



# Charities Act 2011

## 2011 CHAPTER 25

### PART 6

#### CY-PRÈS POWERS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

#### *[<sup>F1</sup>Total return investment*

#### Textual Amendments

**F1** Ss. 104A, 104B inserted (6.4.2013 for specified purposes, 1.1.2014 in so far as not already in force) by Trusts (Capital and Income) Act 2013 (c. 1), ss. 4, 5(3); S.I. 2013/676, art. 3; S.I. 2013/2461, art. 2

#### **104A Investment of endowment fund on total return basis**

- (1) This section applies to any available endowment fund of a charity.
- (2) If the condition in subsection (3) is met in relation to the charity, the charity trustees may resolve that the fund, or a portion of it—
  - (a) should be invested without the need to maintain a balance between capital and income returns, and
  - (b) accordingly, should 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 it is in the interests of the charity that regulations under section 104B(1)(b) should apply in place of the restrictions mentioned in subsection (2)(b).
- (4) While a resolution under subsection (2) has effect, the regulations apply in place of the restrictions.
- (5) In this section “available endowment fund”, in relation to a charity, means—

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- (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.

### **Total return investment: social investments**

**104AA**

- (1) This section applies to a fund, or a portion of a fund, in respect of which a resolution under section 104A(2) has effect.
- (2) The charity trustees may resolve that—
  - (a) the fund or portion, and
  - (b) any returns from the investment of the fund or portion,
 may be used to make social investments (within the meaning of section 292A) which they could not otherwise make.
- (3) While a resolution under subsection (2) has effect, regulations under section 104B(1) (b) and (ba) apply to—
  - (a) the fund or portion, and
  - (b) any returns from the investment of the fund or portion.]

#### **Textual Amendments**

**F2** S. 104AA inserted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(2), 41(4); S.I. 2023/643, Sch. para. 5

### **104B Total return investment: regulations**

- (1) The Commission may by regulations make provision about—
  - (a) resolutions under section [F3 sections 104A(2) and 104AA],
  - (b) the investment of a relevant fund without the need to maintain a balance between capital and income returns, and expenditure from such a fund, F4 ...
    - [ the use of a relevant social investment fund to make social investments (within F5 (ba) the meaning of section 292A),]
  - (c) the steps that must be taken by charity trustees in respect of a fund, or portion of a fund, in the event of a resolution under section 104A(2) ceasing to have effect in respect of the fund or portion [F6, and
  - (d) any steps that must be taken by charity trustees in respect of a relevant social investment fund in the event of a resolution under section 104AA(2) ceasing to have effect.]
- (2) Regulations under subsection (1)(a) may, in particular—
  - (a) specify steps that must be taken by charity trustees before passing a resolution under section 104A(2) [F7 or 104AA(2)(2)],
  - (b) make provision about the variation and revocation of such a resolution,
  - (c) require charity trustees to notify the Commission of the passing, variation or revocation of such a resolution, and
  - (d) specify circumstances in which such a resolution is to cease to have effect.
- (3) Regulations under subsection (1)(b) may, in particular—

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- (a) make provision requiring a relevant fund to be invested, and the returns from that investment to be allocated, in such a way as to maintain (so far as practicable) the long-term capital value of the fund,
  - (b) make provision about the taking of advice by charity trustees in connection with the investment of, and expenditure from, a relevant fund,
  - (c) confer on the charity trustees of a relevant fund a power (subject to such restrictions as may be specified in the regulations) to accumulate income,
  - (d) make provision about expenditure from a relevant fund (including by imposing limits on expenditure and specifying circumstances in which expenditure requires the Commission's consent), and
  - (e) require charity trustees to report to the Commission on the investment of, and expenditure from, a relevant fund.
- (4) A power to accumulate income conferred by regulations under subsection (1)(b) or (c) is not subject to section 14(3) of the Perpetuities and Accumulations Act 2009 (which provides for certain powers to accumulate income to cease to have effect after 21 years).
- (5) Any regulations made by the Commission under this section must be published by the Commission in such manner as it thinks fit.
- (6) In this [F8]section—
- “relevant”] fund means a fund, or portion of a fund, in respect of which a resolution under section 104A(2) has effect, and includes the returns from the investment of the fund or portion.
- [F9“relevant social investment fund” means a fund, or a portion of a fund, and any returns from the investment of the fund, or portion, in respect of which a resolution under section 104AA(2) has effect.]]

#### Textual Amendments

- F3** Words in s. 104B(1)(a) substituted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(a), 41(4); S.I. 2023/643, Sch. para. 5
- F4** Word in s. 104B omitted (14.6.2023) by virtue of Charities Act 2022 (c. 6), ss. 13(3)(b), 41(4); S.I. 2023/643, Sch. para. 5
- F5** S. 104B(ba) inserted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(c), 41(4); S.I. 2023/643, Sch. para. 5
- F6** S. 104B(d) and word inserted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(d), 41(4); S.I. 2023/643, Sch. para. 5
- F7** Words in s. 104B(2)(a) inserted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(e), 41(4); S.I. 2023/643, Sch. para. 5
- F8** Words in s. 104B(6) substituted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(f), 41(4); S.I. 2023/643, Sch. para. 5
- F9** Words in s. 104B(6) inserted (14.6.2023) by Charities Act 2022 (c. 6), ss. 13(3)(g), 41(4); S.I. 2023/643, Sch. para. 5

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 106(1)-(1B) substituted for s. 106(1) by [2022 c. 6 s. 16\(a\)](#)
- s. 322(2)(ea) inserted by [2022 c. 6 Sch. 2 para. 26](#)
- s. 331A331B and cross-heading inserted by [2022 c. 6 s. 15](#)