

Charities Act 2011

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¹ Amended by Sch 3, para 30.

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¹⁰ Repealed by cl 19.

¹¹ Inserted by cl 22.

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¹³ Inserted by cl 31.

¹⁴ Amended by cl 32.

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¹⁶ Amended by sch 3, para 37.

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¹⁸ Amended by cl 2.

¹⁹ As amended by sch 3, para 19.

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²³ As amended by sch 3, para 16.

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²⁶ As amended by sch 3, para 20.

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³⁰ Inserted by cl 34.

³¹ As amended by cl 41.

³² As amended by cl 43.

Part 4
Registration and Names of Charities

[...]

Names and working namesPower to require charity's name to be changed³³

42 Power to require name or working name to be changed³⁴

~~(1) If one or more of the conditions in subsection (2) are met in relation to a charity, the Commission may give a direction—~~

~~(a) requiring the name of the charity to be changed to a name determined by the charity trustees with the approval of the Commission, or~~

~~(b) requiring that a working name of the charity no longer be used as its working name.~~

~~(1) If this subsection applies to a charity, the Commission may give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the charity trustees may determine with the approval of the Commission.~~

~~(2) The conditions are—~~

~~(a) that the name or working name is the same as, or in the opinion of the Commission too like, the name or a working name of another charity,~~

~~(2) Subsection (1) applies to a charity if—~~

~~(a) it is a registered charity and its name ("the registered name")—~~

~~(i) is the same as, or~~

~~(ii) is in the opinion of the Commission too like,~~

~~the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not),~~

~~(b) that the name or working name~~the name of the charity~~ is in the opinion of the Commission likely to mislead the public as to the true nature of—~~

~~(i) the purposes of the charity as set out in its trusts, or~~

~~(ii) the activities which the charity carries on under its trusts in pursuit of those purposes,~~

~~(c) that the name or working name~~the name of the charity~~ includes any word or expression for the time being specified in by the [Secretary of State] and the inclusion in the name or working name~~its name~~ of that word or expression is in the opinion of the Commission likely to mislead the public in any respect as to the status of the charity,~~

~~(d) that the name or working name~~the name of the charity~~ is in the opinion of the Commission likely to give the impression that the charity is connected in some way with Her Majesty's Government or any local authority, or with any other body of persons or any individual, when it is not so connected, or~~

³³ As amended by sch 3, para 30.

³⁴ As amended by cl 27.

(e) ~~that the name or working name~~~~the name of the charity~~ is in the opinion of the Commission offensive.

~~(3) Any direction given by virtue of subsection (2)(a) must be given within 12 months of the time when the registered name was entered in the register in respect of the charity.~~

~~(4) In this Act, any reference to a working name of a charity is a reference to a name that is not the name of the charity but under which activities of the charity are carried out.~~

~~(4) In subsection (2) any reference to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.~~

(5) Any direction given under this section with respect to a charity must be given to the charity trustees.

43 Duty of charity trustees on receiving direction under s 42³⁵

(1) On receiving a direction under section 42 the charity trustees must give effect to ~~it—~~

~~(a) within such period as is specified in the direction, and~~

~~(b) regardless of anything in the trusts of the charity.~~~~it regardless of anything in the trusts of the charity.~~

(2) If the name of any charity is changed by virtue of section 42, the charity trustees must without delay notify the Commission of--

(a) the charity's new name, and

(b) the date on which the change occurred.

(3) Subsection (2) does not affect section 35(3) (duty of charity trustees to notify changes in registered particulars).

44 Change of name not to affect existing rights and obligations etc

A change of name by a charity by virtue of section 42 does not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

45 Change of name where charity is a company³⁶

(1) In relation to a charitable company, any reference in section 42 or 43 to the charity trustees of a charity is to be read as a reference to the directors of the company.

(2) Subsections (3) to (5) apply if a direction is given under section 42 with respect to the name of a charitable company.

(3) The direction is to be treated as requiring the name of the company to be changed by resolution of the directors of the company.

³⁵ As amended by cl 27.

³⁶ As amended by sch 3, para 31.

- (4) Where a resolution of the directors is passed in accordance with subsection (3), the company must give notice of the change to the registrar of companies.
- (5) Where the name of the company is changed in compliance with the direction, the registrar of companies must--
- (a) if satisfied that the new name complies with the requirements of Part 5 of the Companies Act 2006, enter the new name on the register of companies in place of the former name, and
 - (b) issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

45A Power to delay registration following s. 42 direction³⁷

- (1) The Commission may delay the registration of a charity if the Commission has given a direction under section 42 (“the section 42 direction”) requiring the name of the charity to be changed.
- (2) A delay under subsection (1) may last until the first to occur of—
- (a) the charity trustees notifying the Commission of the charity’s new name and the date of the name change, or
 - (b) the expiry of the maximum postponement period.
- (3) The “maximum postponement period” is the period of 60 days beginning at the end of the period specified in the section 42 direction for giving effect to the direction.
- (4) If any relevant proceedings are commenced, the period of 60 days mentioned in subsection (3) stops running while the proceedings are ongoing.
- (5) Each of the following are “relevant proceedings”—
- (a) proceedings on an appeal brought to the Tribunal under section 319 against the section 42 direction or against any steps taken by the Commission with a view to securing compliance with the section 42 direction;
 - (b) proceedings on an application made to the Tribunal under section 321 for the review of the Commission’s decision to institute an inquiry under section 46 in respect of matters connected with the section 42 direction;
 - (c) proceedings on an application for judicial review of the Commission’s decision to give the section 42 direction or to take any steps with a view to securing compliance with the section 42 direction;
 - (d) proceedings on an application under section 336 in respect of disobedience to the section 42 direction.
- (6) Relevant proceedings are commenced when an application, claim form or other process is made or issued for the purpose of commencing the proceedings.
- (7) Relevant proceedings are ongoing until—

³⁷ Inserted by cl 28.

- (a) the proceedings (including any proceedings on appeal or further appeal) have been concluded, and
- (b) any period during which an appeal (or further appeal) may ordinarily be made has passed.

45B Power to delay entry of name in register following a s. 42 direction³⁸

- (1) If the charity trustees of a charity notify the Commission under section 35(3) of a change of name of the charity, the Commission may delay changing the charity's name in the register if the Commission has given a direction under section 42 ("the section 42 direction") requiring the new name to be changed.
- (2) A delay under subsection (1) may last until the first to occur of—
 - (a) the charity trustees notifying the Commission of the charity's further new name and the date of the further name change, or
 - (b) the expiry of the maximum postponement period.
- (3) The "maximum postponement period" is the period of 60 days beginning at the end of the period specified in the section 42 direction for giving effect to the direction.
- (4) If any relevant proceedings are commenced, the period of 60 days mentioned in subsection (3) stops running while the proceedings are ongoing.
- (5) Each of the following are "relevant proceedings"—
 - (a) proceedings on an appeal brought to the Tribunal under section 319 against the section 42 direction or against any steps taken by the Commission with a view to securing compliance with the section 42 direction;
 - (b) proceedings on an application made to the Tribunal under section 321 for the review of the Commission's decision to institute an inquiry under section 46 in respect of matters connected with the section 42 direction;
 - (c) proceedings on an application for judicial review of the Commission's decision to give the section 42 direction or to take any steps with a view to securing compliance with the section 42 direction;
 - (d) proceedings on an application under section 336 in respect of disobedience to the section 42 direction.
- (6) Relevant proceedings are commenced when an application, claim form or other process is made or issued for the purpose of commencing the proceedings.
- (7) Relevant proceedings are ongoing until—
 - (a) the proceedings (including any proceedings on appeal or further appeal) have been concluded, and
 - (b) any period during which an appeal (or further appeal) may ordinarily be made has passed.

[...]

³⁸ Inserted by cl 29.

Part 6

Cy-près Powers and Assistance and Supervision of Charities by Court and Commission

Cy-près powers and variation of charters

61 Duty of trustees in relation to application of property cy-près

It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

62 Occasions for applying property cy-près

(1) Subject to subsection (3), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près are--

- (a) where the original purposes, in whole or in part--
 - (i) have been as far as may be fulfilled, or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift,
- (b) where the original purposes provide a use for part only of the property available by virtue of the gift,
- (c) where--
 - (i) the property available by virtue of the gift, and
 - (ii) other property applicable for similar purposes,
 can be more effectively used in conjunction, and to that end can suitably, regard being had to the appropriate considerations, be made applicable to common purposes,
- (d) where the original purposes were laid down by reference to--
 - (i) an area which then was but has since ceased to be a unit for some other purpose, or
 - (ii) a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the appropriate considerations, or to be practical in administering the gift, or
- (e) where the original purposes, in whole or in part, have, since they were laid down--
 - (i) been adequately provided for by other means,
 - (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable, or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the appropriate considerations.

(2) In subsection (1) "the appropriate considerations" means--

- (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.
- (3) Subsection (1) does not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près except in so far as those conditions require a failure of the original purposes.
- (4) References in subsections (1) to (3) to the original purposes of a gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (5) The court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in column 1 in Schedule 4, provide for enlarging the area to any such area as is mentioned in column 2 in the same entry in that Schedule.
- (6) Subsection (5) does not affect the power to make schemes in circumstances falling within subsection (1).

63A Failure of specific charitable purposes: application cy-près³⁹

- (1) Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally, if—
- (a) the court or the Commission by order so direct, or
 - (b) the condition specified in any of subsections (3), (4) or (6) is met.
- (2) An order may be made under subsection (1)(a) if it appears to the court or the Commission—
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property, or
 - (b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (3) The condition in this subsection is met if—
- (a) the property is a single gift of £120 or less, and
 - (b) the charity trustees reasonably believe that during the financial year of the charity in which it is given the total amount given by the donor to the charity for the specific charitable purposes is £120 or less,
- unless at the time of giving the gift the donor states in writing that the gift must be returned if the specific charitable purposes fail.
- (4) The condition in this subsection is met if the property is given by a donor who, after the agreed actions are taken, is not identified or is not found.

³⁹ Inserted by cl 6.

(5) The “agreed actions” are those agreed in writing between the charity trustees and the Commission as being reasonable in all the circumstances of the case to identify and find donors.

(6) The condition in this subsection is met if the property consists of—

(a) the proceeds of cash collections made—

(i) by means of collecting boxes, or

(ii) by other means not adapted for distinguishing one gift from another, or

(b) the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(7) The Secretary of State may by regulations amend subsection (3)(a) or (b) by substituting a different sum for the time being specified there.

63—Application cy-près: donor unknown or disclaiming

~~(1) Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally, if it belongs--~~

~~(a) to a donor who after--~~

~~(i) the prescribed advertisements and inquiries have been published and made, and~~

~~(ii) the prescribed period beginning with the publication of those advertisements has ended,~~

~~cannot be identified or cannot be found, or~~

~~(b) to a donor who has executed a disclaimer in the prescribed form of the right to have the property returned.~~

~~(2) Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees are not liable to any person in respect of the property if no claim by that person to be interested in it is received by them before the end of the period mentioned in subsection (1)(a)(ii).~~

~~(3) Where property is applied cy-près by virtue of this section, all the donor's interest in it is treated as having been relinquished when the gift was made.~~

~~(4) But where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of section 64 (donors treated as unidentifiable)--~~

~~(a) the scheme must specify the total amount of that property,~~

~~(b) the donor of any part of that amount is entitled, on making a claim within the time limit, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after the scheme's date in connection with claims relating to the donor's gift, and~~

~~(c) the scheme may include directions as to the provision to be made for meeting any claims made in accordance with paragraph (b).~~

~~(5) For the purposes of subsection (4)(b)--~~

~~(a) a claim is made within the time limit only if it is made no later than 6 months after the date on which the scheme is made, and~~

~~(b) "the scheme's date" means the date on which the scheme is made.~~

~~(6) Subsection (7) applies if--~~

~~(a) any sum is, in accordance with any directions included in the scheme under subsection (4)(c), set aside for meeting claims made in accordance with subsection (4)(b), but~~

~~(b) the aggregate amount of any such claims actually made exceeds the relevant amount;~~

~~and for this purpose "the relevant amount" means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors' gifts.~~

~~(7) If the Commission so directs, each of the donors in question is entitled only to such proportion of the relevant amount as the amount of the donor's claim bears to the aggregate amount referred to in subsection (6)(b).~~

64 Donors treated as unidentifiable

~~(1) For the purposes of section 63 property is conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists of--~~

~~(a) the proceeds of cash collections made--~~

~~(i) by means of collecting boxes, or~~

~~(ii) by other means not adapted for distinguishing one gift from another, or~~

~~(b) the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.~~

~~(2) The court or the Commission may by order direct that property not falling within subsection (1) is for the purposes of section 63 to be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified if it appears to the court or the Commission--~~

~~(a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property, or~~

~~(b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.~~

65 Donors treated as disclaiming

~~(1) This section applies to property given--~~

~~(a) for specific charitable purposes, and~~

~~(b) — in response to a solicitation within subsection (2).~~

~~(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.~~

~~(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, the donor wishes to be given the opportunity by the trustees holding the property to request the return of the property in question (or a sum equal to its value at the time of the making of the gift).~~

~~(4) — Subsections (5) and (6) apply if—~~

~~(a) — a person has given property as mentioned in subsection (1);~~

~~(b) — the specific charitable purposes fail, and~~

~~(c) — the donor has made a relevant declaration.~~

~~(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 the donor wishes to request the return of the property (or a sum equal to its value); and~~

~~(c) — if within the prescribed period the donor makes such a request, returning the property (or such a sum) to the donor.~~

~~(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);~~

~~section 63(1) applies to the property as if it belonged to a donor within section 63(1)(b) (application of property where donor has disclaimed right to return of property).~~

~~(7) — If—~~

~~(a) — a person has given property as mentioned in subsection (1);~~

~~(b) — the specific charitable purposes fail, and~~

~~(c) — the donor has not made a relevant declaration;~~

~~section 63(1) similarly applies to the property as if it belonged to a donor within section 63(1)(b).~~

~~(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~~

~~(c) — where any appeal consists of—~~

~~(i) solicitations that are accompanied by statements within subsection (2)(b), and
(ii) solicitations that are not so accompanied,
a person giving property as a result of the appeal is to be presumed, unless the contrary is proved,
to have responded to the former solicitations and not the latter.~~

66 Section 63A: supplementary~~Unknown and disclaiming donors: supplementary~~⁴⁰

(1) For the purposes of ~~section 63A~~~~sections 63 and 65~~, charitable purposes are to be treated as failing if any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors.

(1A) Where property is applied cy-près by virtue of section 63A, all the donor's interest in it is treated as having been relinquished when the gift was made.

(2) In ~~section 63A~~~~sections 63 to 65~~ and this section--

- (a) references to a donor include persons claiming through or under the original donor, and
- (b) references to property given include the property for the time being representing the property originally given or property derived from it.

(3) Subsection (2) applies except in so far as the context otherwise requires.

~~(4) In sections 63 and 65 "prescribed" means prescribed by regulations made by the Commission.~~

~~(5) Any such regulations are to be published by the Commission in such manner as it thinks fit.~~

~~(6) Any such regulations may, as respects the advertisements which are to be published for the purposes of section 63(1)(a), make provision as to the form and content of such advertisements as well as the manner in which they are to be published.~~

67 Cy-près schemes

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

(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--

- (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).

(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

⁴⁰ Amended by sch 3, para 13.

- (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

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.

(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.

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

- (a) to the charity,
- (b) to the charity trustees,
- (c) to any trustee for the charity, or
- (d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the scheme may provide.

(7) In this section references to the original purposes of a gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

67A Proceeds of fund-raising: power of trustees to apply cy-près⁴¹

(1) Subsection (2) applies if—

- (a) money or other property is solicited to enable a charity to further specific charitable purposes,
- (b) money or other property is given as a result of that solicitation, and
- (c) some or all of that money or other property (or the property for the time being representing it or derived from it) is applicable cy-près by virtue of section 62(1)(a) or (b) or 63A.

(2) The charity trustees of the charity may resolve that all the money or other property which is applicable cy-près by virtue of section 62(1)(a) or (b) or 63A be applied for such charitable purposes specified in the resolution as they consider appropriate, having regard to—

- (a) the desirability of securing that the purposes are, so far as reasonably practicable, similar to the specific charitable purposes for which the money or other property was given;
- (b) the need for the purposes to be suitable and effective in the light of current social and economic circumstances.

(3) A resolution under this section must be passed by a majority of the charity trustees.

(4) If a resolution passed under this section concerns money or other property with a value exceeding £1,000—

⁴¹ Inserted by cl 7.

(a) the charity trustees must send a copy of the resolution to the Commission, together with a statement of their reasons for passing it, and

(b) the resolution does not have effect until the date on which the Commission consents to it in writing.

(5) The Secretary of State may, by regulations, amend subsection (4) by substituting a different sum for the sum for the time being specified there.

68 Charities governed by charter, or by or under statute

(1) Subsection (2) applies where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter.

(2) A scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the cy-près application of any such property)--

(a) may be made by the court under the court's jurisdiction with respect to charities even though the scheme cannot take effect without the alteration of the charter, but

(b) must be so framed that the scheme, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect.

(3) Subsection (4) applies where, under--

(a) the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or

(b) powers conferred by this Act or by any Northern Ireland legislation relating to charities, a scheme is made with respect to a body corporate and it appears to Her Majesty expedient, having regard to the scheme, to amend any Royal charter relating to that body.

(4) Her Majesty may, on the application of the body corporate, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in the same manner as the charter it amends.

(5) The jurisdiction of the court with respect to charities is not excluded or restricted in the case of a charity of a description mentioned in Schedule 5 by the operation of the enactments or instruments there mentioned in relation to that description.

(6) A scheme established for a charity of a description mentioned in Schedule 5--

(a) may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and

(b) may also make any such provision as is authorised by that Schedule.

Powers of Commission to make schemes etc

69 Commission's concurrent jurisdiction with High Court for certain purposes

- (1) The Commission may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes--
- (a) establishing a scheme for the administration of a charity;
 - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;
 - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.
- (2) Subsection (1) is subject to the provisions of this Act.
- (3) If the court directs a scheme for the administration of a charity to be established--
- (a) the court may by order refer the matter to the Commission for it to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and
 - (b) any such order may provide for the scheme to be put into effect by order of the Commission as if prepared under subsection (1) and without any further order of the court.

70 Restrictions on Commission's concurrent jurisdiction

- (1) The Commission does not have jurisdiction under section 69 to try or determine--
- (a) the title at law or in equity to any property as between--
 - (i) a charity or trustee for a charity, and
 - (ii) a person holding or claiming the property or an interest in it adversely to the charity, or
 - (b) any question as to the existence or extent of any charge or trust.
- (2) Subject to the following subsections, the Commission must not exercise its jurisdiction under section 69 as respects any charity except--
- (a) on the application of the charity,
 - (b) on an order of the court under section 69(3), or
 - (c) on the application of the Attorney General.
- (3) In the case of a charity whose gross income does not exceed £500 a year, the Commission may exercise its jurisdiction under section 69 on the application of--
- (a) any one or more of the charity trustees,
 - (b) any person interested in the charity, or
 - (c) any two or more inhabitants of the area of the charity if it is a local charity.
- (4) Subsection (5) applies where in the case of a charity, other than an exempt charity, the Commission--
- (a) is satisfied that the charity trustees--
 - (i) ought in the interests of the charity to apply for a scheme, but

- (ii) have unreasonably refused or neglected to do so, and
 - (b) has given the charity trustees an opportunity to make representations to it.
- (5) The Commission--
- (a) may proceed as if an application for a scheme had been made by the charity, but
 - (b) may not, where it acts by virtue of this subsection, alter the purposes of a charity unless 40 years have elapsed from the date of the charity's foundation.
- (6) Where--
- (a) a charity cannot apply to the Commission for a scheme because of any vacancy among the charity trustees or the absence or incapacity of any of them, but
 - (b) such an application is made by such number of the charity trustees as the Commission considers appropriate in the circumstances of the case,

the Commission may nevertheless proceed as if the application were an application made by the charity.

- (7) The Commission may on the application of any charity trustee or trustee for a charity exercise its jurisdiction under section 69 for the purpose of discharging the applicant from trusteeship.
- (8) The Commission must not exercise its jurisdiction under section 69 in any case (not referred to it by order of the court) which--
- (a) because of its contentious character, or any special question of law or of fact which it may involve, or
 - (b) for other reasons,

the Commission may consider more fit to be adjudicated on by the court.

71 Exercise of Commission's concurrent jurisdiction: notice

- (1) Before exercising any jurisdiction under section 69 otherwise than on an order of the court, the Commission must give notice of its intention to do so to each of the charity trustees except any--
- (a) that cannot be found or has no known address in the United Kingdom, or
 - (b) who is party or privy to an application for the exercise of the jurisdiction.
- (2) Any such notice--
- (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.

72 Power to alter sum specified in s 70(3)

If the [Secretary of State] thinks it expedient to do so--

- (a) in consequence of changes in the value of money, or
- (b) with a view to increasing the number of charities in respect of which the Commission may exercise its jurisdiction under section 69 in accordance with section 70(3),

the [Secretary of State] may by order amend section 70(3) by substituting a different sum for the sum for the time being specified there.

73 Powers to make schemes altering provision made by Acts, etc⁴²

- (1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also--
- (a) that it is necessary or desirable for the scheme--
 - (i) to alter the provision made by an Act establishing or regulating the charity, or
 - (ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or
 - (b) that it is for any reason proper for the scheme to be subject to parliamentary review,
- the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commission under this section may be given effect by order of the [Secretary of State].
- ~~(3) Subject to subsections (4) and (6), an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.~~
- ~~(4) In the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act, no order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.~~
- (5) ~~Subject to subsection (6),~~ any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commission as if it were a scheme brought into effect by order of the Commission under section 69.
- ~~(6) Where subsection (4) applies to a scheme, the order giving effect to it--~~
- ~~(a) may direct that the scheme must not be modified or superseded by a scheme brought into effect otherwise than under this section, and~~
 - ~~(b) may also direct that subsection (4) is to apply to any scheme modifying or superseding the scheme to which the order gives effect.~~
- (7) The Commission must not proceed under this section without the same application, and the same notice to the charity trustees, as would be required if the Commission was proceeding (without an order of the court) under section 69.
- (8) But on any application for a scheme, or in a case where it acts by virtue of section 70(5) or (6), the Commission may proceed under this section or section 69 as appears to it appropriate.

⁴² As amended by cl 5.

74 Restriction on expenditure on promoting Bills

- (1) No expenditure incurred in preparing or promoting a Bill in Parliament is to be defrayed without the consent of the court or the Commission out of any money applicable for the purposes of a charity.
- (2) Subsection (1) applies regardless of anything in the trusts of a charity.

75 Further powers to alter application of charitable property

- (1) Subsection (2) applies where the Commission is satisfied that--
 - (a) the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity,
 - (b) if those circumstances continue, a scheme might be made for applying the surplus cy-près,
 and
 - (c) it is for any reason not yet desirable to make such a scheme.
- (2) The Commission may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme.
- (3) Any application of accrued or accruing income authorised by an order under subsection (2) is to be treated as being within the purposes of the charity.
- (4) An order under subsection (2) must not extend--
 - (a) to more than £300 out of income accrued before the date of the order,
 - (b) to income accruing more than 3 years after that date, or
 - (c) to more than £100 out of the income accruing in any of those 3 years.

Power of the court and the Commission to make schemes⁴³**75ZA Power of the court and the Commission to make schemes**

- (1) Any power of the court or the Commission to make a scheme in relation to a charity that is a charitable trust is also exercisable in relation to any other institution which is a charity.
- (2) Subsection (1)—
 - (a) is subject to the provisions of this Act;
 - (b) is to be treated as always having had effect.

[...]

Total return investment**104A Investment of endowment fund on total return basis**

- (1) This section applies to any available endowment fund of a charity.

⁴³ Inserted by cl 8.

- (2) If the condition in subsection (3) is met in relation to the charity, the charity trustees may resolve that the fund, or a portion of it--
- (a) should be invested without the need to maintain a balance between capital and income returns, and
 - (b) accordingly, should be freed from the restrictions with respect to expenditure of capital that apply to it.
- (3) The condition is that the charity trustees are satisfied that it is in the interests of the charity that regulations under section 104B(1)(b) should apply in place of the restrictions mentioned in subsection (2)(b).
- (4) While a resolution under subsection (2) has effect, the regulations apply in place of the restrictions.
- (5) In this section "available endowment fund", in relation to a charity, means--
- (a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or
 - (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

104AA Total return investment: social investments⁴⁴

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

104B Total return investment: regulations⁴⁵

- (1) The Commission may by regulations make provision about--
- (a) resolutions under sections 104A(2) and 104AA(2)~~section 104A(2)~~,
 - (b) the investment of a relevant fund without the need to maintain a balance between capital and income returns, and expenditure from such a fund, ~~and~~
(ba) the use of a total return fund to make social investments (within the meaning of section 292A), and
 - (c) the steps that must be taken by charity trustees in respect of a fund, or portion of a fund, in the event of a resolution under section 104A(2) or 104AA(2) ceasing to have effect in respect of the fund or portion.
- (2) Regulations under subsection (1)(a) may, in particular--

⁴⁴ Inserted by cl 13.

⁴⁵ As amended by cl 13.

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

Power to authorise dealings with charity property, ex gratia payments etc

105 Power to authorise dealings with charity property etc

- (1) Subject to the provisions of this section, where it appears to the Commission that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Commission may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity.
- (2) Anything done under the authority of an order under this section is to be treated as properly done in the exercise of those powers.
- (3) An order under this section--

- (a) may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and
- (b) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.

Paragraph (b) does not affect the generality of subsection (1).

- (4) An order under this section may give directions--
 - (a) as to the manner in which any expenditure is to be borne, and
 - (b) as to other matters connected with or arising out of the action authorised by the order.
- (5) Where anything is done in pursuance of an authority given by an order under this section, any directions given in connection with that authority--
 - (a) are binding on the charity trustees for the time being as if contained in the trusts of the charity, but
 - (b) may on the application of the charity be modified or superseded by a further order.
- (6) The directions which may be given by an order under this section in particular include directions--
 - (a) for meeting any expenditure out of a specified fund,
 - (b) for charging any expenditure to capital or to income,
 - (c) for requiring expenditure charged to capital to be recouped out of income within a specified period,
 - (d) for restricting the costs to be incurred at the expense of the charity, or
 - (e) for the investment of money arising from any transaction.

This does not affect the generality of subsection (4).

- (7) An order under this section may authorise any act even though--
 - (a) it is prohibited by the Ecclesiastical Leases Act 1836, or
 - (b) the trusts of the charity provide for the act to be done by or under the authority of the court.
- (8) But an order under this section may not--
 - (a) authorise the doing of any act expressly prohibited by any Act other than the Ecclesiastical Leases Act 1836, or by the trusts of the charity, or
 - (b) extend or alter the purposes of the charity.
- (9) In the case of a charitable company, an order under this section may authorise an act even though it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).
- (10) An order under this section does not confer any authority in relation to a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect or treated as having effect under or by virtue of the Mission and Pastoral Measure 2011.
- (11) The reference in subsection (10) to a building is to be treated as including--
 - (a) part of a building, and

(b) any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

106 Power to authorise ex gratia payments etc⁴⁶

~~(1) The Commission, the Attorney General or the court may authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees—~~

~~(a) (apart from by virtue of this section or section 331A) have no power to take the action, but~~

~~(b) in all the circumstances could reasonably be regarded as being under a moral obligation to take it.~~

~~(1A) In relation to a charity established by (or whose purposes or functions are set out in) legislation, subsection (1) is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation.~~

~~(1B) In subsection (1) “legislation” means—~~

~~(a) an Act of Parliament or an Act or Measure of the National Assembly for Wales;~~

~~(b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure; or~~

~~(c) a Measure of the Church Assembly or of the General Synod of the Church of England.~~

~~(1) Subject to subsection (5), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees--~~

~~(a) (apart from this section) have no power to take the action, but~~

~~(b) in all the circumstances regard themselves as being under a moral obligation to take it.~~

(2) The actions are--

(a) making any application of property of the charity, or

(b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.

(3) The power conferred on the Commission by subsection (1) is exercisable by the Commission by order and under the supervision of, and in accordance with such directions as may be given by, the Attorney General.

(4) Any such directions may in particular require the Commission, in such circumstances as are specified in the directions--

(a) to refrain from exercising the power conferred by subsection (1), or

(b) to consult the Attorney General before exercising it.

(5) Where--

(a) an application is made to the Commission for it to exercise the power conferred by subsection (1) in a case where it is not precluded from doing so by any such directions, but

⁴⁶ As amended by cl 16.

(b) the Commission considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by the Commission,
the Commission must refer the application to the Attorney General.

(6) It is hereby declared that where--

- (a) an application is made to the Commission as mentioned in subsection (5)(a), and
- (b) the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (2)(a) or (b),

that refusal does not preclude the Attorney General, on an application subsequently made to the Attorney General by the charity trustees, from authorising them to take that action.

[...]

Legal proceedings relating to charities

[...]

115 Proceedings by other persons⁴⁷

(1) Charity proceedings may be taken with reference to a charity by--

- (a) the charity,
- (b) any of the charity trustees,
- (c) any person interested in the charity, or
- (d) if it is a local charity, any two or more inhabitants of the area of the charity,

but not by any other person.

(2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.

(3) The Commission must not, without special reasons, authorise the taking of charity proceedings where in its opinion the case can be dealt with by the Commission under the powers of this Act other than those conferred by section 114.

(4) This section does not require an order for the taking of proceedings--

- (a) in a pending cause or matter, or
- (b) for the bringing of any appeal.

(5) Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if—

(a) a condition in subsection (5A) is met, and

(b) leave to take the proceedings is obtained from one of the judges of the High Court attached to the Chancery Division.~~if, after the order had been applied for and refused, leave to take the~~

⁴⁷ As amended by cl 38.

~~proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.~~

~~(5A) The conditions referred to in subsection (5)(a) are—~~

~~(a) that the Commission has refused an application for the order;~~

~~(b) that an application to the Commission for the order would, or would appear to, give rise to a conflict of interest affecting the Commission.~~

(6) Nothing in subsections (1) to (5) applies--

(a) to the taking of proceedings by the Attorney General, with or without a relator, or

(b) to the taking of proceedings by the Commission in accordance with section 114.

(7) If it appears to the Commission, on an application for an order under this section or otherwise, that it is desirable--

(a) for legal proceedings to be taken with reference to any charity or its property or affairs, and

(b) for the proceedings to be taken by the Attorney General,

the Commission must so inform the Attorney General and send the Attorney General such statements and particulars as the Commission thinks necessary to explain the matter.

(8) In this section "charity proceedings" means proceedings in any court in England or Wales brought under--

(a) the court's jurisdiction with respect to charities, or

(b) the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

[...]

Part 7

Charity Land

Restrictions on dispositions of land in England and Wales

117 Restrictions on dispositions of land: general⁴⁸

(1) No land held by or in trust for a charity is to be conveyed, transferred, leased or otherwise disposed of without an order of--

(a) the court, or

(b) the Commission.

But this is subject to the following provisions of this section, sections 119 ~~and 120 to 121~~ (further provisions about restrictions on dispositions) and section 127 (release of charity rentcharges).

⁴⁸ As amended by cl 17, 18 and sch 1, para 16.

(1A) For the purposes of this Part, land is held by or in trust for a charity only if the whole of the land which forms the subject matter of the disposition is held—

- (a) by the charity solely for its own benefit (and, accordingly, is not being held as nominee or in trust for another person), or
- (b) in trust solely for the charity.

(2) Subsection (1) does not apply to a disposition of such land if--

- (a) the disposition is made to a person who is not--
 - (i) a connected person (as defined in section 118), or
 - (ii) a trustee for, or nominee of, a connected person, and
- (b) the requirements of--
 - (i) section 119(1) (dispositions other than certain leases), or
 - (ii) section 120(2) (leases which are for 7 years or less etc),

have been complied with in relation to it.

(3) The restrictions on disposition imposed by this section and sections 119 ~~and 120 to 124~~ apply regardless of anything in the trusts of a charity; but nothing in this section or sections 119 ~~and 120 to 124~~ applies to--

- (a) any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by--
 - (i) any statutory provision contained in or having effect under an Act, or
 - (ii) any scheme legally established,

(aa) any disposition by a liquidator, provisional liquidator, receiver, mortgagee or an administrator,

~~(b) any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and College Estates Act 1925,~~

(c) any disposition of land held by or in trust for a charity which is made to another charity

unless—

- (i) the charity making the disposition is making it with a view to achieving the best price it can reasonably obtain, or
- (ii) the disposition is a social investment for the purposes of Part 14A (social investments).
- ~~(c) any disposition of land held by or in trust for a charity which--~~
 - ~~(i) is made to another charity otherwise than for the best price that can reasonably be obtained, and~~
 - ~~(ii) is authorised to be so made by the trusts of the first-mentioned charity, or~~
- (d) the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease--
 - (i) is granted otherwise than for the best rent that can reasonably be obtained, and

- (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.
- (4) Nothing in this section or sections 119 ~~and 120 to 124~~ applies to--
- (a) any disposition of land held by or in trust for an exempt charity,
 - (b) any disposition of land by way of mortgage or other security, or
 - (c) any disposition of an advowson.

118 Meaning of "connected person" in s 117(2)⁴⁹

- (1) In section 117(2) "connected person", in relation to a charity, means any person who falls within subsection (2)--
- (a) at the time of the disposition in question, or
 - (b) at the time of any contract for the disposition in question.
- (2) ~~The~~ Subject to subsections (2A) and (2B), the persons are--
- (a) a charity trustee or trustee for the charity,
 - (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity),
 - (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,
 - (d) an officer, agent or employee of the charity,
 - (e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d),
 - (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e),
 - (g) an institution which is controlled--
 - (i) by any person falling within any of paragraphs (a) to (f), or
 - (ii) by two or more such persons taken together, or
 - (h) a body corporate in which--
 - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or
 - (ii) two or more such persons, taken together, have a substantial interest.

(2A) A person who is an employee of the charity does not fall within subsection (2)(d) if the disposition in question is the grant of a tenancy—

(a) for a fixed term of one year or less or which is a periodic tenancy and the period is one year or less, and

(b) which confers the right to occupy a dwelling as a home.

(2B) A person does not fall within subsection (2)(g) or (h) if the person is a body corporate which is wholly-owned by the charity.

(2C) A body corporate is wholly-owned by a charity if—

⁴⁹ As amended by cl 23, cl 25 and Sch 3, para 27.

- ~~(a) it is a body corporate of which no person is a member other than—~~
- ~~(i) the charity,~~
 - ~~(ii) a person who is a charity trustee acting on behalf of the charity,~~
 - ~~(iii) a person who is a trustee for the charity acting on behalf of the charity, or~~
 - ~~(iv) a nominee of any person falling within any of subparagraphs (i) to (iii), or~~
- ~~(b) it is a wholly-owned subsidiary (within the meaning of section 1159 of the Companies Act 2006) of a body corporate within paragraph (a).~~

(3) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (2).

119 Requirements for dispositions other than certain leases⁵⁰

(1) The requirements mentioned in section 117(2)(b) are that the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land--

- (a) obtain and consider a written report on the proposed disposition from a designated adviser~~qualified surveyor~~ instructed by the trustees and acting exclusively for the charity,
- ~~(b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and~~
- (c) decide that they are satisfied, having considered the adviser~~surveyor~~'s report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(2) Subsection (1) does not apply where the proposed disposition is the granting of such a lease as is mentioned in section 120(1).

- (3) For the purposes of subsection (1) a designated adviser~~qualified surveyor~~ is a person who--
- (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfies such other requirement or requirements as may be prescribed by regulations made by the Minister, and
 - (b) is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question.
- (4) Any report prepared for the purposes of subsection (1) must ~~contain such information, and~~ deal with such matters, as may be prescribed by regulations made by the [Secretary of State].

120 Requirements for leases which are for 7 years or less etc

(1) Subsection (2) applies where the proposed disposition is the granting of a lease for a term ending not more than 7 years after it is granted (other than one granted wholly or partly in consideration of a fine).

⁵⁰ As amended by cl 20 and 21.

(2) The requirements mentioned in section 117(2)(b) are that the charity trustees must, before entering into an agreement for the lease--

- (a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition, and
- (b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

~~121—Additional restrictions where land held for stipulated purposes⁵¹~~

~~(1)—Subsection (2) applies where--~~

- ~~(a)—any land is held by or in trust for a charity, and~~
- ~~(b)—the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity.~~

~~(2)—The land must not be conveyed, transferred, leased or otherwise disposed of unless the charity trustees have before the relevant time--~~

- ~~(a)—given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice, and~~
- ~~(b)—taken into consideration any representations made to them within that time about the proposed disposition.~~

~~(3)—Subsection (2)--~~

- ~~(a)—is subject to subsections (5) and (6), and~~
- ~~(b)—does not affect the operation of sections 117 to 120.~~

~~(4)—In subsection (2) "the relevant time" means--~~

- ~~(a)—where the charity trustees enter into an agreement for the sale, or (as the case may be) for the lease or other disposition, the time when they enter into that agreement, and~~
- ~~(b)—in any other case, the time of the disposition.~~

~~(5)—Subsection (2) does not apply to any such disposition of land as is there mentioned if--~~

- ~~(a)—the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in subsection (1)(b), or~~
- ~~(b)—the disposition is the granting of a lease for a term ending not more than 2 years after it is granted (other than one granted wholly or partly in consideration of a fine).~~

~~(6)—The Commission may, if the condition in subsection (7) is met, direct--~~

⁵¹ Repealed by cl 19.

~~(a) that subsection (2) is not to apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or~~

~~(b) that subsection (2) is not to apply to a particular disposition of land held by or in trust for a charity.~~

~~(7) The condition is that the Commission, on an application made to it in writing by or behalf of the charity or charities in question, is satisfied that it would be in the interests of the charity or charities for the Commission to give the direction.~~

122 Instruments concerning dispositions of land: required statements, etc⁵²

(1) Subsection (2) applies to any of the following instruments--

(a) a contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and

(b) a conveyance, transfer, lease or other instrument effecting a disposition of such land.

~~(2) An instrument to which this subsection applies must—~~

~~(a) state that the land is held by or in trust for a charity,~~

~~(b) state whether the charity is an exempt charity,~~

~~(c) if the charity is not an exempt charity, state whether the disposition is one falling within section 117(3)(a), (aa), (c) or (d), and~~

~~(d) if the charity is not an exempt charity and the disposition is not one falling within section 117(3)(a), (aa), (c) or (d), include the statement required by subsection (2A).~~

~~(2A) The statement is—~~

~~(a) in a case where section 117(1) applies to the disposition to which the instrument relates, a statement that the disposition has been sanctioned by an order of the court or the written consent of the Charity Commission, or~~

~~(b) in a case where section 117(2) applies to the disposition to which the instrument relates, a statement that there is power under the trusts of the charity to effect the disposition and that sections 117 to 120 have been complied with.~~

~~(2) An instrument to which this subsection applies must state--~~

~~(a) that the land is held by or in trust for a charity,~~

~~(b) whether the charity is an exempt charity and whether the disposition is one falling within section 117(3)(a), (b), (c) or (d), and~~

~~(c) if it is not an exempt charity and the disposition is not one falling within section 117(3)(a), (b),~~

~~(c) or (d), that the land is land to which the restrictions on disposition imposed by sections 117 to 121 apply.~~

⁵² As amended by cl 24 and sch 1, para 16.

~~(3) Where any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, the charity trustees must certify in the instrument by which the disposition is effected—~~

~~(a) (where section 117(1) applies) that the disposition has been sanctioned by an order of the court or of the Commission (as the case may be), or~~

~~(b) (where section 117(2) applies) that the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.~~

(4) Where subsection (2)(d) has been complied with in relation to a contract for the disposition of land it is conclusively presumed, for the purposes of enforcing the contract, that the statement is true.

(4A) Where subsection (2)(d) has been complied with in relation to an instrument effecting the disposition of land it is conclusively presumed, in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, that the statement is true.

~~(4) Where subsection (3) has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate.~~

(5) Where subsection (2)(d) applies in relation to a contract for the disposition of land but the statement required by subsection (2A) has not been included in it, then in favour of a person who has entered into the contract in good faith the contract is enforceable as if—

(a) the disposition to which the contract relates had been sanctioned by an order of the court or the written consent of the Charity Commission, or

(b) there is power under the trusts of the charity to effect such a disposition and sections 117 to 120 have been complied with.

(5A) Where subsection (2)(d) applies in relation to an instrument effecting the disposition of land but the statement required by subsection (2A) has not been included in it, then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition is valid even if—

(a) the disposition has not been sanctioned by an order of the court or the written consent of the Charity Commission, or

(b) there is no power under the trusts of the charity to effect the disposition or sections 117 to 120 have not been complied with in relation to it (or both).

~~(5) Subsection (6) applies where—~~

~~(a) any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, but~~

~~(b) subsection (3) has not been complied with in relation to the disposition.~~

~~(6) In favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition is valid whether or not—~~

~~(a) — the disposition has been sanctioned by an order of the court or of the Commission, or~~
~~(b) — the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.~~

- (7) Subsection (8) applies to any of the following instruments--
- (a) a contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and
 - (b) a conveyance, transfer, lease or other instrument effecting a disposition of such land.
- (8) An instrument to which this subsection applies must state--
- (a) that the land will, as a result of the disposition, be held by or in trust for a charity,
 - (b) whether the charity is an exempt charity, and
 - (c) if it is not an exempt charity, that the restrictions on disposition imposed by sections 117 to 120~~to 124~~ will apply to the land (subject to section 117(3)).
- (9) In this section and section 123 references to a disposition of land do not include references to--
- (a) a disposition of land by way of mortgage or other security,
 - (b) any disposition of an advowson, or
 - (c) any release of a rentcharge falling within section 127(1).

123 Charity land and land registration⁵³

- (1) Where the disposition to be effected by any such instrument as is mentioned in section 122(1)(b) or (7)(b) will be--

- (a) a registrable disposition, or
- (b) a disposition which triggers the requirement of registration,

the statement which, by virtue of section 122(2) or (8), is to be contained in the instrument must be in such form as may be prescribed by land registration rules.

- (2) Where the registrar approves an application for registration of--

- (a) a disposition of registered land, or
- (b) a person's title under a disposition of unregistered land,

and the instrument effecting the disposition contains a statement complying with section 122(8) and subsection (1), the registrar must enter in the register a restriction reflecting the limitation under sections 117 to 120~~to 124~~ on subsequent disposal.

- (3) Where--

- (a) any such restriction is entered in the register in respect of any land, and
- (b) the charity by or in trust for which the land is held becomes an exempt charity,

the charity trustees must apply to the registrar for the removal of the entry.

- (4) On receiving any application duly made under subsection (3) the registrar must remove the entry.

- (5) Where--

⁵³ As amended by sch 1, para 16(4).

- (a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or
- (b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees must apply to the registrar for such a restriction as is mentioned in subsection (2) to be entered in the register in respect of the land.

- (6) On receiving any application duly made under subsection (5) the registrar must enter such a restriction in the register in respect of the land.

Restrictions on mortgages of land in England and Wales

124 Restrictions on mortgages⁵⁴

- (1) Subject to subsection (2), no mortgage of land held by or in trust for a charity is to be granted without an order of--
 - (a) the court, or
 - (b) the Commission.
- (2) Subsection (1) does not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (4) (as the case may be).
- (3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are--
 - (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant,
 - (b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant, and
 - (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.
- (4) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.
- (5) Subsection (3) or (as the case may be) subsection (4) applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage--
 - (a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or
 - (b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

⁵⁴ As amended by cl 18 and 22.

- (6) Subsection (7) applies where--
- (a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2), and
 - (b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (7) In such a case, the charity trustees must not after that date enter into any transaction involving--
- (a) the payment of any such sums, or
 - (b) the undertaking of any such obligations,
- unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (4) (as the case may be).
- (8) For the purposes of this section proper advice is the advice of a person--
- (a) who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters, and
 - (b) who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given;

~~and such advice may constitute proper advice for those purposes even though the person giving it does so in the course of employment as an officer or employee of the charity or of the charity trustees.~~

- (9) This section applies regardless of anything in the trusts of a charity; but nothing in this section applies to any mortgage--
- (a) for which general or special authority is given as mentioned in section 117(3)(a), or (aa) granted by a liquidator, provisional liquidator, receiver, mortgagee or an administrator.
 - ~~(b) for which the authorisation or consent of the Secretary of State is required as mentioned in section 117(3)(b).~~
- (10) Nothing in this section applies to an exempt charity.

125 Mortgages: required statements, etc⁵⁵

- ~~(1) Any mortgage of land held by or in trust for a charity must—~~
- ~~(a) state that the land is held by or in trust for a charity,~~
 - ~~(b) state whether the charity is an exempt charity and whether the mortgage is one falling within section 124(9), and~~
 - ~~(c) if the charity is not an exempt charity and the mortgage is not one falling within section 124(9), include the statement required by subsection (1A).~~
- ~~(1A) The statement is—~~
- ~~(a) in a case where section 124(1) applies, a statement that the mortgage has been sanctioned by an order of the court or the written consent of the Charity Commission, or~~

⁵⁵ As amended by cl 24.

(b) in a case where section 124(2) applies, a statement that there is power under the trusts of the charity to grant the mortgage and the requirements of section 124(2) have been complied with.

~~(1) Any mortgage of land held by or in trust for a charity must state—~~

~~(a) that the land is held by or in trust for a charity,~~

~~(b) whether the charity is an exempt charity and whether the mortgage is one falling within section 124(9), and~~

~~(c) if it is not an exempt charity and the mortgage is not one falling within section 124(9), that the mortgage is one to which the restrictions imposed by section 124 apply.~~

~~(2) Where section 124(1) or (2) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in the mortgage—~~

~~(a) (where section 124(1) applies) that the mortgage has been sanctioned by an order of the court or of the Commission (as the case may be), or~~

~~(b) (where section 124(2) applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and have obtained and considered such advice as is mentioned in section 124(2).~~

(3) Where subsection (1)(c)~~subsection (2)~~ has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it is conclusively presumed that the statement is true~~facts were as stated in the certificate.~~

(5) Where subsection (1)(c) applies in relation to a mortgage of land but the statement required by subsection (1A) has not been included in it, then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage is valid even if—

(a) the mortgage has not been sanctioned by an order of the court or the written consent of the Charity Commission, or

(b) there is no power under the trusts of the charity to grant the mortgage or section 124 has not been complied with in relation to it (or both).

~~(4) Subsection (5) applies where—~~

~~(a) section 124(1) or (2) applies to any mortgage of land held by or in trust for a charity, but~~

~~(b) subsection (2) has not been complied with in relation to the mortgage.~~

~~(5) In favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage is valid whether or not—~~

~~(a) the mortgage has been sanctioned by an order of the court or of the Commission, or~~

~~(b) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in section 124(2).~~

(6) Where section 124(7) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in relation to any transaction falling within section 124(7) that they have obtained and considered such advice as is mentioned in section 124(7).

(7) Where subsection (6) has been complied with in relation to any transaction, then, in favour of a person who (whether under the mortgage or afterwards) has acquired or acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate.

126 Mortgages of charity land and land registration⁵⁶

(1) Where the mortgage referred to in section 125(1) will be a registrable disposition, the statement required by section 125(1) must be in such form as may be prescribed by land registration rules.

(2) Where any such mortgage will be one to which section 4(1)(g) of the Land Registration Act 2002 applies--

- (a) the statement required by section 125(1) must be in such form as may be prescribed by land registration rules, and
- (b) if the charity is not an exempt charity, the mortgage must also contain a statement, in such form as may be prescribed by land registration rules, that the restrictions on disposition imposed by sections 117 ~~to 120~~~~to 124~~ apply to the land (subject to section 117(3)).

(3) Where--

- (a) the registrar approves an application for registration of a person's title to land in connection with such a mortgage as is mentioned in subsection (2),
- (b) the mortgage contains statements complying with section 125(1) and subsection (2), and
- (c) the charity is not an exempt charity,

the registrar must enter in the register a restriction reflecting the limitation under sections 117 ~~to 120~~~~to 124~~ on subsequent disposal.

(4) Subsections (3) and (4) of section 123 (removal of entry) apply in relation to any restriction entered under subsection (3) as they apply in relation to any restriction entered under section 123(2).

Release of charity rentcharges

127 Release of charity rentcharges

(1) Section 117(1) does not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than 10 times the annual amount of the rentcharge.

(2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £1,000, any costs incurred by the charity in connection with proving its title to

⁵⁶ As amended by sch 1, para 16.

the rentcharge are recoverable by the charity from the person or persons in whose favour the rentcharge is being released.

(3) Neither section 117(1) nor subsection (2) of this section applies where a rentcharge which a charity is entitled to receive is redeemed under sections 8 to 10 of the Rentcharges Act 1977.

128 Power to alter sum specified in s 127(2)

The [Secretary of State] may by order amend section 127(2) by substituting a different sum for the sum for the time being specified there.

Advice etc from charity trustees, officers and employees⁵⁷

128A Advice etc from charity trustees, officers and employees

(1) Subsection (2) applies to—

- (a) a report by a designated adviser for the purposes of section 119(1)(a),
- (b) advice on a proposed disposition for the purposes of section 120(2)(a),
- (c) proper advice in connection with a mortgage of land for the purposes of section 124(2), and
- (d) proper advice in connection with a mortgage of land for the purposes of section 124(7).

(2) For the purposes of the provisions mentioned in subsection (1), it does not matter if the report or the advice (as the case may be) is provided—

- (a) by a charity trustee or an officer or employee of the charity or of the charity trustees, or
- (b) in the course of a person's employment as an officer or an employee of the charity or of the charity trustees.

Notification of certain disposals⁵⁸

128B Notification of disposal to wholly-owned company etc

(1) This section applies where—

- (a) land held by or in trust for a charity has been conveyed, transferred, leased or otherwise disposed of to—
 - (i) a body corporate which is wholly-owned by the charity (within the meaning of section 118(2C)), or
 - (ii) a trustee for, or a nominee of, such a body corporate, and
- (b) in reliance on section 117(2) and section 118(2B) no order of the court or of the Commission was obtained in respect of the disposition.

⁵⁷ Inserted by cl 22.

⁵⁸ Inserted by cl 25.

(2) Within 14 days of the disposal the charity trustees must notify the Commission that the disposal has taken place.

(3) A notification under subsection (2) must include—

(a) a copy of the report of the designated adviser obtained for the purposes of section 119(1)(a),
or

(b) a copy of the advice obtained for the purposes of section 120(2)(a) (or, if the advice obtained for the purposes of that section was not provided to the charity trustees in writing, a summary of the contents of the advice).

[...]

Part 9

Charity Trustees, Trustees and Auditors etc

[...]

Invalid appointment of charity trustee⁵⁹

184B Power to confirm trustee appointments etc

(1) Subsection (2) applies if—

(a) a person acts, or intends to act, as a charity trustee in relation to a charity, but

(b) there is not, or might not be, a valid appointment or election of that person to a qualifying position in relation to that charity.

(2) The Commission may, with the consent of the person concerned, by order provide that for the purposes of anything done (or not done) on or after the date of the order—

(a) any defect in the person's appointment or election to a qualifying position (including any absence of appointment or election) is to be ignored in relation to the charity, and

(b) accordingly, there is to be treated as being a valid appointment or election to a qualifying position in respect of the person.

(3) A position is a "qualifying position" in relation to a charity if, as a result of a person holding that position, the person is a charity trustee of the charity.

(4) A position need not be a position in the charity to be a qualifying position.

(5) An order under subsection (2) may include—

(a) provision with respect to the vesting in or transfer of property that the Commission could make on the removal or appointment of a charity trustee by it under section 69 (Commission's concurrent jurisdiction with High Court for certain purposes);

(b) provision that an act of a person who is the subject of the order is valid notwithstanding that there was not at the time the act was carried out a valid appointment or election to a qualifying position in respect of that person.

⁵⁹ Inserted by cl 31.

(6) An order containing provision made by virtue of subsection (5)(a) has the same effect as an order made under section 69.

Remuneration of charity trustees and trustees etc

185 Remuneration of charity trustees or trustees etc providing goods or services to charity⁶⁰

(1) This section applies to remuneration for goods or services provided by a person ("P") to or on behalf of a charity where--

- (a) P is a charity trustee or trustee for the charity, or
- (b) P is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (3).

(2) If Conditions A to D are met in relation to remuneration within subsection (1), P is entitled to receive the remuneration out of the funds of the charity.

Condition A

Condition A is that the amount or maximum amount of the remuneration--

- (a) is set out in an agreement in writing between the charity or its charity trustees (as the case may be) and P under which P is to provide the goods or 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 P of the goods or services in question.

Condition B

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 goods or services to be provided by P to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.

Condition C

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 Condition A is in force,
- (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),

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

Condition D

⁶⁰ As amended by cl 32.

Condition D is that the trusts of the charity do not contain any express provision that prohibits P from receiving the remuneration.

~~(3) This section does not apply to any remuneration for services provided by a person in the person's capacity as a charity trustee or trustee for a charity or under a contract of employment.~~

~~(3A) Any entitlement to receive remuneration under subsection (2) is in addition to and does not affect any entitlement to receive the remuneration by virtue of—~~

~~(a) any provision contained in the trusts of the charity;~~

~~(b) any order of the court or the Commission;~~

~~(c) any other statutory provision contained in or having effect under any Act.~~

~~(3) Nothing in this section applies to--~~

~~(a) any remuneration for services provided by a person in the person's capacity as a charity trustee or trustee for a charity or under a contract of employment, or~~

~~(b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of--~~

~~(i) any provision contained in the trusts of the charity;~~

~~(ii) any order of the court or the Commission;~~

~~(iii) any statutory provision contained in or having effect under an Act other than this section.~~

(4) Before entering into an agreement within Condition A the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.

(5) 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 Condition B.

(6) For the purposes of Condition C an agreement within Condition A is in force so long as any obligations under the agreement have not been fully discharged by a party to it.

(7) Sections 187 and 188 (interpretation) apply for the purposes of this section.

186 Disqualification of charity trustee or trustee receiving remuneration under s 185

(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 Condition A, or

(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.

(3) But if an act is done by a person who is disqualified from doing it by virtue of subsection (2), the act is not invalid merely because of that disqualification.

(4) If the Commission is satisfied--

(a) that a person ("P") has done any act which P was disqualified from doing by virtue of subsection (2), and

(b) that P or a person connected with P has received or is to receive from the charity any remuneration under the agreement in question,

it may make an order under subsection (5) or (6) (as appropriate).

(5) An order under this subsection is one requiring P--

(a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b);

(b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.

(6) An order under this subsection is one directing that P or (as the case may be) the connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b).

(7) If the Commission makes an order under subsection (5) or (6), P or (as the case may be) the connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires P to reimburse to the charity or (as the case may be) as it directs is not to be paid to P.

(8) Sections 187 and 188 (interpretation) apply for the purposes of this section.

186A Remuneration etc for work already carried out⁶¹

(1) This section applies to a person who—

(a) has carried out work for or on behalf of a charity, and

(b) is a charity trustee or trustee for the charity (or was one when the work was carried out).

(2) If the condition in subsection (3) is met, the Commission may by order—

(a) require the charity trustees of the charity to pay the person such remuneration for the work as must be specified in the order;

(b) authorise, to such extent as must be specified in the order, any benefit already received in connection with the work to be retained.

(3) The condition in this subsection is that the Commission considers that it would be inequitable for the person not to be paid the remuneration or not to retain the benefit.

(4) In determining whether to make an order under this section the Commission must in particular have regard to—

(a) whether, if the person had not carried out the work, the charity would have employed someone else to do so,

(b) the level of skill with which the work was carried out,

(c) any express provision in the trusts of the charity prohibiting the person from receiving the remuneration or retaining the benefit, and

⁶¹ Inserted by cl 33.

(d) whether remunerating the person or allowing the person to retain the benefit would encourage breaches of trust or breaches of duty by persons in their capacity as charity trustees or trustees for charities.

187 Meaning of "benefit", "remuneration", "~~services~~" etc⁶²

In sections 185 ~~to 186A and 186--~~

"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;

"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.~~

188 Meaning of "connected person"

(1) For the purposes of sections 185 and 186, 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;
- (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
- (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
- (d) an institution which is controlled--
 - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together.
- (e) a body corporate in which--
 - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(2) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (1).

[...]

⁶² As amended by sch 3, paras 37 and 39.

Part 10

Charitable Companies etc

[...]

*Restrictions on alteration of objects***197 Alteration of objects by bodies corporate and charitable status**

- (1) Subsection (2) applies where a charity--
- (a) is a company or other body corporate, and
 - (b) has power to alter the instruments establishing or regulating it as a body corporate.
- (2) No exercise of the power which has the effect of the body ceasing to be a charity is valid so as to affect the application of--
- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property.

198 Alteration of objects by companies and Commission's consent⁶³

- (1) Any regulated alteration by a charitable company--
- (a) requires the prior written consent of the Commission, and
 - (b) is ineffective if such consent has not been obtained.
- (2) The following are regulated alterations--
- (a) an amendment of the company's articles of association which alters the charitable purposes of the company, adding, removing or altering a statement of the company's objects,
 - (b) any alteration of any provision of its articles of association directing the application of property of the company on its dissolution, and
 - (c) any alteration of any provision of its 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.

(2A) In considering whether to consent to an alteration falling within subsection (2)(a) the Commission must have regard to—

- (a) the purposes of the company when it was established,

⁶³ As amended by cl 1.

- (b) the desirability of securing that the purposes of the company are, so far as reasonably practicable, similar to the purposes being altered, and
(c) the need for the company to have purposes which are suitable and effective in the light of current social and economic circumstances.

(3) Where a company that has made a regulated alteration in accordance with subsection (1) is required--

- (a) by section 26 of the Companies Act 2006 to send to the registrar of companies a copy of its articles as amended,
 (b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or
 (c) by section 31 of that Act to give notice to the registrar of the amendment,

the copy or notice must be accompanied by a copy of the Commission's consent.

(4) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(5) Subsections (2) to (4) of section 30 of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (3) as in relation to a failure to comply with that section.

199 Meaning of "benefit" in s 198(2)⁶⁴

For the purposes of section 198(2)(c) "benefit" means a direct or indirect benefit of any nature, except that it does not include—

(a) any remuneration whose receipt may be authorised under section 185, or

(b) the purchase of any insurance which may be authorised under section 189.~~include any remuneration (within the meaning of section 185) whose receipt may be authorised under that section.~~

200 Meaning of "connected person" in s 198(2)

(1) For the purposes of section 198(2)(c), the following persons are connected with a director or member of a charitable company--

- (a) a child, parent, grandchild, grandparent, brother or sister of the director or member;
 (b) the spouse or civil partner of the director or member or of any person falling within paragraph (a);
 (c) a person carrying on business in partnership with the director or member or with any person falling within paragraph (a) or (b);
 (d) an institution which is controlled--
 (i) by the director or member or by any person falling within paragraph (a), (b) or (c), or
 (ii) by two or more persons falling within sub-paragraph (i), when taken together.

⁶⁴ As amended by sch 3, para 40.

- (e) a body corporate in which--
 - (i) the director or member or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.
- (2) Sections 350 to 352 (meaning of child, spouse, civil partner, controlled institution and substantial interest) apply for the purposes of subsection (1).

[...]

Part 11

Charitable Incorporated Organisations (CIOs)

Chapter 1

General

[...]

Formation and registration of CIO

207 Application for CIO to be constituted and registered

- (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.
- (2) The applicants must 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 CIO regulations, and
 - (c) such other documents or information as the Commission may require for the purposes of the application.

208 Cases where application must or may be refused⁶⁵

- (1) The Commission must refuse an application under section 207 if--
 - (a) it is not satisfied that the CIO would be a charity at the time it would be registered, or
 - (b) the CIO's proposed constitution does not comply with one or more of the requirements of section 206 (constitution of CIOs) and any regulations made under that section.
- (2) The Commission may refuse such an application if--
 - (a) the proposed name of the CIO--

⁶⁵ As amended by sch 3, para 32.

- (i) is the same as, or
 - (ii) is in the opinion of the Commission too like,
- the name or a working 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 42(2) (power to require charity's name or working name to be changed) 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).

[...]

Chapter 3

Amendment of Constitution

224 Amendment of constitution and procedure⁶⁶

- (1) A CIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must 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.
- (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 section 223 treats it as having been passed (but that date may not be earlier than that on which the last member agreed to it).
- (4) Within 15 days of the date of passing such a resolution the CIO must send to the Commission a copy of the resolution together with--
 - (a) a copy of the constitution as amended;
 - (b) such other documents and information as the Commission may require.

225 Amendment of constitution and charitable status

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.

⁶⁶ As amended by cl 2.

226 Amendment of constitution: Commission's consent and coming into effect

Commission's consent⁶⁷

(1) An amendment to a CIO's constitution which would make a regulated alteration—

(a) requires the prior written consent of the Commission, and

(b) cannot take effect if such consent has not been obtained, (and subsections (2B) and (2C) are subject to this requirement.)

~~(1) Subject to section 227(5), 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.~~

(2) 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, and

(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.

(2A) In considering whether to consent to an alteration falling within subsection (2)(a) the Commission must have regard to—

(a) the purposes of the CIO when it was established,

(b) the desirability of securing that the purposes of the CIO are, so far as reasonably practicable, similar to the purposes being altered, and

(c) the need for the CIO to have purposes which are suitable and effective in the light of current social and economic circumstances.

(2B) Subject to subsection (2C), an amendment to a CIO's constitution takes effect—

(a) on the date the resolution containing it is passed, or

(b) if a later date is specified for that purpose in the resolution containing the amendment, on that later date.

(2C) An amendment making a regulated alteration falling within subsection (2)(a) takes effect—

(a) when it is registered by the Commission, or

(b) if later, on the date specified for that purpose in the resolution containing the amendment.

(3) Sections 248 (meaning of "benefit") and 249 (meaning of "connected person") apply for the purposes of this section.

⁶⁷ As amended by cl 2.

227 — Registration and coming into effect of amendments⁶⁸

- ~~(1) — A CIO must send to the Commission a copy of a resolution containing an amendment to its constitution, together with—~~
- ~~(a) — a copy of the constitution as amended, and~~
 - ~~(b) — such other documents and information as the Commission may require, by the end of the period of 15 days beginning with the date of passing of the resolution (see section 224(3)).~~
- ~~(2) — An amendment to a CIO's constitution does not take effect until it has been registered.~~
- ~~(3) — The Commission must 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 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 207 for the constitution and registration of a CIO with the name specified in the amendment on a ground set out in section 208(2).~~
- ~~(4) — The Commission may refuse to register an amendment if—~~
- ~~(a) — the amendment would make a regulated alteration, and~~
 - ~~(b) — the consent referred to in section 226(1) had not been obtained.~~
- ~~(5) — But if the Commission does register such an amendment, section 226(1) does not apply.~~

Chapter 4**Conversion, Amalgamation and Transfer*****Conversion of certain bodies to CIO*****228 Application for conversion by charitable company**

- (1) A charitable company 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.
- (2) But such an application may not be made by—
- (a) a company having a share capital if any of the shares are not fully paid up, or
 - (b) an exempt charity.
- (3) The company must supply the Commission with—
- (a) a copy of a resolution of the company that it be converted into a CIO,
 - (b) a copy of the proposed constitution of the CIO,
 - (c) a copy of a resolution of the company adopting the proposed constitution of the CIO,

⁶⁸ Repealed by cl 2.

- (d) such other documents or information as may be prescribed by CIO regulations, and
 - (e) such other documents or information as the Commission may require for the purposes of the application.
- (4) The resolution referred to in subsection (3)(a) must be--
- (a) a special resolution of the company, or
 - (b) a unanimous written resolution signed by or on behalf of all the members of the company who would be entitled to vote on a special resolution.
- (5) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution) does not apply to such a resolution.
- (6) In the case of a company limited by guarantee which makes an application under this section (whether or not it also has a share capital), the proposed constitution of the CIO must (unless subsection (8) applies) provide--
- (a) for the CIO's members to be liable to contribute to its assets if it is wound up, and
 - (b) for the amount up to which they are so liable.
- (7) That amount must 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.
- (8) If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less--
- (a) the guarantee is extinguished on the conversion of the company into a CIO, and
 - (b) the requirements of subsections (6) and (7) do not apply.

229 Application for conversion by registered society

- (1) A charity which is a registered society 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.
- "Registered society" has the same meaning as in [the Co-operative and Community Benefit Societies Act 2014].
- (2) But such an application may not be made by--
- (a) a registered society having a share capital if any of the shares are not fully paid up, or
 - (b) an exempt charity.
- (3) The registered society must supply the Commission with--
- (a) a copy of a resolution of the registered society that it be converted into a CIO,
 - (b) a copy of the proposed constitution of the CIO,
 - (c) a copy of a resolution of the registered society adopting the proposed constitution of the CIO,
 - (d) such other documents or information as may be prescribed by CIO regulations, and
 - (e) such other documents or information as the Commission may require for the purposes of the application.
- (4) The resolution referred to in subsection (3)(a) must be--

- (a) a special resolution of the registered society, or
 - (b) a unanimous written resolution signed by or on behalf of all the members of the registered society who would be entitled to vote on a special resolution.
- (5) In subsection (4), "special resolution" has the meaning given in [section 113 of the Co-operative and Community Benefit Societies Act 2014].

230 Commission to consult appropriate registrar and others

- (1) The Commission must notify the following of an application for conversion--
- (a) the appropriate registrar, and
 - (b) such other persons (if any) as the Commission thinks appropriate in the particular case,
- and must consult those notified about whether the application should be granted.
- (2) In subsection (1) and sections 231 to 233, "the appropriate registrar" means--
- (a) in the case of an application by a charitable company, the registrar of companies;
 - (b) in the case of an application by a registered society, the [Financial Conduct Authority and, if the society is a PRA-authorized person within the meaning of section 2B of the Financial Services and Markets Act 2000, the Prudential Regulation Authority].
- (3) In this section and sections 231 to 233, "application for conversion" means an application under section 228 or 229.

231 Cases where application must or may be refused⁶⁹

- (1) The Commission must refuse an application for conversion if--
- (a) it is not satisfied that the CIO would be a charity at the time it would be registered,
 - (b) the CIO's proposed constitution does not comply with one or more of the requirements of section 206 (constitution of CIOs) and any regulations made under that section, or
 - (c) in the case of an application for conversion made by a company limited by guarantee, the CIO's proposed constitution does not comply with the requirements of section 228(6) and (7).
- (2) The Commission may refuse an application for conversion if--
- (a) the proposed name of the CIO--
 - (i) is the same as, or
 - (ii) is in the opinion of the Commission too like,
 the name or a working name of any other charity (whether registered or not),
 - (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 42(2) (power to require charity's name or working name to be changed) 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), or

⁶⁹ As amended by sch 3, para 33.

- (c) having considered any representations received from those whom it has consulted under section 230(1), the Commission considers (having regard to any regulations made under subsection (3)) that it would not be appropriate to grant the application.
- (3) CIO regulations may make provision about circumstances in which it would not be appropriate to grant an application for conversion.
- (4) If the Commission refuses an application for conversion, it must so notify the appropriate registrar.

[...]

Amalgamation of CIOs

[...]

237 Cases where application must or may be refused⁷⁰

- (1) The Commission must refuse an application for amalgamation if--
- (a) it is not satisfied that the new CIO would be a charity at the time it would be registered, or
 - (b) the new CIO's proposed constitution does not comply with one or more of the requirements of section 206 and any regulations made under that section.
- (2) In addition to being required to refuse it on one of the grounds mentioned in subsection (1), the Commission must 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.
- (3) The Commission may refuse an application for amalgamation if--
- (a) the proposed name or a working name of the new CIO--
 - (i) is the same as, or
 - (ii) 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 42(2) (power to require charity's name or working name to be changed) in relation to the proposed name of the new CIO (reading paragraph (b) as referring to the proposed purposes of the new CIO and to the activities which it is proposed it should carry on).
- (4) The Commission may refuse an application for amalgamation if it is not satisfied that the provision in the constitution of the new CIO about the matters mentioned in subsection (5) is--
- (a) the same, or
 - (b) substantially the same,
- as the provision about those matters in the constitutions of each of the old CIOs.
- (5) The matters are--
- (a) the purposes of the CIO,
 - (b) the application of property of the CIO on its dissolution, and

⁷⁰ As amended by sch 3, para 34.

- (c) authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.
- (6) Sections 248 (meaning of "benefit") and 249 (meaning of "connected person") apply for the purposes of this section.
- (7) In this section and sections 238 and 239, "application for amalgamation" means an application under section 235.

238 Registration of amalgamated CIO

- (1) If the Commission grants an application for amalgamation, it must register the new CIO in the register of charities.
- (2) The entry relating to the registration in the register of the charity constituted as the new CIO must 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.
- (3) A copy of the entry in the register must be sent to the charity at the principal office of the new CIO.

239 Effect of registration⁷¹

- (1) Upon the registration of the new CIO it becomes by virtue of the registration a body corporate--
 - (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.
- (2) Upon the registration of the new CIO--
 - (a) all the property, rights and liabilities of each of the old CIOs become by virtue of this subsection the property, rights and liabilities of the new CIO, and
 - (b) each of the old CIOs is dissolved.
- ~~(3) Subsection (4) applies to a gift if—~~
 - ~~(a) the gift would have taken effect as a gift to one of the old CIOs if it had not been dissolved, and~~
 - ~~(b) the date on which the gift would have taken effect is a date on or after the date of the registration of the new CIO.~~
- ~~(4) The gift takes effect as a gift to the new CIO.~~
- ~~(3) Any gift which--~~

⁷¹ As amended by cl 35.

~~(a) is expressed as a gift to one of the old CIOs, and
 (b) takes effect on or after the date of registration of the new CIO,
 takes effect as a gift to the new CIO.~~

Transfer of CIO's undertaking to another CIO

[...]

244 Effect of confirmation of resolution⁷²

(1) If the resolution of the transferor CIO is confirmed (or treated as confirmed) by the Commission--
 (a) all the property, rights and liabilities of the transferor CIO 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 is dissolved.

~~(2) Subsection (3) applies to a gift if--~~

~~(a) the gift would have taken effect as a gift to the transferor CIO if it had not been dissolved,
 and
 (b) the date on which the gift would have taken effect is a date on or after the date on which the resolution is confirmed (or treated as confirmed).~~

~~(3) The gift takes effect as a gift to the transferee CIO.~~

~~(2) Any gift which--~~

~~(a) is expressed as a gift to the transferor CIO, and
 (b) takes effect on or after the date on which the resolution is confirmed (or treated as confirmed),
 takes effect as a gift to the transferee CIO.~~

Chapter 5

Supplementary

[...]

248 Meaning of "benefit"⁷³

(1) This section applies for the purposes of sections 226(2)(c), 237(5)(c) and 242(3)(c) (cases where Commission may refuse to consent to amendment of constitution, to grant an application for amalgamation or to confirm a resolution transferring a CIO's undertaking).

(2) "Benefit" means a direct or indirect benefit of any nature, except that it does not include--

~~(a) any remuneration whose receipt may be authorised under section 185, or
 (b) the purchase of any insurance which may be authorised under section 189, include any remuneration (within the meaning of section 185) whose receipt may be authorised under that section.~~

⁷² As amended by cl 35.

⁷³ As amended by sch 3, para 41.

[...]
Part 13

Powers to amend trusts and use capital Unincorporated Charities⁷⁴

Power to transfer all property of unincorporated charity⁷⁵

267—Introduction

(1) ~~Section 268 (resolution to transfer all property) applies to a charity if—~~

- ~~(a) (subject to subsection (2)) its gross income in its last financial year did not exceed £10,000,~~
- ~~(b) it does not hold any designated land, and~~
- ~~(c) it is not a company or other body corporate.~~

~~"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.~~

(2) ~~Subsection (1)(a) does not apply in relation to a resolution by the charity trustees of a charity—~~

- ~~(a) to transfer all its property to a CIO, or~~
- ~~(b) to divide its property between two or more CIOs.~~

(3) ~~Where a charity has a permanent endowment, sections 268 to 272 have effect in accordance with sections 273 and 274.~~

(4) ~~In sections 268 to 274 references to the transfer of property to a charity are references to its transfer—~~

- ~~(a) to the charity,~~
- ~~(b) to the charity trustees,~~
- ~~(c) to any trustee for the charity, or~~
- ~~(d) to a person nominated by the charity trustees to hold it in trust for the charity,~~

~~as the charity trustees may determine.~~

268—Resolution to transfer all property

(1) ~~The charity trustees of a charity to which this section applies (see section 267) may resolve for the purposes of this section—~~

- ~~(a) that all the property of the charity should be transferred to another charity specified in the resolution, or~~
- ~~(b) that all the property of the charity should be transferred to two or more charities specified in the resolution in accordance with such division of the property between them as is so specified.~~

⁷⁴ Inserted by sch 3, para 19.

⁷⁵ Repealed by cl 3.

~~(2) Any charity so specified may be either a registered charity or a charity which is not required to be registered.~~

~~(3) But the charity trustees of a charity ("the transferor charity") do not have power to pass a resolution under subsection (1) unless they are satisfied--~~

~~(a) that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution, and~~

~~(b) that the purposes (or any of the purposes) of any charity to which property is to be transferred under the resolution are substantially similar to the purposes (or any of the purposes) of the transferor charity.~~

~~(4) Any resolution under subsection (1) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.~~

~~(5) Where charity trustees have passed a resolution under subsection (1), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.~~

~~269 Notice of, and information about, resolution to transfer property~~

~~(1) Having received the copy of the resolution under section 268(5), the Commission--~~

~~(a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and~~

~~(b) if it gives such a direction, must take into account any representations made to it--~~

~~(i) by persons appearing to it to be interested in the charity, and~~

~~(ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.~~

~~(2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to--~~

~~(a) the circumstances in and by reference to which they have decided to act under section 268,~~
or

~~(b) their compliance with any obligation imposed on them by or under section 268 or this section in connection with the resolution.~~

~~270 General rule as to when s 268 resolution takes effect~~

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

~~271 S 268 resolution not to take effect or to take effect at later date~~

~~(1) A resolution does not take effect under section 270 if before the end of--~~

~~(a) the 60-day period, or~~

~~(b) that period as modified by subsection (4) or (5),~~

~~the Commission notifies the charity trustees in writing that it objects to the resolution, either on procedural grounds or on the merits of the proposals contained in the resolution.~~

~~(2) — "The 60 day period" means the period of 60 days mentioned in section 270.~~

~~(3) — "On procedural grounds" means on the grounds that any obligation imposed on the charity trustees by or under section 268 or 269 has not been complied with in connection with the resolution.~~

~~(4) — If under section 269(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the 60 day period is suspended by virtue of this subsection—~~

~~(a) — as from the date on which the direction is given to the charity trustees, and~~

~~(b) — until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.~~

~~(5) — If under section 269(2) the Commission directs the charity trustees to provide any information or explanations, the running of the 60-day period is suspended by virtue of this subsection—~~

~~(a) — as from the date on which the direction is given to the charity trustees, and~~

~~(b) — until the date on which the information or explanations is or are provided to the Commission.~~

~~(6) — Subsection (7) applies once the period of time, or the total period of time, during which the 60-day period is suspended by virtue of either or both of subsections (4) and (5) exceeds 120 days.~~

~~(7) — At that point the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed.~~

272 — Transfer of property in accordance with s 268 resolution

~~(1) — Subsection (2) applies where a resolution under section 268(1) has taken effect.~~

~~(2) — The charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred—~~

~~(a) — is to be held by the charity to which it is transferred ("the transferee charity") in accordance with subsection (3), but~~

~~(b) — when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity;~~

~~and the charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned.~~

~~(3) — The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity.~~

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

~~(4) For the purpose of enabling any property to be transferred to a charity under this section, the Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity—~~

~~(a) in the transferee charity, in its charity trustees or in any trustee for that charity, or~~

~~(b) in any other person nominated by those charity trustees to hold property in trust for that charity.~~

~~273 Transfer where charity has permanent endowment: general~~

~~(1) This section and section 274 provide for the operation of sections 268 to 272 where a charity within section 267(1) has a permanent endowment (whether or not the charity's trusts contain provision for the termination of the charity).~~

~~(2) If the charity has both a permanent endowment and other property ("unrestricted property")—~~

~~(a) a resolution under section 268(1) must relate to both its permanent endowment and its unrestricted property, and~~

~~(b) sections 268 to 272 apply—~~

~~(i) in relation to its unrestricted property, as if references in those sections to all or any of the property of the charity were references to all or any of its unrestricted property, and~~

~~(ii) in relation to its permanent endowment, in accordance with section 274.~~

~~(3) If all of the property of the charity is comprised in its permanent endowment, sections 268 to 272 apply in relation to its permanent endowment in accordance with section 274.~~

~~274 Requirements relating to permanent endowment~~

~~(1) Sections 268 to 272 apply in relation to the permanent endowment of the charity (as mentioned in section 273(2)(b)(ii) and (3)) with the following modifications.~~

~~(2) References in sections 268 to 272 to all or any of the property of the charity are references to all or any of the property comprised in its permanent endowment.~~

~~(3) If the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must (instead of being satisfied as mentioned in section 268(3)(b)) be satisfied that the proposed transferee charity has purposes which are substantially similar to all of the purposes of the transferor charity.~~

~~(4) If the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must (instead of being satisfied as mentioned in section 268(3)(b)) be satisfied—~~

~~(a) that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and~~

~~(b) that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity.~~

~~(5) — In the case of a transfer to which subsection (4) applies, the resolution under section 268(1) must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Commission for the purposes of this section.~~

~~(6) — For the purposes of sections 268 to 272, the references in sections 269(2)(b) and 271(3) to any obligation imposed on the charity trustees by or under section 268 or 269 includes a reference to any obligation imposed on them by virtue of any of subsections (3) to (5).~~

~~(7) — The requirement in section 272(3) applies in the case of every such transfer, and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of such guidance as may be given by the Commission for the purposes of this section.~~

~~(8) — Any guidance given by the Commission for the purposes of this section may take such form and be given in such manner as the Commission considers appropriate.~~

~~Powers to alter purposes or powers etc of unincorporated charity~~

~~275 — Resolution to replace purposes of unincorporated charity~~

~~(1) — This section applies to a charity if—~~

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

~~"Designated land" means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.~~

~~(2) — The charity trustees of such a charity may resolve for the purposes of this section that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other purposes specified in the resolution.~~

~~(3) — The other purposes so specified must be charitable purposes.~~

~~(4) — But the charity trustees of a charity do not have power to pass a resolution under subsection (2) unless they are satisfied—~~

~~(a) — that it is expedient in the interests of the charity for the purposes in question to be replaced,~~
and

- ~~(b) — that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.~~

~~(5) — Any resolution under subsection (2) must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution.~~

~~(6) — Where charity trustees have passed a resolution under subsection (2), they must send a copy of it to the Commission, together with a statement of their reasons for passing it.~~

276— Notice of, and information about, s 275 resolution

- (1) Having received the copy of the resolution under section 275(6), the Commission—
- (a) may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and
 - (b) if it gives such a direction, must take into account any representations made to it—
 - (i) by persons appearing to it to be interested in the charity, and
 - (ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.
- (2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to—
- (a) the circumstances in and by reference to which they have decided to act under section 275,
- or
- (b) their compliance with any obligation imposed on them by or under section 275 or this section in connection with the resolution.

277— General rule as to when s 275 resolution takes effect

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

278— S 275 resolution not to take effect or to take effect at a later date

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

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

279 — Replacement of purposes in accordance with s 275

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

280 — Power to modify powers or procedures of unincorporated charity

~~(1) — This section applies to any charity which is not a company or other body corporate.~~

~~(2) — The charity trustees of such a charity may resolve for the purposes of this section that any provision of the trusts of the charity—~~

~~(a) — relating to any of the powers exercisable by the charity trustees in the administration of the charity, or~~

~~(b) — regulating the procedure to be followed in any respect in connection with its administration, should be modified in such manner as is specified in the resolution.~~

~~(3) — Subsection (4) applies if the charity is an unincorporated association with a body of members distinct from the charity trustees.~~

~~(4) — Any resolution of the charity trustees under subsection (2) must be approved by a further resolution which is passed at a general meeting of the body—~~

~~(a) — by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or~~

~~(b) — by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.~~

~~(5) — Where—~~

~~(a) — the charity trustees have passed a resolution under subsection (2), and~~

~~(b) — (if subsection (4) applies) a further resolution has been passed under that subsection, the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution.~~

~~(6) — The trusts are to be taken to have been so modified as from—~~

~~(a) — such date as is specified for this purpose in the resolution under subsection (2), or~~

~~(b) — (if later) the date when any such further resolution was passed under subsection (4).~~

Unincorporated charity's general power to amend⁷⁶

280A Amendment of the trusts of an unincorporated charity

- (1) This section applies to any charity which is not a company or other body corporate.
- (2) The charity trustees of such a charity may, if they are satisfied that it is expedient in the interests of the charity, resolve that the trusts of the charity should be amended in such manner as is specified in the resolution.
- (3) The power under subsection (2) is not exercisable in any way which would result in the institution ceasing to be a charity.
- (4) Subsection (5) applies in the case of a charity which has a body of members distinct from the charity trustees, any of whom are entitled under the trusts of the charity to attend and vote at a general meeting of the body.
- (5) In the case of a charity to which this subsection applies, a resolution under subsection (2) is effective only if—
- (a) it is passed by a majority of the charity trustees of the charity, and
 - (b) it is approved by a further resolution which is passed—
 - (i) at a general meeting, by not less than 75% of the members entitled to attend and vote at the meeting who vote on the resolution,
 - (ii) at a general meeting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting, or
 - (iii) otherwise than at a general meeting, by the agreement of all the members entitled to attend and vote at a general meeting.
- (6) In the case of any other charity, a resolution under subsection (2) is effective only if it is passed by not less than 75% of the charity trustees of the charity.
- (7) An amendment to which subsection (8) applies—
- (a) requires the written consent of the Commission, and
 - (b) is ineffective if such consent has not been obtained.
- (8) This subsection applies to an amendment—
- (a) which would alter the purposes of the charity;
 - (b) which would alter a provision directing the application of property of the charity on its dissolution;
 - (c) which would provide authorisation for any benefit to be obtained by charity trustees or members of the charity, or persons connected with them;
 - (d) which would alter a restriction making property permanent endowment;
 - (e) which would require the consent of a person other than—
 - (i) a charity trustee of, or trustee for, the charity, or

⁷⁶ Inserted by cl 3.

(ii) a member of the charity.

if made otherwise than by virtue of this section:

(f) which would affect any right directly conferred by the trusts of the charity on a person who—

(i) is named in the trusts of the charity, or

(ii) holds an office or other position specified in the trusts of the charity (other than that of charity trustee or member of, or trustee for, the charity);

(g) which would confer power on the charity trustees to make an amendment falling within any of paragraphs (a) to (f).

(9) But subsection (8)(e) and (f) do not apply where the person concerned consents to the amendment or is no longer in existence.

(10) In considering whether to consent to an alteration falling within subsection (8)(a), or to the conferral of a power which would enable the charity trustees to make such an alteration, the Commission must have regard to—

(a) the purposes of the charity when it was established,

(b) the desirability of securing that the purposes of the charity are, so far as reasonably practicable, similar to the purposes being altered, and

(c) the need for the charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

280B S. 280A: supplementary provision

(1) A resolution under section 280A(2) takes effect on the latest of—

(a) the date the resolution is passed,

(b) the date specified in the resolution for it to take effect,

(c) if relevant, the date on which the resolution required by virtue of section 280A(5)(b) is passed, and

(d) if relevant, the date on which the Commission gives any consent required by virtue of section 280A(7).

(2) In section 280A(8)(c) “benefit” means a direct or indirect benefit of any nature, except that it does not include—

(a) any remuneration whose receipt may be authorised under section 185, or

(b) the purchase of any insurance which may be authorised under section 189.

(3) For the purposes of section 280A(8)(c) the following persons are connected with a charity trustee or a member of a charity—

(a) a child, parent, grandchild, grandparent, brother or sister of the trustee or member;

(b) the spouse or civil partner of the trustee or member or of any person falling within paragraph

(a);

(c) a person carrying on business in partnership with the trustee or member or with any person falling within paragraph (a) or (b);

(d) an institution which is controlled—

(i) by the trustee or member or by any person falling within paragraph (a), (b) or (c), or

(ii) by two or more persons falling within sub-paragraph (i), when taken together;

(e) a body corporate in which—

(i) the trustee or member or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or

(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(4) Sections 350 to 352 (meaning of child, spouse, civil partner, controlled institution and substantial interest) apply for the purposes of subsection (3).

Charity established etc by Royal charter: general power to amend⁷⁷

280C Power to amend Royal charter

(1) This section applies to any charity which is established or regulated by Royal charter.

(2) The charity trustees of such a charity may resolve that the Royal charter should be amended in such manner as is specified in the resolution if—

(a) they are satisfied that it is expedient in the interests of the charity to do so, and

(b) there is no power under the Royal charter to make the proposed amendment.

(3) Subsection (4) applies in the case of a charity which has a body of members distinct from the charity trustees, any of whom are entitled under the Royal charter to attend and vote at a general meeting of the body.

(4) In the case of a charity to which this subsection applies, a resolution under subsection (2) may not be approved under subsection (6) unless—

(a) it is passed by a majority of the charity trustees of the charity, and

(b) it is approved by a further resolution which is passed—

(i) at a general meeting, by not less than 75% of the members entitled to attend and vote at the meeting who vote on the resolution,

(ii) at a general meeting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting, or

(iii) otherwise than at a general meeting, by the agreement of all the members entitled to attend and vote at a general meeting.

⁷⁷ Inserted by cl 4.

(5) In the case of any other charity to which this section applies, a resolution under subsection (2) may not be approved under subsection (6) unless it is passed by not less than 75% of the charity trustees of the charity.

(6) A resolution under this section takes effect when it is approved by Her Majesty by Order in Council.

Powers of ~~unincorporated~~ charities to spend capital⁷⁸

281 Power of ~~unincorporated~~ charities to spend capital: general⁷⁹

(1) This section applies to any available endowment fund of a charity ~~which is not a company or other body corporate.~~

(2) But this section does not apply to a fund if sections 282 to 284 (power to spend larger fund ~~given for particular purpose~~) apply to it.

(3) If the condition in subsection (4) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) Once the charity trustees have passed a resolution under subsection (3), the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.

(6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

(7) In this section "available endowment fund", in relation to a charity, means--

- (a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or
- (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

282 Resolution to spend larger fund ~~given for particular purpose~~⁸⁰

(1) This section applies to any available endowment fund of a charity if the market value of the fund exceeds £25,000 ~~which is not a company or other body corporate if--~~

~~(a) the capital of the fund consists entirely of property given--~~

~~(i) by a particular individual,~~

~~(ii) by a particular institution (by way of grant or otherwise), or~~

~~(iii) by two or more individuals or institutions in pursuit of a common purpose, and~~

⁷⁸ As amended by sch 3, para 16.

⁷⁹ As amended by cl 10 and sch 3, para 16.

~~(b) — the charity's gross income in its last financial year exceeded £1,000 and the market value of the endowment fund exceeds £10,000.~~

(2) If the condition in subsection (3) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(3) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(4) The charity trustees--

(a) must send a copy of any resolution under subsection (2) to the Commission, together with a statement of their reasons for passing it, and

(b) may not implement the resolution except in accordance with sections 283 and 284.

(5) In this section--

"available endowment fund" has the same meaning as in section 281;

"market value", in relation to an endowment fund, means--

(a) the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or

(b) if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose.

~~(6) — In subsection (1), the reference to the giving of property by an individual includes the individual's giving it by will.~~

283 Notice of, and information about, s 282 resolution

(1) Having received the copy of the resolution under section 282(4), the Commission may--

(a) direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and

(b) if it gives such a direction, must take into account any representations made to it--

(i) by persons appearing to it to be interested in the charity, and

(ii) within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.

(2) The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to--

(a) the circumstances in and by reference to which they have decided to act under section 282,

or

(b) their compliance with any obligation imposed on them by or under section 282 or this section in connection with the resolution.

284 When and how s 282 resolution takes effect⁸¹

(1) When considering whether to concur with the resolution under section 282(2), the Commission must take into account--

(a) any evidence made available to it as to the wishes of the any donor or donors to the available endowment fund~~donor or donors mentioned in section 282(1)(a)~~, and
 (b) any changes in circumstances relating to the available endowment fund since it was established (including, in particular, the financial position of the fund, the needs of those who can benefit from the fund, and the social, economic and legal environment). ~~(b) any changes in the circumstances relating to the charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).~~

(2) The Commission must not concur with the resolution unless it is satisfied--

(a) that its implementation would accord with the spirit of any gift or gifts to the available endowment fund~~the gift or gifts mentioned in section 282(1)(a)~~ (even though it would be inconsistent with the restrictions mentioned in section 282(2)), and
 (b) that the charity trustees have complied with the obligations imposed on them by or under section 282 or 283 in connection with the resolution.

(3) Before the end of the relevant period~~period of 3 months beginning with the relevant date~~, the Commission must notify the charity trustees in writing--

(a) that the Commission concurs with the resolution, or
 (b) that it does not concur with it.

(4) The "relevant period" means—

(a) the period of 60 days beginning with the date on which the Commission receives the copy of the resolution in accordance with section 282(4), or
 (b) that period as modified by subsection (4A) or (4B).

(4A) If under section 283(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the relevant period is suspended from the date on which the direction is given to the charity trustees 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.

(4B) If under section 283(2) the Commission directs the charity trustees to provide any information or explanations, the running of the relevant period is suspended from the date on which the direction is given to the charity trustees until the date on which the information or explanations is or are provided to the Commission.

~~(4) — In subsection (3) "the relevant date" means--~~

⁸¹ As amended by cl 11 and sch 3, cl 17.

~~(a) if the Commission directs the charity trustees under section 283(1) to give public notice of the resolution, the date when that notice is given, and~~

~~(b) otherwise, the date on which the Commission receives the copy of the resolution in accordance with section 282(4).~~

(5) Where--

(a) the charity trustees are notified by the Commission that it concurs with the resolution, or

(b) the ~~relevant period~~~~period of 3 months mentioned in subsection (3)~~ has elapsed without the Commission notifying them that it does not concur with the resolution,

the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in section 282(2).

Power to borrow from permanent endowment⁸²

284A Power to borrow from permanent endowment: general

(1) This section applies to any available endowment fund of a charity.

(2) The charity trustees may resolve to borrow an amount, not exceeding the permitted amount, from the available endowment fund if they are satisfied—

(a) that it is expedient for the amount to be borrowed, and

(b) that arrangements are in place for the amount to be repaid within 20 years of being borrowed.

(3) Any amount borrowed in accordance with subsection (2) no longer forms part of the available endowment fund and, as a result, is freed from the restrictions with respect to the expenditure of capital that applied to it when it was comprised in that fund.

(4) An amount borrowed in accordance with subsection (2) may not be used to repay (in whole or in part) any amount previously borrowed from permanent endowment (whether the previous borrowing was by virtue of this section or otherwise).

(5) When repaying an amount borrowed (whether in whole or in part), the charity trustees may resolve to pay an additional amount not exceeding the maximum estimated capital appreciation.

(6) Any—

(a) repayment of an amount borrowed, and

(b) payment of an additional amount by virtue of a resolution under subsection (5),

is to be added to the available endowment fund and is to be subject to the same restrictions as to expenditure as apply to the other capital in the fund.

(7) The powers conferred by this section—

(a) may be restricted or excluded by the trusts of the charity;

⁸² Inserted by cl 12.

(b) are (subject to paragraph (a)) in addition to any other power to borrow that the charity or charity trustees may have.

(8) If, and in so far as, the power conferred by subsection (5) confers power to accumulate income, it is not subject to section 14(3) of the Perpetuities and Accumulations Act 2009 (which provides for certain powers to accumulate income to cease after 21 years).

(9) In this section “available endowment fund”, in relation to a charity, means—

(a) the whole of the charity’s permanent endowment if it is all subject to the same trusts, or

(b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

(10) If a resolution under section 104A(2) has effect in respect of an available endowment fund (or portion of such a fund), references in this section to an “available endowment fund” include that fund (or portion) but do not include any returns from the investment of the fund (or portion) which have not been accumulated.

(11) For the meaning of “permitted amount” and “maximum estimated capital appreciation” see sections 284B and 284C respectively.

284B Calculation of the “permitted amount”

(1) The “permitted amount” for the purposes of section 284A(2) is given by the formula—

$$(0.25 \times (V + B)) - B$$

where—

V is the value of the available endowment fund on the relevant date (ignoring the value, if any, of the benefit of the debt owed by the charity trustees representing outstanding borrowing from the fund), and

B is the amount of the charity trustees’ outstanding borrowing from the available endowment fund on that date.

(2) In subsection (1)—

the “relevant date” is the date on which the trustees resolve to borrow from the available endowment fund (see section 284A(2));

“outstanding borrowing” means outstanding borrowing by virtue of section 284A or otherwise.

(3) If a resolution under section 104A(2) has effect in respect of the available endowment fund (or any part of it), for the purposes of subsection (1) the value of the available endowment fund does not include any returns from the investment of the fund (or part) which have not been accumulated.

284C Calculation of the “maximum estimated capital appreciation”

(1) The “maximum estimated capital appreciation” for the purposes of section 284A(5) is given by the formula—

R x I

where—

R is the amount of borrowing being repaid, and

I is the percentage increase in the relevant index between the month in which the amount was borrowed and the month preceding the month in which the repayment is made (or if there is no increase is nil).

(2) The “relevant index” is whichever of the following is selected by the charity trustees from time to time—

(a) the retail prices index;

(b) the consumer prices index;

(c) any similar general index of prices published by the Statistics Board.

(3) In this section—

“retail prices index” means the general index of retail prices (for all items) published by the Statistics Board;

“consumer prices index” means the general index for consumer prices published by the Statistics Board.

284D Inability to repay

(1) If (at any time) it appears to the charity trustees that—

(a) they will not be able to fulfil the arrangements put in place to repay an amount borrowed under section 284A, or

(b) those arrangements are not sufficient to ensure that the amount is repaid,

the trustees may apply to the Commission for an order under this section directing them how to proceed.

(2) An order under this section may give such directions as the Commission thinks fit, including—

(a) that the relevant amount may be repaid over a longer period,

(b) that the charity trustees put in place arrangements specified in the order, or

(c) that the charity trustees need not repay an amount borrowed.

Supplementary

285 Power to alter ~~sums specified in this Part~~⁸³

(1) The [Secretary of State] may by order amend ~~section 282(1) (market value of fund for purposes of resolution to spend larger fund)~~ any provision listed in subsection (2)—

(a) ~~by substituting a different sum for the sum for the time being specified in that provision, or~~

(b) ~~if the provision specifies more than one sum, by substituting a different sum for any sum specified in that provision.~~

(2) ~~The provisions are—~~

⁸³ As amended by cl 12 and sch 3, paras 3, 18 and 20.

~~section 267(1) (income level for purposes of resolution to transfer property of unincorporated charity);~~

~~section 275(1) (income level for purposes of resolution to replace purposes of unincorporated charity);~~

~~section 282(1) (income level and market value of fund for purposes of resolution to spend larger fund given for particular purpose).~~

~~(3) The Secretary of State may by regulations amend—~~

~~(a) the period of time specified in section 284A(2)(b), or~~

~~(b) the multiplier in the formula set out in section 284B(1), so as to substitute a different time period or multiplier (as the case may be) for the period or multiplier for the time being specified in that provision.~~

286 Effect of provisions relating to vesting or transfer of property

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

Part 14⁸⁴

Special Trusts

287— Meaning of "special trust"

~~(1) In this Act, "special trust" means property which—~~

~~(a) is held and administered by or on behalf of a charity for any special purposes of the charity,~~

~~and~~

~~(b) is so held and administered on separate trusts relating only to that property.~~

~~(2) But a special trust does not, by itself, constitute a charity for the purposes of Part 8 (charity accounts, reports and returns).~~

288— Power to spend capital subject to special trusts: general

~~(1) This section applies to any available endowment fund of a special trust which, as the result of a direction under section 12(1), is to be treated as a separate charity ("the relevant charity") for the purposes of this section and sections 289 to 292.~~

~~(2) But this section does not apply to such a fund if sections 289 to 291 (power to spend capital subject to special trusts: larger fund) apply in relation to it.~~

⁸⁴ Repealed by cl 14.

~~(3) — If the condition in subsection (4) is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.~~

~~(4) — The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.~~

~~(5) — Once the charity trustees have passed a resolution under subsection (3), the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.~~

~~(6) — The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.~~

~~(7) — In this section, "available endowment fund" has the same meaning as in section 281 (power of unincorporated charities to spend capital: general).~~

~~289 — Resolution to spend capital subject to special trusts: larger fund~~

~~(1) — This section applies to a fund within section 288(1) if—~~

~~(a) — the capital of the fund consists entirely of property given—~~

~~(i) — by a particular individual,~~

~~(ii) — by a particular institution (by way of grant or otherwise), or~~

~~(iii) — by two or more individuals or institutions in pursuit of a common purpose, and~~

~~(b) — the market value of the fund exceeds £10,000.~~

~~(2) — If the condition in subsection (3) is met in relation to the relevant charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.~~

~~(3) — The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.~~

~~(4) — The charity trustees—~~

~~(a) — must send a copy of any resolution under subsection (2) to the Commission, together with a statement of their reasons for passing it, and~~

~~(b) — may not implement the resolution except in accordance with sections 290 and 291.~~

~~(5) — In this section, "market value" has the same meaning as in section 282 (resolution to spend larger fund for given for particular purpose).~~

~~(6) — In subsection (1), the reference to the giving of property by an individual includes the individual's giving it by will.~~

290 — Notice of, and information about, s 289 resolution

- (1) ~~Having received the copy of the resolution under section 289(4), the Commission may--~~
- ~~(a) — direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction, and~~
 - ~~(b) — if it gives such a direction, must take into account any representations made to it--~~
 - ~~(i) — by persons appearing to it to be interested in the relevant charity, and~~
 - ~~(ii) — within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees.~~
- (2) ~~The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to--~~
- ~~(a) — the circumstances in and by reference to which they have decided to act under section 289,~~
- ~~or~~
- ~~(b) — their compliance with any obligation imposed on them by or under section 289 or this section in connection with the resolution.~~

291 — When and how s 289 resolution takes effect

- (1) ~~When considering whether to concur with the resolution under section 289(2), the Commission must take into account--~~
- ~~(a) — any evidence available to it as to the wishes of the donor or donors mentioned in section 289(1)(a), and~~
 - ~~(b) — any changes in the circumstances relating to the relevant charity since the making of the gift or gifts (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).~~
- (2) ~~The Commission must not concur with the resolution unless it is satisfied--~~
- ~~(a) — that its implementation would accord with the spirit of the gift or gifts mentioned in section 289(1)(a) (even though it would be inconsistent with the restrictions mentioned in section 289(2)),~~
 - ~~and~~
 - ~~(b) — that the charity trustees have complied with the obligations imposed on them by or under section 289 or 290 in connection with the resolution.~~
- (3) ~~Before the end of the period of 3 months beginning with the relevant date, the Commission must notify the charity trustees in writing--~~
- ~~(a) — that the Commission concurs with the resolution, or~~
 - ~~(b) — that it does not concur with it.~~
- (4) ~~In subsection (3) "the relevant date" means--~~
- ~~(a) — if the Commission directs the charity trustees under section 290(1) to give public notice of the resolution, the date when that notice is given, and~~

~~(b) — otherwise, the date on which the Commission receives the copy of the resolution in accordance with section 289(4).~~

~~(5) — Where—~~

~~(a) — the charity trustees are notified by the Commission that it concurs with the resolution, or~~

~~(b) — the period of 3 months mentioned in subsection (3) has elapsed without the Commission notifying them that it does not concur with the resolution,~~

~~the fund or portion may, by virtue of this section, be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in section 289(2).~~

~~(6) — The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.~~

~~292 — Power to alter sum specified in s 289~~

~~The [Secretary of State] may by order amend section 289(1) (market value of fund for purposes of resolution to spend capital subject to special trusts: larger fund) by substituting a different sum for the sum for the time being specified there.~~

Part 14A

Social Investments

292A Meaning of "social investment"

- (1) This section applies for the purposes of this Part.
- (2) A social investment is made when a relevant act of a charity is carried out with a view to both--
 - (a) directly furthering the charity's purposes; and
 - (b) achieving a financial return for the charity.
- (3) References to an act of a charity are, in the case of an unincorporated charity, to an act of the charity trustees.
- (4) A relevant act of a charity is--
 - (a) an application or use of funds or other property; or
 - (b) taking on a commitment in relation to a liability of another person (such as a guarantee) that puts the charity's funds or other property at risk of being applied or used.
- (5) An act mentioned in subsection (4)(a) is to be regarded as achieving a financial return if its outcome is better for the charity in financial terms than expending the whole of the funds or other property in question.
- (6) A commitment mentioned in subsection (4)(b) is to be regarded as achieving a financial return if--
 - (a) it is not called upon; or
 - (b) it is called upon without resulting in the expenditure of the whole of the funds or other property put at risk.

(7) The fact that a relevant act may also have results other than those mentioned in subsection (2)(a) and (b) does not prevent the carrying out of that act being regarded as the making of a social investment.

(8) The fact that carrying out a relevant act of a charity is regarded as the making of a social investment for the purposes of this Part does not of itself make the act an investment for any other purpose.

292B General power to make social investments⁸⁵

[(1) An incorporated charity has, and the charity trustees of an unincorporated charity have, power to make social investments.

(2) The power conferred by this section may not be used to make a social investment involving--

- (a) the application or use of permanent endowment, or
- (b) taking on a commitment mentioned in section 292A(4)(b) that puts permanent endowment at risk of being applied or used,

unless the charity trustees expect that making the social investment will not contravene any restriction with respect to expenditure that applies to the permanent endowment in question (but see section 104AA, which confers on charity trustees a power to use permanent endowment to make social investments in certain circumstances).

(3) The power conferred by this section--

- (a) may be restricted or excluded by the trusts of the charity;
- (b) is (subject to paragraph (a)) in addition to any other power to make social investments that the charity or charity trustees may have.

(4) This section and section 292C do not apply in relation to--

- (a) charities established by, or whose purposes and functions are set out in, legislation;
- (b) charities established or regulated by Royal charter;
- ~~(b) charities established by Royal Charter;~~

but they apply in relation to all other charities, whether established before or after this section comes into force.

(5) In subsection (4) "legislation" means--

- (a) an Act of Parliament or an Act or Measure of the National Assembly for Wales; or
- (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure.

292C Charity trustees' duties in relation to social investments

(1) This section applies in relation to social investments that are made after section 292B comes into force, whether or not made by the exercise of the power conferred by section 292B.

(2) The charity trustees of a charity must, before exercising a power to make a social investment--

⁸⁵ As amended by sch 3, paras 22 and 42.

- (a) consider whether in all the circumstances any advice about the proposed social investment ought to be obtained;
 - (b) obtain and consider any advice they conclude ought to be obtained; and
 - (c) satisfy themselves that it is in the interests of the charity to make the social investment, having regard to the benefit they expect it to achieve for the charity (by directly furthering the charity's purposes and achieving a financial return).
- (3) The charity trustees of a charity must from time to time review the charity's social investments.
- (4) When carrying out a review the charity trustees must--
- (a) consider whether any advice about the social investments (or any particular social investment) ought to be obtained; and
 - (b) obtain and consider any advice they conclude ought to be obtained.
- (5) The duties under this section may not be restricted or excluded by the charity's trusts.
- (6) In the case of an unincorporated charity, the duties under this section apply in relation to relevant social investments in place of any duties under sections 4 and 5 of the Trustee Act 2000 that would otherwise apply.
- (7) In subsection (6) "relevant social investments" means social investments that are investments for the purposes of Part 2 of the Trustee Act 2000.

[...]

Part 16

Charity Mergers

Registration

305 Register of charity mergers

- (1) There continues to be a register of charity mergers, to be kept by the Commission in such manner as it thinks fit and maintained by it.
- (2) The register must contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with section 307 and such procedures as it may determine.

306 Meaning of "relevant charity merger" etc⁸⁶

- (1) In this Part "relevant charity merger" means--
 - (a) a merger of two or more charities in connection with which 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, or is to cease to exist, on or after the transfer of its property to the transferee, or

⁸⁶ As amended by cl 37.

- (b) a merger of two or more charities ("transferors") in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity ("the transferee").
- (2) In the case of a merger involving the transfer of property of any charity--
- (a) which has both a permanent endowment and other property ("unrestricted property"), and ~~(b) whose trusts do not contain provision for the termination of the charity,~~
- subsection (1)(a) or (b) applies subject to the modifications in subsection (3).
- (3) The modifications in relation to any such charity are--
- (a) the reference to all of its property is to be treated as a reference to all of its unrestricted property, and
- (b) any reference to its ceasing to exist is to be treated as omitted.
- (4) In this section and sections 307 and 308--
- (a) any reference to a transfer of property includes a transfer effected by a vesting declaration, and
- (b) "vesting declaration" means a declaration to which section 310(2) applies.

307 Notification of charity mergers

- (1) A notification under section 305(2) may be given in respect of a relevant charity merger at any time after--
- (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.
- (2) If a vesting declaration is made in connection with a relevant charity merger, a notification under section 305(2) must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (1) has taken place.
- (3) A notification under section 305(2) is to be given by the charity trustees of the transferee and must--
- (a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place,
- (b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities, and
- (c) in the case of a notification required by subsection (2), set out the matters mentioned in subsection (4).
- (4) The matters are--
- (a) the fact that the vesting declaration in question has been made,
- (b) the date when the declaration was made, and

(c) the date on which the vesting of title under the declaration took place by virtue of section 310(2).

308 Details to be entered in register of charity mergers

- (1) Subsection (2) applies to the entry to be made in the register of charity mergers in respect of a relevant charity merger, as required by section 305(2).
- (2) The entry must--
- (a) specify the date when the transfer or transfers of property involved in the merger took place,
 - (b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 307(4), and
 - (c) contain such other particulars of the merger as the Commission thinks fit.

309 Right to inspect register of charity mergers

- (1) The register of charity mergers must be open to public inspection at all reasonable times.
- (2) Where any information contained in the register is not in documentary form, subsection (1) is to be read as requiring the information to be available for public inspection in legible form at all reasonable times.

Vesting declarations and effect of merger on certain gifts

310 Pre-merger vesting declarations⁸⁷

- (1) Subsection (2) 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 connection with a relevant charity merger, and
 - (c) is to the effect that (subject to subsections (3) and (4)) all of the transferor's property is to vest in the transferee on such date as is specified in the declaration ("the specified date").
- (2) The declaration operates on the specified date to vest the legal title to all of the transferor's property in the transferee, without the need for any further document transferring it.

This is subject to subsections (3) and (4).

- (3) Subsection (2) does not apply to--

~~(a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock),~~

(b) any land held by the transferor under a lease or agreement if, had the transferor assigned its interest in the land on the specified date to the transferee, that assignment would have given rise to--

(i) an actionable breach of covenant or condition against alienation, or

⁸⁷ As amended by cl 36.

(ii) a forfeiture.

~~(b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor's interest without the consent of some other person, unless that consent has been obtained before the specified date, or~~

(c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment.

(4) In its application to registered land within the meaning of the Land Registration Act 2002, subsection (2) is subject to section 27 of that Act (dispositions required to be registered).

311 Effect of registering charity merger on gifts to transferor⁸⁸

(1) This section applies where a relevant charity merger is registered in the register of charity mergers.

~~(2) Subsection (2A) applies to a gift, other than an excluded gift, if—~~

~~(a) the gift would have taken effect as a gift to the transferor if the transferor had been in existence, and~~

~~(b) the date on which the gift would have taken effect is a date on or after the date of the registration of the merger.~~

(2A) The gift takes effect as a gift to the transferee.

~~(2) Any gift which--~~

~~(a) is expressed as a gift to the transferor, and~~

~~(b) takes effect on or after the date of registration of the merger,~~

~~takes effect as a gift to the transferee, unless it is an excluded gift.~~

(3) A gift is an excluded gift if--

(a) the transferor is a charity within section 306(2), and

(b) the gift is intended to be held subject to the trusts on which the whole or part of the charity's permanent endowment is held.

312 "Transferor" and "transferee" etc in s 310 and s 311

(1) In sections 310 and 311--

(a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 306, and

(b) any reference to all of the transferor's property, where the transferor is a charity within section 306(2), is a reference to all of the transferor's unrestricted property (within the meaning of section 306(2)(a)).

(2) In sections 310 and 311, any reference to the transferee, in relation to a relevant charity merger, is a reference to--

⁸⁸ As amended by cl 35.

- (a) the transferee (within the meaning of section 306), if it is a company or other body corporate, and
- (b) otherwise, the charity trustees of the transferee (within the meaning of section 306).

Supplementary

313 Effect of provisions relating to vesting or transfer of property

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

314 Exception for CIOs

Nothing in this Part applies in a case where section 235 (amalgamation of CIOs) or 240 (transfer of CIO's undertaking to another CIO) applies.

Part 17

The Tribunal

[...]

Chapter 2

Appeals and Applications to Tribunal

319 Appeals: general

- (1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6.
- (2) Such an appeal may be brought by--
 - (a) the Attorney General, or
 - (b) any person specified in the corresponding entry in column 2 of Schedule 6.
- (3) The Commission is to be the respondent to such an appeal.
- (4) In determining such an appeal the Tribunal--
 - (a) must consider afresh the decision, direction or order appealed against, and
 - (b) may take into account evidence which was not available to the Commission.
- (5) The Tribunal may--
 - (a) dismiss the appeal, or

- (b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6.

320 Appeals: orders under s 52

- (1) Section 319(4)(a) does not apply in relation to an appeal against an order made under section 52 (power to call for documents).
- (2) On such an appeal the Tribunal must consider whether the information or document in question--
 - (a) relates to a charity;
 - (b) is relevant to the discharge of the functions of the Commission or the official custodian.
- (3) The Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within subsection (2)(a) or (b).

321 Reviews

- (1) An application may be made to the Tribunal for the review of a reviewable matter.
- (2) Such an application may be made by--
 - (a) the Attorney General, or
 - (b) any person mentioned in the entry in column 2 of Schedule 6 which corresponds to the entry in column 1 which relates to the reviewable matter.
- (3) The Commission is to be the respondent to such an application.
- (4) In determining such an application the Tribunal must apply the principles which would be applied by the High Court on an application for judicial review.
- (5) The Tribunal may--
 - (a) dismiss the application, or
 - (b) if it allows the application, exercise any power mentioned in the entry in column 3 of Schedule 6 which corresponds to the entry in column 1 which relates to the reviewable matter.

322 Reviewable matters⁸⁹

- (1) In this Chapter references to reviewable matters are to--
 - (a) decisions to which subsection (2) applies, and
 - (b) orders to which subsection (3) applies.
- (2) This subsection applies to decisions of the Commission--
 - (a) to institute an inquiry under section 46 with regard to a particular institution;
 - (b) to institute an inquiry under section 46 with regard to a class of institutions;
 - (c) not to make a common investment scheme under section 96;
 - (d) not to make a common deposit scheme under section 100;

⁸⁹ As amended by sch 3, para 25.

(e) not to make an order under section 105 (power to authorise dealings with charity property etc) in relation to a charity;

(ea) not to make an order under section 106 (power to authorise ex gratia payments etc) in relation to a charity;

(f) not to make an order under section 117 (restrictions on dispositions of land) in relation to land held by or in trust for a charity;

(g) not to make an order under section 124 (restrictions on mortgages) in relation to a mortgage of land held by or in trust for a charity.

(3) This subsection applies to an order made by the Commission under section 147(2) (investigation and audit) in relation to a charitable company.

323 Remission of matters to Commission

References in column 3 of Schedule 6 to the power to remit a matter to the Commission are to the power to remit the matter--

- (a) generally, or
- (b) for determination in accordance with a finding made or direction given by the Tribunal.

324 Power to amend provisions relating to appeals and applications to Tribunal

(1) The [Secretary of State] may by order--

- (a) amend or otherwise modify an entry in Schedule 6,
- (b) add an entry to Schedule 6, or
- (c) remove an entry from Schedule 6.

(2) An order under subsection (1) may make such amendments, repeals or other modifications of--

- (a) sections 319 to 323, or
- (b) an enactment which applies this Chapter and Schedule 6,

as the [Secretary of State] considers appropriate in consequence of any change in Schedule 6 made by the order.

(3) Subsections (1) and (2) apply (with the necessary modifications) in relation to section 57 of the Charities Act 2006 as if--

- (a) that section were contained in this Chapter, and
- (b) the reference in subsection (2) to sections 319 to 323 included a reference to any other provision relating to appeals to the Tribunal which is contained in Chapter 1 of Part 3 of the Charities Act 2006.

324A Power to authorise costs to be incurred in relation to proceedings⁹⁰

- (1) The Tribunal may make an authorised costs order on the application of a charity or charity trustees of a charity.
- (2) An authorised costs order is an order—
- (a) made in respect of proceedings brought, or proposed to be brought, before the Tribunal or on appeal from it, and
 - (b) authorising payment out of the funds of the charity of costs falling within subsection (3).
- (3) Those costs are costs incurred, or to be incurred, in connection with the proceedings—
- (a) by the charity,
 - (b) by charity trustees, or
 - (c) by any other person, so far as the charity or its charity trustees are ordered by the Tribunal or the court hearing the appeal to bear them.

Chapter 3**References to Tribunal****325 References by Commission⁹¹**

- (1) A question which--
- (a) has arisen in connection with the exercise by the Commission of any of its functions, and
 - (b) involves either the operation of charity law in any respect or its application to a particular state of affairs,

may be referred to the Tribunal by the Commission if the Commission considers it desirable to refer the question to the Tribunal.

(2) The Commission must give the Attorney General notice of its intention to make a reference under subsection (1).

(2A) The reference may not be made until at least 28 days after notice is given to the Attorney General in accordance with subsection (2), unless the Attorney General agrees that it may be made earlier.

~~(2) The Commission may make such a reference only with the consent of the Attorney General.~~

- (3) The Commission is to be a party to proceedings before the Tribunal on the reference.
- (4) The following are entitled to be parties to proceedings before the Tribunal on the reference--
- (a) the Attorney General, and
 - (b) with the Tribunal's permission--

⁹⁰ Inserted by cl 39.

⁹¹ As amended by cl 40.

- (i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,
- (ii) any such charity which is a body corporate, and
- (iii) any other person who is likely to be so affected.

326 References by Attorney General⁹²

(1) A question which involves--

- (a) the operation of charity law in any respect, or
- (b) the application of charity law to a particular state of affairs,

may be referred to the Tribunal by the Attorney General if the Attorney General considers it desirable to refer the question to the Tribunal.

(1A) The Attorney General must give the Commission notice of its intention to make a reference under subsection (1).

(1B) The reference may not be made until at least 28 days after notice is given to the Commission in accordance with subsection (1A), unless the Commission agrees that it may be made earlier.

(2) The Attorney General is to be a party to proceedings before the Tribunal on the reference.

(3) The following are entitled to be parties to proceedings before the Tribunal on the reference--

- (a) the Commission, and
- (b) with the Tribunal's permission--
 - (i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,
 - (ii) any such charity which is a body corporate, and
 - (iii) any other person who is likely to be so affected.

327 Powers of Commission in relation to matters referred to Tribunal

(1) This section applies where a question which involves the application of charity law to a particular state of affairs has been referred to the Tribunal under section 325 or 326.

(2) The Commission must not take any steps in reliance on any view as to the application of charity law to that state of affairs until--

(a) proceedings on the reference (including any proceedings on appeal) have been concluded, and

(b) any period during which an appeal (or further appeal) may ordinarily be made has ended.

(3) Where--

- (a) paragraphs (a) and (b) of subsection (2) are satisfied, and
- (b) the question has been decided in proceedings on the reference,

⁹² As amended by cl 40.

the Commission must give effect to that decision when dealing with the particular state of affairs to which the reference related.

328 Suspension of time limits while reference is in progress⁹³

- (1) Subsection (2) applies if--
- (a) section 327(2) prevents the Commission from taking any steps which it would otherwise be permitted or required to take, and
 - (b) the steps in question may be taken only during a period specified in an enactment ("the specified period").
- (2) The running of the specified period is suspended for the period which--
- (a) begins with the date on which the question is referred to the Tribunal, and
 - (b) ends with the date on which paragraphs (a) and (b) of section 327(2) are satisfied.

~~(3) Nothing in--~~

~~(a) this section, or~~

~~(b) section 271 or 278 (suspension of period during which Commission may object to resolution of unincorporated charity),~~

~~prevents the specified period being suspended concurrently by virtue of subsection (2) and any of the provisions of sections 271 and 278.~~

[...]

Part 18

Miscellaneous and Supplementary

Limited power to make ex gratia payments⁹⁴

331A Limited power for charity trustees to make ex gratia payments etc

- (1) The charity trustees of a charity may take any action falling within subsection (2)(a) or (b) if the conditions in subsection (3) are met.
- (2) The actions are—
- (a) making any application of property of the charity, or
 - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The conditions are—
- (a) that the value of the property does not exceed the relevant threshold,
 - (b) that the charity trustees have no power to take the action apart from this section or by virtue of section 106, and

⁹³ As amended by sch 3, para 4.

⁹⁴ Inserted by cl 15.

- (c) that in all the circumstances the charity trustees could reasonably be regarded as being under a moral obligation to take the action.
- (4) The power conferred by this section may be restricted or excluded by the trusts of the charity.
- (5) In relation to a charity established by (or whose purposes or functions are set out in) legislation, the power conferred by this section is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation.
- (6) For the purposes of subsection (3)(a)—
- (a) if the charity's gross income in its last financial year did not exceed £25,000, the relevant threshold is £1,000;
- (b) if the charity's gross income in its last financial year exceeded £25,000 but not £250,000, the relevant threshold is £2,500;
- (c) if the charity's gross income in its last financial year exceeded £250,000 but not £1 million, the relevant threshold is £10,000;
- (d) if the charity's gross income in its last financial year exceeded £1 million, the relevant threshold is £20,000.
- (7) In subsection (5) "legislation" means—
- (a) an Act of Parliament or an Act or Measure of the National Assembly for Wales;
- (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure; or
- (c) a Measure of the Church Assembly or of the General Synod of the Church of England.

331B Power to alter sums specified in s.331A

The Secretary of State may by regulations amend section 331A(6) (relevant income thresholds) by substituting a different sum for any sum for the time being specified in that provision.

[...]

Trustee of charitable trust: status as a trust corporation⁹⁵

334A Status of certain trustees of charitable trusts

- (1) For the purposes of the provisions listed in subsection (2), "trust corporation" includes a trustee of or for a charitable trust if that trustee is a body corporate and itself a charity.
- (2) The provisions are—
- (a) section 117(1)(xxx) of the Settled Land Act 1925,
- (b) paragraph (18) of section 68(1) of the Trustee Act 1925,
- (c) section 205(1)(xxviii) of the Law of Property Act 1925,

⁹⁵ Inserted by cl 34.

(d) section 55(1)(xxvi) of the Administration of Estates Act 1925, and

(e) section 128 of the Senior Courts Act 1981.

Enforcement powers of Commission etc

[...]

337 Other provisions as to orders etc orders of Commission⁹⁶

- (1) Any order made by the Commission under this Act may include such incidental or supplementary provisions as the Commission thinks expedient for carrying into effect the objects of the order.
- (2) Where the Commission exercises any jurisdiction to make an order under this Act on an application or reference to it, it may insert any such provisions in the order even though the application or reference does not propose their insertion.
- (3) Where the Commission makes an order or gives written consent under this Act, the Commission--
- (a) may itself give such public notice as it thinks fit of the making or contents of the order or consent, or
 - (b) may require it to be given by--
 - (i) any person on whose application the order is made or the consent is given, or
 - (ii) any charity affected by the order or consent.
- (4) The Commission may, with or without any application or reference to it, discharge an order in whole or in part, and subject or not to any savings or other transitional provisions, if--
- (a) it made the order under any provision of this Act other than section 263 (dissolution of incorporated body), and
 - (b) at any time within 12 months after it made the order, it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act.
- (5) Except for the purposes of subsection (4) or an appeal under this Act, an order made by the Commission under this Act--
- (a) is to be treated as having been duly and formally made, and
 - (b) is not to be called in question on the ground only of irregularity or informality,
- but (subject to any further order) has effect according to its tenor.
- (6) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made and may include transitional provisions or savings.

[...]

⁹⁶ As amended by cl 41.

Regulations and orders

347 Regulations and orders: general

- (1) Any power of the [Secretary of State] to make any regulations or order under this Act is exercisable by statutory instrument.
- (2) Subject to sections 348(1) and 349(1), regulations or orders of the [Secretary of State] under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any regulations of the [Secretary of State] or the Commission and any order of the [Secretary of State] under this Act may make--
 - (a) different provision for different cases or descriptions of case or different purposes or areas, and
 - (b) such supplemental, incidental, consequential, transitory or transitional provision or savings as the [Secretary of State] or, as the case may be, the Commission considers appropriate.
- (4) Nothing in this section applies to an order under paragraph 29 of Schedule 9 (transitory modifications).

348 Regulations subject to affirmative procedure etc⁹⁷

- (1) Section 347(2) (negative procedure) does not apply to--
 - (a) regulations under section 19 (fees and other amounts payable to Commission) which require the payment of a fee in respect of any matter for which no fee was previously payable;
 - (b) regulations under section 25 (meaning of "principal regulator") which amend any provision of an Act;
 - ~~[(ba) regulations under section 178A(4) (offences specified for automatic disqualification of charity trustees);]~~
 - ~~[(bb) regulations under section 181A(8) (conditions for disqualification by order);]~~
 - (c) regulations under section 245 (regulations about winding up, insolvency and dissolution of CIOs).
 - (d) regulations under section 352A (power to amend definition of "connected person").
- (2) No regulations within subsection (1)(a), (ba), (bb), (c) or (d) ~~or (e)~~ may be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (3) No regulations within subsection (1)(b) may be made (whether alone or with other provisions) unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (4) Before making any regulations under--
 - (za) section 178A(4), if the regulations add an offence,
 - (zb) section 181A(8), if the regulations add a condition,

⁹⁷ As amended by cl 43.

(a) Part 8 (charity accounts, reports and returns), or
 (b) section 245 or 246 (certain powers to make regulations about CIOs),
 the [Secretary of State] must consult such persons or bodies of persons as the [Secretary of State] considers appropriate.

349 Orders subject to affirmative procedure etc⁹⁸

- (1) Section 347(2) (negative procedure) does not apply to--
- (a) an order under section 23 (power to amend Schedule 3 so as to add or remove exempt charities);
 - ~~(b) an order under section 73(2) (powers to make schemes altering provision made by Acts etc);~~
 - (c) an order under section 190 (power to amend provisions relating to indemnity insurance for charity trustees and trustees);
 - (d) an order under section 324 (power to amend provisions relating to appeals and applications to Tribunal).
- (2) No order within subsection (1)(a) may be made (whether alone or with other provisions) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (3) No order within subsection (1)(c) or (d) may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) If a draft of an instrument containing an order under section 23 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

Interpretation

350 Connected person: child, spouse and civil partner⁹⁹

- (1) In sections 118(2)(c), 188(1)(a), 200(1)(a), ~~249(2)(a) and 280B(4)(a) and 249(2)(a)~~, "child" includes a stepchild ~~and an illegitimate child~~.
- (2) For the purposes of sections 118(2)(e), 188(1)(b), 200(1)(b), ~~249(2)(a) and 280B(4)(a) and 249(2)(b)~~--
- (a) a person living with another as that person's husband or wife is to be treated as that person's spouse;
 - (b) where two people of the same sex are not civil partners but live together as if they were, each of them is to be treated as the civil partner of the other.

⁹⁸ As amended by sch 3, para 11.

⁹⁹ As amended by cl 42 and sch 3, para 5.

351 Connected person: controlled institution¹⁰⁰

For the purposes of sections 118(2)(g), 157(1)(a), 188(1)(d), 200(1)(d), ~~249(2)(d) and 280B(4)(d) and 249(2)(e)~~, a person controls an institution if the person is able to secure that the affairs of the institution are conducted in accordance with the person's wishes.

352 Connected person: substantial interest in body corporate¹⁰¹

(1) For the purposes of sections 118(2)(h), 157(1)(b), 188(1)(e), 200(1)(e), ~~249(2)(e) and 280B(4)(e) and 249(2)(e)~~, any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question--

- (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
- (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

(2) The rules set out in Schedule 1 to the Companies Act 2006 (rules for interpretation of certain provisions of that Act) apply for the purposes of subsection (1) as they apply for the purposes of section 254 of that Act ("connected persons" etc).

(3) In this section "equity share capital" and "share" have the same meaning as in that Act.

352A Power to amend definition of "connected person"¹⁰²

The Secretary of State may by regulations amend this Act to alter what is a "connected person" for the purposes of any provision of this Act.

353 Minor definitions¹⁰³

(1) In this Act, except in so far as the context otherwise requires--

"company" means a company registered under the Companies Act 2006 in England and Wales or Scotland;

"the court" means--

- (a) the High Court, and
- (b) within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court;

"ecclesiastical charity" has the same meaning as in the Local Government Act 1894;

"financial year"--

¹⁰⁰ As amended by sch 3, para 6.

¹⁰¹ As amended by sch 3, para 7.

¹⁰² Inserted by cl 43.

¹⁰³ As amended by cl 9 and 14.

(a) in relation to a charitable company, is to be construed in accordance with section 390 of the Companies Act 2006, and

(b) in relation to any other charity, is to be construed in accordance with regulations made by virtue of section 132(3);

but this is subject to any provision of regulations made by virtue of section 142(3) (financial years of subsidiary undertakings);

"gross income", in relation to a charity, means its gross recorded income from all sources including special trusts;

"independent examiner", in relation to a charity, means such a person as is mentioned in section 145(1)(a);

"members", in relation to a charity with a body of members distinct from the charity trustees, means any of those members;

...

"trusts"--

(a) in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and

(b) in relation to other institutions has a corresponding meaning.

(2) In this Act, except in so far as the context otherwise requires, "document" includes information recorded in any form, and, in relation to information recorded otherwise than in legible form--

(a) any reference to its production is to be read as a reference to the provision of a copy of it in legible form, and

(b) any reference to the provision of a copy of, or extract from, it is accordingly to be read as a reference to the provision of a copy of, or extract from, it in legible form.

(3) For the purposes of this Act, property is "permanent endowment" if it is subject to a restriction on being expended which distinguishes between income and capital.

~~(3) A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between--~~

~~(a) capital, and~~

~~(b) income;~~

~~and in this Act "permanent endowment" means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.~~

(4) In this Act, "special trust" means property which--

(a) is held and administered by or on behalf of a charity for any special purposes of the charity, and

(b) is so held and administered on separate trusts relating only to that property.

But a special trust does not, by itself, constitute a charity for the purposes of Part 8 (charity accounts, reports and returns).

[...]
SCHEDULE 6

APPEALS AND APPLICATIONS TO TRIBUNAL

Sections 319, 321, 323 and 324

[...]

Decision by the Commission not to make an order under section 106 in relation to a charity.

The persons are—
 (a) the charity trustees of the charity, and
 (b) (if a body corporate) the charity itself.

Power to quash the decision and (if appropriate) remit the matter to the Commission.¹⁰⁴

[...]

Decision of the Commission under section 226 to give, or withhold, consent under section 226 in relation to an amendment of the constitution of a CIO.

The persons are—
 (a) the CIO,
 (b) the charity trustees of the CIO, and
 (c) any other person who is or may be affected by the decision.

Power to quash the decision and (if appropriate) remit the matter to the Commission.¹⁰⁵

~~Decision of the Commission under section 227 to refuse to register an amendment to the constitution of a CIO.~~

~~The persons are—~~
 (a) ~~the CIO,~~
 (b) ~~the charity trustees of the CIO, and~~
 (c) ~~any other person who is or may be affected by the decision.~~

~~Power to quash the decision and (if appropriate)—~~
 (a) ~~remit the matter to the Commission;~~
 (b) ~~direct the Commission to register the amendment.~~

[...]

¹⁰⁴ Inserted by sch 3, para 26.

¹⁰⁵ Amended by sch 3, para 2.

~~Decision of the Commission to notify charity trustees under section 271(1) that it objects to a resolution of the charity trustees under section 268(1).~~

~~The persons are—
(a) the charity trustees, and
(b) any other person who is or may be affected by the decision.~~

~~Power to quash the decision.~~¹⁰⁶

~~Decision of the Commission to notify charity trustees under section 278(1) that it objects to a resolution of the charity trustees under section 275(2).~~

~~The persons are—
(a) the charity trustees, and
(b) any other person who is or may be affected by the decision.~~

~~Power to quash the decision.~~¹⁰⁷

[...]

~~Decision of the Commission not to concur under section 291 with a resolution of charity trustees under section 289(2).~~

~~The persons are—
(a) the charity trustees,
(b) (if a body corporate) the charity itself, and
(c) any other person who is or may be affected by the decision.~~

~~Power to quash the decision and (if appropriate) remit the matter to the Commission.~~¹⁰⁸

[...]

SCHEDULE 8

TRANSITIONALS AND SAVINGS

Section 354

[...]

~~*Application cy-près: donors unknown or disclaiming or treated as disclaiming*~~¹⁰⁹

17

~~Sections 63, 64 and 67 apply to property given for charitable purposes whether before or on or after the commencement of this Act.~~

[...]

¹⁰⁶ As repealed by Sch 3, para 8(a).

¹⁰⁷ As repealed by Sch 3, para 8(b).

¹⁰⁸ As repealed by Sch 3, para 23.

SCHEDULE 9

TRANSITORY MODIFICATIONS

Section 354

[...]

~~*Change of name and exempt charities*~~¹¹⁰**10**

~~(1) — Sub-paragraph (2) applies if, in relation to charities of a particular description or a particular charity, paragraph 1 of Schedule 5 to the 2006 Act (removal of exception for exempt charities from power to require charity's name to be changed) has not been brought into before the commencement of this Act.~~

~~(2) — In relation to those charities or that charity, section 42 (power to require name to be changed) has effect until the relevant commencement date as if at the end there were inserted—~~

~~"(6) — Nothing in this section applies to an exempt charity."~~

[...]

*CIOs***26**

[...]

*provision of the 1993 Act**corresponding provision of this Act*

[...]

~~section 69O~~~~section 267(2)~~¹¹¹

[...]

¹⁰⁹ Repealed by Sch 3, para 14.

¹¹⁰ Repealed by cl 30.

¹¹¹ Repealed by Sch 3, para 9.

SCHEDULE 11

INDEX OF DEFINED EXPRESSIONS

Section 357

[...]

available endowment fund (in Part 13 Parts 13 and 14)	sections: 281(7) and 284A(9) section 281(7) (and see also section 282(5) sections 282(5) and 288(7)) ¹¹²
charitable purposes, failure of (in section 63A sections 63 and 65) ¹¹³	section 66(1)
child (in sections 118(2)(c), 188(1)(a), 200(1)(a), 249(2)(a) and 280B(4)(a) and 249(2)(a)) ¹¹⁴	section 350(1)
civil partner (in sections 118(2)(e), 188(1)(b), 200(1)(b), 249(2)(b) and 280B(4)(b) and 249(2)(b)) ¹¹⁵	section 350(2)
control of institution (in sections 118(2)(g), 157(1)(a), 188(1)(d), 200(1)(d), 249(2)(d) and 280B(4)(d) and 249(2)(d)) ¹¹⁶	section 351
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the relevant charity, in relation to power to spend capital subject to special trust (in Part 14)	section 288(1) ¹¹⁹
services (in sections 185 and 186)	section 187 ¹²⁰
special trust	section 353(4) section 287 ¹²¹
substantial interest in a body corporate (in sections	section 352

¹¹² As amended by Sch 3, paras 21 and 24.

¹¹³ As amended by Sch 3, para 15.

¹¹⁴ As amended by Sch 3, para 10.

¹¹⁵ As amended by Sch 3, para 10.

¹¹⁶ As amended by Sch 3, para 10.

¹¹⁷ As amended by Sch 3, para 15.

¹¹⁸ Repealed by Sch 3, para 15.

¹¹⁹ Repealed by Sch 3, para 24.

¹²⁰ Repealed by Sch 3, para 38.

¹²¹ Amended by Sch 3, para 24.

118(2)(h), 157(1)(b), 188(1)(e), 200(1)(e), ~~249(2)(e)~~
~~and 280B(4)(e) and 249(2)(e)~~¹²²

~~transfer of property (in sections 268 to 274)~~

~~working name~~

~~section 267(4)~~¹²³

~~section 42(4)~~¹²⁴

¹²² Amended by Sch 3, para 10.

¹²³ Repealed by Sch 3, para 10.

¹²⁴ Inserted by Sch 3, para 35.