by such charity trustees.
- (4) In any authority under this section to execute a document in the names and on behalf of charity trustees there is, unless the contrary intention appears, implied authority also to execute it for them in the name and on behalf of the official custodian or of any other person, in any case in which the charity trustees could do so.
- (5) Where a document purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth—
  - (a) an interest in or charge on property, or
  - (b) the benefit of any covenant or agreement expressed to be entered into by the charity trustees,
 it is conclusively presumed to have been duly executed by virtue of this section.
- (6) The powers conferred by this section are in addition to and not in derogation of any other powers.

### **334 Transfer and evidence of title to property vested in trustees**

- (1) Subsection (2) applies where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons.
- (2) A memorandum declaring a trustee to have been so appointed or discharged is sufficient evidence of that fact if the memorandum—
  - (a) is signed either at the meeting by the person presiding or in some other manner directed by the meeting, and
  - (b) is attested by two persons present at the meeting.
- (3) A memorandum evidencing the appointment or discharge of a trustee under subsection (2), if executed as a deed, has the same operation under section 40 of the Trustee Act 1925 (vesting declarations as respects trust property in deeds appointing or discharging trustees) as if the appointment or discharge were effected by the deed.
- (4) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (2), then on proof (whether by evidence or as a matter of presumption) of the signature the document is presumed to have been so signed and attested, unless the contrary is shown.

- (5) This section applies to a memorandum made at any time, except that subsection (3) applies only to those made on or after 1 January 1961.
- (6) This section applies in relation to any institution to which the Literary and Scientific Institutions Act 1854 applies as it applies in relation to a charity.
- (7) No vesting or transfer of any property in pursuance of any provision of this section operates as a breach of a covenant or condition against alienation or gives rise to a forfeiture.

*Enforcement powers of Commission etc.*

**335 Enforcement of requirements by order of Commission**

- (1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2)) the Commission may by order give that person such directions as it considers appropriate for securing that the default is made good.
- (2) Subsection (1) does not apply to any such requirement if—
  - (a) a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty, or
  - (b) the requirement is imposed by—
    - (i) an order of the Commission to which section 336 applies, or
    - (ii) a direction of the Commission to which section 336 applies by virtue of section 338(2).

**336 Enforcement of orders of Commission**

- (1) A person guilty of disobedience to an order mentioned in subsection (2) may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court.
- (2) The orders are—
  - (a) an order of the Commission under—
    - section 52(1) (power to call for documents),
    - section 84 (power to direct specified action to be taken),
    - section 85 (power to direct application of charity property),
    - section 87 (supervision of certain Scottish charities),
    - section 155 (power to direct compliance with regulations giving auditors etc. access to information etc.),
    - section 184 (civil consequences of acting while disqualified),
    - section 186 (disqualification of charity trustee or trustee receiving remuneration under section 185),
    - section 263 (dissolution of incorporated body),
  - (b) an order of the Commission under—
    - section 69 (concurrent jurisdiction with High Court for certain purposes), or
    - any of sections 76 and 79 to 81 (powers to act for protection of charities etc.),requiring a transfer of property or payment to be called for or made, or

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- (c) an order of the Commission requiring a default under this Act to be made good.

### **337 Other provisions as to orders of Commission**

- (1) Any order made by the Commission under this Act may include such incidental or supplementary provisions as the Commission thinks expedient for carrying into effect the objects of the order.
- (2) Where the Commission exercises any jurisdiction to make an order under this Act on an application or reference to it, it may insert any such provisions in the order even though the application or reference does not propose their insertion.
- (3) Where the Commission makes an order under this Act, the Commission—
  - (a) may itself give such public notice as it thinks fit of the making or contents of the order, or
  - (b) may require it to be given by—
    - (i) any person on whose application the order is made, or
    - (ii) any charity affected by the order.
- (4) The Commission may, with or without any application or reference to it, discharge an order in whole or in part, and subject or not to any savings or other transitional provisions, if—
  - (a) it made the order under any provision of this Act other than section 263 (dissolution of incorporated body), and
  - (b) at any time within 12 months after it made the order, it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act.
- (5) Except for the purposes of subsection (4) or an appeal under this Act, an order made by the Commission under this Act—
  - (a) is to be treated as having been duly and formally made, and
  - (b) is not to be called in question on the ground only of irregularity or informality, but (subject to any further order) has effect according to its tenor.
- (6) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made and may include transitional provisions or savings.

### **338 Directions of the Commission or person conducting inquiry**

- (1) Any direction given by the Commission under any provision of this Act—
  - (a) may be varied or revoked by a further direction given under that provision, and
  - (b) must be given in writing.
- (2) Sections 336 (enforcement of orders) and 337(1) to (3) and (5) (other provisions as to orders) apply to any such directions as they apply to an order of the Commission.
- (3) In subsection (1) the reference to the Commission includes, in relation to a direction under section 47(2) (obtaining evidence etc. for the purposes of an inquiry), a reference to any person conducting an inquiry under section 46.

- (4) Nothing in this section is to be read as applying to any directions contained in an order made by the Commission under section 335(1) (directions for securing that default is made good).

### **339 Service of orders and directions**

- (1) This section applies to any order or direction made or given by the Commission under this Act.
- (2) Any such order or direction may be served on a person (other than a body corporate) by—
- (a) delivering it to that person,
  - (b) leaving it at that person's last known address in the United Kingdom, or
  - (c) sending it by post to that person at that address.
- (3) Any such order or direction may be served on a body corporate by delivering it or sending it by post—
- (a) to the registered or principal office of the body in the United Kingdom, or
  - (b) if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities (as the case may be).
- (4) Any such order or direction may also be served on a person (including a body corporate) by sending it by post to that person at an address notified by that person to the Commission for the purposes of this subsection.
- (5) In this section any reference to the Commission includes, in relation to a direction under section 47(2) (obtaining evidence etc. for the purposes of an inquiry), a reference to any person conducting an inquiry under section 46.

#### *Documents and evidence etc.*

### **340 Enrolment and deposit of documents etc.**

- (1) The Commission may provide books in which any deed, will or other document relating to a charity may be enrolled.
- (2) The Commission may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commission deposit them with the Commission for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.
- (3) Regulations made by the Minister may make provision for such documents deposited with the Commission under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.
- (4) Subsection (3) applies to any document—
- (a) transmitted to the Commission under section 52, and
  - (b) kept by the Commission under section 52(3),

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as if the document had been deposited with the Commission for safe keeping under this section.

- (5) Subsections (3) and (4) apply (with any necessary adaptations) to documents enrolled by, deposited with or transmitted to the Charity Commissioners for England and Wales under corresponding previous enactments, including in particular the Charitable Trusts Act 1853 to 1939.

### **341 Evidence of documents received by Commission etc.**

- (1) Subsection (2) applies where a document is enrolled by the Commission or is for the time being deposited with the Commission under section 340.
- (2) Evidence of the document's contents may be given by means of a copy certified by any member of the staff of the Commission generally or specially authorised by the Commission to act for this purpose.
- (3) A document purporting to be such a copy is to be received in evidence without proof—
- (a) of the official position, authority or handwriting of the person certifying it, or
  - (b) of the original document being enrolled or deposited.
- (4) Subsections (2) and (3) apply to any document—
- (a) transmitted to the Commission under section 52, and
  - (b) kept by the Commission under section 52(3),
- as if the document had been deposited with the Commission for safe keeping under section 340.
- (5) Subsections (2) to (4) apply (with any necessary adaptations) to documents enrolled by, deposited with or transmitted to the Charity Commissioners for England and Wales under corresponding previous enactments, including in particular the Charitable Trusts Act 1853 to 1939.

### **342 Report of inquiry to be evidence in certain proceedings**

- (1) A copy of the report of the person conducting an inquiry under section 46, if certified by the Commission to be a true copy, is admissible in any proceedings to which this section applies—
- (a) as evidence of any fact stated in the report, and
  - (b) as evidence of the opinion of that person as to any matter referred to in it.
- (2) This section applies to—
- (a) any legal proceedings instituted by the Commission under Part 6, and
  - (b) any legal proceedings instituted by the Attorney General in respect of a charity.
- (3) A document purporting to be a certificate issued for the purposes of subsection (1) is to be—
- (a) received in evidence, and
  - (b) treated as such a certificate,
- unless the contrary is proved.

### **343 Evidence of documents issued by Commission etc.**

- (1) Evidence of any order, certificate or other document issued by the Commission may be given by means of a copy retained by it, or taken from a copy so retained, if the copy is certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for this purpose.
- (2) Evidence of an entry in any register kept by the Commission may be given by means of a copy of the entry, if the copy is certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for this purpose.
- (3) A document purporting to be such a copy as is mentioned in subsection (1) or (2) is to be received in evidence without proof of the official position, authority or handwriting of the person certifying it.
- (4) Subsections (1) and (3) apply to any order, certificate or other document issued by the Charity Commissioners for England and Wales as they apply to any order, certificate or other document issued by the Commission.

### **344 Other miscellaneous provisions as to evidence**

- (1) Subsection (2) applies to proceedings to recover or compel payment of any rentcharge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion.
- (2) If it is shown in any proceedings to which this subsection applies that the rentcharge or other periodical payment has at any time been paid for 12 consecutive years to or for the benefit of the charity—
  - (a) that is prima facie evidence of the perpetual liability to it of the land or income, and
  - (b) no proof of its origin is necessary.
- (3) In any proceedings, the following documents are admissible as evidence of the documents and facts stated in them—
  - (a) the printed copies of the reports of the Commissioners for enquiring concerning charities, 1818 to 1837, who were appointed under the Act 58 Geo. 3 c. 91 and subsequent Acts, and
  - (b) the printed copies of the reports which were made for various counties and county boroughs to the Charity Commissioners by their assistant commissioners and presented to the House of Commons as returns to orders of various dates beginning with 8 December 1890, and ending with 9 September 1909.

### *Offences*

### **345 Restriction on institution of proceedings for certain offences**

- (1) No proceedings for an offence to which this section applies are to be instituted except by or with the consent of the Director of Public Prosecutions.
- (2) This section applies to any offence under—

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- (a) section 41 (offences in connection with statements required in official publications etc.),
- (b) section 60 (supply of false or misleading information to Commission etc.),
- (c) section 77(1) (offence of contravening certain orders made for protection of charities),
- (d) section 173 (offences of failing to supply certain documents), or
- (e) section 183(1) (criminal consequences of acting while disqualified).

### **346 Offences by bodies corporate**

- (1) If an offence under this Act—
  - (a) is committed by a body corporate, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate,
 the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In this section, “officer”, in relation to a body corporate, means—
  - (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
 and, in relation to a body corporate whose affairs are managed by its members, “director” means a member of the body corporate.

#### *Regulations and orders*

### **347 Regulations and orders: general**

- (1) Any power of the Minister to make any regulations or order under this Act is exercisable by statutory instrument.
- (2) Subject to sections 348(1) and 349(1), regulations or orders of the Minister under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any regulations of the Minister or the Commission and any order of the Minister under this Act may make—
  - (a) different provision for different cases or descriptions of case or different purposes or areas, and
  - (b) such supplemental, incidental, consequential, transitory or transitional provision or savings as the Minister or, as the case may be, the Commission considers appropriate.
- (4) Nothing in this section applies to an order under paragraph 29 of Schedule 9 (transitory modifications).

### **348 Regulations subject to affirmative procedure etc.**

- (1) Section 347(2) (negative procedure) does not apply to—



- (a) regulations under section 19 (fees and other amounts payable to Commission) which require the payment of a fee in respect of any matter for which no fee was previously payable;
  - (b) regulations under section 25 (meaning of “principal regulator”) which amend any provision of an Act;
  - (c) regulations under section 245 (regulations about winding up, insolvency and dissolution of CIOs).
- (2) No regulations within subsection (1)(a) or (c) may be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (3) No regulations within subsection (1)(b) may be made (whether alone or with other provisions) unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (4) Before making any regulations under—
- (a) Part 8 (charity accounts, reports and returns), or
  - (b) section 245 or 246 (certain powers to make regulations about CIOs),
- the Minister must consult such persons or bodies of persons as the Minister considers appropriate.

### **349 Orders subject to affirmative procedure etc.**

- (1) Section 347(2) (negative procedure) does not apply to—
- (a) an order under section 23 (power to amend Schedule 3 so as to add or remove exempt charities);
  - (b) an order under section 73(2) (powers to make schemes altering provision made by Acts etc.);
  - (c) an order under section 190 (power to amend provisions relating to indemnity insurance for charity trustees and trustees);
  - (d) an order under section 324 (power to amend provisions relating to appeals and applications to Tribunal).
- (2) No order within subsection (1)(a) may be made (whether alone or with other provisions) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (3) No order within subsection (1)(c) or (d) may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) If a draft of an instrument containing an order under section 23 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

### *Interpretation*

### **350 Connected person: child, spouse and civil partner**

- (1) In sections 118(2)(c), 188(1)(a), 200(1)(a) and 249(2)(a), “child” includes a stepchild and an illegitimate child.

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- (2) For the purposes of sections 118(2)(e), 188(1)(b), 200(1)(b) and 249(2)(b)—
- (a) a person living with another as that person’s husband or wife is to be treated as that person’s spouse;
  - (b) where two people of the same sex are not civil partners but live together as if they were, each of them is to be treated as the civil partner of the other.

### **351 Connected person: controlled institution**

For the purposes of sections 118(2)(g), 157(1)(a), 188(1)(d), 200(1)(d) and 249(2)(d), a person controls an institution if the person is able to secure that the affairs of the institution are conducted in accordance with the person’s wishes.

### **352 Connected person: substantial interest in body corporate**

- (1) For the purposes of sections 118(2)(h), 157(1)(b), 188(1)(e), 200(1)(e) and 249(2)(e), any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question—
- (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
  - (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.
- (2) The rules set out in Schedule 1 to the Companies Act 2006 (rules for interpretation of certain provisions of that Act) apply for the purposes of subsection (1) as they apply for the purposes of section 254 of that Act (“connected persons” etc.).
- (3) In this section “equity share capital” and “share” have the same meaning as in that Act.

### **353 Minor definitions**

- (1) In this Act, except in so far as the context otherwise requires—
- “company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;
- “the court” means—
- (a) the High Court, and
  - (b) within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court,
- and includes any judge or officer of the court exercising the jurisdiction of the court;
- “ecclesiastical charity” has the same meaning as in the Local Government Act 1894;
- “financial year”—
- (a) in relation to a charitable company, is to be construed in accordance with section 390 of the Companies Act 2006, and
  - (b) in relation to any other charity, is to be construed in accordance with regulations made by virtue of section 132(3);
- but this is subject to any provision of regulations made by virtue of section 142(3) (financial years of subsidiary undertakings);

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“gross income”, in relation to a charity, means its gross recorded income from all sources including special trusts;

“independent examiner”, in relation to a charity, means such a person as is mentioned in section 145(1)(a);

“members”, in relation to a charity with a body of members distinct from the charity trustees, means any of those members;

“the Minister” means the Minister for the Cabinet Office;

“trusts”—

(a) in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and

(b) in relation to other institutions has a corresponding meaning.

(2) In this Act, except in so far as the context otherwise requires, “document” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form—

(a) any reference to its production is to be read as a reference to the provision of a copy of it in legible form, and

(b) any reference to the provision of a copy of, or extract from, it is accordingly to be read as a reference to the provision of a copy of, or extract from, it in legible form.

(3) A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between—

(a) capital, and

(b) income;

and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.