



2008 CHAPTER 12

PART 6

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND
SUPERVISION OF CHARITIES BY COURT AND COMMISSION

Establishment of common investment or deposit funds

Schemes to establish common investment funds

43.—(1) The Court or the Commission may by order make and bring into effect schemes (in this section referred to as “common investment schemes”) for the establishment of common investment funds under trusts which provide—

- (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
- (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.

(2) The Court or the Commission may make a common investment scheme on the application of any two or more charities.

(3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.

(4) 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.

(5) In this section “appropriate body” means—

- (a) a Scottish recognised body, or
- (b) an England and Wales charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4), “charity” includes an appropriate body.

“The relevant provisions” are subsections (1) and (6) to (8) and (in relation only to a charity within paragraph (b)) subsection (9).

(6) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision—

- (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that the person is also a charity trustee or trustee for a participating charity;
- (b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;
- (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;
- (d) for enabling money to be borrowed temporarily for the purpose of meeting payments to be made out of the funds;
- (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;
- (f) for regulating the accounts and information to be supplied to participating charities.

(7) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the

scheme; and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.

(8) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.

(9) The powers of investment of every charity shall include power to participate in common investment schemes unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.

(10) A common investment fund shall be deemed for all purposes to be a charity.

(11) Subsection (10) shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any statutory provision relating to any particular charities or class of charity.

Schemes to establish common deposit funds

44.—(1) The Court or the Commission may by order make and bring into effect schemes (in this section referred to as “common deposit schemes”) for the establishment of common deposit funds under trusts which provide—

- (a) for sums to be deposited by or on behalf of a charity participating in the scheme and invested under the control of trustees appointed to manage the fund; and
- (b) for any such charity to be entitled (subject to the provisions of the scheme) to repayment of any sums so deposited and to interest thereon at a rate determined under the scheme.

(2) Subject to subsection (3), the following provisions of section 43, namely—

- (a) subsections (2), (3) and (6), and
- (b) subsections (8) to (11),

shall have effect in relation to common deposit schemes and common deposit funds as they have effect in relation to common investment schemes and common investment funds.

(3) In its application in accordance with subsection (2), subsection (6) of section 43 shall have effect with the substitution for paragraphs (b) and (c) of the following paragraphs—

“(b) for regulating as to time, amount or otherwise the right to repayment of sums deposited in the fund;

(c) for authorising a part of the income for any year to be credited to a reserve account maintained for the purpose of counteracting any losses accruing to the fund, and generally for regulating the manner in which the rate of interest on deposits is to be determined from time to time;”.

(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) an England and Wales charity,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (4), “charity” includes an appropriate body.

(6) “The relevant provisions” are—

(a) subsection (1), and

(b) subsections (6) and (8) of section 43, as they apply in accordance with subsections (2) and (3), and

(c) (in relation only to a charity within subsection (5)(b)) subsection (9) of that section, as it so applies.

Meaning of “Scottish recognised body” and “England and Wales charity” in sections 43 and 44

45.—(1) In sections 43 and 44 “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 (c. 1) or Part 10 of the Income Tax Act 2007 (c. 3) in respect of income of the body which is applicable and applied to charitable purposes only.

(2) In those sections “England and Wales charity” means an institution—

(a) which is a charity under the law of England and Wales, and

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- (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 or Part 10 of the Income Tax Act 2007 in respect of income of the institution which is applicable and applied to charitable purposes only.