



# Draft Charities Bill

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

May 2004

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## Foreword from the Home Secretary



When the Government published its response to the Strategy Unit's review of the legal and regulatory framework for charities and the not-for-profit sector in July 2003, I gave an undertaking that we would publish a Charities Bill in draft as soon as possible. I know that the voluntary and community sector and other stakeholders have been eagerly awaiting the emergence of the draft Bill since then and I am pleased that we are now publishing it for pre-legislative scrutiny.

The Government recognises and greatly values the role the voluntary and community sector plays as a force for good in society. One of the most important contributions Government can make to facilitating and promoting the activities of the sector is by creating a modern legislative framework for it, which will enable the sector to operate in a dynamic and innovative fashion and which will preserve and build on the very considerable trust and esteem in which the public hold the sector. We believe that the measures contained in the draft Bill meet those aims. They closely reflect and take forward our response to the Strategy Unit review. They take account of further helpful contributions which we have received from key stakeholders and, in particular, the responses to the consultation we conducted on the regulation of public collections. We are grateful for all the assistance we have had with finalising the detail of the proposals now contained in the draft Bill. This document also contains explanatory notes on the draft clauses and a regulatory impact assessment.

The Government readily acknowledges the complexity of charity law and the challenges we face in attempting to devise a legal and regulatory framework which meets the needs of what is a continually evolving area of our national life. The draft Bill doesn't represent a definitive answer for a diverse sector. We need to test and refine our proposals before legislation is introduced into Parliament. We welcome the very important role that will be played by the Joint Committee who will examine our proposals in some detail. The Members of the Committee bring to their task of scrutiny a wealth of experience of the

work of the sector, and an understanding of the barriers to its further expansion and how these might best be tackled without compromising its integrity. The Committee will, I am sure, seek views from a wide audience and will take evidence from the key players in the sector. The draft legislation will receive rigorous and constructive examination. The outcome of the Committee's deliberations will be of considerable assistance to us in refining our proposals for the finalised Bill. I look forward to receiving their report.

*David Blunkett*

## CONTENTS

NOTE ON THE JOINT COMMITTEE.....	1
1. DRAFT CHARITIES BILL.....	3
2. EXPLANATORY NOTES ON THE DRAFT CLAUSES.....	99
3 DRAFT REGULATORY IMPACT ASSESSMENT .....	131
CHAPTER 1 – Summary .....	133
CHAPTER 2 – Charitable Legal Framework: Administrative and Structural Reforms .....	141
CHAPTER 3 – Public Collections.....	157
CHAPTER 4 – Exempt Charities .....	201
CHAPTER 5 – Excepted Charities .....	225



## NOTE ON THE JOINT COMMITTEE

The two Houses of Parliament have established a Joint Committee on the Draft Charities Bill. The remit of the Committee is to consider the draft Bill, and to report on it to both Houses by the end of September 2004. The Committee will proceed in the normal manner of Select Committees, by holding hearings and receiving written evidence. The Committee will publish a report making recommendations.

The Joint Committee will invite interested organisations and individuals to submit written evidence. The Committee is working to a very tight timetable. Oral evidence has to be taken in June. If written evidence is going to influence those sessions it needs to be sent in as soon as possible - **by 21 June** if possible. Submissions received after that date will still be considered by the Committee but are bound to have less influence on the inquiry.

Submissions should take the form of a memorandum and should have numbered paragraphs. An indicative length would be 1,000 - 1,200 words, memoranda which exceed five pages should be accompanied by a one-page summary. Submissions may be accompanied by background material (perhaps already published elsewhere) which would not be reprinted by the Joint Committee. Written evidence should be sent, if possible in MS Word or rich text format, by e-mail to [scrutiny@parliament.uk](mailto:scrutiny@parliament.uk). A single hard copy (single-sided, unbound) should also be sent to Francene Graham, Scrutiny Unit, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. Fax 020 7219 838.

Details of the Joint Committee's inquiry will be available on the website [http://www.parliament.uk/parliamentary\\_committees/jcdchb.cfm](http://www.parliament.uk/parliamentary_committees/jcdchb.cfm)



# Draft Charities Bill



# Charities Bill

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## CONTENTS

### PART 1

#### MEANING OF “CHARITY” AND “CHARITABLE PURPOSE”

- 1 Meaning of “charity”
- 2 Meaning of “charitable purpose”
- 3 The “public benefit” test

### PART 2

#### REGULATION OF CHARITIES

##### CHAPTER 1

#### THE CHARITY COMMISSION

##### *Establishment of Charity Commission*

- 4 The Charity Commission

##### *Commission’s general objectives, functions etc.*

- 5 The Commission’s objectives, general functions and duties

##### CHAPTER 2

#### THE CHARITY APPEAL TRIBUNAL

- 6 The Charity Appeal Tribunal

##### CHAPTER 3

#### REGISTRATION OF CHARITIES

##### *General*

- 7 Registration of charities
- 8 Interim changes in threshold for registration of small charities

*Exempt charities: registration and regulation*

- 9 Changes in exempt charities
- 10 Increased regulation of exempt charities under 1993 Act
- 11 General duty of principal regulator in relation to exempt charity

**CHAPTER 4**

## APPLICATION OF PROPERTY CY-PRÈS

*Cy-près occasions*

- 12 Application cy-près by reference to current circumstances
- 13 Application cy-près of gifts by donors unknown or disclaiming
- 14 Application cy-près of gifts made in response to certain solicitations

*Schemes*

- 15 Cy-près schemes

**CHAPTER 5**

## ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

*Directions by Commission*

- 16 Power to give specific directions for protection of charity
- 17 Power to direct application of charity property

*Publicity relating to schemes*

- 18 Relaxation of publicity requirements relating to schemes etc.

*Common investment schemes*

- 19 Participation of Scottish and Northern Irish charities in common investment schemes etc.

*Advice and guidance*

- 20 Power to give advice and guidance

*Powers of entry*

- 21 Power to enter premises

**CHAPTER 6**

## AUDIT OR EXAMINATION OF ACCOUNTS

- 22 Annual audit or examination of accounts of unincorporated charities
- 23 Duty of auditor etc. of unincorporated charity to report matters to Commission

**CHAPTER 7**

## CHARITABLE COMPANIES

- 24 Relaxation of restriction on altering memorandum etc. of charitable company
- 25 Annual audit or examination of accounts of charitable companies

**CHAPTER 8**

## CHARITABLE INCORPORATED ORGANISATIONS

- 26 Charitable incorporated organisations

**CHAPTER 9**

## CHARITY TRUSTEES ETC.

*Remuneration of trustees etc.*

- 27 Remuneration of trustees etc. providing services to charity
- 28 Disqualification of trustee receiving remuneration by virtue of section 27

*Liability of trustees etc.*

- 29 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty

**CHAPTER 10**

## POWERS OF UNINCORPORATED CHARITIES

- 30 Power to transfer all property
- 31 Power to replace purposes
- 32 Power to modify powers or procedures

**CHAPTER 11**

## POWERS TO SPEND CAPITAL AND MERGERS

*Spending of capital*

- 33 Power to spend capital

*Mergers*

- 34 Merger of charities

**PART 3**

## FUNDING FOR CHARITABLE, BENEVOLENT OR PHILANTHROPIC INSTITUTIONS

*Fund-raising*

- 35 Statements indicating benefits for charitable institutions and fund-raisers

- 36 Reserve power to control fund-raising by charitable institutions

*Public charitable collections*

- 37 Regulation of public charitable collections  
 38 Restrictions on conducting collections  
 39 Exemptions from requirement to obtain certificates of fitness or permits in respect of collections  
 40 Certificates of fitness  
 41 Permits to conduct collections in a public place  
 42 Regulations  
 43 Offences

*Grants*

- 44 Power of Secretary of State to give financial assistance to charitable, benevolent or philanthropic institutions

**PART 4**

FINAL PROVISIONS

- 45 Consequential amendments, repeals and transitional provisions  
 46 Expenses  
 47 Interpretation  
 48 Short title, commencement and extent

- 
- Schedule 1 – The Charity Commission  
 Schedule 2 – Establishment of the Charity Commission: Supplementary  
 Schedule 3 – The Charity Appeal Tribunal  
 Schedule 4 – Appeals to Charity Appeal Tribunal  
 Schedule 5 – Exempt charities: increased regulation under 1993 Act  
 Schedule 6 – Charitable incorporated organisations  
     Part 1 – New Part 8A of and Schedule 5A to Charities Act 1993  
     Part 2 – Other amendments of Charities Act 1993  
 Schedule 7 – Minor and consequential amendments  
 Schedule 8 – Repeals

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**B I L L**

TO

Amend the law about charities; to make further provision about fund-raising carried on in connection with charities and other institutions; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

MEANING OF "CHARITY" AND "CHARITABLE PURPOSE"

**1 Meaning of "charity"**

- (1) For the purposes of the law of England and Wales, "charity" means a body or trust which— 5
- (a) is established for charitable purposes only, and
  - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.
- (2) Subsection (1) does not apply in relation to any reference to a charity in any other enactment if the term is defined by or by virtue of any such enactment. 10
- (3) A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601 (c. 4) or the preamble to it shall be construed as a reference to a charity as defined by this section.

**2 Meaning of "charitable purpose"**

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which— 15
- (a) falls within subsection (2), and
  - (b) is for the public benefit (see section 3).
- (2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes— 20

- 
- (a) the prevention or relief of poverty;
  - (b) the advancement of education;
  - (c) the advancement of religion;
  - (d) the advancement of health;
  - (e) the advancement of citizenship or community development; 5
  - (f) the advancement of the arts, heritage or science;
  - (g) the advancement of amateur sport;
  - (h) the advancement of human rights, conflict resolution or reconciliation;
  - (i) the advancement of environmental protection or improvement;
  - (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; 10
  - (k) the advancement of animal welfare;
  - (l) any other purposes within subsection (4).
- (3) In subsection (2) –
- (a) paragraph (d) includes the prevention or relief of sickness, disease or human suffering; 15
  - (b) paragraph (e) includes –
    - (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities, 20
  - (c) in paragraph (g) “sport” means sport which involves physical skill and exertion; and
  - (d) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.
- (4) The purposes within this subsection (see subsection (2)(l)) are – 25
- (a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law;
  - (b) any purposes that may reasonably be regarded as analogous to any purposes falling within any of those paragraphs or paragraph (a) above; and 30
  - (c) any purposes that may reasonably be regarded as analogous to any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.
- (5) Where any of the terms used in any of paragraphs (a) to (f) or (h) to (k) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision. 35
- (6) In this section –
- “charity law” means the law relating to charities in England and Wales; and 40
  - “existing charity law” means charity law as in force immediately before the day on which this section comes into force.
- 3 The “public benefit” test**
- (1) This section applies in connection with the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose. 45

- (2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In this Part any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales. 5
- (4) Subsection (3) applies subject to subsection (2).

## PART 2

### REGULATION OF CHARITIES

#### CHAPTER 1 10

#### THE CHARITY COMMISSION

##### *Establishment of Charity Commission*

#### 4 The Charity Commission

- (1) After section 1 of the Charities Act 1993 (c. 10) ("the 1993 Act") insert –
  - "1A The Charity Commission 15**
    - (1) There shall be a body corporate to be known as the Charity Commission for England and Wales (in this Act referred to as "the Commission").
    - (2) In Welsh the Commission shall be known as "Comisiwn Elusennau ar gyfer Lloegr a Cymru". 20
    - (3) The functions of the Commission shall be performed on behalf of the Crown.
    - (4) The provisions of Schedule 1A to this Act shall have effect with respect to the Commission."
  - (2) Schedule 1 (which inserts the new Schedule 1A into the 1993 Act) has effect. 25
  - (3) The office of Charity Commissioner for England and Wales is abolished.
  - (4) The functions of the Charity Commissioners for England and Wales and their property, rights and liabilities are by virtue of this subsection transferred to the Charity Commission for England and Wales.
  - (5) Any enactment passed or made before the coming into force of this section has effect, so far as necessary for the purposes of or in consequence of the transfer effected by subsection (4), as if any reference to the Charity Commissioners for England and Wales or to any Charity Commissioner for England and Wales were a reference to the Charity Commission for England and Wales. 30
  - (6) Section 1 of, and Schedule 1 to, the 1993 Act cease to have effect. 35
  - (7) Schedule 2 (which contains supplementary provision relating to the establishment of the Charity Commission for England and Wales) has effect.

*Commission’s general objectives, functions etc.*

**5 The Commission’s objectives, general functions and duties**

After section 1A of the 1993 Act (inserted by section 4 above) insert—

**“1B The Commission’s regulatory objectives**

- (1) The Commission has the regulatory objectives set out in subsection (2). 5
- (2) The regulatory objectives are—
  - 1. The public confidence objective.
  - 2. The compliance objective.
  - 3. The social and economic impact objective.
  - 4. The accountability objective. 10
- (3) Those objectives are defined as follows—
  - 1. The public confidence objective is to increase public trust and confidence in charities.
  - 2. The compliance objective is to increase compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. 15
  - 3. The social and economic impact objective is to enable and encourage charities to maximise their social and economic impact.
  - 4. The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public. 20

**1C The Commission’s general functions**

- (1) The Commission has the general functions set out in subsection (2).
- (2) The general functions are—
  - 1. Determining whether institutions are, or are not, charities. 25
  - 2. Encouraging and facilitating the better administration of charities.
  - 3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein. 30
  - 4. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its regulatory objectives.
  - 5. Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission’s functions or meeting any of its regulatory objectives. 35
- (3) The Commission’s fourth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under section 3 above. 40
- (4) The Commission’s fifth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions. 45

**1D The Commission’s general duties**

- (1) The Commission has the general duties set out in subsection (2).
- (2) The general duties are –
  1. So far as is reasonably practicable the Commission must, in performing its functions, act in a way –
    - (a) which is compatible with its regulatory objectives, and
    - (b) which it considers most appropriate for the purpose of meeting those objectives.
  2. In performing its functions the Commission must have regard to the need to use its resources in the most efficient and economic way.
  3. In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

**1E The Commission’s incidental powers**

- (1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions.
- (2) However, nothing in this Act authorises the Commission –
  - (a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or
  - (b) otherwise to be directly involved in the administration of a charity.
- (3) Subsection (2) does not affect the operation of section 19A or 19B below (power of Commission to give directions as to action to be taken or as to application of charity property)."

**CHAPTER 2**

THE CHARITY APPEAL TRIBUNAL

**6 The Charity Appeal Tribunal**

- (1) After section 2 of the 1993 Act insert –

**“PART 1A**

THE CHARITY APPEAL TRIBUNAL

**2A The Charity Appeal Tribunal**

- (1) There shall be a tribunal to be known as the Charity Appeal Tribunal (in this Act referred to as “the Tribunal”).
- (2) The provisions of Schedule 1B to this Act shall have effect with respect to the Tribunal.

**2B Practice and procedure**

- (1) On an appeal to the Tribunal the Commission shall be the respondent.

- 
- (2) In determining an appeal the Tribunal –
- (a) shall consider afresh the decision, direction or order appealed against, and
  - (b) may take into account evidence which was not available to the Commission. 5
- (3) The Lord Chancellor may make rules –
- (a) regulating the exercise of the right to appeal to the Tribunal,
  - (b) about the practice and procedure to be followed in relation to proceedings before the Tribunal.
- (4) Rules under subsection (3)(a) above may, in particular, make provision specifying – 10
- (a) steps which a person must take before appealing to the Tribunal (and the period within which those steps must be taken),
  - (b) the period following the Commission’s final decision, direction or order within which such appeals may be made, 15
  - (c) the manner in which such appeals are to be made.
- (5) Rules under subsection (3)(b) above may, in particular, make provision –
- (a) for the President or a legal member of the Tribunal (see paragraph 1(2)(a) of Schedule 1B to this Act) to determine interlocutory or ancillary matters, 20
  - (b) about the disclosure of documents,
  - (c) about evidence,
  - (d) about the admission of members of the public to proceedings,
  - (e) about the representation of parties to proceedings, 25
  - (f) about the withdrawal of applications,
  - (g) about the recording and promulgation of decisions,
  - (h) about the award of costs.
- (6) Rules of the Lord Chancellor under this section – 30
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Section 86(3) below applies in relation to rules of the Lord Chancellor under this section as it applies in relation to regulations and orders of the Secretary of State under this Act. 35
- 2C Appeal from Tribunal**
- (1) A party to proceedings before the Tribunal may appeal to the High Court on a point of law against a decision of the Tribunal.
- (2) An appeal under this section may be brought only with the permission of – 40
- (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the High Court.
- (3) For the purposes of subsection (1) above –
- (a) the Attorney General is to be treated as a party to all proceedings before the Tribunal, and 45

- (b) rules under section 2B(3) above may include provision as to who else is, and is not, to be treated as a party to proceedings before the Tribunal.

## **2D Intervention by Attorney General**

- (1) This section applies to any proceedings – 5
  - (a) before the Tribunal, or
  - (b) on an appeal from the Tribunal, to which the Attorney General is not a party.
- (2) The Tribunal or, in the case of an appeal from the Tribunal, the court may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General. 10
- (3) A direction under subsection (2) may be made by the Tribunal or court –
  - (a) of its own motion, or
  - (b) on the application of any party to the proceedings. 15
- (4) The Attorney General may –
  - (a) intervene in the proceedings in such manner as he thinks necessary or expedient, and
  - (b) argue before the Tribunal or court any question in relation to the proceedings which the Tribunal or court considers it necessary to have fully argued. 20
- (5) Subsection (4) applies whether or not the Tribunal or court has given a direction under subsection (2).”
- (2) Schedule 3 (which inserts the new Schedule 1B into the 1993 Act) has effect.
- (3) Schedule 4 (which contains provision about appeals to the Tribunal against decisions, directions and orders of the Charity Commission) has effect. 25

## **CHAPTER 3**

### REGISTRATION OF CHARITIES

#### *General*

- 7 Registration of charities** 30

For section 3 of the 1993 Act substitute –

**“3 Register of charities**

  - (1) There shall continue to be a register of charities, which shall be kept by the Charity Commission.
  - (2) The register shall be kept by the Commission in such manner as it thinks fit. 35
  - (3) The register shall contain –
    - (a) the name of every charity registered in accordance with section 3A below (registration), and

- 
- (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.
- (4) The Commission shall remove from the register –
- (a) any institution which it considers is no longer a charity, and
  - (b) any charity which has ceased to exist or does not operate. 5
- (5) If the removal of an institution under subsection (4)(a) above is due to any change in its trusts, the removal shall take effect from the date of that change.
- (6) Where the Commission intends to remove from the register a charity constituted as a CIO, it must give 3 months' notice of its intention – 10
- (a) in such manner, and
  - (b) to such persons or descriptions of persons, as may be prescribed by regulations made by the Secretary of State.
- (7) If a charity is for the time being registered under section 3A(6) below (voluntary registration), the charity – 15
- (a) may be removed from the register at any time, and
  - (b) shall be so removed if the charity so requests.
- (8) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times. 20
- (9) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 3B below (applications for registration) shall, so long as the charity remains on the register –
- (a) be kept by the Commission, and
  - (b) be open to public inspection at all reasonable times, 25
- except to the extent that regulations made by the Secretary of State otherwise provide.
- (10) Where any information contained in the register is not in documentary form, subsection (8) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times. 30
- (11) If the Commission so determines, subsection (8) shall not apply to any particular information contained in the register that is specified in the determination.
- 3A Registration of charities** 35
- (1) Every charity must be registered in the register of charities unless subsection (2) below applies to it.
- (2) The following are not required to be registered –
- (a) any exempt charity (see Schedule 2 to this Act);
  - (b) any charity which for the time being – 40
    - (i) is permanently or temporarily excepted by order of the Commission, and
    - (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000;
  - (c) any charity which for the time being – 45

- 
- (i) is, or is of a description, permanently or temporarily excepted by regulations made by the Secretary of State, and
- (ii) complies with any conditions of the exception, and whose gross income does not exceed £100,000; and 5
- (d) any charity (other than one constituted as a CIO) whose gross income does not exceed £5,000.
- (3) For the purposes of subsection (2)(b) above –
- (a) any order made or having effect as if made by the Commission under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day has effect as from that day as if made under subsection (2)(b) (and may be varied or revoked accordingly); and 10
- (b) no order may be made under subsection (2)(b) so as to except on or after the appointed day any charity that was not excepted immediately before that day. 15
- (4) For the purposes of subsection (2)(c) above –
- (a) any regulations made or having effect as if made by the Secretary of State under section 3(5)(b) of this Act (as originally enacted) and in force immediately before the appointed day have effect as from that day as if made under subsection (2)(c) (and may varied or revoked accordingly); 20
- (b) such regulations shall be made under subsection (2)(c) as are necessary to secure that all of the formerly specified institutions are excepted under that provision (subject to compliance with any conditions of the exception and the financial limit mentioned in that provision); but 25
- (c) otherwise no regulations may be made under subsection (2)(c) so as to except on or after appointed day any description of charities that was not excepted immediately before that day. 30
- (5) In subsection (4)(b) above “formerly specified institutions” means –
- (a) any institution falling within section 3(5B)(a) or (b) of this Act as in force immediately before the appointed day (certain educational institutions); or
- (b) any institution ceasing to be an exempt charity as a result of the amendments made by section 9 of the Charities Act 2005. 35
- (6) A charity within –
- (a) subsection (2)(b) or (c) above, or
- (b) subsection (2)(d) above,
- may, at its request, be registered in the register of charities. 40
- (7) The Secretary of State may by order amend –
- (a) subsection (2)(b) and (c) above, or
- (b) subsection (2)(d) above,
- by substituting a different sum for the sum for the time being specified there. 45
- (8) The Secretary of State may only make an order under subsection (7) above –

- 
- (a) so far as it amends subsection (2)(b) and (c), if he considers it expedient to so with a view to reducing the scope of the exception provided by those provisions;
- (b) so far as it amends subsection (2)(d), if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception provided by that provision. 5
- (9) In this section “the appointed day” means the day appointed for the coming into force of section 7 of the Charities Act 2005 (registration of charities). 10
- (10) In this section any reference to a charity’s “gross income” shall be construed, in relation to a particular time –
- (a) as a reference to the charity’s gross income in its financial year immediately preceding that time, or
- (b) if the Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity’s gross income in such financial year of the charity as is specified in the determination. 15
- (11) The following provisions of this section –
- (a) subsection (2)(b) and (c), 20
- (b) subsections (3) to (5), and
- (c) subsections (6)(a), (7)(a), (8)(a) and (9),
- shall cease to have effect on such day as the Secretary of State may by order appoint for the purposes of this subsection.
- 3B Duties of trustees in connection with registration 25**
- (1) Where a charity required to be registered by virtue of section 3A(1) above is not registered, it is the duty of the charity trustees –
- (a) to apply to the Commission for the charity to be registered, and
- (b) to supply the Commission with the required documents and information. 30
- (2) The “required documents and information” are –
- (a) copies of the charity’s trusts, or (if they are not set out in any extant document) particulars of them,
- (b) such other documents or information as may be prescribed by regulations made by the Secretary of State, and 35
- (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) Where an institution is for the time being registered, it is the duty of the charity trustees (or the last charity trustees) –
- (a) to notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register, and 40
- (b) (so far as appropriate), to supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts. 45
- (4) Nothing in subsection (3) above requires a person –

- (a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court,
  - (b) to notify the Commission of any change made with respect to a registered charity by such a scheme, or
  - (c) if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document. 5
- (5) Where a copy of a document relating to a registered charity is not required to be supplied to the Commission as the result of subsection (4) above, a copy of the document shall be open to inspection under section 3(9) above as if supplied to the Commission under this section.” 10

## 8 Interim changes in threshold for registration of small charities

- (1) At any time before the commencement of section 7 above, the Secretary of State may by order amend section 3 of the 1993 Act (the register of charities) so as to— 15
- (a) replace section 3(5)(c) (threshold for registration of small charities) with a provision referring to a charity whose gross income does not exceed such sum as is prescribed in the order, and
  - (b) define “gross income” for the purposes of that provision.
- (2) An order under subsection (1) is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (3) Subsection (1) does not affect the existing power under section 3(12) of that Act to increase the financial limit specified in section 3(5)(c).
- (4) This section ceases to have effect on the day on which section 7 above comes into force. 25

### *Exempt charities: registration and regulation*

## 9 Changes in exempt charities

- (1) Schedule 2 to the 1993 Act (exempt charities) is amended as follows.
- (2) In paragraph (a) (general exemption by reference to law existing prior to Charities Act 1960) after “1855” insert “(but see Note 1)”. 30
- (3) In paragraph (b) (certain specified universities and schools)—
- (a) for “the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle,” substitute “any college or hall in the university of Newcastle and”, and
  - (b) omit “and the colleges of Winchester and Eton”. 35
- (4) Before paragraph (i) insert—
- “(h) a higher education corporation;”.
- (5) After paragraph (i) insert—
- “(j) a further education corporation;”.

- 
- (6) In paragraph (w) (exemption for institutions administered by or on behalf of institutions exempted under preceding provisions) after “last-mentioned institution” insert “(but see Note 2)”.
- (7) Omit paragraph (x) (Church Commissioners and institutions administered by them). 5
- (8) In paragraph (y) (industrial and provident societies etc.) for the words from “and any” onwards substitute “and which is also registered in the register of social landlords under Part 1 of the Housing Act 1996;”.
- (9) Omit paragraph (zb) (the National Lottery Charities Board).
- (10) At the end insert— 10  
“Notes  
1. Paragraph (a) above does not include—  
    (a) any institution whose property consists of or includes property falling within the Methodist Church Funds Act 1960,  
    (b) the representative body of the Welsh Church or property administered by it, or 15  
    (c) any institution whose property consists of or includes property falling within the Church Funds Investment Measure 1958.  
2. Paragraph (w) above does not include any students’ union.”
- (11) In section 24 of the 1993 Act (schemes to establish common investment funds), in subsection (8) (fund is to be a charity and, if the scheme admits only exempt charities, an exempt charity) omit the words from “; and if the scheme” onwards. 20
- 10 Increased regulation of exempt charities under 1993 Act**
- The 1993 Act is amended in accordance with Schedule 5 (which has effect for increasing the extent to which exempt charities are subject to regulation under that Act). 25
- 11 General duty of principal regulator in relation to exempt charity**
- (1) This section applies to any body or Minister of the Crown who is the principal regulator in relation to an exempt charity. 30
- (2) The body or Minister must do all that it or he reasonably can to meet the compliance objective in relation to the charity.
- (3) The compliance objective is to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity. 35
- (4) In this section—  
    (a) “charity trustees” and “exempt charity” have the same meaning as in the 1993 Act; and  
    (b) “principal regulator”, in relation to an exempt charity, means such body or Minister of the Crown as is prescribed as its principal regulator 40  
        by regulations made by statutory instrument by the Secretary of State.
- (5) Regulations under subsection (4)(b) may make such amendments of any enactment as the Secretary of State considers appropriate for the purpose of

facilitating, or otherwise in connection with, the discharge by a principal regulator of the duty under subsection (2).

- (6) No regulations may be made under subsection (4)(b) unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

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## CHAPTER 4

### APPLICATION OF PROPERTY CY-PRÈS

#### *Cy-près occasions*

#### **12 Application cy-près by reference to current circumstances**

- (1) Section 13 of the 1993 Act (occasions for applying property cy-près) is amended as follows. 10
- (2) In subsection (1)(c), (d) and (e)(iii), for “the spirit of the gift” substitute “the appropriate considerations”.
- (3) After subsection (1) insert –

“(1A) In subsection (1) above “the appropriate considerations” means – 15

(a) (on the one hand) the spirit of the gift concerned, and

(b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.”

#### **13 Application cy-près of gifts by donors unknown or disclaiming**

- (1) Section 14 of the 1993 Act (application cy-près of gifts of donors unknown or disclaiming) is amended as follows. 20
- (2) In subsection (4) (power of court to direct that property is to be treated as belonging to donors who cannot be identified) after “court”, in both places, insert “or the Commission”.

#### **14 Application cy-près of gifts made in response to certain solicitations**

25

After section 14 of the 1993 Act insert –

##### **“14A Application cy-près of gifts made in response to certain solicitations**

- (1) This section applies to property given –
- (a) for specific charitable purposes, and
- (b) in response to a solicitation within subsection (2) below. 30
- (2) A solicitation is within this subsection if –
- (a) it is made for specific charitable purposes, and
- (b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift. 35

- (3) A “relevant declaration” is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, he wishes the trustees holding the property to give him the opportunity to request the return of the property in question (or a sum equal to its value). 5
- (4) Subsections (5) and (6) below apply if—
- (a) a person has given property as mentioned in subsection (1) above,
  - (b) the specific charitable purposes fail, and
  - (c) the donor has made a relevant declaration. 10
- (5) The trustees holding the property must take the prescribed steps for the purpose of—
- (a) informing the donor of the failure of the purposes,
  - (b) enquiring whether he wishes to request the return of the property (or a sum equal to its value), and 15
  - (c) if within the prescribed period he makes such a request, returning the property (or such a sum) to him.
- (6) If those trustees have taken all appropriate prescribed steps but—
- (a) they have failed to find the donor, or
  - (b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value), 20
- section 14(1) above shall apply to the property as if it belonged to a donor within paragraph (b) of that subsection (application of property where donor has disclaimed right to return of property).
- (7) If— 25
- (a) a person has given property as mentioned in subsection (1) above,
  - (b) the specific charitable purposes fail, and
  - (c) the donor has not made a relevant declaration,
- section 14(1) above shall similarly apply to the property as if it belonged to a donor within paragraph (b) of that subsection. 30
- (8) For the purposes of this section—
- (a) “solicitation” means a solicitation made in any manner and however communicated to the persons to whom it is addressed,
  - (b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and 35
  - (c) where any appeal consists of both solicitations that are accompanied by statements within subsection (2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless he proves otherwise. 40
- (9) Subsections (7) to (10) of section 14 shall apply for the purposes of this section as they apply for the purposes of section 14.”

*Schemes*

**15 Cy-près schemes**

(1) After section 14A of the 1993 Act (inserted by section 14 above) insert –

**“14B Cy-près schemes**

(1) The power of the court or the Commission to make schemes for the application of property cy-près shall be exercised in accordance with this section. 5

(2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied – 10

(a) for such charitable purposes, and

(b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,

as it considers appropriate, having regard to the matters set out in subsection (3). 15

(3) The matters are –

(a) the spirit of the original gift,

(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and 20

(c) the need for the relevant charity to be able to make a significant social and economic impact.

The “relevant charity” means the charity by or on behalf of which the property is to be applied under the scheme.

(4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes. 25

(5) In this section references to property given include the property for the time being representing the property originally given or property derived from it. 30

(6) In this section references to the transfer of property to a charity are references to its transfer –

(a) to the charity, or 35

(b) to the charity trustees, or

(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 scheme may provide.” 40

(2) The amendment made by subsection (1) applies to property given for charitable purposes whether before or on or after the day on which this section comes into force.

**CHAPTER 5**

ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

*Directions by Commission*

**16 Power to give specific directions for protection of charity**

- (1) After section 19 of the 1993 Act insert – 5
- “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 – 10
- (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 15  
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 20
- (b) may not require any action to be taken which is expressly prohibited by any Act of Parliament or 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.” 25
- (2) The amendment made by subsection (1) applies whether the inquiry under section 8 of the 1993 Act was instituted before or on or after the day on which this section comes into force. 30

**17 Power to direct application of charity property**

After section 19A of the 1993 Act (inserted by section 16 above) insert –

**“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 35
- (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. 40

- (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 5
  - (b) may not require any action to be taken which is expressly prohibited by any Act of Parliament or 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.” 10

*Publicity relating to schemes*

**18 Relaxation of publicity requirements relating to schemes etc.**

For section 20 of the 1993 Act substitute – 15

**“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 Secretary of State for an order giving it effect, 20
- 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. 25
- (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;
  - (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). 30
- (3) The time when any such notice is given or any such communication takes place is to be decided by the Commission. 35
- (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 40
  - (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. 5
- (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 – 10
- (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 – 15
- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission think sufficient and appropriate, and
- (b) is to be given in such manner as the Commission think sufficient and appropriate. 20

#### **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 – 25
- (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. 30
- (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. 35
- (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 – 40
- (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. 45

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 5
  - (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— 10
- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission think sufficient and appropriate, and
  - (b) (in the case of a public notice) is to be given in such manner as the Commission think sufficient and appropriate. 15
- (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.
- 20B Publicity relating to orders subject to appeal 20**
- (1) Where the Commission makes an order against which an appeal may be brought under section 19C above, the Commission must either—
- (a) give public notice of the order, or
  - (b) give notice of it to every person entitled to appeal against it under that section, 25
- unless the Commission are satisfied that for any reason it is unnecessary to do either of those things.
- (2) Any notice of any order which is to be given under subsection (1) above—
- (a) is to contain such particulars of the order, or such directions for obtaining information about it, as the Commission think sufficient and appropriate, and 30
  - (b) (in the case of a public notice) is to be given in such manner as the Commission think sufficient and appropriate.
- (3) Any notice to be given under subsection (1)(b) above— 35
- (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*

- 19 Participation of Scottish and Northern Irish charities in common investment schemes etc. 40**
- (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 recognised body within the meaning of Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, or 5
  - (b) a charity within the meaning of the Charities Act (Northern Ireland) 1964,
- and, in the application of subsections (1) and (4) to (6) above in relation to a scheme which contains provisions authorised by subsection (3A) above, “charity” includes an appropriate body.” 10
- (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. 15
- (5) In this section “appropriate body” means –
- (a) a recognised body within the meaning of Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, or 20
  - (b) a charity within the meaning of the Charities Act (Northern Ireland) 1964,
- 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. 25
- (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.” 30

*Advice and guidance***20 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 a person to whom subsection (2) below applies, give that person its opinion or advice in relation to any matter – 35
- (a) relating to the performance of any duties of his in relation to the charity concerned, or
  - (b) otherwise relating to the proper administration of the charity. 40
- (2) This subsection applies to –
- (a) any charity trustee,
  - (b) any trustee for a charity, or

- (c) any officer, agent or employee of a charity.
- (3) A person who acts in accordance with any opinion or advice given by the Commission under subsection (1) above (whether to him or to another person to whom subsection (2) applies) is to be taken, as regards his responsibility for so acting, to have acted –
  - (a) in accordance with his trust (if he is a trustee), or
  - (b) in accordance with the trusts of the charity (in any other case).
- (4) But subsection (3) 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 has been obtained on the matter or proceedings are pending to obtain one.
- (5) 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.
- (6) 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.”

*Powers of entry*

**21 Power to enter premises**

After section 31 of the 1993 Act insert – 25

**“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 an employee of the Commission, that there are reasonable grounds for believing that each of the conditions in subsection (2) below is satisfied. 30
- (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 35
  - (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. 40
- (3) A warrant under this section is a warrant authorising the employee of the Commission 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; 5
- (d) to take possession of any computer disc or other electronic storage device which appears to contain information falling within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information. 10
- (e) to take copies of, or extracts from, any such documents or information;
- (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; 15
- (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. 20
- (4) Entry and search under such a warrant must be at a reasonable hour.
- (5) The employee of the Commission authorised under such a warrant (“the authorised person”) must also comply with subsections (6) and (7) below.
- (6) The authorised person must, if required to do so, produce— 25
- (a) the warrant, and
- (b) documentary evidence that he is an employee of the Commission,
- for inspection by the occupier of the premises or anyone acting on his behalf. 30
- (7) 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;
- (c) the period for which he (and any such persons) remained on the premises; 35
- (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.
- (8) Any document or device of which possession is taken under this section may be retained by the Commission for such period as appears to it to be necessary for the purposes of the relevant inquiry under section 8 above. 40
- (9) 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— 45
- (a) to the person from whose possession it was taken, or

- (b) to any of the charity trustees of the charity to whom it belonged or related.
- (10) 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 – 5
  - (a) to imprisonment for a term not exceeding 3 months, or
  - (b) to a fine not exceeding level 5 on the standard scale, or both.”

## CHAPTER 6

### AUDIT OR EXAMINATION OF ACCOUNTS 10

#### 22 Annual audit or examination of accounts of unincorporated charities

- (1) Section 43 of the 1993 Act (annual audit or examination of accounts of unincorporated charities) is amended as follows.
- (2) For subsection (1) substitute – 15
  - “(1) Subsection (2) below applies to a financial year of a charity if –
    - (a) the charity’s gross income in that year exceeds £500,000; or
    - (b) the charity’s gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.
  - “The accounts threshold” means £100,000 or such other sum as is for the time being specified in section 42(3) above.” 20
- (3) In subsection (2) (accounts required to be audited) for paragraph (a) substitute –
  - “(a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the charity were a company, or”. 25
- (4) In subsection (3) (independent examinations instead of audits) –
  - (a) for the words from “and its gross income” to “subsection (4) below)” substitute “but its gross income in that year exceeds £10,000,”; and
  - (b) at the end insert – 30
    - “This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.”
- (5) After subsection (3) insert –
  - “(3A) If subsection (3) above applies to the accounts of a charity for a year and the charity’s gross income in that year exceeds £250,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is a member of – 35
    - (a) a body for the time being specified in section 249D(3) of the Companies Act 1985 (reporting accountants); or 40
    - (b) the Chartered Institute of Public Finance and Accountancy.”

- (6) For subsection (8) substitute –
- “(8) The Secretary of State may by order –
- (a) amend any of subsections (1), (3) and (3A) above by substituting a different sum for any of the sums specified there;
- (b) amend subsection (3A) by adding the name of a body to the list in that subsection or by removing or altering the name of a body for the time being included in that list.” 5
- (7) The amendments made by this section apply in relation to any financial year of a charity which begins on or after the day on which this section comes into force. 10
- 23 Duty of auditor etc. of unincorporated charity to report matters to Commission**
- (1) After section 44 of the 1993 Act insert –
- “44A Duty of auditors etc. to report matters to Commission**
- (1) This section applies to a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above. 15
- (2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter – 20
- (a) which relates to the activities or affairs of the charity or of any connected institution or body, and
- (b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of their functions under section 8 or 18 above, 25
- he must immediately make a written report on the matter to the Commission.
- (3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter – 30
- (a) which does not appear to him to be one that he is required to report under subsection (2) above, but
- (b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of their functions, 35
- he may make a report on the matter to the Commission.
- (4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity. 40
- (5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.
- (6) In this section “connected institution or body”, in relation to a charity, means – 45

- (a) an institution which is controlled by, or
  - (b) a body corporate in which a substantial interest is held by, the charity or any one or more of the charity trustees acting in his or their capacity as such.
- (7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule. 5
- (8) Nothing in this section applies to a charity which is a company.”
- (2) After section 69 of that Act insert –  
**“69A Duty of auditors etc. to report matters to Commission 10**
  - (1) Section 44A(2) to (7) above shall apply in relation to a person acting as –
    - (a) an auditor of a charitable company appointed under Chapter 5 of Part 11 of the Companies Act 1985 (auditors), or
    - (b) a reporting accountant appointed by a charitable company for the purposes of section 249C of that Act (report required instead of audit), 15as they apply in relation to a person such as is mentioned in section 44A(1).
  - (2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as reference to his acting in the capacity mentioned in subsection (1) of this section. 20
  - (3) In this section “charitable company” means a charity which is a company.”
- (3) The amendments made by this section apply in relation to matters (“pre-commencement matters”) of which a person became aware at any time falling –
  - (a) before the day on which this section comes into force, and
  - (b) during a financial year ending on or after that day, 25as well as in relation to matters of which he becomes aware on or after that day. 30
- (4) Any duty imposed by or by virtue of the new section 44A(2) or section 69A(1) must be complied with in relation to any such pre-commencement matters as soon as practicable after this section comes into force.

## CHAPTER 7

### CHARITABLE COMPANIES 35

#### 24 Relaxation of restriction on altering memorandum etc. of charitable company

- (1) Section 64 of the 1993 Act (alteration of objects clause etc.) is amended as follows.
- (2) For subsection (2) substitute –
  - “(2) Where a charity is a company, any regulated alteration by the company – 40
    - (a) requires the prior written consent of the Commission, and

- (b) is ineffective if such consent has not been obtained.
- (2A) The following are “regulated alterations” –
- (a) any alteration of the objects clause in the company’s memorandum of association,
  - (b) any alteration of any provision of its memorandum or articles of association directing the application of property of the company on its dissolution, and 5
  - (c) any alteration of any provision of its memorandum or articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them. 10
- (2B) For the purposes of subsection (2A) above –
- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 73A below) whose receipt may be authorised under that section; and 15
  - (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 73B(6) and (7) below, for determining whether a person is connected with a charity trustee for the purposes of section 73A.” 20
- (3) In subsection (3) (documents required to be delivered to registrar of companies), for “any such alteration” substitute “a regulated alteration”.

## 25 Annual audit or examination of accounts of charitable companies

- (1) In section 249A(4) of the Companies Act 1985 (c. 6) (circumstances in which charitable company’s accounts may be subject to an accountant’s report instead of an audit) – 25
- (a) in paragraph (b) (gross income between £90,000 and £250,000) for “£250,000” substitute “£500,000”; and
  - (b) in paragraph (c) (balance sheet total not more than £1.4 million) for “£1.4 million” substitute “£2.8 million”. 30
- (2) In section 249B(1C) of that Act (circumstances in which parent company or subsidiary not disqualified for exemption from auditing requirement), in paragraph (b) (group’s aggregate turnover not more than £350,000 net or £420,000 gross in case of charity), for “£350,000 net (or £420,000 gross)” substitute “£700,000 net (or £840,000 gross)”. 35
- (3) The amendments made by this section apply in relation to any financial year of a charity which begins on or after the day on which this section comes into force.

## CHAPTER 8

40

### CHARITABLE INCORPORATED ORGANISATIONS

## 26 Charitable incorporated organisations

Schedule 6, which makes provision about charitable incorporated organisations, has effect.

CHAPTER 9

CHARITY TRUSTEES ETC.

*Remuneration of trustees etc.*

**27 Remuneration of trustees etc. providing services to charity**

After section 73 of the 1993 Act insert – 5

**“73A Remuneration of trustees etc.**

- (1) This section applies to remuneration for services provided by a person to or on behalf of a charity where –
- (a) he is a charity trustee or trustee for the charity, or
  - (b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit. 10

This is subject to subsection (7) below.

- (2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity. 15

- (3) Condition A is that the amount or maximum amount of the remuneration –
- (a) is set out in an agreement in writing between –
    - (i) the charity or its charity trustees (as the case may be), and 20
    - (ii) the relevant person,under which the relevant person is to provide the services in question to or on behalf of the charity, and
  - (b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question. 25

- (4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement. 30

- (5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is –
- (a) a person in respect of whom an agreement within subsection (3) above is in force, or 35
  - (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or
  - (c) a person connected with a person falling within paragraph (a) or (b) above, 40

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

- (6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.
- (7) Nothing in this section applies to—
- (a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or 5
  - (b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8). 10
- (8) The provisions or orders within this subsection are—
- (a) any provision contained in the trusts of the charity,
  - (b) any order of the court or the Charity Commission,
  - (c) any statutory provision contained in or having effect under an Act of Parliament other than this section. 15
- (9) Section 73B below applies for the purposes of this section.
- 73B Supplementary provisions for purposes of section 73A**
- (1) This section applies for the purposes of section 73A above.
- (2) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements. 20
- (3) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).
- (4) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it. 25
- (5) In section 73A—
- “benefit” means a direct or indirect benefit of any nature;
  - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question; 30
  - “remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);
  - “services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services. 35
- (6) For the purposes of section 73A the following persons are “connected” with a charity trustee or trustee for a charity—
- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee; 40
  - (b) the spouse of the trustee or of any person falling within paragraph (a);
  - (c) an institution which is controlled—
    - (i) by a charity trustee or trustee for the charity or by any person falling within paragraph (a) or (b), or 45

- (ii) by two or more persons falling within sub-paragraph (i), when taken together.
  - (d) a body corporate in which –
    - (i) any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or 5
    - (ii) two or more such persons, when taken together, have a substantial interest.
- (7) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.” 10

## 28 Disqualification of trustee receiving remuneration by virtue of section 27

After section 73B of the 1993 Act (inserted by section 27 above) insert –

### “73C Disqualification of trustee receiving remuneration under section 73A

- (1) This section applies to any charity trustee or trustee for a charity –
  - (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or 15
  - (b) who is connected with a person who is or would be so entitled.
- (2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement. 20
- (3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.
- (4) A person who does any act which he is disqualified from doing by virtue of subsection (2) above is guilty of an offence and liable – 25
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both. 30
- (5) It is a defence for a person charged with an offence under subsection (4) above to prove that he believed on reasonable grounds that, at the time when he did the act in question, he was not such a person as is mentioned in subsection (1) above. 35
- (6) Where the Commission is satisfied –
  - (a) that a person has done any act which he was disqualified from doing by virtue of subsection (2) above, and
  - (b) that he has received from the charity any remuneration under the agreement in question, 40it may by order direct him to repay to the charity the whole or part of any such remuneration.
- (7) To the extent that the remuneration consists of a benefit in kind, the Commission may by order direct the person to pay to the charity the

whole or part of the monetary value (as determined by it) of the benefit in kind.

- (8) Any of the following may appeal to the Tribunal against an order under subsection (6) above –
- (a) the Attorney General, 5
  - (b) the person subject to the order,
  - (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order.
- (9) The Tribunal may –
- (a) dismiss the appeal, 10
  - (b) quash the order, or
  - (c) substitute for the order another order of a kind that the Commission could have made.
- (10) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal). 15
- (11) Subsections (5) to (7) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.”

*Liability of trustees etc.*

**29 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty** 20

- (1) After section 73C of the 1993 Act (inserted by section 28 above) insert –
- “73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty**
- (1) This section applies to a person who is or has been –
- (a) a charity trustee or trustee for a charity, 25
  - (b) an auditor of a charity’s accounts appointed under section 43 above or under Chapter 5 of Part 11 of the Companies Act 1985, or
  - (c) an independent examiner or reporting accountant appointed in respect of a charity’s accounts. 30
- (2) If the Commission consider –
- (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but 35
  - (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,
- the Commission may make an order relieving him wholly or partly from any such liability. 40
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.

- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) This section does not affect the operation of –
- (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees), 5
  - (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
  - (c) section 44(3) above (which applies that section to auditors of unincorporated charities etc.).”
- (2) The amendment made by subsection (1) applies to a breach of trust or breach of duty occurring before the day on which this section comes into force as well as to one occurring on or after that day. 10

## CHAPTER 10

### POWERS OF UNINCORPORATED CHARITIES

#### 30 Power to transfer all property 15

For section 74 of the 1993 Act substitute –

##### “74 Power to transfer all property 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 20
  - (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 – 25
- (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 divided, in the manner specified in the resolution, between two or more other charities specified in it. 30
- (3) Any charity so specified may be either a registered charity or a charity which is not required to be registered.
- (4) But the charity trustees of a charity (“the transferor charity”) do not have power to pass a resolution under subsection (2) above unless they are satisfied – 35
- (a) that it is expedient in the interests of furthering the purposes for which the property is held by transferor charity for the property to be transferred in accordance with the resolution, and
  - (b) that the purposes of any charity to which property is to be transferred under the resolution are wide enough to encompass 40 the purposes of the transferor charity.

- 
- (5) Any resolution under subsection (2) above 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. 5
- (7) Having received the copy of the resolution, 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 by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 10
- (8) 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 this section, or
- (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution. 15 20
- (9) Subject to the provisions of section 74A below, a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it was sent to the Commission.
- (10) Where such a resolution has taken effect, 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 (11) below, 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; 25 30
- 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. 35
- (11) 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 purposes which are similar in character to those of the transferor charity. 40
- 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.
- (12) 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 – 45

- (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.
- (13) The Secretary of State may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there. 5
- (14) In this section references to the transfer of property to a charity are references to its transfer –
  - (a) to the charity, or 10
  - (b) to the charity trustees, or
  - (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. 15

#### **74A Resolution not to take effect or to take effect at later date**

- (1) This section deals with circumstances in which a resolution under section 74(2) above either –
  - (a) does not take effect under section 74(9) above, or
  - (b) takes effect at a time later than that mentioned in section 74(9). 20
- (2) A resolution does not take effect under section 74(9) above if before the end of –
  - (a) the period of 60 days mentioned in section 74(9) (“the 60-day period”), or
  - (b) that period as modified by subsection (3) or (4) below, 25the 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.  
“On procedural grounds” means on the grounds that any obligation imposed on the charity trustees by or under section 74 above has not been complied with in connection with the resolution. 30
- (3) If under section 74(7) above the Commission direct charity trustees to give public notice of a resolution, the 60-day period –
  - (a) stops running as from the date on which the direction is given to the charity trustees, and 35
  - (b) does not start running again 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 (or until any later date applying under subsection (4) below).
- (4) If under section 74(8) above the Commission direct charity trustees to provide any information or explanations, the 60-day period –
  - (a) stops running as from the date on which the direction is given to the charity trustees, and
  - (b) does not start running again until the date on which the information or explanations is or are provided to the Commission (or until any later date applying under subsection (3) above). 40 45

- (5) Subsection (6) below 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 (3) and (4) above exceeds 120 days.
- (6) At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.” 5

### 31 Power to replace purposes

After section 74A of the 1993 Act (inserted by section 30 above) insert—

#### “74B Power 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, 10
  - (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. 15
- (3) Any replacement purposes so specified must be purposes that are charitable in law. 20
- (4) But the charity trustees of a charity do not have power to pass a resolution under subsection (2) above 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. 25
- (5) Any resolution under subsection (2) above must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution. 30
- (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.
- (7) Having received the copy of the resolution, 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 35
  - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 40
- (8) 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 this section, or 45

- (b) their compliance with any condition or requirement imposed by or under this section in connection with the resolution.
- (9) Subject to the provisions of section 74A above (as they apply in accordance with subsection (10) below), a resolution under subsection (2) above takes effect at the end of the period of 60 days beginning with the date on which the copy of it received by the Commission. 5
- (10) Section 74A above applies to a resolution under subsection (2) of this section as it applies to a resolution under subsection (2) of section 74, except that any reference to section 74(7), (8) or (9) is to be read as a reference to subsection (7), (8) or (9) above. 10
- (11) As from the time when a resolution takes effect under subsection (9) above, the trusts of the charity concerned are to be taken to have been modified in accordance with the terms of the resolution.
- (12) The Secretary of State may by order amend subsection (1) above by substituting a different sum for the sum for the time being specified there.” 15

### 32 Power to modify powers or procedures

After section 74B of the 1993 Act (inserted by section 31 above) insert –

#### “74C 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. 20
- (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 25
  - (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. 30
- (4) Any resolution of the charity trustees under subsection (2) must be approved by a further resolution passed at a general meeting of the body 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.
- (5) Where – 35
  - (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. 40
- (6) The trusts are to be taken to have been so modified as from such date as is specified for this purpose in the resolution.”

## CHAPTER 11

### POWERS TO SPEND CAPITAL AND MERGERS

#### *Spending of capital*

### 33 Power to spend capital

For section 75 of the 1993 Act substitute – 5

#### **“75 Power of smaller charities to spend capital**

- (1) This section applies where –
  - (a) a charity (“the relevant charity”) has an endowment fund which does not consist of or include designated land,
  - (b) either – 10
    - (i) the relevant charity is not a company or other body corporate, or
    - (ii) a charity to which subsection (2) below applies administers the fund as trustee for the relevant charity, and 15
  - (c) the financial condition in subsection (3) below is met.

“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) This subsection applies to a charity if – 20
  - (a) it is a company,
  - (b) it is constituted as a CIO, or
  - (c) it is a registered society within the meaning of the Industrial and Provident Societies Act 1965.
- (3) The financial condition in this subsection is met if – 25
  - (a) the relevant charity’s gross income in its last financial year did not exceed £1,000, or
  - (b) its gross income in that year exceeded that amount but the market value of the endowment fund does not exceed £10,000.
- (4) Where the condition in subsection (5) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 30
- (5) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 35
- (6) Once the charity trustees have passed a resolution under subsection (4) above, the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in that subsection. 40
- (7) The fund may be so expended as from such date as is specified for this purpose in the resolution.

- (8) The Secretary of State may by order amend subsection (3) above by substituting a different sum for any sum specified there.
- (9) In this section –
- “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 5
    - (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; 10
  - “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 10
    - (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. 15

### 75A Power of larger charities to spend capital

- (1) This section applies where –
- (a) a charity (“the relevant charity”) has an endowment fund which does not consist of or include designated land, 20
  - (b) either –
    - (i) the relevant charity is not a company or other body corporate, or
    - (ii) a charity to which section 75(2) above applies administers the fund as trustee for the relevant charity, and 25
  - (c) the financial condition in section 75(3) above is not met.
- “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) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 30
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 35
- (4) Subsections (5) to (10) below apply where the capital of the endowment fund consists entirely of property given –
- (a) by or under the will of a particular individual, or
  - (b) by a particular institution (by way of grant or otherwise). 40
- (5) In such a case the charity trustees –
- (a) must send a copy of the resolution to the Commission, together with a statement of their reasons for passing it, and
  - (b) may not implement the resolution without the concurrence of the Commission. 45
- (6) Having received the copy of the resolution 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 by persons appearing to it to be interested in the charity, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees. 5
- (7) 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 this section, or 10
- (b) their compliance with any obligation imposed on them by or under this section in connection with the resolution.
- (8) When considering whether to concur with the resolution the Commission must take into account— 15
- (a) any evidence available to them as to the wishes of the donor of the gift mentioned in subsection (4) above, and
- (b) any changes in the circumstances relating to the charity since the gift was made (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates). 20
- (9) The Commission must not concur with the resolution unless it is satisfied—
- (a) that its implementation would accord with the spirit of the gift mentioned in subsection (4) above (even though it would be inconsistent with the restrictions mentioned in subsection (2) above), and 25
- (b) that the charity trustees have complied with the obligations imposed on them by or under this section in connection with the resolution. 30
- (10) Before the end of the period of three months beginning with the date on which the Commission receives the copy of the resolution, the Commission must notify the charity trustees in writing either—
- (a) that the Commission concurs with the resolution, or
- (b) that it does not concur with it. 35
- (11) Once the charity trustees—
- (a) have passed a resolution under subsection (2) above, and
- (b) (in a case where subsections (5) to (10) above apply) have been notified by the Commission that it concurs with the resolution, the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in subsection (2). 40
- (12) The fund may be so expended as from such date as is specified for this purpose in the resolution.
- (13) In this section “endowment fund” has the same meaning as in section 75 above. 45

**75B Power to spend capital subject to special trusts**

- (1) This section applies where—
- (a) a charity (“the relevant charity”) is a special trust which, as the result of a direction under section 96(5) below, is to be treated as a separate charity for the purposes of this section, and 5
  - (b) it has an endowment fund which does not consist of or include designated land.
- “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) Where the condition in subsection (3) below is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it. 10
- (3) The condition in this subsection is that the charity trustees are satisfied that the purposes of the charity could be carried out more effectively if the capital of the fund could be expended as well as income accruing to it, rather than just such income. 15
- (4) Where the market value of the fund exceeds £10,000 and the capital of the fund consists entirely of property given—
- (a) by or under the will of a particular individual, or 20
  - (b) by a particular institution (by way of grant or otherwise).
- subsections (5) to (10) of section 75A above apply in relation to the resolution and that gift as they apply in relation to a resolution under section 75A(2) and the gift mentioned in section 75A(4).
- (5) Once the charity trustees— 25
- (a) have passed a resolution under subsection (2) above, and
  - (b) (in a case where section 75A(5) to (10) above apply in accordance with subsection (4) above) have been notified by the Commission that it concurs with the resolution,
- the fund may, by virtue of this section, be expended in carrying out the purposes of the charity without regard to the restrictions mentioned in subsection (2). 30
- (6) The fund may be so expended as from such date as is specified for this purpose in the resolution.
- (7) The Secretary of State may by order amend subsection (4) by substituting a different sum for the sum specified there. 35
- (8) In this section “endowment fund” and “market value” have the same meaning as in section 75 above.”

*Mergers*

**34 Merger of charities**

After section 75B of the 1993 Act (inserted by section 33 above) insert –

**“75C Register of charity mergers**

- (1) The Commission shall establish and maintain a register of charity mergers. 5
- (2) The register shall be kept by the Commission in such manner as it thinks fit.
- (3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with such procedures as it may determine. 10
- (4) In this section “relevant charity merger” means –
  - (a) a merger of two or more charities whereby one of them (“the transferee”) has transferred to it all the property of the other or others, each of which (a “transferor”) ceases to exist on or after the transfer of its property to the transferee, or 15
  - (b) a merger of two or more charities (“transferors”) whereby both or all of them cease to exist on or after the transfer of all of their property to a new charity (“the transferee”).
- (5) A notification under subsection (3) above may be given at any time after – 20
  - (a) the transfer of property involved in the merger has taken place, or
  - (b) (if more than one transfer of property is so involved) the last of those transfers has taken place. 25
- (6) Each of the entries in the register shall –
  - (a) specify when any transferor ceased to exist, and
  - (b) contain such other particulars of the merger as the Commission thinks fit.
- (7) The register shall be open to public inspection at all reasonable times. 30
- (8) Where any information contained in the register is not in documentary form, subsection (7) above shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.
- (9) This section applies to relevant charity mergers taking place before the day on which section 34 of the Charities Act 2005 comes into force as well as to ones taking place on or after that day. 35

**75D Effect of registering charity mergers**

- (1) This section applies where a relevant charity merger is registered in the register of charity mergers. 40
- (2) Any gift which –
  - (a) is expressed as a gift to the transferor, and
  - (b) takes effect on or after the registered termination date,

takes effect as a gift to the transferee.

- (3) Where the merger took place before the day mentioned in section 75C(9) above, subsection (2) above –
- (a) does not apply to any gift that took effect before that day, but
  - (b) otherwise applies to gifts made before or after the merger is registered. 5
- (4) Subsection (5) below applies to a declaration which –
- (a) is made by deed for the purposes of this section by the charity trustees of the transferor,
  - (b) is made in contemplation of the merger, and 10
  - (c) is to the effect that all of the transferor’s property is to vest in the transferee.
- (5) The declaration operates on the registered termination date to vest all of the transferor’s property in the transferee, without the need for any further document transferring it. 15
- (6) In this section –
- “registered termination date”, in relation to a transferor, means the date recorded under section 75C(6) above as the date when the transferor ceased to exist,
  - “relevant charity merger” has the same meaning as in section 75C. 20
- (7) In this section any reference to the transferor, in relation to a registered charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 75C above.
- (8) In this section any reference to the transferee, in relation to a registered charity merger, is a reference to – 25
- (a) the transferee (within the meaning of section 75C above), if it is a company or other body corporate, and
  - (b) otherwise, to the charity trustees of the transferee (within the meaning of that section).”

**PART 3** 30

FUNDING FOR CHARITABLE, BENEVOLENT OR PHILANTHROPIC INSTITUTIONS

*Fund-raising*

**35 Statements indicating benefits for charitable institutions and fund-raisers**

- (1) In the Charities Act 1992 (c. 41) (“the 1992 Act”) section 60 (fund-raisers required to indicate institutions benefiting and arrangements for remuneration) is amended as follows. 35
- (2) In subsection (1) (statements by professional fund-raisers raising money for particular charitable institutions), for paragraph (c) substitute –
- “(c) the method by which the fund-raiser’s remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.” 40
- (3) In subsection (2) (statements by professional fund-raisers raising money for

- charitable purposes etc.), for paragraph (c) substitute –
- “(c) the method by which his remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.”
- (4) In subsection (3) (statements by commercial participators raising money for particular charitable institutions), for paragraph (c) substitute – 5
- “(c) the notifiable amount of whichever of the following sums is applicable in the circumstances –
- (i) the sum representing so much of the consideration given for goods or services sold or supplied by him as is to be given to or applied for the benefit of the institution or institutions concerned, 10
- (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by him as is to be so given or applied, or 15
- (iii) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so given or supplied.”
- (5) After subsection (3) insert –
- “(3A) In subsections (1) to (3) a reference to the “notifiable amount” of any remuneration or other sum is a reference – 20
- (a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; and
- (b) otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.” 25
- (6) The amendments made by this section apply in relation to any solicitation or representation to which section 60(1), (2) or (3) applies and which is made on or after the day on which this section comes into force.
- 36 Reserve power to control fund-raising by charitable institutions 30**
- (1) After section 64 of the 1992 Act insert –
- “64A Reserve power to control fund-raising by charitable institutions**
- (1) The Secretary of State may make such regulations as appear to him to be necessary or desirable for or in connection with regulating charity fund-raising. 35
- (2) In this section “charity fund-raising” means activities which are carried on by –
- (a) charitable institutions,
- (b) persons managing charitable institutions, or
- (c) persons or companies connected with such institutions, 40
- and involve soliciting or otherwise procuring funds for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes.
- But “activities” does not include primary purpose trading.

- (3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where –
- (a) those institutions,
  - (b) the persons managing them, or
  - (c) persons or companies connected with such institutions,
- are engaged in charity fund-raising. 5
- (4) A “good practice requirement” is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that –
- (a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;
  - (b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;
  - (c) it does not result in undue pressure being placed on persons to donate funds;
  - (d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).
- 10 15
- (5) The matters are –
- (a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution;
  - (b) any use to which funds donated in response to the fund-raising are to be put by such an institution or company;
  - (c) the activities, achievements or finances of such an institution or company.
- 20 25
- (6) Regulations under this section may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. 30
- (7) For the purposes of this section –
- (a) “funds” means money or other property;
  - (b) “general charitable, benevolent or philanthropic purposes” means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions;
  - (c) the persons “managing” a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution; and
  - (d) a person is “connected” with a charitable institution if he is an employee or agent of –
- (i) the institution,
  - (ii) the persons managing it, or
  - (iii) a company connected with it,
- or he is a volunteer acting on behalf of the institution or such a company. 35 40 45
- (8) In this section “primary purpose trading”, in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where –

- (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the institution; or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the institution.”
- (2) In section 77(4) of the 1992 Act (consultation requirements), after “64” insert “, 64A”.

*Public charitable collections*

**37 Regulation of public charitable collections**

For section 65 of the 1992 Act substitute –

- “65 Regulation of public charitable collections** 10
- (1) This Part regulates public charitable collections, which are of the following two types –
- (a) collections in a public place; and
  - (b) door to door collections.
- (2) In this Part – 15
- (a) “public charitable collection” means (subject to section 65A) a charitable appeal which is made –
    - (i) in any public place, or
    - (ii) by means of visits to houses or business premises (or both); 20
  - (b) “charitable appeal” means an appeal to members of the public to give money or other property (whether for consideration or otherwise) which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes; 25
  - (c) a “collection in a public place” is a public charitable collection that is made in a public place, as mentioned in paragraph (a)(i);
  - (d) a “door to door collection” is a public charitable collection that is made by means of visits to houses or business premises (or both), as mentioned in paragraph (a)(ii). 30
- (3) An appeal to members of the public (other than one falling within section 65A(1)) is a public charitable collection for the purposes of this Part if –
- (a) it consists in or includes the making of an offer to sell goods or to supply services, or the exposing of goods for sale, to members of the public, and 35
  - (b) it is made as mentioned in sub-paragraph (i) or (ii) of subsection (2)(a) and in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes. 40
- (4) Subsection (3) shall not be taken to prejudice the generality of subsection (2)(b).
- (5) In this section –
- “business premises” means any premises used for business or other commercial purposes; 45

- “house” includes any part of a building constituting a separate dwelling;
- “public place” means –
- (a) any highway, and
  - (b) (subject to subsection (6)) any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either –
    - (i) is not within a building, or
    - (ii) if within a building, is a public area within any station, airport or shopping precinct or any other similar public area.
- (6) In subsection (5), paragraph (b) of the definition of “public place” does not apply to –
- (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or
  - (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question.
- 65A Charitable appeals that are not public charitable collections**
- (1) A charitable appeal is not a public charitable collection if the appeal –
- (a) is made in the course of a public meeting; or
  - (b) is made –
    - (i) on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or
    - (ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise); or
  - (c) is made on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land and the occupier is the promoter of the collection; or
  - (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.
- (2) For the purposes of subsection (1)(c) “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.
- (3) For the purposes of subsection (1)(d) a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.
- 65B Other definitions for purposes of Part 3**
- (1) In this Part –
- “charitable purposes”, in the context of a reference to charitable, benevolent or philanthropic purposes, has the meaning given by section 2 of the Charities Act 2005;
  - “collector”, in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made

- by him alone or with others and whether made by him for remuneration or otherwise);
- “local authority” means the council of a district, of a London borough or of a Welsh county or county borough, the Common Council of the City of London or the Council of the Isles of Scilly; 5
- “prescribed” means prescribed by regulations under section 73;
- “proceeds”, in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to the charitable appeal in question; 10
- “promoter”, in relation to a public charitable collection, means –
- (a) a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or 15
- (b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection,
- and associated expressions shall be construed accordingly.
- (2) The functions exercisable under this Part by a local authority shall be exercisable – 20
- (a) as respects the Inner Temple, by its Sub-Treasurer, and
- (b) as respects the Middle Temple, by its Under Treasurer;
- and references in this Part to a local authority or to the area of a local authority shall be construed accordingly.” 25

### 38 Restrictions on conducting collections

For section 66 of the 1992 Act (and the cross-heading before that section) substitute –

*“Restrictions on conducting collections*

- 66 Restrictions on conducting collections in a public place** 30
- (1) A collection in a public place must not be conducted in the area of a local authority unless –
- (a) the promoters of the collection hold a certificate of fitness in force under section 66E in respect of the collection in that area, and 35
- (b) the collection is conducted in accordance with a permit issued by the authority under section 68.
- (2) Subsection (1) does not apply to a public charitable collection which is an exempt collection in relation to the area of the authority by virtue of section 66B (local, short-term collections). 40
- (3) Where –
- (a) a collection in a public place is conducted in contravention of subsection (1), and
- (b) the circumstances of the case do not fall within section 66B(4),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**66A Restrictions on conducting door to door collections**

- (1) A door to door collection must not be conducted in the area of a local authority unless the promoters of the collection – 5
- (a) hold a certificate of fitness in force under section 66E in respect of the collection in that area, and
  - (b) have notified the authority of the matters mentioned in subsection (3), and provided the authority with a copy of the certificate mentioned in paragraph (a), not later than one month before the day on which the collection commences (but not more than six months before that day). 10
- (2) Subsection (1) does not apply to a door to door collection which is an exempt collection in relation to the area of the authority by virtue of – 15
- (a) section 66B (local, short-term collections), or
  - (b) section 66C (door to door collections of goods).
- (3) The matters referred to in subsection (1)(b) are –
- (a) the purpose for which the proceeds of the appeal are to be applied; 20
  - (b) the date or dates on which the collection is to be conducted;
  - (c) the locality within which the collection is to be conducted; and
  - (d) such other matters as may be prescribed.
- (4) Where –
- (a) a door to door collection is conducted in contravention of subsection (1), and 25
  - (b) the circumstances of the case do not fall within section 66B(4) or 66C(3),
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.” 30

**39 Exemptions from requirement to obtain certificates of fitness or permits in respect of collections**

After section 66A of the 1992 Act (inserted by section 38 above) insert –

*“Exemptions from requirement to obtain certificate of fitness or permit 35*

**66B Exemption for local, short-term collections**

- (1) A public charitable collection is an exempt collection in relation to the area of a local authority if –
- (a) the appeal is for a purpose that is local in character;
  - (b) the appeal is conducted within the prescribed period of time; 40
  - (c) the promoters have notified the local authority of the matters mentioned in subsection (2) not later than one month before the day on which the collection commences (but not more than six months before that day); and

- (d) the local authority have not notified the promoters under subsection (3) at least 14 days before the day on which the collection is to commence that the collection is not an exempt collection under this section.
- (2) The matters referred to in subsection (1)(c) are – 5
- (a) the purpose for which the proceeds of the appeal are to be applied;
  - (b) the date or dates on which the collection is to be conducted;
  - (c) the place at which, or the locality within which, the collection is to be conducted; and 10
  - (d) such other matters as may be prescribed.
- (3) The local authority may notify the promoters that the collection is not an exempt collection under this section if –
- (a) the local authority are not satisfied that the appeal is for a purpose that is local in character; or 15
  - (b) they are not satisfied that the appeal is to take place within the prescribed period of time.
- (4) Where –
- (a) a collection in a public place is conducted otherwise than in accordance with section 66(1) or a door to door collection is conducted otherwise than in accordance with section 66A(1), and 20
  - (b) paragraphs (a) and (b) of subsection (1) above apply in respect of the collection, but the promoters do not notify the local authority as mentioned in paragraph (c) of that subsection, 25
- every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 66C Exemption for door to door collections of goods**
- (1) A door to door collection is an exempt collection in relation to the area of a local authority if – 30
- (a) the appeal is for goods only, and
  - (b) the promoters of the collection have notified the local authority of the matters mentioned in subsection (2) not later than 14 days before the day on which the collection commences (but not more than six months before that day). 35
- (2) The matters referred to in subsection (1)(b) are –
- (a) the purpose for which the proceeds of the appeal are to be applied;
  - (b) the date or dates on which the collection is to be conducted; 40
  - (c) the locality within which the collection is to be conducted; and
  - (d) such other matters as may be prescribed.
- (3) Where –
- (a) a door to door collection is conducted otherwise than in accordance with section 66A(1), and 45
  - (b) paragraph (a) of subsection (1) above applies in respect of the collection, but the promoters do not notify the local authority as mentioned in paragraph (b) of that subsection,

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (4) In this section “goods” includes all personal chattels other than things in action and money.” 5

#### 40 Certificates of fitness

- (1) After section 66C of the 1992 Act (inserted by section 39 above) insert –

*“Certificates of fitness*

##### 66D Applications for certificates

- (1) A person or persons proposing to promote public charitable collections (other than exempt collections) in the area of one or more local authorities may apply for a certificate of fitness in respect of the collections in that area or those areas. 10
- (2) The application is to be made – 15
- (a) in the case of an application in respect of collections in the area of one local authority only, to that local authority, and
  - (b) in any other case, to an appropriate local authority (see subsections (4) and (5)).
- (3) The application must – 20
- (a) be made not less than one month before the first of the collections commence;
  - (b) specify the areas in respect of which the certificate is sought;
  - (c) specify the period for which the certificate is sought (which must be no more than 5 years); and
  - (d) contain such other information as may be prescribed. 25
- (4) A local authority is an appropriate local authority for the purposes of making an application under this section if subsection (5) is satisfied in relation to – 30
- (a) the authority, and
  - (b) the person making the application or, where there is more than one such person, at least one of those persons.
- (5) This subsection is satisfied in relation to a local authority and such a person if – 35
- (a) the person is an individual and the authority is the local authority for the area in which the individual has his usual residence, or
  - (b) the person is a charity and the authority is the local authority for the area in which the charity has its registered address, or
  - (c) the person is a body (other than a charity) and the authority is the local authority for the area in which the body has its principal place of business or where it principally conducts its activities. 40
- (6) In this section –

“charity” means a charity within the meaning of the Charities Act 1993;

“exempt collection” means a public charitable collection which is an exempt collection by virtue of section 66B or section 66C;

“registered address”, in relation to a charity, means the address in respect of the charity contained in the register of charities under section 3 of the Charities Act 1993. 5

#### **66E Determination of applications and issue of certificates**

- (1) On receiving an application for a certificate under section 66D in respect of any proposed public charitable collections, the local authority – 10
- (a) must consult the chief officer of police for the police area which comprises or includes the area of the local authority, and
  - (b) may make such other inquiries as they think fit.
- (2) After making inquiries under subsection (1), the local authority must determine the application by either – 15
- (a) issuing a certificate in respect of the collections, or
  - (b) refusing the application on any of the grounds specified in section 66F(1).
- (3) A certificate issued under this section – 20
- (a) must specify such matters as may be prescribed, and
  - (b) shall, subject to section 66G, be in force for –
    - (i) the period specified in the application in accordance with section 66D(2)(c), or
    - (ii) such lesser period as the local authority think fit. 25
- (4) Where a local authority refuse to issue a certificate, they must serve on the applicant written notice of their decision to do so and of the reasons for their decision.
- (5) Such a notice must also state the right of appeal conferred by section 66H(1) and the time within which such an appeal must be brought. 30

#### **66F Grounds for refusing to issue a certificate**

- (1) The grounds on which an application for a certificate of fitness may be refused are –
- (a) that the applicant has been convicted of a relevant offence;
  - (b) where the applicant is a person other than a charitable, benevolent or philanthropic institution for whose benefit the collections are proposed to be conducted, that the local authority are not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections; or 35 40
  - (c) that it appears to the local authority that the applicant, in promoting any other collection authorised under this Part or under section 119 of the 1982 Act, failed to exercise the required due diligence.
- (2) For the purposes of subsection (1) – 45
- (a) a relevant offence is –
    - (i) an offence under section 5 of the 1916 Act;

- (ii) an offence under the 1939 Act;
  - (iii) an offence under section 119 of the 1982 Act or regulations made under it;
  - (iv) an offence under this Part or regulations made under section 73 below; 5
  - (v) an offence involving dishonesty;
  - (vi) an offence of a kind the commission of which would, in the opinion of the local authority, be likely to be facilitated by the issuing to the applicant of a certificate under this section; and 10
- (b) the required due diligence is due diligence—
- (i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were fit and proper persons;
  - (ii) to secure that such persons complied with the provisions of regulations under section 73 below or (as the case may be) section 119 of the 1982 Act; or 15
  - (iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised. 20
- (3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) shall be construed as a reference to any of the applicants.
- (4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 73 below or (as the case may be) under section 119 of the 1982 Act. 25
- (5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised— 30
- (a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or
  - (b) under the 1939 Act (collection of money or other property by means of visits from house to house), 35
- as it applies to his conduct in relation to a collection authorised under this Part, but subject to the modifications set out in subsection (6).
- (6) The modifications are—
- (a) in the case of a collection authorised under regulations made under the 1916 Act— 40
    - (i) the reference in subsection (2)(b)(ii) to regulations under section 73 below shall be construed as a reference to the regulations under which the collection in question was authorised, and
    - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority shall be construed as a reference to any written authority provided to a collector pursuant to those regulations; and 45
  - (b) in the case of a collection authorised under the 1939 Act—

- (i) the reference in subsection (2)(b)(ii) to regulations under section 73 below shall be construed as a reference to regulations under section 4 of that Act, and
- (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority shall be construed as a reference to badges or certificates of authority in a form prescribed by such regulations. 5
- (7) In subsections (1)(c) and (5) a reference to a collection authorised under this Part is a reference to a public charitable collection that – 10
- (a) is conducted in accordance with section 66 or section 66A (as the case may be), or
- (b) is an exempt collection by virtue of section 66B or section 66C.
- (8) In this section – 15
- “the 1916 Act” means the Police, Factories, &c (Miscellaneous Provisions) Act 1916;
- “the 1939 Act” means the House to House Collections Act 1939; and
- “the 1982 Act” means the Civic Government (Scotland) Act 1982.
- 66G Withdrawal etc of certificates**
- (1) A local authority may withdraw a certificate issued by them under section 66E where subsection (2) or (3) applies. 20
- (2) This subsection applies where – 25
- (a) the local authority have reason to believe there has been a change in the circumstances which prevailed at the time when they issued the certificate, and
- (b) they are of the opinion that, if the application for the certificate had been made in the new circumstances, they would not have issued the certificate.
- (3) This subsection applies where the local authority have reason to believe that information furnished to them by the promoter (or, where there is more than one promoter, by any of them) for the purposes of the application for the certificate was false in a material particular. 30
- (4) Where a local authority withdraw a certificate, they must serve on the promoter written notice of their decision to do so and of the reasons for their decision. 35
- (5) Such a notice must also state the right of appeal conferred by section 66H(2) and the time within which such an appeal must be brought.
- (6) Where a local authority so withdraw a certificate, the certificate shall nevertheless continue to have effect as if it had not been withdrawn – 40
- (a) until the time for bringing an appeal under section 66H(2) has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

## 66H Appeals

- (1) An applicant for a certificate under section 66D may appeal to a magistrates' court against a decision of the local authority to refuse to issue the certificate.
- (2) A person to whom a certificate has been issued under section 66E may appeal to a magistrates' court against a decision of the local authority under section 66G to withdraw the certificate. 5
- (3) An appeal under subsection (1) or (2) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 shall apply to the proceedings. 10
- (4) Any such appeal shall be brought within 14 days of the date of service on the person in question of the relevant notice under section 66E(4) or (as the case may be) section 66G(4); and for the purposes of this subsection an appeal shall be taken to be brought when the complaint is made. 15
- (5) An appeal against the decision of a magistrates' court on an appeal under subsection (1) or (2) may be made to the Crown Court.
- (6) On an appeal to a magistrates' court or the Crown Court under this section, the court may confirm, vary or reverse the local authority's decision and generally give such directions as it thinks fit, having regard to the provisions of this Part and of regulations under section 73. 20
- (7) It shall be the duty of the local authority to comply with any directions given by the court under subsection (6); but the authority need not comply with any directions given by a magistrates' court—
  - (a) until the time for bringing an appeal under subsection (5) has expired, or
  - (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.” 25
- (2) Section 72 of the 1992 Act (orders made by Charity Commissioners) ceases to have effect. 30

## 41 Permits to conduct collections in a public place

- (1) Sections 67 to 69 and 71 of the 1992 Act (permits to conduct public charitable collections) are amended as follows.
- (2) In section 67(1) (applications for permits) for “public charitable collection” substitute “collection in a public place (other than a collection that is an exempt collection under section 66B)”. 35
- (3) For subsections (2) and (3) of section 67 substitute—
  - “(2) Any such application—
    - (a) shall specify the date or dates in respect of which it is desired that the permit, if issued, should have effect (which, in the case of two or more dates, shall not span a period of more than 12 months); 40
    - (b) shall be accompanied by a copy of the certificate of fitness in force under section 66E in respect of the proposed collection in the area of the local authority; and 45

- (c) shall contain such information as may be prescribed.
- (3) An application under this section shall be made at least 14 days before the day (or the first of the days) on which the collection is to take place (but not more than six months before that day, or the first of those days), except as provided in subsection (3A). 5
- (3A) Where—
- (a) an application has been made in accordance with section 66D for a certificate of fitness in respect of the collection in the area of the authority, but
- (b) no determination on the application has been made under section 66E by the beginning of the period of 14 days mentioned in subsection (3) above, 10
- the application for a permit under this section shall be made as soon as practicable before the day (or the first of the days) on which the collection is to take place.” 15
- (4) In section 67, omit subsection (4).
- (5) In section 68(1) (determination of applications and issue of permits)—
- (a) for “public charitable collection” substitute “collection in a public place”, and
- (b) for “for the period” substitute “in respect of the date or dates”. 20
- (6) In section 69(1) (refusal of permits)—
- (a) for “a public charitable collection” substitute “a collection in a public place”;
- (b) in paragraph (b) for “public charitable collection is already authorised (whether under section 68 or otherwise)” substitute “collection in a public place is already authorised under this Part”; and 25
- (c) omit paragraphs (c) to (g).
- (7) After subsection (2) of section 69 insert—
- “(2A) In this section a reference to a collection in a public place authorised under this Part is a reference to a collection in a public place that— 30
- (a) is conducted in accordance with section 66, or
- (b) is an exempt collection by virtue of section 66B.”
- (8) Omit subsections (3) to (5) of section 69.
- (9) In section 71(1) (appeals) for “public charitable collection” substitute “collection in a public place”. 35

## 42 Regulations

- (1) Section 73 of the 1992 Act (regulations) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make regulations— 40
- (a) prescribing matters which are to be notified to a local authority under section 66A, section 66B or section 66C;
- (b) prescribing a period of time for the purposes of section 66B(1)(b);

- (c) prescribing information which is to be contained in applications made under section 66D or section 67;
  - (d) prescribing the matters which are to be specified in a certificate of fitness under section 66E(3)(a);
  - (e) making provision as to conditions which may be imposed under section 68(2);
  - (f) for the purpose of regulating the conduct of public charitable collections.”
- (3) In subsection (2) for “(1)(b)” substitute “(1)(f)”.
- 43 Offences** 10
- (1) Section 74 of the 1992 Act (offences) is amended as follows.
- (2) In subsection (2) for “the fourth level” substitute “level 5”.
- (3) For subsection (3) substitute –
- “(3) Any person who –
    - (a) for the purposes of an application made under section 66D or section 67, or
    - (b) for the purposes of section 66A, section 66B or section 66C, knowingly or recklessly furnishes any information which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- (4) Omit subsections (3A) and (3B). 15 20

### *Grants*

- 44 Power of Secretary of State to give financial assistance to charitable, benevolent or philanthropic institutions**
- (1) The Secretary of State may give financial assistance by way of grants or loans to any charitable, benevolent or philanthropic institution whose operations are carried on wholly or mainly in England. 25
- (2) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.
- (3) Those terms and conditions may, in particular, include provision as to – 30
- (a) the purposes for which the assistance may be used;
  - (b) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State, and the manner in which that is to be done;
  - (c) the making of reports to the Secretary of State regarding the uses to which the assistance has been put; 35
  - (d) the keeping, and making available for inspection, of accounts and other records;
  - (e) the carrying out of examinations by the Comptroller and Auditor General into the economy, efficiency and effectiveness with which the assistance has been used; 40

- (f) the giving by the institution of financial assistance by way of grants or loans to other persons on such terms and conditions as the institution or the Secretary of State considers appropriate.
- (4) A person receiving assistance under this section must comply with the terms and conditions on which it is given, and compliance may be enforced by the Secretary of State. 5
- (5) The Secretary of State may make arrangements for –
- (a) assistance under subsection (1) to be given, or
  - (b) any other functions of his under this section to be exercised,
- by some other person. 10
- (6) Arrangements under subsection (5) may make provision for the functions concerned to be so exercised –
- (a) either wholly or to such extent as may be specified in the arrangements, and
  - (b) either generally or in such cases or circumstances as may be so specified,
- but do not prevent the functions concerned from being exercised by the Secretary of State. 15
- (7) As soon as possible after 31 March in each year, the Secretary of State must make a report on the exercise of powers under this section during the period of 12 months ending on that day. 20
- (8) The Secretary of State must lay a copy of the report before each House of Parliament.
- (9) In this section “charitable, benevolent or philanthropic institution” means –
- (a) a charity, or
  - (b) a body or trust (other than a charity) which is established for charitable, benevolent or philanthropic purposes.
- and “charity” and “charitable purposes” have the meaning given by sections 1 and 2. 25

#### PART 4

30

#### FINAL PROVISIONS

#### 45 Consequential amendments, repeals and transitional provisions

- (1) Schedule 7 (which contains minor and consequential amendments) has effect.
- (2) Schedule 8 (which contains repeals, including repeals of spent enactments) has effect. 35
- (3) The Secretary of State may by order made by statutory instrument make such incidental, consequential, transitional or supplementary provision as he considers necessary or expedient –
- (a) for the general purposes, or any particular purposes, of this Act, or
  - (b) in consequence of any of its provisions or for giving full effect to it. 40
- (4) An order under subsection (3) may amend or repeal any enactment.

- (5) No order may be made under subsection (3) unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.

#### 46 Expenses

- There shall be paid out of money provided by Parliament –
- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act; 5
  - (b) any expenditure incurred by the Charity Commission by virtue of this Act; and
  - (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment. 10

#### 47 Interpretation

- In this Act –
- “the 1992 Act” means the Charities Act 1992 (c. 41);
  - “the 1993 Act” means the Charities Act 1993 (c. 10);
  - “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30). 15

#### 48 Short title, commencement and extent

- (1) This Act may be cited as the Charities Act 2005.
- (2) Apart from –
  - (a) section 11(4) to (6), 20
  - (b) section 45(3) to (5), and
  - (c) this section,this Act does not come into force until such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order under subsection (2) – 25
  - (a) may appoint different days for different purposes or different areas;
  - (b) make such provision as the Secretary of State considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (4) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates. 30
- (5) Subject to that, this Act extends to England and Wales only.

## SCHEDULES

## SCHEDULE 1

Section 4

## THE CHARITY COMMISSION

1 After Schedule 1 to the 1993 Act insert—

## “SCHEDULE 1A

Section 1A

5

## THE CHARITY COMMISSION

*Membership*

- 1 (1) The Commission shall consist of a chairman and at least four, but not more than eight, other members.
- (2) The chairman and other members shall be appointed by the Secretary of State. 10
- (3) The Secretary of State shall exercise the power in sub-paragraph (2) so as to secure that—
- (a) at least two members have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990, and 15
- (b) so far as reasonably practicable, at least one member has knowledge of the interests of persons in Wales and has been appointed following consultation with the National Assembly for Wales. 20

*Terms of appointment and remuneration*

- 2 The chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.
- 3 (1) An appointment of a person to hold office as chairman or one of the other members of the Commission shall be for a term not exceeding five years. 25
- (2) A person holding office as chairman or other member—
- (a) may resign that office by giving notice in writing to the Secretary of State, and 30
- (b) may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour.
- (3) The Secretary of State shall consult the National Assembly for Wales before removing a person appointed following consultation with it. 35

- (4) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.
- 4 (1) The Commission shall pay to its chairman and its other members such remuneration, and such other allowances, as may be determined by the Secretary of State. 5
- (2) The Commission shall, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member of the Commission, or 10
- (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If the Secretary of State determines that there are special circumstances which make it right for a person ceasing to hold office as chairman or other member of the Commission to receive compensation, the Commission shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State. 15  
20

*Staff*

- 5 (1) The Commission—
- (a) shall appoint a chief executive, and
- (b) may appoint such other staff as it may determine.
- (2) The appointment of a chief executive requires the approval of the Minister for the Civil Service as to the chief executive's terms and conditions of service. 25
- (3) The appointment of other staff requires the approval of that Minister as to their numbers and terms and conditions of service.

*Committees*

- 6 (1) The Commission may establish committees and any committee of the Commission may establish sub-committees. 30
- (2) The members of a committee of the Commission may include persons who are not members of the Commission (and the members of a sub-committee may include persons who are not members of the committee or of the Commission). 35

*Procedure etc.*

- 7 (1) The Commission may regulate its own procedure (including quorum).
- (2) The validity of anything done by the Commission is not affected by a vacancy among its members or by a defect in the appointment of a member. 40

*Performance of functions*

- 8 Anything authorised or required to be done by the Commission may be done by—
- (a) any member or member of staff of the Commission who is authorised for that purpose by the Commission, whether generally or specially, 5
  - (b) any committee of the Commission which has been so authorised.

*Evidence*

- 9 The Documentary Evidence Act 1868 shall have effect as if— 10
- (a) the Commission were mentioned in the first Schedule to that Act,
  - (b) any member or member of staff of the Commission authorised to act on behalf of the Commission were specified in the second column of that Schedule in connection with the Commission, and 15
  - (c) the regulations referred to in that Act included any document issued by or under the authority of the Commission.

*Annual report* 20

- 10 (1) As soon as practicable after the end of each financial year the Commission shall make a report to the Secretary of State on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its regulatory objectives (see section 1B of this Act) have been met, and 25
  - (c) the management of its affairs, during that year.
- (2) The Commission shall—
- (a) lay a copy of each such report before Parliament, and
  - (b) arrange for it to be published. 30
- (3) In sub-paragraph (1) above, “financial year” means—
- (a) the period beginning with the date on which the Commission is established and ending with the next 31st March following that date, and
  - (b) each successive period of 12 months ending with 31st March. 35

*Annual public meeting*

- 11 (1) The Commission shall hold a public meeting (“the annual meeting”) for the purpose of enabling a report under paragraph 10 above to be considered. 40
- (2) The annual meeting shall be held within the period of three months beginning with the day on which the report is made to the Secretary of State.

- (3) The Commission shall organise the annual meeting so as to allow –
- (a) a general discussion of the contents of the report which is being considered, and
  - (b) a reasonable opportunity for those attending the meeting to put questions to the Commission about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates. 5
- (4) But subject to sub-paragraph (3) above the annual meeting is to be organised and conducted in such a way as the Commission considers appropriate. 10
- (5) The Commission shall give reasonable notice of the annual meeting.
- (6) That notice shall –
- (a) give details of the time and place at which the meeting is to be held, 15
  - (b) set out the proposed agenda for the meeting,
  - (c) indicate the proposed duration of the meeting,
  - (d) give details of the Commission’s arrangements for enabling persons to attend, and 20
  - (e) be published by the Commission in the way appearing to it to be most suitable for bringing the notice to the attention of the public.
- (7) If the Commission proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5) above it shall – 25
- (a) give reasonable notice of the alteration, and
  - (b) publish the notice in the way appearing to it to be best calculated to bring it to the attention of the public.”
- Parliamentary Commissioner Act 1967 (c. 13)* 30
- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation), for “Charity Commission.” substitute “Charity Commission for England and Wales.”
- House of Commons Disqualification Act 1975 (c. 24)*
- 3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), insert at the appropriate place – 35
- “The Charity Commission for England and Wales.”
- Northern Ireland Assembly Disqualification Act 1975 (c. 25)*
- 4 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), insert at the appropriate place – 40
- “The Charity Commission for England and Wales.”

## SCHEDULE 2

Section 4

## ESTABLISHMENT OF THE CHARITY COMMISSION: SUPPLEMENTARY

- 1 In this Schedule –  
     “commencement” means the coming into force of section 4, and  
     “the Commission” means the Charity Commission for England and Wales. 5

*Appointments to Commission*

- 2 (1) The person who immediately before commencement was the Chief Charity Commissioner for England and Wales is on commencement to become the chairman of the Commission as if duly appointed under paragraph 1 of Schedule 1A to the 1993 Act. 10
- (2) Any other person who immediately before commencement was a Charity Commissioner for England and Wales is on commencement to become a member of the Commission as if duly appointed under that paragraph.
- (3) A person who becomes a member of the Commission by virtue of this paragraph is to continue to be deemed to be employed in the civil service of the Crown and shall continue to hold office on the same terms (but subject to any necessary modifications). 15
- (4) Accordingly –  
     (a) paragraphs 2 and 3 of Schedule 1A to the 1993 Act, and 20  
     (b) paragraphs 3 and 4 of Schedule 1 to this Act,  
     shall not apply in relation to such a person.

*Effect of transfers under section 4*

- 3 (1) Anything which –  
     (a) has been done by or in relation to the Commissioners, and 25  
     (b) is in effect immediately before commencement,  
     is to be treated as if done by or in relation to the Commission.
- (2) Anything (including legal proceedings) which –  
     (a) relates to anything transferred by section 4(4), and  
     (b) is in the process of being done by or in relation to the Commissioners, 30  
     may be continued by or in relation to the Commission.
- (3) But nothing in section 4 or this paragraph affects the validity of anything done by or in relation to the Commissioners.
- (4) In this paragraph “the Commissioners” means the Charity Commissioners for England and Wales (and includes any person acting for them by virtue of paragraph 3(3) of Schedule 1 to the 1993 Act). 35

*First annual report of Charity Commission*

- 4 (1) This paragraph applies if there is a period of one or more days which –  
     (a) began on the day after the end of the last year for which the Charity Commissioners for England and Wales made a report under section 1(5) of the 1993 Act, and 40  
     (b) ended on the day before commencement.

- (2) The first report made by the Commission under paragraph 10 of Schedule 1A to the 1993 Act shall also be a report on the operations of the Charity Commissioners for England and Wales during the period mentioned in subparagraph (1).

SCHEDULE 3

Section 6

5

THE CHARITY APPEAL TRIBUNAL

- 1 After Schedule 1A to the 1993 Act (inserted by Schedule 1 to this Act) insert—

“SCHEDULE 1B

Section 2A

THE CHARITY APPEAL TRIBUNAL

10

*Membership*

- 1 (1) The Tribunal shall consist of the President and its other members (if any).  
(2) The Lord Chancellor shall appoint a person to be President of the Tribunal and may appoint—  
(a) legal members of the Tribunal, and  
(b) ordinary members of the Tribunal. 15  
(3) A person may be appointed as the President or a legal member of the Tribunal only if he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990. 20  
(4) A person may be appointed as an ordinary member of the Tribunal only if he appears to the Lord Chancellor to have appropriate knowledge or experience relating to charities.

*Deputy President*

25

- 2 (1) The Lord Chancellor may appoint a legal member as deputy President of the Tribunal.  
(2) The deputy President—  
(a) may act for the President when he is unable to act or unavailable, and  
(b) shall perform such other functions as the President may delegate or assign to him. 30

*Terms of appointment and remuneration*

- 3 (1) The members of the Tribunal shall hold and vacate office as such in accordance with the terms of their respective appointments. 35  
(2) A person holding office as a member of the Tribunal—  
(a) may resign that office by giving notice in writing to the Lord Chancellor, and

- (b) may be removed from office by the Lord Chancellor on the ground of incapacity or misbehaviour.
- 4 (1) The Lord Chancellor may pay to the members of the Tribunal such remuneration, and such other allowances, as he may determine.
- (2) The Lord Chancellor may – 5
- (a) pay such pension, allowances or gratuities as he may determine to or in respect of a person who is or has been a member of the Tribunal, or
- (b) make such payments as he may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person. 10
- (3) If the Lord Chancellor determines that there are special circumstances which make it right for a person ceasing to hold office as a member of the Tribunal to receive compensation, the Lord Chancellor may pay to him a sum by way of compensation of such amount as may be determined by the Lord Chancellor. 15

*Staff and facilities*

- 5 The Lord Chancellor may make staff and facilities available to the Tribunal.

*Panels*

- 6 (1) The functions of the Tribunal shall be exercised by panels of the Tribunal.
- (2) Panels of the Tribunal shall sit at such times and in such places as the President may direct.
- (3) Before giving a direction under sub-paragraph (2) above the President shall consult the Lord Chancellor. 25
- (4) More than one panel may sit at a time.
- 7 (1) The President shall make arrangements for determining which of the members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function. 30
- (2) Those arrangements shall, in particular, ensure that each panel consists of –
- (a) the President,
- (b) a legal member,
- (c) the President sitting with two other members, 35
- (d) a legal member sitting with two other members,
- (e) with the consent of the parties to the proceedings, the President sitting with one other member, or
- (f) with the consent of the parties to the proceedings, a legal member sitting with one other member, 40
- (and references in paragraphs (d) and (f) to other members do not include the President).
- (3) The President shall publish arrangements made under this paragraph.

*Practice and procedure*

- 8 (1) Decisions of the Tribunal may be taken by majority vote.  
(2) Where paragraph 7(2)(e) applies the President shall have a casting vote.  
(3) Where paragraph 7(2)(f) applies and the panel consists of a legal member and an ordinary member, the legal member shall have a casting vote. 5  
(4) The President shall make and publish arrangements as to who is to have a casting vote where paragraph 7(2)(f) applies and the panel consists of two legal members. 10
- 9 The President may, subject to rules under section 2B of this Act, give directions about the practice and procedure of the Tribunal.”
- 2 In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53) (tribunals under general supervision of Council), before paragraph 7 insert— 15

“Charities | 6A. The Charity Appeal Tribunal constituted under section 2A of, and Schedule 1B to, the Charities Act 1993.”

SCHEDULE 4

Section 6

20

APPEALS TO CHARITY APPEAL TRIBUNAL

- 1 The 1993 Act is amended as follows.
- 2 (1) Section 4 (claims and objections to registration) is amended as follows.  
(2) For subsection (3) substitute—
- “(3) The persons mentioned in subsection (3A) below may appeal to the Tribunal against a decision— 25  
(a) to enter or not to enter an institution in the register of charities, or  
(b) to remove or not to remove an institution from the register.
- (3A) The persons mentioned in this subsection are— 30  
(a) the Attorney General,  
(b) the institution,  
(c) the persons who are or claim to be the charity trustees of the institution,  
(d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the decision. 35
- (3B) The Tribunal may—  
(a) dismiss the appeal, or  
(b) quash the decision.

- (3C) If the Tribunal quashes the decision it may in addition –
- (a) remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal), or
  - (b) direct the Commission to rectify the register.” 5
- (3) In subsection (4), for “High Court” substitute “Tribunal”.
- (4) In subsection (5), omit “, whether given on such an appeal or not”.
- 3 In section 6 (power of Commission to require change of charity’s name), after subsection (7) insert –
- “(7A) Any of the following may appeal to the Tribunal against a direction given under this section – 10
- (a) the Attorney General,
  - (b) the charity,
  - (c) the charity trustees of the charity,
  - (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the direction. 15
- (7B) The Tribunal may –
- (a) dismiss the appeal,
  - (b) quash the direction, or
  - (c) substitute for the direction another direction of a kind that the Commission could have given.” 20
- 4 After section 8 insert –
- “8A Appeals against decisions to institute inquiries**
- (1) Subsection (2) applies in relation to any institution –
- (a) which is or may be affected by an inquiry with regard to charities instituted under section 8 above, 25
  - (b) with regard to which an inquiry has been so instituted, or
  - (c) which is a member of a class of charities with regard to which an inquiry has been so instituted.
- (2) Any of the following may appeal to the Tribunal against the decision to institute the inquiry – 30
- (a) the Attorney General,
  - (b) the institution,
  - (c) any person who has control or management of the institution. 35
- (3) An appeal may be brought under subsection (2) above only on the ground that the institution is not a charity.
- (4) If the Tribunal determines that the institution is a charity it shall dismiss the appeal.
- (5) If the Tribunal determines that the institution is not a charity it shall – 40
- (a) direct the Commission to end the inquiry, or
  - (b) direct that the inquiry is not to consider the institution.”

- 5 In section 16 (concurrent jurisdiction of Commission and High Court), omit subsections (11) to (14).
- 6 In section 18 (power of Commission to act for protection of charities), omit subsections (8) to (10).
- 7 After section 19B (inserted by section 17) insert – 5
- “19C Appeals against orders made under sections 16 to 19B**
- (1) An appeal against an order made by virtue of section 16(1) above may be made to the Tribunal –
- (a) by the Attorney General,
  - (b) in a section 16(1)(a) case, by the charity or its charity trustees, 10
  - (c) in a section 16(1)(b) case, by any person discharged or removed by the order,
  - (d) by any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (2) An appeal against an order made under subsection (1) or (2) of section 18 above may be made to the Tribunal – 15
- (a) by the Attorney General,
  - (b) by the charity or its charity trustees,
  - (c) in a section 18(1)(i) case, by any person suspended by the order, 20
  - (d) in a section 18(2)(i) case, by any person removed by the order,
  - (e) by any person not mentioned in paragraph (a), (b), (c) or (d) above who is or may be affected by the order.
- (3) An appeal against an order made under section 18(4) above may be made to the Tribunal by – 25
- (a) the Attorney General,
  - (b) any charity trustee removed by the order,
  - (c) the charity of which he was a charity trustee,
  - (d) the remaining charity trustees of that charity,
  - (e) any person not mentioned in paragraph (a), (b), (c) or (d) 30 above who is or may be affected by the order.
- (4) An appeal against an order made under section 18(5) above may be made to the Tribunal by –
- (a) the Attorney General,
  - (b) the charity in respect of which the charity trustee was appointed, 35
  - (c) the charity trustees of the charity,
  - (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (5) An appeal against an order made under section 19A(2) above may be made to the Tribunal – 40
- (a) by the Attorney General,
  - (b) by the charity or its charity trustees,
  - (c) in a section 19A(2)(b) case, by any trustee for the charity who is subject to the order, 45

- (d) in a section 19A(2)(c) case, by any officer or employee of the charity who is subject to the order,
- (e) by any person not mentioned in paragraph (a), (b), (c) or (d) above who is or may be affected by the order.
- (6) An appeal against an order made under section 19B(2) above may be made to the Tribunal by – 5
- (a) the Attorney General,
- (b) any person who is subject to the order,
- (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order. 10
- (7) The Tribunal may –
- (a) dismiss the appeal,
- (b) quash the order in whole or in part,
- (c) substitute for all or part of the order another order of a kind that the Commission could have made, 15
- (d) add to the order an order of a kind that the Commission could have made.
- (8) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 20
- 8 In section 69 (investigation of accounts), after subsection (3) insert –
- “(3A) Any of the following may appeal to the Tribunal against an order under subsection (1) above –
- (a) the Attorney General,
- (b) the company which is subject to the order, 25
- (c) the directors of the company,
- (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the order.
- (3B) An appeal may be brought under subsection (3A) above only on the ground that the company is not a charity. 30
- (3C) If the Tribunal determines that the company is a charity it shall dismiss the appeal.
- (3D) If the Tribunal determines that the company is not a charity it shall quash the order.”
- 9 In section 72 (disqualification for being trustee of charity), after subsection (5) insert – 35
- “(5A) Any of the following may appeal to the Tribunal against a decision under subsection (4) above to waive, or not to waive, a person’s disqualification –
- (a) the Attorney General, 40
- (b) the person who applied for the waiver,
- (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the decision.
- (5B) The Tribunal may –
- (a) dismiss the appeal, 45

- (b) quash the decision, or
  - (c) substitute for the decision another decision of a kind that the Commission could have made.
- (5C) If the Tribunal quashes the decision it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 5
- 10 In section 73 (acting as charity trustee while disqualified), after subsection (5) add –
- “ (6) Any of the following may appeal to the Tribunal against an order under subsection (4) above – 10
  - (a) the Attorney General,
  - (b) the person subject to the order,
  - (c) any person not mentioned in paragraph (a) or (b) above who is or may be affected by the order.
- (7) The Tribunal may – 15
  - (a) dismiss the appeal,
  - (b) quash the order, or
  - (c) substitute for the order another order of a kind that the Commission could have made.
- (8) If the Tribunal quashes the order it may remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal).” 20
- 11 Omit section 92 (appeals from Commissioners).

SCHEDULE 5

Section 10

EXEMPT CHARITIES: INCREASED REGULATION UNDER 1993 ACT 25

*Power to require charity’s name to be changed*

- 1 In section 6 of the 1993 Act (power of Commission to require charity’s name to be changed) omit subsection (9) (exclusion of exempt charities).

*Power to institute inquiries*

- 2 In section 8(1) of the 1993 Act (power of Commission to institute inquiries with regard to charities but not in relation to any exempt charity) after “any exempt charity” insert “except where this has been requested by its principal regulator (within the meaning of section 11 of the Charities Act 2005).” 30

*Power to call for documents etc.*

- 3 In section 9 of the 1993 Act (power of Commission to call for documents and search records) omit subsection (4) (exclusion of documents relating only to exempt charities). 35

*Concurrent jurisdiction of Commission with High Court*

- 4 (1) Section 16 of the 1993 Act (concurrent jurisdiction of Commission with High Court for certain purposes) is amended as follows.
- (2) In subsection (4)(c) (application for Commission to exercise powers may be made by Attorney General except in case of exempt charity) omit “in the case of a charity other than an exempt charity,”. 5
- (3) In subsection (5) (jurisdiction exercisable in case of charity which is not an exempt charity and whose annual income does not exceed £500) omit “which is not an exempt charity and”.

*Further powers of Commission* 10

- 5 In section 17(7) of the 1993 Act (expenditure by charity on promoting Parliamentary Bill needs consent of court or Commission except in case of exempt charity) omit the words from “but this subsection” onwards.

*Power to act for protection of charities*

- 6 In section 18 of the 1993 Act (power of Commission to act for protection of charities) for subsection (16) substitute – 15
- “(16) In this section –
- (a) subsections (1) to (3) apply in relation to an exempt charity, and
- (b) subsections (4) to (6) apply in relation to such a charity at any time after the Commission have instituted an inquiry under section 8 with respect to it, 20
- and the other provisions of this section apply accordingly.”

*Power to give directions about dormant bank accounts*

- 7 In section 28 of the 1993 Act (power of Commission to give directions about dormant bank accounts of charities), omit subsection (10) (exclusion of accounts held by or on behalf of exempt charity). 25

*Proceedings by persons other than Commission*

- 8 (1) Section 33 of the 1993 Act (charity proceedings by persons other than Commission) is amended as follows. 30
- (2) In subsection (2) (proceedings relating to a charity other than an exempt charity must be authorised by the Commission) omit “(other than an exempt charity)”.
- (3) In subsection (7) (participation by Attorney General in proceedings relating to charity other than exempt charity) omit “(other than an exempt charity)”. 35

*Power to order disqualified person to repay sums received from charity*

- 9 In section 73 of the 1993 Act (consequences of person acting as charity trustee while disqualified), in subsection (4) (power of Commission to order disqualified person to repay sums received from a charity other than an exempt charity) omit “(other than an exempt charity)”. 40

SCHEDULE 6

Section 26

CHARITABLE INCORPORATED ORGANISATIONS

PART 1

NEW PART 8A OF AND SCHEDULE 5A TO CHARITIES ACT 1993

- 1 After Part 8 of the 1993 Act insert the following new Part – 5

**“PART 8A**

CHARITABLE INCORPORATED ORGANISATIONS

*Nature and constitution*

**69A Preliminary**

- (1) In this Act, a charitable incorporated organisation is referred to as a “CIO”. 10
- (2) A registered charity may be constituted as a CIO in accordance with this Part.
- (3) A charity which is not a registered charity may not be constituted as a CIO. 15

**69B Charitable incorporated organisations**

- (1) A CIO shall be a body corporate.
- (2) A CIO shall have a constitution.
- (3) A CIO shall have a principal office, which shall be in England or in Wales. 20
- (4) A CIO shall have one or more members.
- (5) The members may be –
- (a) liable to contribute to the assets of the CIO if it is wound up, or
  - (b) not so liable. 25

**69C Constitution**

- (1) A CIO’s constitution shall state –
- (a) its name,
  - (b) its purposes,
  - (c) the address of its principal office, and 30
  - (d) whether or not its members are liable to contribute to its assets if it is wound up, and (if they are) up to what amount.
- (2) A CIO’s constitution shall make provision –
- (a) about who is eligible for membership, and how a person becomes a member, 35
  - (b) about the appointment of one or more persons (to be called “Trustees”) who are to be charged with the general control

- and management of the CIO’s administration, and about any conditions of eligibility for becoming one, and
- (c) containing directions about the application of property of the CIO on its dissolution.
- (3) A Trustee may, but need not, be a member; a member may, but need not, be a Trustee; and those who are members and those who are Trustees may, but need not, be identical. 5
- (4) A CIO’s constitution shall also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Secretary of State. 10
- (5) A CIO’s constitution –
- (a) shall be in English if its principal office is in England,
- (b) may be in English or in Welsh if its principal office is in Wales.
- 69D Name and status** 15
- (1) The name of a CIO shall appear in legible characters –
- (a) in all business letters of the CIO,
- (b) in all its notices and other official publications,
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the CIO, 20
- (d) in all conveyances purporting to be executed by the CIO, and
- (e) in all bills rendered by it and in all its invoices, receipts, and letters of credit.
- (2) In subsection (1)(d), “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land. 25
- (3) Subsection (5) applies if the name of a CIO does not include –
- (a) “charitable incorporated organisation”, or
- (b) “CIO”, with or without full stops after each letter, or
- (c) a Welsh equivalent mentioned in subsection (4) (but this option applies only if the CIO’s constitution is in Welsh), 30
- and it is irrelevant, in any such case, whether or not capital letters are used.
- (4) The Welsh equivalents referred to in subsection (3)(c) are –
- (a) “sefydliad corfforedig elusenol”, or 35
- (b) “SCE”, with or without full stops after each letter.
- (5) If this subsection applies, the fact that a CIO is a CIO shall be stated in legible characters in all the documents mentioned in subsection (1).
- (6) The statement required by subsection (5) shall be in English, except that in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh. 40
- 69E Offences connected with name and status**
- (1) A charity trustee of a CIO or a person on the CIO’s behalf who issues or authorises the issue of any document referred to in paragraph (a), 45

- (b), (d) or (e) of section 69D(1) above which fails to comply with the requirements of section 69D(1), (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A charity trustee of a CIO or a person on the CIO's behalf who signs or authorises to be signed on behalf of the CIO any document referred to in paragraph (c) of section 69D(1) above which fails to comply with the requirements of section 69D(1), (5) or (6)– 5
- (a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) is personally liable to the holder of the bill of exchange (etc) for the amount of it, unless it is duly paid by the CIO. 10
- (3) A person who holds any body out as being a CIO when it is not (however it is done) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he believed on reasonable grounds that the body was a CIO. 15

#### *Registration*

#### **69F Application for registration**

- (1) Any one or more persons (“the applicants”) may apply to the Commission for a CIO to be constituted and for its registration as a charity. 20
- (2) The applicants shall supply the Commission with–
- (a) a copy of the proposed constitution of the CIO,
- (b) such other documents or information as may be prescribed by regulations made by the Secretary of State, and 25
- (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) The Commission shall refuse such an application if–
- (a) it is not satisfied that the CIO would be a charity at the time it would be registered, or 30
- (b) the CIO's proposed constitution does not comply with one or more of the requirements of section 69C above and any regulations made under that section.
- (4) The Commission may refuse such an application if– 35
- (a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not), or
- (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 6(2) above (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on). 40

### 69G Effect of registration

- (1) If the Commission grants an application under section 69F above it shall register the CIO to which the application related as a charity in the register of charities.
- (2) Upon the registration of the CIO in the register of charities, it becomes by virtue of the registration a body corporate—
  - (a) whose constitution is that proposed in the application,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first member is, or members are, the applicants referred to in section 69F above.
- (3) All property for the time being vested in the applicants (or, if more than one, any of them) on trust for the charitable purposes of the CIO (when incorporated) shall by virtue of this subsection become vested in the CIO upon its registration.
- (4) The entry relating to the charity’s registration in the register of charities shall include—
  - (a) the date of the charity’s registration, and
  - (b) a note saying that it is constituted as a CIO.
- (5) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

### *Conversion, amalgamation and transfer*

### 69H Conversion of charitable company or registered friendly society

- (1) The following may apply to the Commission to be converted into a CIO, and for the CIO’s registration as a charity, in accordance with this section—
  - (a) a charitable company,
  - (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965.
- (2) But such an application may not be made by a company or registered society having a share capital if any of the shares are not fully paid up.
- (3) Such an application is referred to in this section and section 69I below as an “application for conversion”.
- (4) Subsections (2) to (4) of section 69F above apply in relation to an application for conversion as they apply to an application for a CIO to be constituted, but in those subsections “the applicants” shall be construed as meaning the company or registered society.
- (5) In addition to the documents and information referred to in section 69F(2) above, the company or registered society shall supply the Commission with—
  - (a) a copy of a resolution of the company or registered society that it be converted into a CIO, and
  - (b) a copy of a resolution of the company or registered society adopting the proposed constitution of the CIO.

- (6) The resolution referred to in subsection (5)(a) shall be –
  - (a) a special resolution of the company or registered society, or
  - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution. 5
- (7) In the case of a registered society, “special resolution” has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965.
- (8) In the case of a company limited by guarantee which makes an application for conversion (whether or not it also has a share capital), the proposed constitution of the CIO shall provide for the CIO’s members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable. 10
- (9) That amount shall not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up. 15
- (10) Subsection (3)(b) of section 69F above shall have effect, in relation to an application for conversion made by such a company, as if the requirements of subsections (8) and (9) of this section were a requirement of section 69C above.
- (11) In subsection (1), “charitable company” means a company which is a charity. 20

**69I Conversion: supplementary**

- (1) If the Commission grants an application for conversion, it shall –
  - (a) register the CIO to which the application related in the register of charities, and 25
  - (b) send to the appropriate registrar a copy of the resolution of the converting company or registered society referred to in section 69H(5)(a) above, and a copy of the entry in the register relating to the CIO.
- (2) The registration of the CIO in the register shall, for so long as the appropriate registrar has not yet acted as required by subsection (3), include a note saying that its constitution as a CIO has not yet taken effect. 30
- (3) The appropriate registrar shall –
  - (a) register the documents sent to him under subsection (1)(b), and 35
  - (b) cancel the registration of the company in the register of companies, or of the society in the register of friendly societies.
- (4) When the appropriate registrar acts as required by subsection (3), the company or registered society is thereupon converted into a CIO, being a body corporate –
  - (a) whose constitution is that proposed in the application for conversion, 40
  - (b) whose name is that specified in the constitution, and 45

- (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall by virtue of this subsection be cancelled, and no former holder of any cancelled share shall have any right in respect of it after its cancellation. 5
- (6) Subsection (5) does not affect any right which accrued in respect of a share before its cancellation. 10
- (7) The entry relating to the charity’s registration in the register shall include—
- (a) a note that it is constituted as a CIO,
- (b) the date on which it became so constituted, and
- (c) a note of the name of the company or society which was converted into the CIO. 15
- (8) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.
- (9) In this section, the “appropriate registrar” means—
- (a) in the case of an application for conversion by a charitable company, the registrar of companies, 20
- (b) in the case of an application for conversion by a registered society, the Financial Services Authority.
- 69J Amalgamation of CIOs**
- (1) Any two or more CIOs (“the old CIOs”) may, in accordance with this section, apply to the Commission to be amalgamated, and for the incorporation and registration as a charity of a new CIO (“the new CIO”) as their successor. 25
- (2) Such an application is referred to in this section and section 69K below as an “application for amalgamation”. 30
- (3) Subsections (2) to (4) of section 69F above apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, but in those subsections—
- (a) “the applicants” shall be construed as meaning the old CIOs, and
- (b) references to the CIO are to the new CIO. 35
- (4) In addition to the documents and information referred to in section 69F(2) above, the old CIOs shall supply the Commission with—
- (a) a copy of a resolution of each of the old CIOs approving the proposed amalgamation, and 40
- (b) a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO.
- (5) The resolutions referred to in subsection (4) shall be passed—
- (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or 45

- (b) unanimously by the CIO’s members, otherwise than at a general meeting.
- (6) The date of passing of such a resolution is –
  - (a) the date of the general meeting at which it was passed, or
  - (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO’s constitution or in regulations made under paragraph 13 of Schedule 5A to this Act deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it). 5
- (7) Each old CIO shall – 10
  - (a) give notice of the proposed amalgamation in the way (or ways) that in the opinion of its charity trustees will make it most likely to come to the attention of those who would be affected by the amalgamation, and
  - (b) send a copy of the notice to the Commission. 15
- (8) The notice shall invite any person who considers that he would be affected by the proposed amalgamation to make written representations to the Commission not later than a date determined by the Commission and specified in the notice.
- (9) In addition to the grounds mentioned in section 69F(3) above as applied by subsection (3) of this section, the Commission shall refuse an application for amalgamation if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes. 20
- 69K Amalgamation: supplementary 25**
  - (1) If the Commission grants an application for amalgamation, it shall –
    - (a) register the new CIO in the register of charities, and
    - (b) cancel the registration of the old CIOs.
  - (2) Upon the registration of the new CIO it thereupon becomes by virtue of the registration a body corporate – 30
    - (a) whose constitution is that proposed in the application for amalgamation,
    - (b) whose name is that specified in the constitution, and
    - (c) whose first members are the members of the old CIOs immediately before the new CIO was registered. 35
  - (3) Upon the cancellation of the registration of the old CIOs –
    - (a) all the property, rights and liabilities of each of the old CIOs shall become by virtue of this subsection the property, rights and liabilities of the new CIO, and
    - (b) each of the old CIOs shall be dissolved. 40
  - (4) The entry relating to the registration in the register of the charity constituted as the new CIO shall include –
    - (a) a note that it is constituted as a CIO,
    - (b) the date of the charity’s registration, and
    - (c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs. 45

- (5) A copy of the entry in the register shall be sent to the charity at the principal office of the new CIO.

#### **69L Transfer of CIO’s undertaking**

- (1) A CIO may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution. 5
- (2) Where a CIO has passed such a resolution, it shall send to the Commission—
- (a) a copy of the resolution, and
  - (b) a copy of a resolution of the transferee CIO agreeing to the transfer to it. 10
- (3) Subsections (5) and (6) of section 69J above apply to the resolutions referred to in subsections (1) and (2)(b) as they apply to the resolutions referred to in section 69J(4).
- (4) Having received the copy resolutions referred to in subsection (2), the Commission— 15
- (a) may direct the transferor CIO to give public notice of its 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 by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO. 20
- (5) The resolution shall not take effect until confirmed by the Commission. 25
- (6) The Commission shall refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor CIO.
- (7) If the Commission confirms the resolution— 30
- (a) all the property, rights and liabilities of the transferor CIO shall become by virtue of this subsection the property, rights and liabilities of the transferee CIO in accordance with the resolution, and
  - (b) the transferor CIO shall be dissolved.

#### *Winding up, insolvency and dissolution* 35

#### **69M Regulations about winding up, insolvency and dissolution**

- (1) The Secretary of State may by regulations make provision about—
- (a) the winding up of CIOs,
  - (b) their insolvency,
  - (c) their dissolution, and 40
  - (d) their revival and restoration to the register following dissolution.
- (2) The regulations may, in particular, make provision—

- (a) about the transfer of a CIO’s property and rights (including property and rights held on trust for the CIO) to the official custodian or another person or body,
  - (b) requiring any person in whose name any stocks, funds or securities are standing in trust for a CIO to transfer them into the name of the official custodian, 5
  - (c) about the disclaiming of title to any of a CIO’s property,
  - (d) about the application of a CIO’s property cy-près,
  - (e) about the reversal on a CIO’s revival of anything done on its dissolution. 10
- (3) The regulations may –
- (a) apply any enactment which would not otherwise apply, either without modification or with modifications specified in the regulations,
  - (b) disapply, or modify (in ways specified in the regulations) the application of, any enactment which would otherwise apply. 15
- (4) In subsection (3), “enactment” includes a provision of subordinate legislation within the meaning of the Interpretation Act 1978.

*Miscellaneous*

**69N Power to transfer all property of unincorporated charity to one or more CIOs** 20

Section 74 below (power to transfer all property of unincorporated charity) applies with the omission of paragraph (a) of subsection (1) in relation to a resolution by the charity trustees of a charity to transfer all its property to a CIO or to divide its property between two or more CIOs. 25

**69O Further provision about CIOs**

The provisions of Schedule 5A to this Act shall have effect with respect to CIOs.

**69P Regulations** 30

- (1) The Secretary of State may by regulations make further provision about the administration of CIOs.
- (2) The regulations may, in particular, make provision about –
  - (a) the execution of deeds and documents,
  - (b) the maintenance of registers of members and of charity trustees. 35
- (3) Subsections (3) and (4) of section 69M above apply for the purposes of this section as they apply for the purposes of that.”

2 After Schedule 5 to the 1993 Act insert the following new Schedule –

“SCHEDULE 5A

Section 69O

FURTHER PROVISION ABOUT CHARITABLE INCORPORATED ORGANISATIONS

*Powers*

- |   |  |   |
|---|--|---|
| 1 | (1) Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. | 5 |
|   | (2) The CIO’s charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO.                                    |   |

*Constitutional requirements*

10

- |   |  |    |
|---|--|----|
| 2 | A CIO shall use and apply its property in furtherance of its purposes and in accordance with its constitution.   |    |
| 3 | If the CIO is one whose members are liable to contribute to its assets if it is wound up, its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract – | 15 |
|   | (a) to which the CIO and each of its members was a party, and  |    |
|   | (b) which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution.  | 20 |
| 4 | Money payable by a member to the CIO under the constitution is a debt due from him to the CIO, and is of the nature of a specialty debt.   |    |

*Third parties*

- |   |   |    |
|---|---|----|
| 5 | (1) Sub-paragraphs (2) and (3) are subject to sub-paragraph (4).  | 25 |
|   | (2) The validity of an act done (or purportedly done) by a CIO shall not be called into question on the ground that it lacked constitutional capacity.  |    |
|   | (3) The power of the charity trustees of a CIO to act so as to bind the CIO (or authorise others to do so) shall not be called into question on the ground of any constitutional limitations on their powers. | 30 |
|   | (4) But sub-paragraphs (2) and (3) apply only in favour of a person who gives full consideration in money or money’s worth in relation to the act in question, and does not know –                            |    |
|   | (a) in a sub-paragraph (2) case, that the act is beyond the CIO’s constitutional capacity, or   | 35 |
|   | (b) in a sub-paragraph (3) case, that the act is beyond the constitutional powers of its charity trustees,  |    |
|   | and (in addition) sub-paragraph (3) applies only if the person dealt with the CIO in good faith (which he shall be presumed to have done unless the contrary is proved).                                      | 40 |
|   | (5) A party to an arrangement or transaction with a CIO is not bound to inquire –   |    |

- (a) whether it is within the CIO’s constitutional capacity, or
  - (b) as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so.
- (6) If a CIO purports to transfer or grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the CIO’s act. 5  
10
- (7) In any proceedings arising out of sub-paragraphs (2) to (4), the burden of proving that a person knew that an act—
  - (a) was beyond the CIO’s constitutional capacity, or
  - (b) was beyond the constitutional powers of its charity trustees,lies on the person making that allegation. 15
- (8) In this paragraph—
  - (a) references to a CIO’s lack of “constitutional capacity” are to lack of capacity because of anything in its constitution, and 20
  - (b) references to “constitutional limitations” on the powers of a CIO’s charity trustees are to limitations on their powers under its constitution, including limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO’s members, and “constitutional powers” is to be construed accordingly. 25
- 6 (1) Nothing in paragraph 5 prevents a person from bringing proceedings to restrain the doing of an act which would be—
  - (a) beyond the CIO’s constitutional capacity, or 30
  - (b) beyond the constitutional powers of the CIO’s charity trustees.
- (2) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CIO. 35
- (3) Sub-paragraph (2) does not prevent the Commission from exercising any of its powers.
- 7 Nothing in paragraph 5(3) affects any liability incurred by the CIO’s charity trustees (or any one of them) for acting beyond his or their constitutional powers. 40
- 8 Nothing in paragraph 5 absolves the CIO’s charity trustees from their duty to act within the CIO’s constitution and in accordance with any constitutional limitations on their powers.

*Duties*

- 9 It is the duty of—
  - (a) each member of a CIO, and
  - (b) each charity trustee of a CIO, 45

to exercise his powers, and (in the case of a charity trustee) to perform his functions, in his capacity as such, in the way he decides, in good faith, would be most likely to further the purposes of the CIO.

- |    |  |    |
|----|--|----|
| 10 | Each charity trustee of a CIO shall in the performance of his functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular –                                     | 5  |
|    | (a) to any special knowledge or experience that he has or holds himself out as having, and   |    |
|    | (b) if he acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession. | 10 |

*Personal benefit and payments*

- |    |   |    |
|----|---|----|
| 11 | (1) A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, he did not disclose to all the charity trustees of the CIO any material interest of his in it or in any other person or body party to it (whether that interest is direct or indirect). | 15 |
|    |   | 20 |
|    | (2) Nothing in sub-paragraph (1) confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO.  |    |
| 12 | A charity trustee of a CIO –  |    |
|    | (a) is entitled to be reimbursed by the CIO, or   | 25 |
|    | (b) may pay out of the CIO's funds, expenses properly incurred by him in the performance of his functions as such.  |    |

*Procedure*

- |    |   |    |
|----|---|----|
| 13 | (1) The Secretary of State may by regulations make provision about the procedure of CIOs.   | 30 |
|    | (2) Subject to –  |    |
|    | (a) any such regulations,   |    |
|    | (b) any other requirement imposed by or by virtue of this Act or any other enactment, and   | 35 |
|    | (c) anything in the CIO's constitution, a CIO may regulate its own procedure.   |    |
|    | (3) But a CIO's procedure shall include provision for the holding of a general meeting of its members, and the regulations referred to in sub-paragraph (1) may in particular make provision about such meetings. | 40 |

*Amendment of constitution*

- |    |  |    |
|----|--|----|
| 14 | (1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment). | 45 |
|----|--|----|

- (2) Such a resolution may be passed –
  - (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the CIO’s members, otherwise than at a general meeting. 5
- (3) The date of passing of such a resolution is –
  - (a) the date of the general meeting at which it was passed, or
  - (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO’s constitution or in regulations made under paragraph 13 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it). 10
- (4) The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO’s ceasing to be a charity. 15
- (5) Subject to paragraph 15(6) below, a resolution containing an amendment which would make any regulated alteration is to that extent ineffective unless the prior written consent of the Commission has been obtained to the making of the amendment. 20
- (6) The following are regulated alterations –
  - (a) any alteration of the CIO’s purposes,
  - (b) any alteration of any provision of the CIO’s constitution directing the application of property of the CIO on its dissolution,
  - (c) any alteration of any provision of the CIO’s constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them. 25

*Registration and coming into effect of amendments*

- 15 (1) A CIO shall send to the Commission a copy of a resolution containing an amendment to its constitution, together with a copy of the constitution as amended, by the end of the period of 15 days beginning with the date of passing of the resolution (see paragraph 14(3)). 30
- (2) Except as mentioned in sub-paragraph (3), an amendment to a CIO’s constitution does not take effect until it has been registered. 35
- (3) An amendment takes effect immediately on the passing of the resolution containing it if the amendment consists solely of a change in the address of the CIO’s principal office; but this does not apply if –
  - (a) the change of address is from a Welsh one to an English one, and
  - (b) the CIO’s registered constitution is in Welsh. 40
- (4) The Commission shall refuse to register an amendment if –
  - (a) in the opinion of the Commission the CIO had no power to make it (for example, because the effect of making it would be that the CIO ceased to be a charity, or that the CIO or its constitution did not comply with any requirement 45

- imposed by or by virtue of this Act or any other enactment), or
- (b) the amendment would change the name of the CIO, and the Commission could have refused an application under section 69F above for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in subsection (4) of that section. 5
- (5) The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the consent referred to in paragraph 14(5) had not been obtained. 10
- (6) But if the Commission does register such an amendment, paragraph 14(5) does not apply.
- (7) Any of the following may appeal to the Tribunal against a decision to refuse to register an amendment – 15
- (a) the Attorney General,
- (b) the CIO,
- (c) the charity trustees of the CIO,
- (d) any person not mentioned in paragraph (a), (b) or (c) above who is or may be affected by the decision.
- (8) The Tribunal may – 20
- (a) dismiss the appeal, or
- (b) quash the decision.
- (9) If the Tribunal quashes the decision it may in addition – 25
- (a) remit the matter to the Commission (either generally or for determination in accordance with a finding made or direction given by the Tribunal), or
- (b) direct the Commission to register the amendment.”

## PART 2

### OTHER AMENDMENTS OF CHARITIES ACT 1993

- 3 The 1993 Act is further amended as follows. 30
- 4 In section 45 (annual reports), after subsection (3A) insert –
- “(3B) But in the case of a charity which is constituted as a CIO –
- (a) the requirement imposed by subsection (3) applies whatever the gross income or total expenditure of the charity is, and
- (b) subsection (3A) does not apply.” 35
- 5 In section 48 (annual returns), in subsection (1A), at the end add “(but this subsection does not apply if the charity is constituted as a CIO)”.
- 6 (1) Section 49 (offences) is amended as follows.
- (2) The existing text is renumbered as subsection (1).
- (3) In that subsection (as so renumbered), after “imposed” insert “in relation to a charity other than one constituted as a CIO”. 40
- (4) After that subsection add –
- “(2) Subsections (3) to (5) apply in relation to a charity which is constituted as a CIO.

- (3) If any requirement imposed –  
(a) by section 45(3) above (taken with section 45(3B) and (4)), or  
(b) by section 47(2) or 48(2) above,  
is not complied with, each person who immediately before the date  
for compliance specified in the section in question was a charity  
trustee of the CIO shall be guilty of an offence and liable on summary  
conviction to the penalty mentioned in subsection (4). 5
- (4) The penalty is –  
(a) a fine not exceeding level 4 on the standard scale, and  
(b) for continued contravention, a daily default fine not  
exceeding 10% of level 4 on the standard scale for so long as  
the person in question remained a charity trustee of the CIO. 10
- (5) It is a defence for a person charged with an offence under subsection  
(3) to prove that he took all reasonable steps for securing that the  
requirement in question would be complied with in time.” 15
- 7 In section 86 (regulations and orders), in subsection (4), for “or 45” substitute  
“, 45, 69M or 69P”.
- 8 In section 97 (general interpretation), in subsection (1), at the appropriate  
place insert –  
“ “CIO” means charitable incorporated organisation;”. 20

## SCHEDULE 7

Section 45

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Education Reform Act 1988 (c. 40)*

- 1 For section 125A of the Education Reform Act 1988 substitute –  
**“125A Charitable status of a higher education corporation”** 25  
A higher education corporation shall be a charity within the meaning  
of the Charities Act 1993 (and in accordance with Schedule 2 to that  
Act is an exempt charity for the purposes of that Act).”

#### *Further and Higher Education Act 1992 (c. 13)*

- 2 For section 22A of the Further and Higher Education Act 1992 substitute – 30  
**“22A Charitable status of a further education corporation”**  
A further education corporation shall be a charity within the  
meaning of the Charities Act 1993 (and in accordance with Schedule  
2 to that Act is an exempt charity for the purposes of that Act).”

#### *Charities Act 1992 (c. 41)*

- 3 In section 58(2)(c) of the 1992 Act (interpretation of Part 2) for “to be treated  
as a promoter of such a collection by virtue of section 65(3)” substitute “a 35

promoter of such a collection by virtue of paragraph (b) of the definition of “promoter” in section 65B(1)”.

*Charities Act 1993 (c. 10)*

- 4 The 1993 Act has effect subject to the following amendments.
- 5 (1) Section 2 (official custodian for charities) is amended as follows. 5
- (2) For subsection (2) substitute –
- “(2) Such individual as the Commission may from time to time designate shall be the official custodian.”
- (3) In subsection (3), for “Commissioners” (in both places) substitute “Commission”. 10
- (4) In subsection (4) –
- (a) for “officer of the Commissioners” substitute “member of the staff of the Commission”, and
- (b) for “by them” substitute “by it”.
- (5) In subsection (7), for “report to be made by the Commissioners to the Secretary of State for any year” substitute “Commission’s annual report”. 15
- 6 In section 16(5) (concurrent jurisdiction of Commissioners with High Court), for “income from all sources does not in aggregate” substitute “gross income does not”.
- 7 In section 44(3) (application of section 727 of Companies Act 1985 to auditors etc.) omit “by a charity”. 20
- 8 (1) Section 46 (special provisions as respects accounts etc. of excepted charities) is amended as follows.
- (2) In subsection (3) for “section 3(5)(c) above” substitute “section 3A(2)(d) above”. 25
- (3) In subsection (4) for the words from “(other than” onwards substitute “which –
- (a) is excepted by section 3A(2)(b) or (c) above, and
- (b) is not registered.”
- (4) In subsection (8) – 30
- (a) for “section 3(5)(c) above” substitute “section 3A(2)(d) above”, and
- (b) for “section 3(5)(b) above” substitute “section 3A(2)(b) or (c) above”.
- 9 For the heading preceding section 74 substitute “*Miscellaneous powers of charities*”.
- 10 In section 80(1) (supervision by Commissioners of certain Scottish charities) for paragraph (c) and the “and” preceding it substitute – 35
- “(c) sections 19 to 19B, and
- (d) section 31A.”.
- 11 In section 88 (enforcement of orders of Commission) after paragraph (b) insert – 40
- “(ba) to an order of the Commission under section 19A or 19B above; or”.
- 12 In section 89 (other provisions as to orders of Commissioners) at the end

- add –
- “(5) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made.”
- 13 In section 93 (miscellaneous provisions as to evidence), for subsection (3) substitute – 5
- “(3) Evidence of any order, certificate or other document issued by the Commission may be given by means of copy which it retained, or which is taken from a copy so retained, and evidence of an entry in any register kept by it may be given by means of a copy of the entry, if (in each case) the copy is certified in accordance with subsection (4). 10
- (4) The copy shall be certified to be a true copy by any officer of the Commission generally or specially authorised by the Commission to act for that purpose.
- (5) A document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.” 15
- 14 In section 96(1) (construction of references to a “charity” etc.) for the definition of “charity” substitute –
- ““charity” has the meaning given by section 1 of the Charities Act 2005;”. 20
- 15 In section 97(1) (interpretation) –
- (a) in the definition of “charitable purposes”, for “charitable according to the law of England and Wales;” substitute “charitable purposes as defined by section 2 of the Charities Act 2005;”; 25
- (b) for the definition of “the Commissioners” substitute –
- ““the Commission” means the Charity Commission;”; and
- (c) at the appropriate place insert –
- ““the Tribunal” means the Charity Appeal Tribunal;”. 30
- School Standards and Framework Act 1998 (c. 31)* 30
- 16 The School Standards and Framework Act 1998 has effect subject to the following amendments.
- 17 (1) Section 23 is amended as follows.
- (2) In subsection (1) (certain school bodies to be charities that are exempt charities) omit “which are exempt charities for the purposes of the Charities Act 1993”. 35
- (3) After that subsection insert –
- “(1A) Any body to which subsection (1)(a) or (b) applies is an institution to which section 3A(4)(b) of the Charities Act 1993 applies (institutions to be excepted from registration under that Act).” 40
- (4) In subsection (2) (connected bodies that are to be exempt charities) for the words from “also” onwards substitute “be treated for the purposes of section 3A(4)(b) of the Charities Act 1993 as if it were an institution to which that provision applies.”

- (5) In subsection (3) (status of certain foundations) for the words from “which (subject” onwards substitute “, and is an institution to which section 3A(4)(b) of the Charities Act 1993 applies.”
- 18 In Schedule 1 (education action forums), in paragraph 10, for the words from “which is” onwards substitute “within the meaning of the Charities Act 1993, and is an institution to which section 3A(4)(b) of that Act applies (institutions to be excepted from registration under that Act).” 5

## SCHEDULE 8

Section 45

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Charities Act 1960 (c. 58)	The whole Act.	10
Charities Act 1992 (c. 41)	Part 1 (so far as unrepealed). Section 67(4). In section 69, in subsection (1) paragraphs (c) to (g), and subsections (3) to (5). Section 72. Section 74(3A) and (3B).	15
Charities Act 1993 (c. 10)	Section 1. In section 4(5), the words “, whether given on such an appeal or not”. Section 6(9). Section 9(4). In section 16, in subsection (4)(c) the words “in the case of a charity other than an exempt charity,”, in subsection (5) the words “which is not an exempt charity and”, and subsections (11) to (14). In section 17(7), the words from “but this subsection” onwards. Section 18(8) to (10). In section 24(8), the words from “; and if the scheme” onwards. Section 28(10). In section 33, in each of subsections (2) and (7) the words “(other than an exempt charity)”. In section 44(3), the words “by a charity”. Section 61(7). In section 73(4), the words “(other than an exempt charity)”. Section 92.	20 25 30 35 40
	In section 96, in the definition of “exempt charity” in subsection (1) the words “(subject to section 24(8) above)”, and subsection (4). Schedule 1. In Schedule 2, in paragraph (b) the words “and the colleges of Winchester and Eton”, and paragraphs (x) and (zb). In Schedule 6, paragraph 29(7) and (8).	45

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
National Lottery etc. Act 1993 (c. 39)	In Schedule 5, paragraph 12.	
Local Government (Wales) Act 1994 (c.19)	In Schedule 16, paragraph 99.	5
Deregulation and Contracting Out Act 1994 (c. 40)	Section 28.	
Teaching and Higher Education Act 1998 (c. 30)	Section 41. In Schedule 3, paragraph 9.	
School Standards and Framework Act 1998 (c. 31)	In section 23(1), the words “which are exempt charities for the purposes of the Charities Act 1993”. In Schedule 30, paragraph 48.	10

