



Charities Act 2006

2006 CHAPTER 50

PART 2

REGULATION OF CHARITIES

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.

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- (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—

Status: This is the original version (as it was originally enacted).

“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.
- (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

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- (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.
- (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.

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- (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.
- (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,

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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.

“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.

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- (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,

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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”.