



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.

Power to call for documents and search records

52 Power to call for documents

- (1) The Commission may by order—
 - (a) require any person to provide the Commission with any information which is in that person’s possession and which—
 - (i) relates to any charity, and
 - (ii) is relevant to the discharge of the functions of the Commission or of the official custodian;

- (b) require any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the functions of the Commission or of the official custodian—
 - (i) to provide the Commission with a copy of or extract from the document, or
 - (ii) to transmit the document itself to the Commission for its inspection (unless the document forms part of the records or other documents of a court or of a public or local authority).
- (2) The Commission is entitled without payment to keep any copy or extract provided to it under subsection (1).
- (3) If a document transmitted to the Commission under subsection (1) for it to inspect—
 - (a) relates only to one or more charities, and
 - (b) is not held by any person entitled as trustee or otherwise to the custody of it, the Commission may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.
- (4) This section has effect in relation to any body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales as it has effect in relation to a charity.

53 Power to search records

- (1) Any member of the staff of the Commission, if so authorised by it, is entitled without payment to inspect and take copies of or extracts from the records or other documents of—
 - (a) any court, or
 - (b) any public registry or office of records,for any purpose connected with the discharge of the functions of the Commission or of the official custodian.
- (2) The reference in subsection (1) to a member of the staff of the Commission includes the official custodian even if not a member of the staff of the Commission.
- (3) The rights conferred by subsection (1), in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form—
 - (a) for inspection, or
 - (b) for a copy or extract to be made of or from it.

Disclosure of information

54 Disclosure to Commission: general

- (1) A relevant public authority may disclose information to the Commission if the disclosure is made for the purpose of enabling or assisting the Commission to discharge any of its functions.
- (2) Subsection (1) is subject to section 55.
- (3) In this section “relevant public authority” means—

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- (a) any government department (including a Northern Ireland department),
- (b) any local authority,
- (c) any constable, and
- (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

55 Disclosure to Commission: Revenue and Customs information

- (1) Revenue and Customs information may be disclosed under section 54(1) only if it relates to an institution, undertaking or body falling within one (or more) of the following paragraphs—
- (a) a charity;
 - (b) an institution which is established for charitable, benevolent or philanthropic purposes;
 - (c) an institution by or in respect of which a claim for tax exemption has at any time been made;
 - (d) a subsidiary undertaking of a charity;
 - (e) a body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales.
- (2) In subsection (1)(d) “subsidiary undertaking of a charity” means an undertaking (as defined by section 1161(1) of the Companies Act 2006) in relation to which—
- (a) a charity is (or is to be treated as) a parent undertaking in accordance with the provisions of section 1162 of, and Schedule 7 to, the Companies Act 2006, or
 - (b) two or more charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions.
- (3) For the purposes of the references to a parent undertaking—
- (a) in subsection (2), and
 - (b) in section 1162 of, and Schedule 7 to, the Companies Act 2006 as they apply for the purposes of subsection (2),
- “undertaking” includes a charity which is not an undertaking as defined by section 1161(1) of that Act.
- (4) In this section “Revenue and Customs information” means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005.
- (5) For the purposes of subsection (1)(c), “claim for tax exemption” means—
- (a) a claim for exemption under section 505(1) of the Income and Corporation Taxes Act 1988,
 - (b) a claim for exemption under Part 10 of the Income Tax Act 2007, or
 - (c) a claim for exemption under Part 11 of the Corporation Tax Act 2010, if it is not—
 - (i) a claim for exemption under section 475, 476 or 477 (reliefs for eligible bodies and scientific research organisations), or
 - (ii) a claim made by virtue of section 490 or 491 (application of exemptions to eligible bodies and scientific research organisations).

56 Disclosure by Commission: general

- (1) The Commission may disclose to any relevant public authority any information received by the Commission in connection with any of the Commission's functions if—
 - (a) the disclosure is made for the purpose of enabling or assisting the relevant public authority to discharge any of its functions, or
 - (b) the information so disclosed is otherwise relevant to the discharge of any of the functions of the relevant public authority.
- (2) Subsection (1) is subject to subsection (3) and section 57(1) and (2).
- (3) In the case of information disclosed to the Commission under section 54(1), the Commission's power to disclose the information under subsection (1) is exercisable subject to any express restriction subject to which the information was disclosed to the Commission.
- (4) In this section “relevant public authority” has the same meaning as in section 54, except that it also includes any body or person within section 54(3)(d) in a country or territory outside the United Kingdom.

57 Disclosure by Commission: Revenue and Customs information

- (1) Section 56(3) does not apply in relation to Revenue and Customs information disclosed to the Commission under section 54(1).
- (2) But any such information may not be further disclosed (whether under section 56(1) or otherwise) except with the consent of the Commissioners for Her Majesty's Revenue and Customs.
- (3) It is an offence for a responsible person to disclose information in contravention of subsection (2).
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (5) It is a defence, where a responsible person is charged with an offence under subsection (3) of disclosing information, to prove that that person reasonably believed—
 - (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (6) In the application of this section to Northern Ireland, the reference to 12 months in subsection (4) is to be read as a reference to 6 months.
- (7) In this section “Revenue and Customs information” means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005.
- (8) In this section “responsible person” means a person who is or was—
 - (a) a member of the Commission,
 - (b) a member of the staff of the Commission,

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- (c) a person acting on behalf of—
 - (i) the Commission, or
 - (ii) a member of the staff of the Commission, or
- (d) a member of a committee established by the Commission.

58 Disclosure to and by principal regulators of exempt charities

- (1) Sections 54 to 57 apply with the modifications in subsections (2) to (4) in relation to the disclosure of information to or by the principal regulator of an exempt charity.
- (2) References in those sections to the Commission or to any of its functions are to be read as references to the principal regulator of an exempt charity or to any of the functions of that body or person as principal regulator in relation to the charity.
- (3) Section 55 has effect as if for subsections (1) and (2) there were substituted—
 - “(1) Revenue and Customs information may be disclosed under section 54(1) only if it relates to—
 - (a) the exempt charity in relation to which the principal regulator has functions as such, or
 - (b) a subsidiary undertaking of the exempt charity.
 - (2) In subsection (1)(b) “subsidiary undertaking of the exempt charity” means an undertaking (as defined by section 1161(1) of the Companies Act 2006) in relation to which—
 - (a) the exempt charity is (or is to be treated as) a parent undertaking in accordance with the provisions of section 1162 of, and Schedule 7 to, the Companies Act 2006, or
 - (b) the exempt charity and one or more other charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions.”
- (4) Section 57 has effect as if for the definition of “responsible person” in subsection (8) there were substituted a definition specified by regulations under section 25 (meaning of “principal regulator”).
- (5) Regulations under section 25 may also make such amendments or other modifications of any enactment as the Minister considers appropriate for securing that any disclosure provisions that would otherwise apply in relation to the principal regulator of an exempt charity do not apply in relation to that body or person as principal regulator.
- (6) In subsection (5) “disclosure provisions” means provisions having effect for authorising, or otherwise in connection with, the disclosure of information by or to the principal regulator concerned.
- (7) In subsection (5) “enactment” includes—
 - (a) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978), and
 - (b) a provision of a Measure of the Church Assembly or of the General Synod of the Church of England,
 and references to enactments include enactments whenever passed or made.

59 Disclosure: supplementary

Nothing in sections 54 to 57 (or in those sections as applied by section 58(1) to (4)) authorises the making of a disclosure which—

- (a) contravenes the Data Protection Act 1998, or
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

Supply of false or misleading information to Commission etc.

60 Supply of false or misleading information to Commission etc.

- (1) It is an offence for a person knowingly or recklessly to provide the Commission with information which is false or misleading in a material particular if the information is provided—
 - (a) in purported compliance with a requirement imposed by or under this Act, or
 - (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information—
 - (i) intends, or
 - (ii) could reasonably be expected to know,that it would be used by the Commission for the purpose of discharging its functions under this Act.
- (2) It is an offence for a person wilfully to alter, suppress, conceal or destroy any document which the person is or is liable to be required, by or under this Act, to produce to the Commission.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) In this section references to the Commission include references to any person conducting an inquiry under section 46.