



# Charities Act 2011

## 2011 CHAPTER 25

### PART 13

#### UNINCORPORATED CHARITIES

##### *Power to transfer all property of unincorporated charity*

#### **267 Introduction**

- (1) Section 268 (resolution to transfer all property) applies to a charity if—
  - (a) (subject to subsection (2)) its gross income in its last financial year did not exceed £10,000,
  - (b) it does not hold any designated land, and
  - (c) it is not a company or other body corporate.“Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) Subsection (1)(a) does not apply in relation to a resolution by the charity trustees of a charity—
  - (a) to transfer all its property to a CIO, or
  - (b) to divide its property between two or more CIOs.
- (3) Where a charity has a permanent endowment, sections 268 to 272 have effect in accordance with sections 273 and 274.
- (4) In sections 268 to 274 references to the transfer of property to a charity are references to its transfer—
  - (a) to the charity,
  - (b) to the charity trustees,
  - (c) to any trustee for the charity, or
  - (d) to a person nominated by the charity trustees to hold it in trust for the charity, as the charity trustees may determine.

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## **268 Resolution to transfer all property**

- (1) The charity trustees of a charity to which this section applies (see section 267) may resolve for the purposes of this section—
  - (a) that all the property of the charity should be transferred to another charity specified in the resolution, or
  - (b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.
- (2) Any charity so specified may be either a registered charity or a charity which is not required to be registered.
- (3) But the charity trustees of a charity (“the transferor charity”) do not have power to pass a resolution under subsection (1) unless they are satisfied—
  - (a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and
  - (b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.
- (4) Any resolution under subsection (1) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (5) Where charity trustees have passed a resolution under subsection (1), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

## **269 Notice of, and information about, resolution to transfer property**

- (1) Having received the copy of the resolution under section 268(5), the Commission—
  - (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it—
    - (i) by persons appearing to it to be interested in the charity, and
    - (ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
  - (a) the circumstances in and by reference to which they have decided to act under section 268, or
  - (b) their compliance with any obligation imposed on them by or under section 268 or this section in connection with the resolution.

## **270 General rule as to when s.268 resolution takes effect**

Subject to section 271, a resolution under section 268(1) takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

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## **271 S.268 resolution not to take effect or to take effect at later date**

- (1) A resolution does not take effect under section 270 if before the end of—
  - (a) the 60-day period, or
  - (b) that period as modified by subsection (4) or (5),the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.
- (2) “The 60-day period” means the period of 60 days mentioned in section 270.
- (3) “On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 268 or 269 has not been complied with in connection with the resolution.
- (4) If under section 269(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—
  - (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.
- (5) If under section 269(2) the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—
  - (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the date on which the information or explanations is or are provided to the Commission.
- (6) Subsection (7) applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (4) and (5) exceeds 120 days.
- (7) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

## **272 Transfer of property in accordance with s.268 resolution**

- (1) Subsection (2) applies where a resolution under section 268(1) has taken effect.
- (2) The charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred—
  - (a) is to be held by the charity to which it is transferred (“the transferee charity”) in accordance with subsection (3), but
  - (b) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity;and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.
- (3) The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.

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But this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property.

- (4) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—
- (a) in the transferee charity, in its charity trustees or in any trustee for that charity, or
  - (b) in any other person nominated by those charity trustees to hold property in trust for that charity.

### **273 Transfer where charity has permanent endowment: general**

- (1) This section and section 274 provide for the operation of sections 268 to 272 where a charity within section 267(1) has a permanent endowment (whether or not the charity's trusts contain provision for the termination of the charity).
- (2) If the charity has both a permanent endowment and other property (“unrestricted property”)—
- (a) a resolution under section 268(1) must relate to both its permanent endowment and its unrestricted property, and
  - (b) sections 268 to 272 apply—
    - (i) in relation to its unrestricted property, as if references in those sections to all or any of the property of the charity were references to all or any of its unrestricted property, and
    - (ii) in relation to its permanent endowment, in accordance with section 274.
- (3) If all of the property of the charity is comprised in its permanent endowment, sections 268 to 272 apply in relation to its permanent endowment in accordance with section 274.

### **274 Requirements relating to permanent endowment**

- (1) Sections 268 to 272 apply in relation to the permanent endowment of the charity (as mentioned in section 273(2)(b)(ii) and (3)) with the following modifications.
- (2) References in sections 268 to 272 to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.
- (3) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 268(3)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.
- (4) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 268(3)(b)) be satisfied—
- (a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and
  - (b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.

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- (5) In the case of a transfer to which subsection (4) applies, the resolution under section 268(1) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Commission for the purposes of this section.
- (6) For the purposes of sections 268 to 272, the references in sections 269(2)(b) and 271(3) to any obligation imposed on the charity trustees by or under section 268 or 269 includes a reference to any obligation imposed on them by virtue of any of subsections (3) to (5).
- (7) The requirement in section 272(3) applies in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of such guidance as may be given by the Commission for the purposes of this section.
- (8) Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.

*Powers to alter purposes or powers etc. of unincorporated charity*

## **275 Resolution to replace purposes of unincorporated charity**

- (1) This section applies to a charity if—
  - (a) its gross income in its last financial year did not exceed £10,000,
  - (b) it does not hold any designated land, and
  - (c) it is not a company or other body corporate.

“Designated land” means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.
- (2) The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.
- (3) The other purposes so specified must be charitable purposes.
- (4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) unless they are satisfied—
  - (a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and
  - (b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.
- (5) Any resolution under subsection (2) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.
- (6) Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.

## **276 Notice of, and information about, s.275 resolution**

- (1) Having received the copy of the resolution under section 275(6), the Commission—

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- (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it—
    - (i) by persons appearing to it to be interested in the charity, and
    - (ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
- (a) the circumstances in and by reference to which they have decided to act under section 275, or
  - (b) their compliance with any obligation imposed on them by or under section 275 or this section in connection with the resolution.

#### **277 General rule as to when s.275 resolution takes effect**

Subject to section 278, a resolution under section 275(2) takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Commission.

#### **278 S.275 resolution not to take effect or to take effect at a later date**

- (1) A resolution does not take effect under section 277 if before the end of—
- (a) the 60-day period, or
  - (b) that period as modified by subsection (4) or (5),
- the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.
- (2) “The 60-day period” means the period of 60 days mentioned in section 277.
- (3) “On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 275 or 276 has not been complied with in connection with the resolution.
- (4) If under section 276(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the 60-day period is suspended by virtue of this subsection—
- (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.
- (5) If under section 276(2) the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—
- (a) as from the date on which the direction is given to the charity trustees, and
  - (b) until the date on which the information or explanations is or are provided to the Commission.

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- (6) Subsection (7) applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (4) and (5) exceeds 120 days.
- (7) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.

## **279 Replacement of purposes in accordance with s.275**

As from the time when a resolution takes effect under section 277, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.

## **280 Power to modify powers or procedures of unincorporated charity**

- (1) This section applies to any charity which is not a company or other body corporate.
- (2) The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—
  - (a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
  - (b) regulating the procedure to be followed in any respect in connection with its administration,should be modified in such manner as is specified in the resolution.
- (3) Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.
- (4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body—
  - (a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or
  - (b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.
- (5) Where—
  - (a) the charity trustees have passed a resolution under subsection (2), and
  - (b) (if subsection (4) applies) a further resolution has been passed under that subsection,the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.
- (6) The trusts are to be taken to have been so modified as from—
  - (a) such date as is specified for this purpose in the resolution under subsection (2), or
  - (b) (if later) the date when any such further resolution was passed under subsection (4).

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*Powers of unincorporated charities to spend capital*

**281 Power of unincorporated charities to spend capital: general**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.
- (2) But this section does not apply to a fund if sections 282 to 284 (power to spend larger fund given for particular purpose) apply to it.
- (3) If the condition in subsection (4) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (4) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.
- (5) Once the charity trustees have passed a resolution under subsection (3), the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.
- (6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.
- (7) In this section “available endowment fund”, in relation to a charity, means—
  - (a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or
  - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

**282 Resolution to spend larger fund given for particular purpose**

- (1) This section applies to any available endowment fund of a charity which is not a company or other body corporate if—
  - (a) the capital of the fund consists entirely of property given—
    - (i) by a particular individual,
    - (ii) by a particular institution (by way of grant or otherwise), or
    - (iii) by two or more individuals or institutions in pursuit of a common purpose, and
  - (b) the charity's gross income in its last financial year exceeded £1,000 and the market value of the endowment fund exceeds £10,000.
- (2) If the condition in subsection (3) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.



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- (4) The charity trustees—
- (a) must send a copy of any resolution under subsection (2) to the Commission, together with a statement of their reasons for passing it, and
  - (b) may not implement the resolution except in accordance with sections 283 and 284.
- (5) In this section—
- “available endowment fund” has the same meaning as in section 281;
  - “market value”, in relation to an endowment fund, means—
- (a) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or
  - (b) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose.
- (6) In subsection (1), the reference to the giving of property by an individual includes the individual's giving it by will.

### **283 Notice of, and information about, s.282 resolution**

- (1) Having received the copy of the resolution under section 282(4), the Commission may—
- (a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
  - (b) if it gives such a direction, must take into account any representations made to it—
    - (i) by persons appearing to it to be interested in the charity, and
    - (ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
- (a) the circumstances in and by reference to which they have decided to act under section 282, or
  - (b) their compliance with any obligation imposed on them by or under section 282 or this section in connection with the resolution.

### **284 When and how s.282 resolution takes effect**

- (1) When considering whether to concur with the resolution under section 282(2), the Commission must take into account—
- (a) any evidence available to it as to the wishes of the donor or donors mentioned in section 282(1)(a), and
  - (b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- (2) The Commission must not concur with the resolution unless it is satisfied—
- (a) that its implementation would accord with the spirit of the gift or gifts mentioned in section 282(1)(a) (even though it would be inconsistent with the restrictions mentioned in section 282(2)), and

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- (b) that the charity trustees have complied with the obligations imposed on them by or under section 282 or 283 in connection with the resolution.
- (3) Before the end of the period of 3 months beginning with the relevant date, the Commission must notify the charity trustees in writing—
  - (a) that the Commission concurs with the resolution, or
  - (b) that it does not concur with it.
- (4) In subsection (3) “the relevant date” means—
  - (a) if the Commission directs the charity trustees under section 283(1) to give public notice of the resolution, the date when that notice is given, and
  - (b) otherwise, the date on which the Commission receives the copy of the resolution in accordance with section 282(4).
- (5) Where—
  - (a) the charity trustees are notified by the Commission that it concurs with the resolution, or
  - (b) the period of 3 months mentioned in subsection (3) has elapsed without the Commission notifying them that it does not concur with the resolution,
 the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in section 282(2).

### *Supplementary*

#### **285 Power to alter sums specified in this Part**

- (1) The Minister may by order amend any provision listed in subsection (2)—
  - (a) by substituting a different sum for the sum for the time being specified in that provision, or
  - (b) if the provision specifies more than one sum, by substituting a different sum for any sum specified in that provision.
- (2) The provisions are—
  - section 267(1) (income level for purposes of resolution to transfer property of unincorporated charity);
  - section 275(1) (income level for purposes of resolution to replace purposes of unincorporated charity);
  - section 282(1) (income level and market value of fund for purposes of resolution to spend larger fund given for particular purpose).

#### **286 Effect of provisions relating to vesting or transfer of property**

No vesting or transfer of any property in pursuance of any provision of this Part operates as a breach of a covenant or condition against alienation or gives rise to a forfeiture.

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