



# Charities Act 2011

## 2011 CHAPTER 25

### PART 5

#### INFORMATION POWERS

##### *Inquiries instituted by Commission*

#### **46 General power to institute inquiries**

- (1) The Commission may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.
- (2) But no such inquiry is to extend to any exempt charity except where this has been requested by its principal regulator.
- (3) The Commission may—
  - (a) conduct such an inquiry itself, or
  - (b) appoint a person to conduct it and make a report to the Commission.
- (4) This section and sections 47 to 49 (obtaining evidence and search warrants) have effect in relation to a body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales as they have effect in relation to a charity.

#### **47 Obtaining evidence etc. for purposes of inquiry**

- (1) In this section “inquiry” means an inquiry under section 46.
- (2) For the purposes of an inquiry, the Commission, or a person appointed by the Commission to conduct it, may direct any person—
  - (a) if a matter in question at the inquiry is one on which the person has or can reasonably obtain information—

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- (i) to provide accounts and statements in writing with respect to the matter, or to return answers in writing to any questions or inquiries addressed to the person on the matter, and
- (ii) to verify any such accounts, statements or answers by statutory declaration;
- (b) to provide copies of documents which are in the custody or under the control of the person and which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;
- (c) to attend at a specified time and place and give evidence or produce any such documents.

But this is subject to the provisions of this section.

- (3) For the purposes of an inquiry—
  - (a) evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or
  - (b) the person conducting the inquiry may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which that person is examined.
- (4) The Commission may pay to any person attending to give evidence or produce documents for the purpose of an inquiry the necessary expenses of doing so.
- (5) A direction under subsection (2)(c) may not require a person to go more than 10 miles from the person's place of residence unless those expenses are paid or tendered to the person.

#### **48 Power to obtain search warrant for purposes of inquiry**

- (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) is satisfied.
- (2) The conditions are—
  - (a) that an inquiry has been instituted under section 46,
  - (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 provided under section 52(1), and
  - (c) that, if the Commission were to make an order requiring the document or information to be so produced or provided—
    - (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 ("P")—
  - (a) to enter and search the premises specified in it;
  - (b) to take such other persons with P as the Commission considers are needed to assist P in doing anything that P is authorised to do under the warrant;
  - (c) to take possession of any documents which appear to fall within subsection (2) (b), 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;
- (g) to require any such person to give P such assistance as P may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

#### **49 Execution of search warrant**

- (1) Entry and search under a warrant under section 48 must be at a reasonable hour and within one month of the date of its issue.
- (2) The member of the Commission's staff who is authorised under such a warrant ("P") must, if required to do so, produce—
  - (a) the warrant, and
  - (b) documentary evidence that P is a member of the Commission's staff, for inspection by the occupier of the premises or anyone acting on the occupier's behalf.
- (3) P must make a written record of—
  - (a) the date and time of P's entry on the premises,
  - (b) the number of persons (if any) who accompanied P on to the premises and the names of any such persons,
  - (c) the period for which P (and any such persons) remained on the premises,
  - (d) what P (and any such persons) did while on the premises, and
  - (e) any document or device of which P took possession while there.
- (4) If required to do so, P must give a copy of the record to the occupier of the premises or someone acting on the occupier's behalf.
- (5) Unless it is not reasonably practicable to do so, P must before leaving the premises comply with—
  - (a) the requirements of subsection (3), and
  - (b) any requirement made under subsection (4) before P leaves the premises.
- (6) Where possession of any document or device is taken under section 48—
  - (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 46, 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.
- (7) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it must arrange for the document or device to be returned as soon as is reasonably practicable—

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- (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.

For the purposes of this subsection as it has effect by virtue of section 46(4), the reference in paragraph (b) to the charity trustees of the charity is to be read as a reference to the persons having the general control and management of the administration of the body entered in the Scottish Charity Register.

- (8) It is an offence for a person intentionally to obstruct the exercise of any rights conferred by a warrant under section 48.
- (9) A person guilty of an offence under subsection (8) is 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.

## **50 Publication of results of inquiries**

- (1) This section applies where an inquiry has been held under section 46.
- (2) The Commission may—
  - (a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published, or
  - (b) publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the Commission about the action to be taken.

## **51 Contributions by local authorities to inquiries into local charities**

- (1) A council may contribute to the expenses of the Commission in connection with inquiries under section 46 into local charities in the council's area.
- (2) In subsection (1) "council" means—
  - (a) a district council;
  - (b) a county council;
  - (c) a county borough council;
  - (d) a London borough council;
  - (e) the Common Council of the City of London.