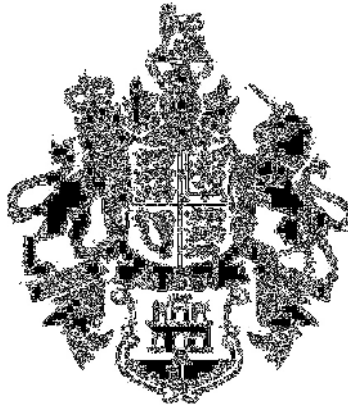


**C03/2025**



**Command Paper on  
a draft Bill for an Act to repeal and replace the  
Charities Act**

**Presented to Parliament by  
the Chief Minister**

**by Command of His Majesty  
3 June 2025**

Comments on this Command Paper should be:

- (a) sent by email to [commandpapers@gibraltar.gov.gi](mailto:commandpapers@gibraltar.gov.gi), or
- (b) delivered to:

Command Papers Consultation  
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by no later than the 15th September 2025.

Any comments received later than noon the 15th September 2025 may not be taken into account for the purposes of the consultation.

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## **1. Introduction**

The Government is proposing a Bill that seeks to modernise charity legislation.

### **Overview**

The Bill introduces major new policies and sets out charity legislation into a modern format.

The Bill, when enacted, will be the principal statute governing the establishment, regulation, and administration of charities in Gibraltar. It outlines:

What constitutes a charity.

The role and powers of the Board.

The responsibilities and duties of charity trustees.

The rules on registration, reporting, and accountability.

### **The Board of Charity Commissioners (the “Board”): Regulatory Role**

#### Status and Purpose

The Board will continue under the Bill, once enacted into law.

The Board serves as the regulator and registrar of charities.

The Board’s principal functions are to promote public trust and confidence in charities, ensure compliance with legal obligations, and enhance the effectiveness of charities.

The Board is not subject to the direction or control of any Minister or of any Government department.

### **Key Powers and Functions (Clauses 9–12)**

#### Registration of Charities:

The Board shall maintain a public register of charities.

All charities must register unless excepted or exempted.

All registered charities must have at least one locally resident trustee or in the case of a body corporate or foundation at least one individual locally resident officer.

The Board must determine whether institutions are charitable in law, have exclusively charitable purposes, and are for the public benefit.

#### Monitoring and Investigations:

The Board can open statutory inquiries where there is evidence of misconduct or mismanagement.

The Board may request information and documents from trustees and others involved with a charity.

#### Compliance and Enforcement Powers:

The Board can issue official warnings.

The Board can suspend or remove trustees or appoint an interim manager.

The Board may restrict transactions.

The Board shall have powers to direct a charity to take specific actions or refrain from certain activities.

#### Supportive and Advisory Functions:

The Board shall provide advice and guidance to charity trustees.

The Board shall maintain a public database of registered charities and issues publications on best practices.

#### Exempt and Excepted Charities:

Exempt charities are generally regulated by other principal regulators.

Excepted charities are exempted from registration if their income is below certain thresholds and they belong to specified groups (for example, certain churches).

### **Charity Trustees: Duties and Responsibilities**

#### Definition and General Duties (Clause 94)

A charity trustee is anyone responsible for the general control and management of a charity.

Trustees must:

Act in good faith and only in the charity's interests.

Avoid conflicts of interest.

Ensure the charity's resources are used appropriately and only for charitable purposes.

Comply with statutory and fiduciary duties under charity and trust law.

### **Specific Regulatory Provisions**

#### Appointment and Removal:

The Bill allows the Board or courts to appoint, suspend, or remove trustees if necessary.

Trustees must not be disqualified (e.g., due to criminal convictions, bankruptcy, etc.).

#### Remuneration and Benefits:

Trustees generally serve on a voluntary basis.

Any remuneration or personal benefit must be authorised by the charity's governing document or the Board.

#### Accountability:

Trustees are legally accountable for the charity's performance, finances, and compliance with the law.

## **Accounts, Audits, and Reporting Requirements**

The Bill mandates clear rules around financial accountability to ensure transparency and public confidence.

### Accounting Requirements (Part 4 – Clauses 41–58)

Charities must keep proper accounting records.

They must prepare and file their annual accounts and an accompanying trustees' annual report with the Charity Commission.

### Accounts and independent examination – Thresholds and Requirements

Accounts - Depending on income and assets, charities may prepare a Receipt and Payments Account (i.e. money received, and money paid out by the charity). However, a charitable company or charitable foundation or any charity with gross income of over £250,000 during the financial year must prepare accounts that comply with the UK Statement of Recommended Practice (SORP) for Charities.

Audit - Except where the charity's governing document requires some form of external scrutiny, only charities with a gross income of more than £50,000 in their financial year (Clause 56 of the Bill) are required to have their accounts independently examined or audited.

The type of scrutiny required depends on the income and assets of the charity. Broadly speaking, an independent examination is needed if gross income is between £50,000 and £1.25 million and an audit is needed where the gross income exceeds £1.25 million (Clause 55 (1)(a) of the Bill).

An audit will also be needed if total assets exceed £3 million, and the charity's gross income is more than £250,000 (Clause 55 (1)(b) of the Bill).

## **Charity Commission Oversight**

The Board can investigate concerns about mismanagement, misconduct, poor governance and financial controls, inaccurate or misleading financial information, lack of transparency and improper use of charitable funds.

Failure to submit accounts can lead to warnings or regulatory action, including ultimately the removal from the register and reputational damage.

## **Other Notable Provisions**

### Public Benefit Requirement (Clause 4–6)

Charities must demonstrate they exist for public benefit—this is central to their registration and ongoing status.

### Cy-près Doctrine (Part 5)

Allows modification of charitable purposes (e.g., when original aims can no longer be achieved).

## Regulatory Emphasis Summary

<u>Area</u>	<u>Regulatory Oversight</u>
The Board of Charity Commissioners	Central regulatory authority; monitors, investigates, and enforces compliance.
Charity Trustees	Legal duty-bearers; responsible for operations, finances, and compliance.
Accounts & Reports	Must be maintained and submitted; thresholds determine level of scrutiny.
Enforcement Tools	Inquiries, warnings, suspensions, removals, interim management, and financial restrictions.

## **Charity Trustees' Legal Compliance Checklist**

### General Duties

Ensure that the charity is operating for its stated charitable purposes.

Comply with the governing document (for example, trust deed, constitution).

Act in the charity's best interests and not personal or external interests.

Exercise reasonable care, skill, and diligence in decision-making.

Avoid conflicts of interest and declare any personal benefit.

### Registration & Reporting

Register with the Board.

Update the register with any changes (for example., name, address, trustees).

Submit annual returns, accounts and trustees' reports by the due date.

### Financial and Accounting Compliance

Keep accurate and up-to-date financial records.

Prepare annual accounts in the correct format (Receipts & Payments; or Accruals basis (large charities)).

Arrange an independent examination or audit (based on income thresholds).

Review and approve annual report and accounts before submission.

### Governance and Operations

Ensure trustee eligibility (no disqualified persons without clearance or waiver from the Board).

Maintain a register of trustees and conduct regular reviews.

Conduct regular board meetings with documented decisions (minutes).

Apply for Board permission before paying trustees, subject to conditions having being met, selling or leasing charity land and amending governing documents (if required).

### Risk and Safeguarding

Assess and manage operational and financial risks.

Have policies for safeguarding, data protection, and complaints.

### **The Board of Charity Commissioners: Regulatory Powers Checklist Monitoring & Investigations**

Monitor charities through annual submissions and compliance trends.

Open statutory inquiries into suspected misconduct/mismanagement.

Request information, documents, or explanations from trustees.

### Enforcement Tools

Issue official warnings to trustees or charities.

Suspend or remove trustees where serious wrongdoing occurs.

Appoint interim managers to take over administration during inquiries.

Restrict transactions to protect assets.

### Legal & Structural Powers

Determine if an organisation is charitable in law and eligible for registration.

Authorise changes to a charity's governing document (if needed).

Approve payment to trustees (if not permitted in governing document).

Direct charities to merge, wind up, or apply cy-près schemes.

### Public Interest Functions

Maintain an accurate and searchable public register of charities.

Issue guidance, model documents, and best practice resources.

Promote public confidence in the charity sector through transparency and action.

### **Anti Money Laundering Considerations**

The Bill does not directly include anti-money laundering (AML) or counter-terrorist financing (CTF) provisions in the same explicit way as legislation such as the Terrorism Act or the Proceeds of Crime Act. However, it supports those frameworks by empowering the Board to identify, investigate, and intervene in activities that may involve financial abuse, including terrorist financing or money laundering, particularly where there is mismanagement or misconduct.

Below are the key clauses of the Bill that are relevant to curtailing money laundering or terrorist financing, by empowering regulatory responses or restricting misuse of charitable funds:



## Key Relevant Sections of the Bill

### Clause 79 – Suspension of trustees and appointment of interim managers

Grants the Board power to suspend a trustee or officer and appoint an interim manager if there's misconduct or mismanagement.

This can be applied where there's suspicion of financial abuse, including laundering or diversion to extremist causes.

### Clause 79(3) – Protective Orders

Allows the Board to restrict property transfers or prohibit specific actions to protect charitable assets.

### Clause 34 – Inquiries by the Board

Authorises the Board to open statutory inquiries if there is reason to suspect fraud, financial crime, or terrorist involvement.

Inquiries can lead to:

Requiring documents,

Interviewing individuals,

Issuing official warnings.

### Schedule 3 – Reduction of Financial Crime

As set out in the Schedule.

### Part 7 and Schedule 4.

Allows for the use of confidential information.

Envisages the entry into cooperation agreements with domestic authorities and foreign commissioners.

Allows for the exchange of information with domestic authorities, foreign commissioners and with the consent of the Minister responsible for finance, foreign authorities.

### Clauses 94–95 – Disqualification of trustees

Disqualifies individuals convicted of money laundering, terrorist offences, or financial crimes from acting as charity trustees unless granted a waiver.

### Clause 38 – False or misleading information

Criminalises knowingly or recklessly providing false or misleading information to the Board—relevant when covering illicit transfers.

### Connection with Other Laws

While the Bill provides structural and enforcement tools, direct offences and obligations regarding AML and CTF arise from:

Terrorism Act - Criminalises fundraising for, or use of funds in support of, terrorism.

Proceeds of Crime Act - Applies to charities that may unknowingly be laundering proceeds of crime.

Crimes Act - Applies to bribery.

Counter-Terrorism Act - Supports due diligence in sectors vulnerable to abuse by extremists.

### Summary of Relevance in Practice

While no sections of the Bill explicitly define or criminalise terrorist financing or money laundering, the following mechanisms enable the Board to take preventive or responsive action:

<u>Clause</u>	<u>Function</u>	<u>AML/CTF Relevance</u>
34	Inquiry powers	Investigate suspicious financial activity
79	Protective measures	Suspend trustees, restrict transactions
Part 7/Schedule 4	Information sharing	Collaborate with law enforcement
94–95	Trustee disqualification	Exclude individuals with relevant convictions
38	False information	Prevent misleading info that masks laundering

## **2. Draft Bill.**

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# BILL

FOR

AN ACT TO MAKE PROVISIONS AS TO THE POWERS EXERCISABLE BY OR WITH RESPECT TO CHARITIES OR WITH RESPECT TO GIFTS TO CHARITY AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH.

**ENACTED** by the Legislature of Gibraltar.

## **PART 1 PRELIMINARY**

### *General*

#### **Title.**

1. This Act may be cited as the Charities Act 2025.

#### **Commencement.**

2. This Act comes into operation on the day the Minister appoints by notice in the Gazette.

#### **Interpretation.**

3. (1) In this Act unless the context otherwise requires-

“charitable purposes” means purposes, which are exclusively charitable according to this Act;

“charity” means any institution, corporate or not, which is established for charitable purposes only and is subject to the control of the Supreme Court in the exercise of the court's jurisdiction with respect to charities;

“charity trustees” means the persons having the general control and management of the administration of a charity;

“Commissioners” means the Board of Charity Commissioners for Gibraltar/established under section 9;

“court” means the Supreme Court and includes the Chief Justice and any officer of the Supreme Court exercising the jurisdiction of the Supreme Court;

“document” includes a document whenever made;

“enactment” includes any provision of subsidiary legislation and references to enactments include enactments whenever passed or made;

“exempt charity” means, subject to section 109(9), a charity comprised in Schedule 2;

“foundation” means a foundation registered under the Private Foundations Act 2017 which has been registered as a charity under the provisions of this Act;

“institution” means a trust, foundation, body corporate, unincorporated association or undertaking;

“Minister” means the Minister with responsibility for finance;

“permanent endowment” shall, subject to section 109(9), be construed in accordance with section 3(2);

“the register” means the register of charities kept under section 17 and “registered” is to be read accordingly;

“trusts”, 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 in relation to other institutions has a corresponding meaning.

(2) Subject to section 109(9) a charity shall be deemed, for the purposes of this Act, to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being so expended.

(3) References in this Act to a charity not having income from property to a specified amount shall be construed by reference to the gross revenues of the charity, but without bringing into account anything for the yearly value of land occupied by the charity apart from the pecuniary income, if any, received from that land; and any question as to the application of any such reference to a charity shall be determined by the Commissioners, whose decision shall be final.

(4) The Commissioners may direct that for all or any of the purposes of this Act an institution established for any special purposes of or in connection with a charity, being charitable purposes, shall be treated as forming part of that charity or as forming a distinct charity.

(5) The Commission may direct that for all or any purposes of this Act two or more charities having the same charity trustees are to be treated as a single charity.

(6) Any reference in this Act to a charity which is excepted by order or regulations shall be construed as referring to a charity which is for the time being permanently or temporarily excepted by order of the Commissioners, or is of a description permanently or temporarily excepted by regulations, and which complies with any conditions of the exception; and any order or regulation made for this purpose may limit any exception so that a charity may be excepted in respect of some matters and not in respect of others.

### *Charitable purpose*

#### **Meaning of “charitable purpose”**

4. (1) For the purposes of this Act, a charitable purpose is a purpose which—

(a) falls within section 5(1); and

(b) is for the public benefit in accordance with section 6.

(2) Any reference in any enactment or document, in whatever terms—

(a) to charitable purposes; or

(b) to institutions having purposes that are charitable under this Act, is to be read in accordance with subsection (1).

(3) Subsection (2) does not apply where the context otherwise requires.

**Descriptions of purposes.**

5. (1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

(a) the prevention or relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the advancement of health or the saving of lives;

(e) the advancement of citizenship or community development;

(f) the advancement of the arts, culture, heritage or science;

(g) the advancement of amateur sport;

(h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

(i) the advancement of environmental protection or improvement;

(j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;

(k) the advancement of animal welfare;

(l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;

(m) any other purposes—

(i) that are not within subsections (1)(a) to (l) but are recognised as charitable purposes by virtue of section 7;

(ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of subsections (1)(a) to (l) or subsection (1)(m)(i); or

(iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in

England and Wales, as falling within subsection (1)(m)(ii) or this subsection (1)(m)(iii).

(2) In subsection (1)—

- (a) in subsection (1)(c), “religion” includes—
  - (i) a religion which involves belief in more than one god; and
  - (ii) a religion which does not involve belief in a god;
- (b) in subsection (1)(d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
- (c) subsection (1)(e) includes—
  - (i) rural or urban regeneration;
  - (ii) community development; and
  - (iii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
- (d) in subsection (1)(g), “sport” means sports or games which promote health by involving physical or mental skill or exertion;
- (e) subsection (1)(j) includes relief given by the provision of accommodation or care to the persons mentioned in that subsection; and
- (f) in subsection (1)(l), “fire and rescue services” means services provided by fire and rescue authorities under the Fire and Rescue Services Act.

(3) Where any of the terms used in any of subsection (1)(a) to (l), or in subsection (2), has a particular meaning under the law relating to charities in England and Wales, the term is to be taken as having the same meaning where it appears in that provision.

### **The public benefit requirement.**

6.(1) In this Act “the public benefit requirement” means the requirement in section 4(1)(b) that a purpose falling within section 5(1) shall be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 5(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

### *Recreational trusts and registered sports clubs*

### **Recreational and similar trusts.**

7.(1) It is charitable, and is to be treated as always having been charitable to provide, or assist in the provision of, facilities for—

- (a) recreation; or
- (b) other leisure-time occupation,

if the facilities are provided in the interests of social welfare.

(2) The requirement that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions appearing in subsection (3) are not met.

(3) The basic conditions referred to in subsection (2) are—

- (a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
- (b) that—
  - (i) those persons have need of the facilities because of their youth, age, infirmity or disability, poverty, or social and economic circumstances; or
  - (ii) the facilities are to be available to members of the public at large.

(4) Subsection (1) applies in particular to—

- (a) the provision of facilities at halls, community centres and women's institutes; and
- (b) the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation,

and extends to the provision of facilities for those purposes by the organising of any activity subject to the requirement that the facilities are provided in the interests of social welfare.

(5) Nothing in this section is to be treated as derogating from the public benefit requirement.

### **Registered sports clubs.**

8.(1) A registered sports club established for charitable purposes is to be treated as not being so established and accordingly cannot be a charity.

(2) In subsection (1), “registered sports club” means a registered club within the meaning of the Clubs Act.

## **PART 2 BOARD OF CHARITY COMMISSIONERS AND OFFICIAL CUSTODIAN.**

### *The Commission*

### **Charity Commissioners.**

9.(1) There shall continue to be a Board of Charity Commissioners for Gibraltar, and they shall have such functions as are conferred on them by this Act in addition to any functions under any other law.

(2) In the exercise of its functions the Commission is not subject to the direction or control of any Minister or of any Government department.

(3) Subsection (2) does not affect—

- (a) any provision made by or under any enactment;
- (b) any administrative controls exercised over the Commission's expenditure by the Minister.

(4) The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Commissioners and other matters relating to the Commissioners.

(5) The Commission has the following objectives—

(a) the public confidence objective

The public confidence objective is to increase public trust and confidence in charities.

(b) the public benefit objective

The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

(c) the compliance objective

The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

(d) the charitable resources objective

The charitable resources objective is to promote the effective use of charitable resources.

(e) the accountability objective

The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

(6) In discharging their functions under this Act, the Commissioners shall, so far as is reasonably possible, adhere to the principles set out in Schedule 3 regarding the reduction of financial crime.

(7) The Commission has the following general functions—

- (a) determining whether institutions are or are not charities;
- (b) encouraging and facilitating the better administration of charities;
- (c) identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities;



- (d) obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives; and
- (e) giving information or advice, or making proposals, to any Minister on matters relating to any of the Commission's functions or meeting any of its objectives.

(8) The Commission may, in connection with its second general function, and in its absolute discretion, give such advice or guidance with respect to the administration of charities as it considers appropriate.

(9) Any advice or guidance so given may relate to—

- (a) charities generally;
- (b) any class of charities; or
- (c) any particular charity,

and may take such form, and be given in such manner, as the Commission considers appropriate.

(10) The Commission's fourth general function includes, among other things, the maintenance of an accurate and up-to-date register of charities under sections 17 and 22.

(11) The Commission's fifth general function includes, among other things complying, so far as is reasonably practicable, with any request made by a Minister for information or advice on any matter relating to any of its functions.

#### **Supply by Commission of copies of documents.**

10. The Commission shall, at the request of any person, provide that person with copies of, or extracts from, any document in the Commission's possession which is for the time being open to or available for inspection under any provision of this Act.

#### **Fees and other amounts payable to Commission.**

11.(1) The Minister may require the payment to the Commission of such fees as may be prescribed by regulations in respect of—

- (a) the discharge by the Commission of such functions as may be so prescribed;
- (b) registration fees;
- (c) annual fees;
- (d) the inspection of the register of charities or of other material kept by the Commission, or the provision of copies of or extracts from documents so kept.

(2) Regulations made by the Minister under this section may—

- (a) confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee;

(b) provide for the remission or refunding of a prescribed fee (in whole or in part) in circumstances prescribed by the regulations.

(3) The Commission may impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it.

(4) Any fees and other payments received by the Commission by virtue of this section are to be paid into Government.

#### **Incidental powers.**

12.(1) The Commission may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2) But nothing in this Act authorises the Commission—

(a) to exercise functions corresponding to those of a charity trustee in relation to a charity; or

(b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not affect the operation of section 89, 90, 91 or 92.

#### *The official custodian*

#### **Official custodian for charities.**

13.(1) There shall be an “official custodian for charities”, whose function it shall be to act as trustee for charities in the cases provided for by this Act, and the official custodian for charities shall be by that name a corporation sole having perpetual succession and using an official seal, which shall be officially and judicially noticed.

(2) Such person as the Minister may from time to time designate shall be the official custodian for charities.

(3) The official custodian for charities shall perform his or her duties in accordance with such general or special directions as may be given him or her by the Commissioners, and his or her expenses, except those reimbursed to him or her or recovered by him or her as trustee for any charity, shall be defrayed by the Commissioners.

(4) Anything which is required to or may be done by, to or before the official custodian for charities may be done by, to or before any officer of the Commissioners generally or specially authorised by them to act for him or her during a vacancy in his or her office or otherwise.

(5) The official custodian for charities shall not be liable as trustee for any charity in respect of any loss or of the misapplication of any property, unless it is occasioned by or through the wilful neglect or default of the custodian or person acting for him or her, but the Government shall be liable to make good to a charity any sums for which the custodian may be liable by reason of any such neglect or default.

(6) The official custodian for charities shall keep such books of account and such records in relation thereto as may be directed by the Principal Auditor, and shall prepare accounts in such form, in such manner and at such times as may be so directed.

(7) The accounts so prepared shall be examined and certified by the Principal Auditor, and the report to be made by the Commissioners to the Minister for any year shall include a copy of the accounts so prepared for any period ending in or with the year, and of the certificate and report of the Principal Auditor with respect to those accounts.

### **PART 3 EXEMPT CHARITIES**

#### *Exempt charities*

##### **General.**

14. An exempt charity is subject to any other enactment by virtue of which a charity is an exempt charity.

##### **Power to amend Schedule 2 to add or remove exempt charities.**

15.(1) The Minister may by order published in the Gazette make such amendments of Schedule 2 as the Minister considers appropriate for securing—

- (a) that (so far as they are charities) institutions of a particular description become or (as the case may be) cease to be exempt charities; or
- (b) that (so far as it is a charity) a particular institution becomes or (as the case may be) ceases to be an exempt charity.

(2) An order under subsection (1) may be made only if the Minister is satisfied that the order is desirable in the interests of ensuring appropriate or effective regulation of the charities or charity concerned in connection with compliance by the charity trustees of the charities or charity with their legal obligations in exercising control and management of the administration of the charities or charity.

(3) The Government may by order make such amendments or other modifications of any enactment as the Government considers appropriate in connection with—

- (a) charities of a particular description becoming, or ceasing to be, exempt charities; or
- (b) a particular charity becoming, or ceasing to be, an exempt charity,

as a result of provision made under subsection (1).

##### **Power to remove defunct institutions from Schedule 2.**

16. The Minister may by order published in the Gazette make such amendments of Schedule 2 as the Minister considers appropriate for removing from that Schedule an institution that has ceased to exist.

### **PART 4 REGISTRATION AND ACCOUNTS.**

### *The register*

#### **The Register.**

17.(1) There shall continue to be a register of charities, to be kept by the Commission in such manner as it thinks fit.

(2) The register shall contain—

- (a) the name of every charity registered in accordance with section 18; and
- (b) such other particulars of, and such other information relating to, every such charity as the Commission thinks fit.

### *Charities required to be registered*

#### **Charities required to be registered.**

18.(1) Every charity shall be registered in the register unless subsection (2) applies to it.

(2) The following are not required to be registered—

- (a) an exempt charity;
- (b) a charity which for the time being—
  - (i) is permanently or temporarily excepted by order of the Minister; and
  - (ii) complies with any conditions of the exception;
- (c) a charity which for the time being—
  - (i) is, or is of a description, permanently or temporarily excepted by regulations made by the Minister; and
  - (ii) complies with any conditions of the exception.

(3) A charity within subsection (2)(b) or (c) shall, if it so requests, be registered in the register.

(4) Every charity registered pursuant to subsection (1) shall have-

- (a) at least two locally resident charity trustees; or
- (b) in the case of a body corporate or foundation at least two individual locally resident officers.

(5) Every charity registered pursuant to subsection (1) shall have a majority of locally resident charity trustees or individual locally resident officers, as the case may be.

(6) Subsections (4) and (5) are subject to any evidence as the Commission in its absolute discretion may consider appropriate and request in each case.

**Power to repeal provisions relating to excepted charities.**

19. Section 18(2)(b), (c) and (3) and this section, cease to have effect on such day as the Minister may by order published in the Gazette appoint for the purposes of this section.

*Removal of charities from the register*

**Removal of charities from register.**

20.(1) The Commission shall remove from the register—

- (a) any institution which it no longer considers is a charity;
- (b) any charity which has ceased to exist or does not operate; and
- (c) any charity which has repeatedly failed to comply with the requirements of this Act or with requests, orders, decisions or directions of the Commission.

(2) If the removal of an institution under subsection (1)(a) is due to any change in its trusts, the removal will be deemed to take effect from the date of the change.

(3) A charity which is for the time being registered under section 18(3) shall be removed from the register if it so requests.

*Registration*

**Duties of charity trustees in connection with registration.**

21.(1) If a charity required to be registered by virtue of section 18(1) is not registered, the charity trustees shall—

- (a) apply to the Commission for the charity to be registered; and
- (b) supply the Commission with the required documents and information.

(2) The required documents and information are—

- (a) copies of the charity's trusts or (if they are not set out in any extant document) particulars of them;
- (b) such other documents or information as may be prescribed by regulations made by the Minister; and
- (c) such other documents or information as the Commission may require for the purposes of the application.

(3) If an institution is for the time being registered, the charity trustees (or the last charity trustees) shall—

- (a) notify the Commission if the institution ceases to exist, or if there is any change in its trusts or in the particulars of it entered in the register; and

- (b) so far as appropriate, supply the Commission with particulars of any such change and copies of any new trusts or alterations of the trusts.

(4) Nothing in subsection (3) shall require a person—

- (a) to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court;
- (b) to notify the Commission of any change made with respect to a registered charity by such a scheme; or
- (c) if the person refers the Commission to a document or copy already in the Commission's possession, to supply a further copy of the document.

### **Effect of registration.**

22.(1) An institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register.

(2) For the purposes of subsection (1) an institution is to be treated as not being on the register during any period when the entry relating to it is in suspense under section 24(4).

### **Right to inspect register.**

23.(1) The register, including the entries cancelled when institutions are removed from the register, shall be open to public inspection at all reasonable times.

(2) If 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.

(3) If the Commission so determines, subsection (1) does not apply to any particular information contained in the register that is specified in the determination.

(4) Copies (or particulars) of the trusts of any registered charity as supplied to the Commission under section 21 shall, so long as the charity remains on the register—

- (a) be kept by the Commission; and
- (b) be open to public inspection at all reasonable times.

### **Claims and objections to registration.**

24.(1) A person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity—

- (a) object to its being entered by the Commission in the register; or
- (b) apply to the Commission for it to be removed from the register.

(2) Provision may be made by regulations made by the Minister as to the manner in which any such objection or application is to be made, prosecuted or dealt with.

(3) Subsection (4) applies if there is an appeal to the Supreme Court against any decision of the Commission—

- (a) to enter an institution in the register; or
- (b) not to remove an institution from the register.

(4) Until the Commission is satisfied whether the decision of the Commission is or is not to stand, the entry in the register—

- (a) is to be maintained; but
- (b) is in suspense and shall be marked to indicate that it is in suspense.

(5) Any question affecting the registration or removal from the register of an institution—

- (a) may be considered afresh by the Commission, even though it has been determined by a decision on appeal under subsection (3); and
- (b) is not concluded by that decision, if it appears to the Commission that—
  - (i) there has been a change of circumstances, or
  - (ii) the decision is inconsistent with a later judicial decision.

**Statement required to be made in official publications.**

25.(1) The fact that a charity is a registered charity shall be stated in legible characters—

- (a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;
- (b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and
- (c) in all bills rendered by it and in all its invoices, receipts and letters of credit.

(2) The statement required by subsection (1) shall be in English.

(3) Subsection (1)(a) has effect—

- (a) whether the solicitation is express or implied; and
- (b) whether or not the money or other property is to be given for any consideration.

**Offences.**

26.(1) It is an offence for a person, to issue or authorise the issue of any document falling within section 25(1)(a) or (c) which does not contain the statement required by section 25(1).

(2) It is an offence for a person, to sign any document falling within section 25(1)(b) which does not contain the statement required by section 25(1).

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Change of name*

#### **Power to require name or working name to be changed.**

27.(1) If one or more of the conditions in subsection (3) are met in relation to the name or a working name of 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 that working name of the charity no longer be used as a working name (as the case may be).

(2) A direction given under this section shall specify the period within which the charity is to comply with the direction.

(3) The conditions referred to in subsection (1) are-

- (a) that the name or working name is the same as, or in the opinion of the Commissioner too like, the name or a working name of another charity;
- (b) that the name or working 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 of the charity includes any word or expression and the inclusion in the name or working 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 of the charity is in the opinion of the Commission likely to give the impression that the charity is connected in some way with His Majesty's Government of Gibraltar or any public authority, or with any other body of persons or any individual, when it is not so connected; or
- (e) that the name or working name of the charity is in the opinion of the Commission offensive.

(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 which is used to designate the charity and under which activities of the charity are carried out.



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

**Duty of charity trustees on receiving direction under section 27.**

28.(1) On receiving a direction under section 27 the charity trustees shall give effect to it regardless of anything in the trusts of the charity.

(2) If the name of any charity is changed by virtue of section 27, the charity trustees shall 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 21(3).

**Change of name not to affect existing rights and obligations.**

29. A change of name by a charity by virtue of section 27 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.

**Change of name where charity is a company or foundation.**

30.(1) In relation to a charitable company or foundation, any reference in section 27 or 28 to the charity trustees of a charity is to be read as a reference to the directors of the company or the councillors of the foundation.

(2) Subsections (3) to (5) apply if a direction is given under section 27 with respect to a charitable company or foundation.

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

(4) Where a special resolution of the directors or the councillors is passed in accordance with subsection (3), the company or the foundation shall give notice of the change to the Registrar of Companies or the Registrar of Foundations, as the case may be.

(5) Where the name of the company or foundation is changed in compliance with the direction, the Registrar of Companies or Registrar of Foundations shall—

- (a) if satisfied that the new name complies with the requirements of section 29 of the Companies Act 2014 or section 20 of the Private Foundations Act 2017, enter the new name on the register of companies or the register of foundations 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.

**Power to delay registration following a section 27 direction.**

31.(1) The Commission may delay the registration of a charity if the Commission has given a direction under section 27 (the “section 27 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) In this section, the “maximum postponement period” means the period of 60 days beginning at the end of the period specified in the section 27 direction for giving effect to the direction.

(4) If any relevant proceedings are commenced, any day on which the relevant proceedings are ongoing is to be disregarded for the purposes of determining whether the period of 60 days mentioned in subsection (3) has elapsed.

(5) Each of the following are “relevant proceedings”—

- (a) proceedings for the review of the Commission’s decision to institute an inquiry under section 33 in respect of matters connected with the section 27 direction;
- (b) proceedings on an application for judicial review of the Commission’s decision to give the section 27 direction or to take any steps with a view to securing compliance with the section 27 direction;
- (c) proceedings on an application under section 137 in respect of disobedience to the section 27 direction.

(6) Relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the court 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.

**Power to delay entry of name in register following a section 27 direction.**

32.(1) If the charity trustees of a charity notify the Commission under section 21(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 section 27 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 27 direction for giving effect to the direction.

(4) If any relevant proceedings are commenced, any day on which the relevant proceedings are ongoing is to be disregarded for the purposes of determining whether the period of 60 days mentioned in subsection (3) has elapsed.

(5) Each of the following are “relevant proceedings”—

- (a) proceedings for the review of the Commission’s decision to institute an inquiry under section 33 in respect of matters connected with the section 27 direction;
- (b) proceedings on an application for judicial review of the Commission’s decision to give the section 27 direction or to take any steps with a view to securing compliance with the section 27 direction;
- (c) proceedings on an application under section 137 in respect of disobedience to the section 27 direction.

(6) Relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the court 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.

#### *Inquiries instituted by the Commission*

#### **General power to institute inquiries.**

33.(1) The Commission may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(2) No such inquiry is to extend to any exempt charity.

(3) The Commission may—

- (a) conduct such an inquiry itself; or
- (b) appoint a person to conduct it and make a report to the Commission.

#### **Obtaining evidence for purposes of inquiry.**

34.(1) In this section “inquiry” means an inquiry under section 33.

(2) For the purposes of an inquiry, the Commission, or a person appointed by the Commission to conduct it, may direct any person—

- (a) if a matter in question at the inquiry is one on which the person has or can reasonably obtain information—
    - (i) to provide accounts and statements in writing with respect to the matter, or to return answers in writing to any questions or inquiries addressed to the person on the matter; and
    - (ii) to verify any such accounts, statements or answers by statutory declaration;
  - (b) to provide copies of documents which are in the custody or under the control of the person and which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;
  - (c) to attend at a specified time and place and give evidence or produce any such documents,
- subject to the provisions of this section.

(3) For the purposes of an inquiry—

- (a) evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths; or
- (b) the person conducting the inquiry may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which that person is examined.

**Power to obtain search warrant for purposes of inquiry.**

35.(1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by the Chief Commissioner or any member of the Commission appointed by the Chief Commissioner for such a purpose, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1) are—

- (a) that an inquiry has been instituted under section 33;
- (b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or provided under section 39(1); and
- (c) that, if the Commission were to make an order requiring the document or information to be so produced or provided—
  - (i) the order would not be complied with; or
  - (ii) the document or information would be removed, tampered with, concealed or destroyed.

(3) A warrant under this section is a warrant authorising a police officer (“P”)—

- (a) to enter and search the premises specified in it;

- (b) to take such other persons with P as the Commission considers are needed to assist P in doing anything that P is authorised to do under the warrant;
- (c) to take possession of any documents which appear to fall within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
- (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;
- (e) to take copies of, or extracts from, any documents or information falling within subsection (3)(c) or (3)(d);
- (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;
- (g) to require any such person to give P such assistance as P may reasonably require for the taking of copies or extracts as mentioned in subsection (3)(e).

**Execution of search warrant.**

36.(1) Entry and search under a warrant under section 35 shall be at a reasonable hour and within one month of the date of its issue.

(2) The police officer who is authorised under such a warrant (“P”) shall, if required to do so, produce the warrant for inspection by the occupier of the premises or anyone acting on the occupier's behalf.

(3) Where possession of any document or device is taken under section 35—

- (a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 33; or
- (b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry,

as the case may be.

(4) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable—

- (a) to the person from whose possession it was taken; or
- (b) to any of the charity trustees of the charity to which it belonged or related.

(5) It is an offence for a person intentionally to obstruct the exercise of any rights conferred by a warrant under section 35.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction—

- (a) to imprisonment for a term not exceeding 3 months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

**Publication of results of inquiries.**

37.(1) This section applies where an inquiry has been held under section 33.

(2) The Commission may—

- (a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published; or
- (b) publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the Commission about the action to be taken.

**Supply of false or misleading information to Commission.**

38.(1) It is an offence for a person knowingly or recklessly to provide the Commission with information which is false or misleading in particular if the information is provided—

- (a) in purported compliance with a requirement imposed by or under this Act; or
- (b) otherwise, than as mentioned in subsection (1)(a) but in circumstances in which the person providing the information—
  - (i) intends; or
  - (ii) could reasonably be expected to know,

that it would be used by the Commission for the purpose of discharging its functions under this Act.

(2) It is an offence for a person wilfully to alter, suppress, conceal or destroy any document which the person is or is liable to be required, by or under this Act, to produce to the Commission.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(4) In this section references to the Commission include references to any person conducting an inquiry under section 33.

*Power to call for documents and search records*

**Power to call for documents.**

39.(1) The Commission may by written notice to a person ('P')- —

- (a) require P to provide the Commission with any information which is in P's possession and which—
  - (i) relates to any charity; and
  - (ii) is relevant to the discharge of the functions of the Commission or of the official custodian;
- (b) require P or any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the functions of the Commission or of the official custodian—
  - (i) to provide the Commission with a copy of or extract from the document; or
  - (ii) to transmit the document itself to the Commission for its inspection (unless the document forms part of the records or other documents of a court or of a public authority).

(2) The Commission is entitled to keep any copy or extract provided to it under subsection (1).

(3) If a document transmitted to the Commission under subsection (1) for it to inspect—

- (a) relates only to one or more charities; and
- (b) is not held by any person entitled as trustee or otherwise to the custody of it,

the Commission may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.

**Power to search records.**

40.(1) The Commission is entitled to inspect and take copies of or extracts from the records or other documents of—

- (a) any court; or
- (b) any public registry or office of records,

for any purpose connected with the discharge of the functions of the Commission or of the official custodian.

(2) The reference in subsection (1) to the Commission includes the official custodian.

(3) The rights conferred by subsection (1), in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form—

- (a) for inspection; or

- (b) for a copy or extract to be made of or from it.

#### *Individual accounts*

#### **Accounting records.**

41.(1) The charity trustees shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to—

- (a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time; and
- (b) enable the trustees to ensure that, where any statements of accounts are prepared by them under section 43(1), those statements of accounts comply with the requirements of regulations which may be made under section 43(1).

(2) The accounting records shall contain—

- (a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of the assets and liabilities of the charity.

#### **Preservation of accounting records.**

42.(1) The charity trustees of a charity shall preserve any accounting records made for the purposes of section 41 in respect of the charity for at least 5 years from the end of the financial year of the charity in which they are made.

(2) Subsection (3) applies if a charity ceases to exist within the period of 5 years mentioned in subsection (1) as it applies to any accounting records.

(3) The obligation to preserve the accounting records in accordance with subsection (1) shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the records being destroyed or otherwise disposed of.

#### **Preparation of statement of accounts.**

43.(1) The charity trustees of a charity shall, subject to section 44, prepare in respect of each financial year of the charity a statement of accounts complying with such requirements as to its form and contents as may be made by the Minister by regulations.

(2) Regulations made under subsection (1) may make provision—

- (a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
- (b) as to any information to be provided by way of notes to the accounts.

(3) Regulations made under subsection (1) may also make provision for determining the financial years of a charity for the purposes of this Act and any other regulations made under it.



(4) Regulations made under subsection (1) may not impose on the charity trustees of a charity that is a charitable trust created by any person (“the settlor”) any requirement to disclose, in any statement of accounts prepared by them under subsection (1)—

(a) the identities of recipients of grants made out of the funds of the charity; or

(b) the amounts of any individual grants so made,

if the disclosure would fall to be made at a time when the settlor or any spouse or civil partner of the settlor was still alive.

**Account and statement an option for lower-income charities.**

44. If a charity's gross income in any financial year does not exceed £250,000 the charity trustees may, in respect of that year, elect to prepare—

(a) a receipts and payments account; and

(b) a statement of assets and liabilities,

instead of a statement of accounts under section 43(1).

**Preservation of statement of accounts or account and statement.**

45.(1) The charity trustees of a charity shall preserve—

(a) any statement of accounts prepared by them under section 43(1); or

(b) any account and statement prepared by them under section 44,

for at least 5 years from the end of the financial year to which any such statement relates or (as the case may be) to which any such account and statement relate.

(2) Subsection (3) applies if a charity ceases to exist within the period of 5 years mentioned in subsection (1) as it applies to any statement of accounts or account and statement.

(3) The obligation to preserve the statement or account and statement in accordance with subsection (1) shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the statement or account and statement being destroyed or otherwise disposed of.

**Charitable companies and foundations.**

46. Nothing in sections 41 to 45 applies to a charitable company or a foundation.

**Exempt charities.**

47.(1) Nothing in sections 41 to 45 applies to an exempt charity.

(2) Notwithstanding subsection (1), the charity trustees of an exempt charity—

- (a) shall keep proper books of account with respect to the affairs of the charity; and
  - (b) if not required by or under the authority of any other Act to prepare periodical statements of account shall prepare consecutive statements of account consisting of—
    - (i) an income and expenditure account relating to a period of not more than 12 months; and
    - (ii) a balance sheet relating to the end of that period.
- (3) The books of accounts and statements of account relating to an exempt charity shall be preserved for a period of at least 5 years unless—
- (a) the charity ceases to exist; and
  - (b) the Commission consents in writing to their being destroyed or otherwise disposed of.

#### *Group accounts*

#### **Accounting records of group accounts.**

48.(1) The charity trustees of a parent charity or of any charity which is a subsidiary undertaking shall ensure that the accounting records kept in respect of the charity under—

- (a) section 41;
- (b) in the case of a company, section 239 of the Companies Act 2014; or
- (c) in the case of a foundation, section 37 of the Private Foundations Act 2017,

are such as to enable the charity trustees of the parent charity to ensure that, where any group accounts are prepared by them under section 49(2), those accounts comply with the requirements of any regulations made under section 53.

(2) The duty in subsection (1) is in addition to the duty to ensure that the accounting records comply with the requirements of—

- (a) section 41;
- (b) section 239 of the Companies Act 2014; or
- (c) section 37 of the Private Foundations Act 2017.

(3) Subsection (4) applies if a parent charity has a subsidiary undertaking in relation to which the requirements of—

- (a) section 41;
- (b) section 239 of the Companies Act 2014; or
- (c) section 37 of the Private Foundations Act 2017,

do not apply.

(4) The charity trustees of the parent charity shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the trustees to ensure that, where any group accounts are prepared by them under section 49(2), those accounts comply with the requirements of regulations made under section 53.

### **Preparation of group accounts.**

49.(1) This section applies in relation to a financial year of a charity if—

- (a) the charity is a parent charity at the end of that year; and
- (b) in the case of a company, it is not required to prepare consolidated accounts for that year under section 281 of the Companies Act 2014, whether or not such accounts are in fact prepared.

(2) The charity trustees of the parent charity shall prepare group accounts in respect of that year.

(3) If the requirement in subsection (2) applies to the charity trustees of a parent charity other than a parent charity which is a company or a foundation in relation to a financial year—

- (a) that requirement applies in addition to the requirement in section 43(1); and
- (b) the option of preparing the documents mentioned in section 44 is not available in relation to that year whatever the amount of the charity's gross income for that year.

(4) If—

- (a) the requirement in subsection (2) applies to the charity trustees of a parent charity in relation to a financial year; and
- (b) the charity is a company or a foundation,

that requirement so applies in addition to the requirement in section 240 of the Companies Act 2014 or the requirement in section 37 of the Private Foundations Act 2017.

(5) Subsection (2) is subject to section 50.

### **Exceptions to requirement to prepare group accounts.**

50.(1) The requirement in section 49(2) does not apply to the charity trustees of a parent charity in relation to a financial year if at the end of that year it is itself a subsidiary undertaking in relation to another charity and group accounts are prepared.

(2) The requirement in section 49(2) does not apply to the charity trustees of a parent charity in relation to a financial year if the aggregate gross income of the group for that year does not exceed £1,250,000.

(3) The Minister may by regulations prescribe circumstances in which a subsidiary undertaking may or (as the case may be) shall be excluded from group accounts required to be prepared under section 49(2) for a financial year.

(4) Where, by virtue of such regulations, each of the subsidiary undertakings which are members of a group is—

- (a) permitted to be excluded from any such group accounts for a financial year; or
- (b) required to be so excluded,

the requirement in section 49(2) does not apply to the charity trustees of the parent charity in relation to that year.

### **Preservation of group accounts.**

51.(1) The charity trustees of a charity shall preserve any group accounts prepared by them under section 49(2) for at least 5 years from the end of the financial year to which the accounts relate.

(2) Subsection (3) applies if a charity ceases to exist within the period of 5 years mentioned in subsection (1) as it applies to any group accounts.

(3) The obligation to preserve the accounts in accordance with subsection (1) shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the accounts being destroyed or otherwise disposed of.

### **“Parent charity”, “subsidiary undertaking” and “group”.**

52.(1) A charity is a parent charity if it is, or is to be treated as, a parent undertaking in relation to one or more other undertakings in accordance with the provisions of section 276 of, and Schedule 20 to, the Companies Act 2014.

(2) Each undertaking in relation to which a parent charity is, or is to be treated as, a parent undertaking in accordance with those provisions is a subsidiary undertaking in relation to the parent charity.

(3) Subsection (2) does not have the result that any of the following is a subsidiary undertaking—

- (a) any special trusts of a charity;
- (b) any institution which, by virtue of a direction under section 3(4), is to be treated as forming part of a charity; or
- (c) any charity to which a direction under section 3(5) applies.

(4) “The group”, in relation to a parent charity, means that charity and its subsidiary undertaking or undertakings, and any reference to the members of the group is to be read accordingly.

(5) For the purposes of this section and the operation for those purposes of section 276 of, and Schedule 20 to, the Companies Act 2014 “undertaking” means—

- (a) an undertaking as defined by section 277(1) of the Companies Act 2014; or

- (b) a charity which is not an undertaking as so defined.

**“Group accounts”.**

53.(1) In this Act, “group accounts” means consolidated accounts—

- (a) relating to the group; and
- (b) complying with such requirements as to their form and contents as may be prescribed by regulations made by the Minister.

(2) Regulations made under subsection (1) may make provision—

- (a) for any such accounts to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
- (b) for dealing with cases where the financial years of the members of the group do not all coincide;
- (c) as to any information to be provided by way of notes to the accounts.

(3) Regulations made under subsection (1) may also make provision—

- (a) for determining the financial years of subsidiary undertakings for the purposes of this Act;
- (b) for imposing on the charity trustees of a parent charity requirements with respect to securing that such financial years coincide with that of the charity.

**Exempt charities.**

54. Nothing in sections 48 to 53 applies to an exempt charity.

*Audit or examination of individual accounts*

**Audit of accounts of larger charities.**

55.(1) Subsection (2) applies to a financial year of a charity if—

- (a) the charity's gross income in that year exceeds £1,250,000; or
- (b) the charity's gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £3,000,000.

“The accounts threshold” means the sum for the time being specified in section 44.

(2) If this subsection applies to a financial year of a charity, the accounts of the charity for that year shall be audited by a person who is eligible for appointment as a statutory auditor under section 474(1) of the Financial Services Act 2019.

**Examination of accounts an option for lower-income charities.**

56.(1) If section 55(2) does not apply to a financial year of a charity but its gross income in that year exceeds £50,000, the accounts of the charity for that year shall, at the election of the charity trustees, be—

- (a) examined by an independent examiner, that is, an independent person who is reasonably believed by the charity trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts; or
- (b) audited by a person within section 55(2).

(2) Subsection (1) is subject to—

- (a) subsection (3); and
- (b) any order under section 57(1).

(3) If subsection (1) applies to the accounts of a charity for a year and the charity's gross income in that year exceeds £50,000 a person qualifies as an independent examiner for the purposes of subsection (1)(a) if the person is independent and is -

- (a) eligible for appointment as a statutory auditor under section 474(1) of the Financial Services Act 2019; or
- (b) a member of an accounting body approved by the Charity Commission; or
- (c) deemed by the Charity Commission to have demonstrated sufficient relevant expertise prior to the enactment of this legislation.

(4) The Commission may—

- (a) give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner;
- (b) give such directions as it thinks appropriate with respect to the carrying out of an examination in pursuance of subsection (1)(a),

and any such guidance or directions may either be of general application or apply to a particular charity only.

#### **Commission's powers to order audit.**

57.(1) The Commission may require the accounts of a charity for a financial year to be audited by a person within section 55(2) if it appears to the Commission that—

- (a) section 55(2), or as the case may be, section 56(1), has not been complied with in relation to that year within 10 months from the end of that year; or
- (b) although section 55(2) does not apply to that year, it would nevertheless be desirable for the accounts of the charity for that year to be audited by a person within section 55(2).

(2) Further to the provisions of subsection (1) with respect to a charity, the auditor shall be a person appointed by the Commission unless—

- (a) subsection (1)(b) applies; and
- (b) the charity trustees themselves appoint an auditor.

(3) The expenses of any audit carried out by an auditor appointed by the Commission under subsection (2), including the auditor's remuneration, are recoverable by the Commission—

- (a) from the charity trustees of the charity concerned, who are personally liable, jointly and severally, for those expenses; or
- (b) to the extent that it appears to the Commission not to be practical to seek recovery of those expenses in accordance with subsection (3)(a), from the funds of the charity.

#### **Accounts required to be audited under Companies Act.**

58.(1) Nothing in sections 55 to 57 applies in relation to the accounts of a charitable company for a financial year if those accounts are required to be audited in accordance with Part VII of the Companies Act 2014 (“Part VII accounts”).

(2) In the case of a charitable company, the Commission may require that Part VII accounts of the company for such period as the Commission thinks fit are to be investigated and audited by an auditor who—

- (a) is eligible for appointment as a statutory auditor under section 474(1) of the Financial Services Act 2019; and
- (b) is appointed by the Commission.

(3) An auditor acting under subsection (2)—

- (a) has a right of access to all books, accounts and documents relating to the company which are in the possession or control of the charity trustees or to which the charity trustees have access;
- (b) is entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the company such information and explanation as the auditor thinks necessary for the performance of the auditor's duties;
- (c) shall at the conclusion or during the progress of the audit make such reports to the Commission about the audit or about the accounts or affairs of the company as the auditor thinks the case requires and shall send a copy of any such report to the charity trustees.

(4) The expenses of any audit under subsection (2) including the remuneration of the auditor, are recoverable by the Commission following the process in subsections 57(3)(a) and 57(3)(b).

(5) If any person fails to afford an auditor any facility to which the auditor is entitled under subsection (3), the Commission may give to that person or to the charity trustees for the time being such directions as the Commission thinks appropriate for securing that the default is made good.

*Audit or examination of group accounts*

**Audit of accounts of larger groups.**

59.(1) This section applies where group accounts are prepared for a financial year of a parent charity under section 49(2) and—

- (a) the aggregate gross income of the group in that year exceeds £1,250,000; or
- (b) the aggregate gross income of the group in that year exceeds the relevant income threshold and at the end of the year the aggregate value of the assets of the group, before deduction of liabilities, exceeds £3,000,000.

(2) This section also applies where—

- (a) group accounts are prepared for a financial year of a parent charity under section 49(2); and
- (b) the appropriate audit provision applies in relation to the parent charity's own accounts for that year.

(3) In this section “the appropriate audit provision”, in relation to a financial year of a parent charity, means—

- (a) subject to subsection (3)(b), section 55(2);
- (b) if the parent charity is a company—
  - (i) section 55(2); or
  - (ii) (as the case may be) Part VII of the Companies Act 2014.

(4) If this section applies in relation to a financial year of a parent charity by virtue of subsection (1) or (2), the group accounts for that year shall be audited by a person within section 55(2).

(5) If this section applies in relation to a financial year of a parent charity by virtue of subsection (1)—

- (a) subject to subsection (5)(b), the appropriate audit provision applies in relation to the parent charity's own accounts for that year, whether or not it would otherwise so apply;
- (b) if the parent charity is a company and its own accounts for that year are not required to be audited in accordance with Part VII of the Companies Act 2014, section 55(2) applies in relation to those accounts (whether or not it would otherwise so apply).

**Examination of accounts an option for smaller groups.**

60.(1) This section applies if—

- (a) group accounts are prepared for a financial year of a parent charity under section 49(2); and



(b) section 59 does not apply in relation to that year.

(2) If—

(a) this section applies in relation to a financial year of a parent charity; and

(b) the aggregate gross income of the group in that year exceeds the sum specified in section 56(1),

the group accounts for that year shall, at the election of the charity trustees of the parent charity, be examined by an independent examiner (as defined in section 56(1)(a)) or audited by a person within section 55(2).

(3) Subsection (2) is subject to—

(a) subsection (4); and

(b) section 61(1).

(4) If subsection (2) applies to the group accounts for a year and the aggregate gross income of the group in that year exceeds the sum specified in section 56(3), a person qualifies as an independent examiner for the purposes of subsection (2) if the person is independent and meets the requirements of section 56(3).

(5) The Commission may—

(a) give guidance to charity trustees of a parent charity in connection with the selection of a person for appointment as an independent examiner;

(b) give such directions as it thinks appropriate with respect to the carrying out of an examination in pursuance of subsection (2),

and any such guidance or directions may either be of general application or apply to a particular charity only.

(6) If the group accounts for a financial year of a parent charity are to be examined or audited in accordance with subsection (2), section 56(1) applies in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply).

### **Commission's powers to order audit of group accounts.**

61.(1) The Commission may require the group accounts of a parent charity for a financial year to be audited by a person within section 55(2) if it appears to the Commission that—

(a) section 59(4), or as the case may be, section 60(2), has not been complied with in relation to that year within 10 months from the end of that year; or

(b) although section 59(4) does not apply to that year, it would nevertheless be desirable for the group accounts for that year to be audited by a person within section 55(2).

(2) Further to the provisions of subsection (1) with respect to group accounts, the auditor shall be a person appointed by the Commission unless—

(a) subsection (1)(b) applies; and

(b) the charity trustees of the parent charity themselves appoint an auditor.

(3) The expenses of any audit carried out by an auditor appointed by the Commission under subsection (2), including the auditor's remuneration, are recoverable by the Commission—

(a) from the charity trustees of the parent charity, who are personally liable, jointly and severally, for those expenses; or

(b) to the extent that it appears to the Commission not to be practical to seek recovery of those expenses in accordance with subsection (3)(a), from the funds of the parent charity.

*Regulations relating to audits and examinations*

**Regulations relating to audits and examinations.**

62.(1) The Minister may by regulations make provision—

(a) with respect to the duties of an auditor carrying out an audit of individual or group accounts, including provision with respect to the making by the auditor of a report on—

(i) the statement of accounts prepared for the financial year in question under section 43(1);

(ii) the account and statement so prepared under section 44;

(iii) the accounts so prepared under section 239 of the Companies Act 2014;

(iv) the accounts so prepared under section 37 of the Private Foundations Act 2017; or

(v) group accounts so prepared under section 49(2);

as the case may be;

(b) with respect to the making of a report in respect of an examination of individual or group accounts by the independent examiner or examiner who has carried out the examination;

(c) conferring on an auditor or on an independent examiner a right of access with respect to books, documents and other records, however kept, which relate to—

(i) the charity, if the audit or examination is of individual accounts; or

(ii) any member of the group, if the audit or examination is of group accounts;

(d) entitling an auditor or an independent examiner to require information and explanations from—

(i) past or present charity trustees or trustees for, or past or present officers or employees of, the charity, if the audit or examination is of individual accounts; or

- (ii) past or present charity trustees or trustees for, or past or present officers or employees of, any member of the group, if the audit or examination is of group accounts;
- (e) enabling the Commission, to dispense with the requirements of section 55(2), 56(1), 59(4) or 60(2)—
  - (i) in the case of a particular charity; or
  - (ii) in the case of any particular financial year of a charity.

(2) Regulations made under subsection (1) may make, in relation to audits or examinations of group accounts, provision in connection with the rights exercisable by an auditor of a company in relation to a subsidiary undertaking of the company.

(3) In this section—

- (a) “audit of individual or group accounts” means an audit under—
  - (i) section 55, 56, 57; or
  - (ii) section 59, 60 or 61;
- (b) “examination of individual or group accounts” means an examination under—
  - (i) section 56; or
  - (ii) section 60,

and the references in this section and section 63 to an audit or examination of individual accounts and to an audit or examination of group accounts are to be read accordingly.

#### **Power of Commission to direct compliance.**

63. If any person fails to afford an auditor or an independent examiner any facility to which the auditor or the independent examiner is entitled by virtue of section 62(1)(d) or (e), the Commission, for securing that the default is made good, may give such directions as it thinks appropriate—

- (a) to that person;
- (b) if the audit or examination is of individual accounts, to the charity trustees for the time being of the charity concerned; or
- (c) if the audit or examination is of group accounts, to the charity trustees for the time being of such member of the group as the Commission thinks appropriate.

#### *Duty of auditors to report matters to Commission*

#### **Duty of auditors to report matters to Commission.**

64.(1) This section applies to a person (“P”) who is acting as an auditor or independent examiner appointed by or in relation to a charity under sections 55 to 57.

(2) If, in the course of acting in the capacity mentioned in subsection (1), P becomes aware of a matter—

- (a) which relates to the activities or affairs of the charity or of any connected institution or body; and
- (b) which P has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under the provisions mentioned in subsection (3),

P shall immediately make a written report on the matter to the Commission.

(3) The provisions are—

- (a) sections 33, 34 and 37;
- (b) sections 79 and 83 to 88.

(4) If, in the course of acting in the capacity mentioned in subsection (1), P becomes aware of any matter—

- (a) which does not appear to P to be one that P is required to report under subsection (2); but
- (b) which P has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

P may make a report on the matter to the Commission.

(5) Where the duty or power under subsection (2) or (4) has arisen in relation to P when acting in the capacity mentioned in subsection (1), the duty or power is not affected by P's subsequently ceasing to act in that capacity.

(6) Where P makes a report as required or authorised by subsection (2) or (4), no duty to which P is subject is to be regarded as contravened merely because of any information or opinion contained in the report.

**Meaning of “connected institution or body” in section 64(2).**

65.(1) In section 64(2) “connected institution or body”, in relation to a charity, means—

- (a) an institution which is controlled by; or
- (b) a body corporate in which a substantial interest is held by,

the charity or any one or more of the charity trustees acting as such.

**Application of duty in relation to auditors of group accounts.**

66.(1) Subsections (2) to (6) of section 64 apply in relation to a person appointed to audit, or report on, any group accounts under sections 59 to 61 as they apply in relation to the person referred to in section 64 as “P”.

(2) In section 64(2)(a), as it applies in accordance with subsection (1), the reference to the charity or any connected institution or body is to be read as a reference to the parent charity or any of its subsidiary undertakings.

#### **Application of duty in relation to Companies Act auditors.**

67.(1) Sections 64(2) to (6) and 65 apply in relation to a person acting as a Companies Act auditor of a charitable company as they apply in relation to the person referred to in section 64 as “P”, but reading any reference to P's acting in the capacity mentioned in section 64(1) as a reference to the person acting as a Companies Act auditor.

(2) In subsection (1), “Companies Act auditor” means an auditor appointed under Part VII of the Companies Act 2014.

#### *Exempt and excepted charities*

##### **Exempt charities.**

68.(1) Nothing in sections 55 to 63 applies to an exempt charity.

(2) Sections 64(2) to (6) and 65 apply in relation to a person appointed to audit, or report on, the accounts of an exempt charity which is not a company as they apply in relation to the person referred to in section 64 as “P”, but reading any reference to P's acting in the capacity mentioned in section 64(1) as a reference to the person acting as a person so appointed.

(3) Nothing in section 66 applies to an exempt charity.

##### **Excepted charities.**

69.(1) Nothing in sections 55 to 57 applies to any charity which falls within section 18(2)(b) or (c).

(2) Except in accordance with subsection (3), nothing in—

(a) section 62 or 63; or

(b) section 64 or 65,

applies to a charity mentioned in subsection (1).

(3) Sections 64 and 65 apply in accordance with section 68(2) to a charity mentioned in subsection (1) which is also an exempt charity.

#### *Exchange of information and co-operation*

##### **Exchange of information.**

70.(1) The Commissioners may furnish the Commissioner appointed under the Income Tax Act and other Government departments, and the Commissioner and other Government departments

may furnish the Commissioners, with the names and addresses of institutions which have for any purpose been treated by the person furnishing the information as established for charitable purposes or, in order to give or obtain assistance in determining whether an institution ought to be treated as so established, with information as to the purposes of the institution and the trusts under which it is established or regulated.

(2) The Commissioners shall supply any person, on payment of such fee as they think reasonable, with copies of or extracts from any document in their possession, which is for the time being open to public inspection under this Act.

### **Co-operation between charities.**

71. Charity trustees shall, notwithstanding anything in the trusts of the charity, have power by virtue of this section to do all or any of the following things, where it appears to them likely to promote or make more effective the work of the charity, and may defray the expense of so doing out of any income or moneys applicable as income of the charity, that is to say-

- (a) they may co-operate in any review undertaken of the working of charities or any class of charities;
- (b) they may make arrangements with another charity for co-coordinating their activities and those of the other charity;
- (c) they may publish information of other charities with a view to bringing them to the notice of those for whose benefit they are intended.

## **PART 5 CY-PRES AND SUPERVISION.**

### *Cy-pres powers and schemes*

### **Occasions for applying property cy-pres.**

72. (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-pres shall be as follows-

- (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; or
- (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
- (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or

- (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to 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; or
  - (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)(d) and (1)(e)(iii), “the appropriate consideration” means-

- (a) the spirit of the gift concerned; and
- (b) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.

(3) Subsection (1) shall not affect the conditions, which shall be satisfied in order that property given for charitable purposes may be applied cy-pres, except in so far as those conditions require a failure of the original purposes.

(4) References in this section to the original purposes of a gift shall be construed, 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) 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-pres, to secure its effective use for charity by taking steps to enable it to be so applied.

#### **Application cy-pres of gifts of donors unknown or disclaiming.**

73.(1) Property given for specific charitable purposes which fail shall be applicable cy-pres as if given for charitable purposes generally, where it belongs-

- (a) to a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
- (b) to a donor who has executed a written disclaimer of his or her right to have the property returned.

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

- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or

- (b) of 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.

(3) The court may by order direct that property not falling within subsection (2) shall for the purposes of this section be treated, without any advertisement or inquiry, as belonging to donors who cannot be identified, where it appears to the court either-

- (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 amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(4) Where property is applied by cy-pres by virtue of this section, the donor shall be deemed to have parted with all his or her interest at the time when the gift was made, 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 subsection (2) or (3)-

- (a) the scheme shall specify the total amount of that property; and
- (b) the donor of any part of that amount shall be entitled, if he or she makes a claim not later than twelve months after the date on which the scheme is made, 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 that date in connection with claims relating to his gift; and
- (c) the scheme may include directions as to the provision to be made for meeting any such claim.

(5) For the purposes of this section, charitable purposes shall be deemed to fail where any difficulty in applying property to those purposes makes that property or the part not applicable cy-pres available to be returned to the donors.

(6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

(7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

### **Entrusting charity property to official custodian, and termination of trust.**

74.(1) The court may, by order, vest any property held by or in trust for a charity in the official custodian for charities, or authorise or require the persons in whom any such property is vested to transfer it to him or her, or appoint any person to transfer any such property to him or her.

(2) Where any personal property is held by or in trust for a charity or is comprised in any testamentary gift to a charity, the property may with the agreement of the official custodian for charities be transferred to him or her; and his or her receipt for any such property comprised in a testamentary gift to a charity shall be a complete discharge of the personal representative. In this



subsection, the expression “personal property” shall extend to any real security but shall not include any interest in land otherwise than by way of security only.

(3) Where property is vested in the official custodian for charities in trust for a charity, the court may make an order discharging him or her from the trusteeship as respects all or any of that property.

(4) Where the official custodian for charities is discharged from his or her trusteeship of any property, or the trusts on which he or she holds any property come to an end, the court may make such vesting orders and give such directions as may seem to the court to be necessary or expedient in consequence.

(5) No person shall be liable for any loss occasioned by their acting in conformity with an order under this section or by them giving effect to anything done in pursuance of such an order, or be excused from so doing by reason of the order having been in any respect improperly obtained, and no vesting or transfer of any property in pursuance of this section shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

#### **Supplementary provisions as to property vested in official custodian.**

75. (1) Subject to the provisions of this Act, where property is vested in the official custodian for charities in trust for a charity, he or she shall not exercise any powers of management, but he or she shall as trustee of any property have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a corporation appointed custodian trustee under section 8 of the Public Trustee Act, except that he or she shall have no power to charge fees.

(2) Where any land or interest in land is vested in the official custodian for charities in trust for a charity, the charity trustees shall have power in his or her name and on his or her behalf to execute and do all assurances and things which they could properly require him or her to execute or do-

- (a) for carrying out any transaction affecting the land or interest which is authorised by order of the court or of the Commissioners; or
- (b) for granting any lease for a term ending not more than twenty-two years after it is granted, not being a lease granted wholly or partly in consideration of a fine, or for accepting the surrender of a lease.

(3) Where any land or interest in land is vested in the official custodian for charities in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land or interest as if it were vested in them, and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land or interest being vested in him or her shall be enforceable by or against the charity trustees as if the land or interest were vested in them.

(4) In relation to a corporate charity, subsection (2) and (3) shall apply with the substitution of references to the charity for references to the charity trustees.

(5) Subsections (2) and (3) shall not authorise any charity trustees or charity to impose any personal liability on the official custodian for charities.

(6) Where the official custodian for charities is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees, without thereby incurring any liability.

## **Concurrent jurisdiction with Supreme Court.**

76.(1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the Supreme 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 servant;
- (c) vesting or transferring property or requiring or entitling any person to call for or make any transfer of property or any payment.

(2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions, if any, as the court sees fit to give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) and without any further order of the court.

(3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.

(4) Subject to the following subsections of this section, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except-

- (a) on the application of the charity; or
- (b) on an order of the court under subsection (2).

(5) In the case of a charity not having any income from property amounting to more than £500.00 a year, and not being an exempt charity, the Commissioners may exercise their jurisdiction under this section on the application-

- (a) of the Attorney-General; or
- (b) of any one or more of the charity trustees, or of any person interested in the charity.

(6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so, the Commissioners may apply to the Attorney-General for him or her to refer the case to them with a view to a scheme, and if, after giving the charity trustees an opportunity to make representations to him or her, the Attorney-General does so, the Commissioners may proceed accordingly without the application required by subsection (4) or (5):

Provided that the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.

(7) The Commissioners may, on the application of any charity trustee or trustee for a charity, exercise their jurisdiction under this section for the purpose of discharging him or her from his or her trusteeship.

(8) Before exercising any jurisdiction under this section otherwise than on an order of the court, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in Gibraltar or who is party or privy to an application for the exercise of the jurisdiction, and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in Gibraltar.

(9) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.

(10) An appeal against any order of the Commissioners under this section may be brought in the Supreme Court by the Attorney-General.

(11) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the Supreme Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order, unless he or she is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity provided that no appeal shall be brought under this subsection except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of the Chief Justice.

(12) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (11) as a charity trustee.

### **Further powers to make schemes or alter application of charitable property.**

77.(1) Where it appears to the Commissioners that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by any Act establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by them apart from this section, or that it is for any reason proper for the scheme to be subject to review by the Parliament, then, subject to subsection (2), the Commissioners may settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by the Commissioners under this section may be given effect by order of the Minister responsible for finance made with the prior approval of the Parliament and published in the Gazette.

(3) Subject to subsection (4) any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section 76.

(4) Where subsection (2) applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.

(5) The Commissioners shall not proceed under this section without like application or the like reference from the Attorney-General, and the like notice to the charity trustees, as would be required if they were proceeding, without an order of the court, under section 76, but on any application or reference made with a view to a scheme, the Commissioners may proceed under this section or that as appears to them appropriate.

(6) Where the Commissioners are satisfied-

- (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
- (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-pres; and
- (c) that it is for any reason not yet desirable to make such a scheme,

then, the Commissioners 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, and any application authorised by the order shall be deemed to be within the purposes of the charity:

Provided that the order shall not extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years.

#### *Powers of Commission to act for protection of charities*

#### **Official warnings by the Commission.**

78.(1) The Commission may issue a warning—

- (a) to a charity trustee or trustee for a charity who it considers has committed a breach of trust or duty or other misconduct or mismanagement in that capacity; or
- (b) to a charity in connection with which it considers a breach of trust or duty or other misconduct or mismanagement has been committed.

(2) The Commission—

- (a) may publish a warning it has issued;
- (b) may issue or publish a warning in any way it considers appropriate.

(3) Before issuing a warning under this section, the Commission shall give notice of its intention to do so to the charity, and each charity trustee or trustee for the charity, except any who cannot be found or who has no known address in Gibraltar.

(4) 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 Gibraltar.
- (5) The notice shall specify—
- (a) the power under subsection (1) to give the warning, and the grounds for the warning;
  - (b) any action that the Commission considers should be taken, or that the Commission is considering taking, to rectify the misconduct or mismanagement referred to in subsection (1);
  - (c) whether and, if so, how the Commission proposes to publish the warning;
  - (d) a period within which representations may be made to the Commission about the content of the proposed warning.
- (6) Where the Commission gives notice under subsection (3) of its intention to issue a warning—
- (a) it shall take into account any representations made to it within the period specified in the notice; and
  - (b) it may, without further notice, issue the warning either without modifications or with such modifications as it thinks desirable.
- (7) The Commission may vary or withdraw a warning under this section.
- (8) Subsection (2) applies to the variation or withdrawal of a warning as it applies to a warning.
- (9) Subsections (3) to (6) apply to the variation of a warning as they apply to a warning, except that—
- (a) in subsection (5)(a) references to the warning are to be read as references to the warning as varied; and
  - (b) the matter to be specified under subsection (5)(b) is any change as a result of the variation in the action previously proposed by the Commission.

### **Suspension of charity trustees and appointment of interim managers.**

79.(1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 33 with respect to any charity, the Commission is satisfied—

- (a) that there is or has been a failure to comply with an order of the Commission, a failure to remedy any breach specified in a warning under section 78, or any other misconduct or mismanagement in the administration of the charity; or
- (b) that it is necessary or desirable to act for the purpose of—
  - (i) protecting the property of the charity; or

- (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.

(2) The reference in subsection (1) to misconduct or mismanagement extends, regardless of anything in the trusts of the charity, to the employment—

- (a) for the remuneration or reward of persons acting in the affairs of the charity; or
- (b) for other administrative purposes,

of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(3) The Commission may of its own motion do one or more of the following—

- (a) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal, whether under section 83 or 85 or otherwise;
- (b) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;
- (c) when dealing with property, by order—
  - (i) vest any property held by or in trust for the charity in the official custodian;
  - (ii) require the persons in whom any such property is vested to transfer it to the official custodian; or
  - (iii) appoint any person to transfer any such property to the official custodian;
- (d) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;
- (e) order any debtor of the charity not to make any payment in or towards the discharge of the debtor's liability to the charity without the approval of the Commission;
- (f) by order restrict, regardless of anything in the trusts of the charity, the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commission;
- (g) by order appoint, in accordance with section 82, an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.

(4) The Commission may not act under subsection (3)(a) so as to suspend a person from office or employment for a period of more than 12 months, subject to any extension under subsection (7).

(5) In the case of any person (“P”) to whom subsection (3)(a) applies, the Commission may make provision, as respects the period of P's suspension for matters arising out of it, and in particular—

- (a) for enabling any person to execute any instrument in P's name or otherwise act for P; and

- (b) in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

This subsection does not affect the generality of section 136(1).

(6) The Commission—

- (a) shall, at such intervals as it thinks fit, review any order made by it under subsection (3)(a), or subsection (3)(c) to (g); and
- (b) if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, shall so discharge it, whether subject to any savings or other transitional provisions or not.

(7) At any time before the expiry of an order under subsection (3)(a) the Commission may extend or further extend the suspension by a further order under that subsection, provided that—

- (a) the order does not extend the suspension for a period of more than 12 months; and
- (b) the total period of suspension is not more than 2 years.

**Exercise of powers where section 79(1)(a) applies.**

80.(1) This section applies to any power which is exercisable in cases where the Commission is satisfied as mentioned in section 79(1)(a) in relation to a charity, with or without any other condition.

(2) If in such a case the Commission is also satisfied—

- (a) that a particular person has been responsible for the misconduct or mismanagement;
- (b) that a particular person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it; or
- (c) that a particular person's conduct contributed to it or facilitated it,

the Commission may take into account the matters mentioned in subsection (3) in deciding whether or how to exercise the power.

(3) Those matters are—

- (a) the conduct of that person in relation to any other charity;
- (b) any other conduct of that person that appears to the Commission to be damaging or likely to be damaging to public trust and confidence in charities generally or particular charities or classes of charity.

**Offence of contravening certain orders under section 79.**

81.(1) It is an offence for a person to contravene an order under—

- (a) section 79(3)(d);

(b) section 79(3)(e); or

(c) section 79(3)(f).

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) This section is not to be treated as precluding the bringing of proceedings for breach of trust against any charity trustee for a charity in respect of a contravention of an order under section 79(3)(d) or (f), whether or not proceedings in respect of the contravention are brought against the charity trustee under this section.

### **Supplementary provisions in respect of interim managers.**

82.(1) The Commission may under section 79(3)(g) appoint to be interim manager in respect of a charity such person, as the Commission thinks fit.

(2) An order made by the Commission under section 79(3)(g) may make provision with respect to the functions to be discharged by the interim manager appointed by the order.

This does not affect the generality of section 136(1).

(3) Those functions are to be discharged by the interim manager under the supervision of the Commission.

(4) In connection with the discharge of those functions, an order under section 79(3)(g) may provide—

(a) for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the decision or direction;

(b) for any powers or duties specified by virtue of subsection (4)(a) to be exercisable or performed by the interim manager to the exclusion of those charity trustees.

(5) Where a person has been appointed interim manager by any such order—

(a) section 111 applies to the interim manager and the interim manager's functions as it applies to a charity trustee of the charity concerned and to the charity trustee's duties as such; and

(b) the Commission may apply to the Supreme Court for directions in relation to any matter arising in connection with the discharge of those functions.

(6) The Supreme Court may on an application under subsection (5)(b)—

(a) give such directions; or

(b) make such orders declaring the rights of any persons, whether before the court or not,

as it thinks just.



- (7) The costs of an application under subsection (5)(b) shall be paid by the charity concerned.
- (8) The Minister may make regulations to provide for —
  - (a) the appointment and removal of persons appointed in accordance with this section;
  - (b) the remuneration of such persons out of the income of the charities concerned;
  - (c) the making of reports to the Commission by such persons.
- (9) Regulations under subsection (8) may authorise the Commission—
  - (a) to require security for the due discharge of the functions of a person so appointed to be given by that person;
  - (b) to determine the amount of such a person's remuneration;
  - (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

**Removal of trustee or officer for protective purposes.**

83.(1) Subsection (2) applies where, at any time after it has instituted an inquiry under section 33 with respect to any charity, the Commission is satisfied either as mentioned in section 79(1)(a) or as mentioned in section 79(1)(b).

(2) The Commission may of its own motion by order establish a scheme for the administration of the charity.

(3) Subsection (4) applies where, at any time after it has instituted an inquiry under section 33 with respect to any charity, the Commission is satisfied both as mentioned in section 79(1)(a) and as mentioned in section 79(1)(b).

(4) Whether or not it acts under subsection (2), the Commission may of its own motion by order remove any trustee, charity trustee, officer, agent or employee of the charity—

- (a) who has been responsible for the misconduct or mismanagement;
- (b) who knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it; or
- (c) whose conduct contributed to it or facilitated it.

(5) Where the Commission has given notice under section 90 of its intention to make an order under subsection (4) removing a person from an office or employment, the Commission may proceed to make the order even though the person has ceased to hold the office or employment.

(6) Where an order is made relying on subsection (5)—

- (a) section 86 and Case D in section 94 apply as if the person was removed by the order; but

- (b) the order does not affect the time when the person ceased to hold the office or employment.

**Removal of disqualified trustee.**

84. The Commission may remove a charity trustee or trustee for a charity by decision or direction made of its own motion if the person is disqualified from being a charity trustee or trustee for a charity, generally or in relation to the charity concerned—

- (a) by virtue of section 94; or
- (b) by an order under section 98.

**Other powers to remove or appoint charity trustees.**

85.(1) The Commission may remove a charity trustee by order made of its own motion if—

- (a) within the last 5 years, the charity trustee—
  - (i) having previously been made bankrupt, has been discharged; or
  - (ii) having previously made a composition or arrangement with, or granted a trust deed for, creditors, has been discharged in respect of it; or
  - (iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;
- (b) the charity trustee is a body corporate or foundation in liquidation;
- (c) the charity trustee is incapable of acting because of mental disorder within the meaning of the Mental Health Act 2016;
- (d) the charity trustee has not acted, and will not make a declaration of willingness or unwillingness to act;
- (e) the charity trustee—
  - (i) is outside Gibraltar or cannot be found; or
  - (ii) does not act,

and the charity trustee's absence or failure to act impedes the proper administration of the charity.

(2) The Commission may by order made of its own motion appoint a person to be a charity trustee—

- (a) in place of a charity trustee removed by the Commission under section 83 or subsection (1) or otherwise;
- (b) if there are no charity trustees, or if because of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

- (c) if there is a single charity trustee who is not a body corporate, and the Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;
- (d) if the Commission is of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee—
  - (i) is outside Gibraltar or cannot be found; or
  - (ii) does not act.

(3) In subsection (1)(a)(i), the reference to the charity trustee having been made bankrupt includes a reference to the charity trustee's estate having been sequestrated.

(4) This section does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 33 with respect to it.

#### **Supplementary provisions in respect of the removal or appointment of charity trustees.**

86.(1) The powers of the Commission under sections 79, 83 and 85 to remove or appoint charity trustees of its own motion include the power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under section 76.

(2) Any order under any of those sections or this section—

- (a) for the removal or appointment of a charity trustee or trustee for a charity; or
- (b) for the vesting or transfer of any property,

has the same effect as an order made under section 76.

(3) Subsection (1) does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 33 with respect to it.

#### **Notice of removal of trustees.**

87.(1) Before exercising any jurisdiction by virtue of section 83 or 85, the Commission shall give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address in Gibraltar.

(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 Gibraltar.

#### **Power to suspend or remove trustees from membership of charity.**

88.(1) Subsection (2) applies where—

- (a) the Commission makes an order under section 79(3) suspending from office or employment a person who is a trustee, charity trustee, officer, agent or employee of a charity; and
  - (b) the person is a member of the charity.
- (2) The Commission may also make an order suspending the person's membership of the charity for the period for which the person is suspended from office or employment.
- (3) Subsection (4) applies where—
  - (a) the Commission makes an order under section 83(4) removing from office or employment a person who is a trustee, charity trustee, officer, agent or employee of a charity; and
  - (b) the person is a member of the charity.
- (4) The Commission may also make an order —
  - (a) terminating the person's membership of the charity; and
  - (b) prohibiting the person from resuming membership of the charity without the Commission's consent.
- (5) If an application for the Commission's consent under subsection (4)(b) is made 5 years or more after the order was made, the Commission shall grant the application unless satisfied that, because of any special circumstances, it should be refused.

**Power to direct specified action to be taken.**

89.(1) This section applies where, at any time after the Commission has instituted an inquiry under section 33 with respect to any charity, it is satisfied either as mentioned in section 79(1)(a) or as mentioned in section 79(1)(b).

- (2) The Commission may by order direct—
  - (a) the charity trustees;
  - (b) any trustee for the charity;
  - (c) any officer or employee of the charity; or
  - (d) if a body corporate or foundation , the charity itself,

to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.

- (3) An order under this section—
  - (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property; but

- (b) may not require any action to be taken which is prohibited by any Act or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.

(4) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).

(5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

**Power to direct specified action not to be taken.**

90.(1) This section applies where, at any time after the Commission has instituted an inquiry under section 33 with respect to any charity, the Commission considers that any action, if taken or continued by a person listed in section 89(2), would constitute misconduct or mismanagement in the administration of the charity.

(2) The Commission may make an order specifying the action and directing the person not to take it or continue it.

(3) While an order under this section is in force, the Commission shall review it at intervals of not more than 6 months.

**Power to direct winding up.**

91.(1) This section applies where the conditions in section 89(1) are met for that section to apply, but the Commission is satisfied—

- (a) that the charity does not operate; or
- (b) that its purposes can be promoted more effectively if it ceases to operate,

and that exercising the power in subsection (2) is expedient in the public interest.

(2) The Commission may order—

- (a) the charity trustees;
- (b) any officer or employee of the charity; or
- (c) if a body corporate or foundation, the charity itself,

to take any action specified in the order for the purpose of having the charity wound up and dissolved, and any remaining property transferred to a charity with the same purposes.

(3) An order under this section—

- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the winding up and dissolution of the charity or to its property; and

- (b) in particular, may require the person or persons concerned to do anything for the purpose of having the charity wound up and dissolved and its property transferred that could otherwise only be done by the members of the charity or any of them,

but may not require any action to be taken which is prohibited by any Act.

(4) Before making an order under this section the Commission shall give public notice published in the Gazette of its intention to make the order, inviting representations to be made to it within a period specified in the notice.

(5) The Commission—

- (a) shall take into account any representations made to it within the period specified in the notice; and
- (b) may make the order, without further notice, either without modifications or with such modifications as it thinks desirable.

(6) An order under this section may not be made less than 60 days after the first day on which public notice under subsection (4) is given, unless the Commission is satisfied after complying with subsections (4) and (5) that it is necessary to make the order to prevent or reduce misconduct or mismanagement in the administration of the charity or to protect the property of the charity or property that may come to the charity.

(7) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).

(8) Subsection (7) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such a decision or direction.

### **Power to direct application of charity property.**

92.(1) This section applies where the Commission is satisfied—

- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling or unable to apply it properly for the purposes of the charity; and
- (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.

(2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.

(3) An order under this section—

- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property; but
- (b) may not require any action to be taken which is prohibited by any Act or expressly prohibited by the trusts of the charity.

(4) Anything done by a person under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).

(5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

(6) Subsection (5) does not apply to the rights of the charity or of a charity trustee or trustee for the charity in that capacity.

**Copy of certain orders, and reasons, to be sent to charity.**

93.(1) Where the Commission makes an order under a provision mentioned in subsection (2) it shall send the documents mentioned in subsection (3)—

- (a) to the charity concerned, if a body corporate or foundation; or
- (b) if not, to each of the charity trustees.

(2) The provisions are—

- (a) section 79;
- (b) section 83;
- (c) section 85;
- (d) section 86;
- (e) section 88;
- (f) section 89;
- (g) section 90;
- (h) section 91;
- (i) section 92.

(3) The documents are—

- (a) a copy of the order; and
- (b) a statement of the Commission's reasons for making it.

(4) The documents shall be sent to the charity or charity trustees as soon as practicable after the making of the order.

(5) The Commission need not comply with subsection (4) in relation to the documents, or as the case may be, the statement of its reasons, if it considers that to do so—

- (a) would prejudice any inquiry or investigation; or

- (b) would not be in the interests of the charity;

but, once the Commission considers that this is no longer the case, it shall send the documents, or, as the case may be the statement, to the charity or charity trustees as soon as practicable.

(6) Nothing in this section requires any document to be sent to a person who—

- (a) cannot be found; or
- (b) has no known address in Gibraltar.

(7) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 135.

#### *Disqualification of charity trustees and trustees*

#### **Persons disqualified from being charity trustees of a charity.**

94.(1) A person (“P”) is disqualified from being a charity trustee or trustee for a charity in the following cases—

##### *Case A*

P has been convicted of—

- (a) an offence specified in Schedule 5;
- (b) an offence, not specified in section Schedule 5, that involves dishonesty or deception.

##### *Case B*

P has been made bankrupt or sequestration of P's estate has been awarded and, in either case—

- (a) P has not been discharged; or
- (b) P is the subject of a bankruptcy restrictions order or an interim order.

##### *Case C*

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

##### *Case D*

P has been removed from the office of charity trustee or trustee for a charity as a trustee, charity trustee, officer, agent or employee of a charity by an order made—

- (a) by the Commission under section 83(4); or
- (b) by the Supreme Court,



on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or which P knew of and failed to take any reasonable step to oppose, or which P's conduct contributed to or facilitated.

*Case E*

P is subject to a disqualification order or disqualification undertaking under the Insolvency Act 2011.

*Case F*

P is subject to a moratorium period or an interim order under the Insolvency Act 2011.

*Case G*

P has been found to be in contempt of court under Civil Procedure Rules for—

- (a) making a false disclosure statement, or causing one to be made; or
- (b) making a false statement in a document verified by a statement of truth or causing one to be made.

*Case H*

P has been found guilty of disobedience to an order or direction of the Commission on an application to the Supreme Court under section 137(1).

*Case I*

P is a designated person for the purposes of Part II of the Terrorist Asset-Freezing Regulations 2011.

*Case J*

P is subject to the notification requirements of Part 13 of the Crimes Act 2011.

(2) Subsection (1) is subject to sections 95 to 97.

(3) While a person is disqualified under this section in relation to a charity, the person is also disqualified from holding an office or employment in the charity with senior management functions.

(4) A function of an office or employment held by a person “(A)” is a senior management function if—

- (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity); or
- (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.

(5) The Minister may amend this section and Schedule 5 by regulations to add or remove an offence.

**Disqualification: pre-commencement events.**

95.(1) Case A—

(a) applies whether the conviction occurred before or after the commencement of section 94(1) or Schedule 5 or any amendment of that Schedule; but

(b) does not apply in relation to any conviction which is a spent conviction.

(2) Case B applies whether the making bankrupt or the sequestration or the making of a bankruptcy restrictions order or an interim order occurred before or after the commencement of section 94(1).

(3) Case C applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of section 94(1).

(4) Cases D and E apply in relation to orders made and removals effected before or after the commencement of section 94(1).

(5) Case G does not apply in relation to a finding of contempt which, if it had been a conviction for which P was dealt with in the same way, would be a spent conviction.

**Disqualification: exceptions in relation to charitable companies or foundations.**

96.(1) Where, apart from this subsection, a person (“P”) is disqualified under Case B or F from being a charity trustee or trustee for a charitable company or foundation, P is not so disqualified if leave has been granted by the court for P to act as director of the company.

(2) Similarly, a person (“P”) is not disqualified under Case E from being a charity trustee or trustee for a charitable company or foundation if leave has been granted by the court for P to act as director of the company or councillor of a foundation.

**Power to waive disqualification.**

97.(1) This section applies where a person (“P”) is disqualified under section 94(1).

(2) The Commission may, if P makes an application under this subsection, waive P's disqualification generally or in relation to a particular charity or a particular class of charities.

(3) A waiver under subsection (2)—

(a) may relate to the whole of P's disqualification or only to disqualification under section 94(3);

(b) in relation to disqualification under section 94(3), may relate to a particular office or employment or to any office or employment of a particular description.

(4) If—

(a) P is disqualified under Case D or I and makes an application under subsection (2) 5 years or more after the date on which the disqualification took effect; and

(b) the Commission is not prevented from granting the application by subsection (5),

the Commission shall grant the application unless satisfied that, because of any special circumstances, it should be refused.

(5) Any waiver under subsection (2) shall be notified in writing to P.

(6) No waiver may be granted under subsection (2) in relation to any charitable company or foundation if—

- (a) P is for the time being prohibited from acting as director of the company or councillor of the foundation (as the case may be), by virtue of a disqualification order or disqualification undertaking under the Insolvency Act 2011; or
- (b) permission has not been granted for P to act as director of any company or councillor of a foundation.

### **Disqualification orders.**

98.(1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.

(2) The order may disqualify a person—

- (a) in relation to all charities; or
- (b) in relation to such charities or classes of charity as may be specified or described in the order.

(3) While a person is disqualified by virtue of an order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions.

(4) A function of an office or employment held by a person (“A”) is a senior management function if—

- (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee, other than a charity trustee or trustee for the charity; or
- (b) it involves control over money and the only officer or employee, other than a charity trustee or trustee for the charity, to whom A is responsible for it is a person with senior management functions other than ones involving control over money.

(5) An order under this section may provide for subsection (3) not to apply generally or in relation to a particular office or employment or to any office or employment of a particular description.

(6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—

- (a) one or more of the conditions listed in Schedule 6 are met in relation to the person;
- (b) the person is unfit to be a charity trustee or trustee for a charity, either generally or in relation to the charities or classes of charity specified or described in the order; and

- (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

(7) The Minister may amend this section and Schedule 6 by regulations to add or remove a condition.

**Duration of disqualification, and suspension pending disqualification.**

99.(1) An order under section 98 shall specify the period for which the person is disqualified.

(2) The period—

- (a) shall be not more than 15 years beginning with the day on which the order takes effect; and
- (b) shall be proportionate, having regard in particular to the time when a conviction becomes spent or would become spent if it were a conviction for the relevant disqualifying offence, and to circumstances in which the Commission may or shall grant a waiver under section 97 where a person is disqualified under section 94.

(3) An order takes effect—

- (a) at the end of the time specified for starting proceedings for an appeal against the order, if no proceedings are started within that time; or
- (b) subject to the decision on the appeal, when any proceedings started within that time are withdrawn or finally determined.

(4) The Commission may by order suspend a person from being a charity trustee or trustee for a charity if it has given notice under section 100(1)(a) of its proposal to make an order under section 98 in respect of the person.

(5) The Commission may not make an order under subsection (4) to suspend a person for a period of more than 12 months, but at any time before the expiry of an order the Commission may extend or further extend the suspension by a further order under that subsection, provided that—

- (a) the order does not extend the suspension for a period of more than 12 months; and
- (b) the total period of suspension is not more than 2 years.

(6) An order under subsection (4) ceases to have effect—

- (a) if the Commission notifies the person that it will not proceed with its proposal, on the notification being given;
- (b) if the Commission makes the order under section 98, on the order taking effect,

or, if earlier, at the end of the period specified in accordance with subsection (5).

(7) The Commission shall review any order under subsection (4), at such intervals as it thinks fit.

(8) If on a review it appears to the Commission that it would be appropriate to discharge an order under subsection (4) in whole or in part, the Commission shall do so, whether subject to any savings or other transitional provisions or not.

(9) An order under subsection (4) made in the case of any person (“P”) may make provision, as respects the period of P’s suspension, for matters arising out of it, and in particular—

- (a) for enabling any person to execute any instrument in P’s name or otherwise act for P; and
- (b) in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

This does not affect the generality of section 136(1).

(10) While an order under subsection (4) is in force suspending a person from being a charity trustee or trustee for a charity, the person shall not take up any appointment as a charity trustee or trustee for any other charity without the written approval of the Commission.

#### **Procedure for disqualification orders.**

100.(1) Before making an order in respect of a person under section 98 without the person’s consent the Commission shall—

- (a) give the person not less than one month’s notice of its proposals; and
- (b) invite representations to be made to it within a period specified in the notice.

(2) Before making an order under section 98 in respect of a person who the Commission knows or believes to be a charity trustee or trustee for a charity, the Commission shall also—

- (a) give notice of its proposals to each of the charity trustees of the charity in question;
- (b) comply with the publicity requirement, unless the Commission is satisfied that for any reason compliance with the requirement is unnecessary.

(3) The publicity requirement is that the Commission shall, by publication in the Gazette, give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(4) The time when any such notice is given is to be decided by the Commission.

(5) Any notice of any proposals which is to be given under this section is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate.

(6) Where the Commission gives notice of any proposals under this section—

- (a) it shall take into account any representations made to it within the period specified in the notice; and

- (b) it may, without further notice proceed with the proposals either without modifications or with such modifications as it thinks desirable;

but a notice under subsection (2)(a) need not specify a period for the purposes of subsection (2)(a) if the charity came to the Commission's knowledge or belief after the expiry of the period specified for the purposes of subsection (1)(b).

(7) A notice under subsection (1) or (2)(a)—

- (a) may be given by post; and
- (b) if given by post, may be addressed to the recipient's last known address in Gibraltar.

(8) A notice under subsection (2)(b) is to be given in such manner as the Commission thinks sufficient and appropriate.

(9) Where the Commission makes an order under section 98 in respect of a person it knows or believes to be a charity trustee or trustee for a charity it shall, as well as serving it on that person), send a copy of the order and a statement of the Commission's reasons for making it—

- (a) to the charity in question, if a body corporate or foundation; or
- (b) if not to each of the charity trustees of the charity in question.

(10) Nothing in this section requires the Commission to give notice, or send a document, to a person who cannot be found or has no known address in Gibraltar.

(11) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 135.

### **Disqualification orders: variation and revocation.**

101. A person in respect of whom an order under section 98 is in force may at any time apply to the Commission for an order varying or discharging that order.

### **Records of persons removed from office.**

102.(1) For the purposes of sections 94 to 98 the Commission shall keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in Case D—

- (a) by an order of the Commission or the Commissioners made before or after the commencement of section 94(1); or
- (b) by an order of the Supreme Court,

and, where any person is so removed from office by an order of the Supreme Court, the court shall notify the Commission of the person's removal.

(2) The register shall include all persons who have been disqualified by an order of the Commission under section 98.

(3) The register shall include all persons who have been removed from office by an order of the Commission under section 84.

(4) The entries in the register kept under subsection (1) shall be available for public inspection in legible form at all reasonable times.

**Criminal consequences of acting while disqualified.**

103.(1) Subject to subsection (2), it is an offence for any person to act as a charity trustee or trustee for a charity or to hold an office or employment while disqualified from being such a trustee or from holding that office or employment by virtue of section 94 or an order under section 98.

(2) Subsection (1) does not apply if—

- (a) the charity concerned is a company; and
- (b) the disqualified person is disqualified by virtue only of Case B, E or F in section 94.

(3) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

**Civil consequences of acting while disqualified.**

104.(1) Any acts done as charity trustee or trustee for a charity or as officer or employee of a charity by a person disqualified from being such a trustee or from holding that office or employment by virtue of section 94 or an order under section 98 are not invalid merely because of that disqualification.

(2) Subsection (3) applies if the Commission is satisfied that any person—

- (a) has acted as charity trustee or trustee for a charity or as officer or employee of a charity while disqualified from being such a trustee or from holding that office or employment by virtue of section 94 or an order under section 98; and
- (b) while so acting, has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity or holding the office or employment.

(3) The Commission may by order direct the person—

- (a) to repay to the charity the whole or part of any such sums; or
- (b) to pay to the charity the whole or part of the monetary value, as determined by the Commission, of any such benefit.

(4) Subsection (3) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified from being a charity trustee or trustee for the charity.

**Participation in corporate decisions.**

105.(1) For the purposes of sections 103 and 104, a person who is not a charity trustee or trustee for a charity is treated as acting as one if that person—

- (a) is an officer of a body corporate which is a charity trustee or trustee for a charity; and
- (b) takes part in that capacity in any decision relating to the administration of the charity.

(2) In subsection (1) “officer” includes any of the persons having general control and management of the administration of the body.

**Power to confirm trustee appointments.**

106.(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) so far as is necessary for those purposes, a valid appointment or election to that qualifying position is to be treated as having been made in respect of the person.

(3) For the purposes of this section 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) The fact that a position is not a position in a charity does not prevent it from being a qualifying position in relation to the charity.

(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 76;
- (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.

(6) An order containing provision made by virtue of subsection (5)(a) has the same effect as an order made under section 76.



*Publicity relating to schemes and orders*

**Publicity relating to schemes.**

107.(1) The Commission may not—

- (a) make any order under this Act to establish a scheme for the administration of a charity;  
or
- (b) submit such a scheme to the court or the Attorney General for an order giving it effect,

unless, before doing so, the Commission has complied with the publicity requirements in subsection (2).

This is subject to any disapplication of those requirements under subsection (4).

(2) The publicity requirements are that the Commission shall, by publication in the Gazette, give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(3) The time when any such notice is given or any such communication takes place is to be decided by the Commission.

(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular scheme if it is satisfied that because of the nature of the scheme or for any other reason, compliance with the requirement or requirements is unnecessary.

(5) Where the Commission gives public notice of any proposals under this section—

- (a) it shall take into account any representations made to it within the period specified in the notice; and
- (b) it may, without further notice proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(6) Any public notice of any proposals which is to be given under this section—

- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate; and
- (b) is to be given in such manner as the Commission thinks sufficient and appropriate.

**Publicity for orders relating to trustees or other individuals.**

108.(1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than—

- (a) an order relating to the official custodian; or
- (b) an order under section 79(3)(b); or
- (c) an order under section 84,

unless, before doing so, the Commission has complied with the publicity requirement in subsection (2).

This is subject to any disapplication of that requirement under subsection (4).

(2) The publicity requirement is that the Commission shall, by publication in the Gazette, give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(3) The time when any such notice is given is to be decided by the Commission.

(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.

(5) Before the Commission makes an order under this Act, other than an order under section 84 to remove a person who is—

(a) a charity trustee or trustee for a charity; or

(b) an officer, agent or employee of a charity,

without the person's consent, the Commission shall give the person not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.

This subsection does not apply if the person cannot be found or has no known address in Gibraltar.

(6) Where the Commission gives notice of any proposals under this section—

(a) it shall take into account any representations made to it within the period specified in the notice; and

(b) it may, without further notice proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(7) Any notice of any proposals which is to be given under this section—

(a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate; and

(b) in the case of a public notice, is to be given in such manner as the Commission thinks sufficient and appropriate.

(8) Any notice to be given under subsection (5)—

(a) may be given by post; and

(b) if given by post, may be addressed to the recipient's last known address in Gibraltar.

#### *Common investment funds*

### **Schemes to establish common investment funds.**

109.(1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as “common investment schemes”) for the establishment of common investment funds under trusts, which provide-

- (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
- (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.

(2) The court or the Commissioners may make a common investment scheme on the application of any two or more charities.

(3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.

(4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision-

- (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he or she is also a charity trustee or trustee for a participating charity;
- (b) for restricting the size of the fund, and for regulating as to time amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;
- (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed and generally for regulating distributions of income;
- (d) for enabling moneys to be borrowed temporarily for the purpose of meeting payments to be made out of the fund;
- (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner; or
- (f) regulating the accounts and information to be supplied to participating charities.

(5) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that, subject to the provisions of the scheme, the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme, and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts, not

exceeding the amounts properly attributable to the making of deposits, as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.

(6) A common investment scheme may provide for the assets of the common investment fund or any of them to be vested in the official custodian for charities, and, if made by the Commissioners or if they consent, may also appoint him or her or authorise him or her to be appointed trustee to manage the fund or any part of it, and as managing trustee he or she shall, subject to section 13, have the same powers, duties and liabilities as other managing trustees, but where a common investment scheme provides for the official custodian for charities to exercise any discretion with respect to the investment of the fund it shall make provision for him or her to be advised by a committee of persons who have special experience of investment and finance or of the administration of trusts, or who represent or are nominated by bodies having that experience.

(7) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.

(8) The powers of investment of every charity shall include powers to participate in common investment schemes, unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.

(9) A common investment fund shall be deemed for all purposes to be a charity, and the assets of the fund shall be treated for the purposes of this Act as a permanent endowment, except that if the scheme establishing the fund admits to participation only charities not having a permanent endowment, the fund shall be treated as a charity not having a permanent endowment, and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.

(10) Subsection (9) shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any law relating to any particular charities or class of charity.

#### *Power to authorise dealings with charity property*

#### **Power to authorise dealings with charity property.**

110.(1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they 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, and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or as to give a more general authority and (without prejudice to the generality of subsection (1)) 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.

(3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised, and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being as if contained in the trusts of the charity provided that any such directions may on the application of the charity be modified or superseded by a further order.

(4) Without prejudice to the generality of subsection (3), the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.

(5) An order under this section may authorise any act, notwithstanding that the trusts of the charity provide for the act to be done by or under the authority of the court, but no such order shall authorise the doing of any act expressly prohibited by any law or by the trusts of the charity or shall extend or alter the purposes of the charity.

#### *Additional powers and legal proceedings*

#### **Power to advise charity trustees.**

111.(1) The Commission may, on the written application of any charity trustee or trustee for a charity, give the applicant its opinion or advice in relation to any matter—

- (a) relating to the performance of any duties of the applicant, as such a trustee, in relation to the charity concerned; or
- (b) otherwise relating to the proper administration of the charity.

(2) A charity trustee or trustee for a charity acting in accordance with the opinion or advice of the Commissioners given under this section with respect to the charity shall be deemed, as regards his or her responsibility for so acting, to have acted in accordance with his trust, unless, when he or she does so, either-

- (a) he or she knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or
- (b) the decision of the court has been obtained on the matter or proceedings are pending to obtain one.

#### **Power to determine membership of charity.**

112.(1) The Commission may—

- (a) on the application of a charity; or
- (b) at any time after the institution of an inquiry under section 33 with respect to a charity,

determine who are the members of the charity.

(2) The Commission's power under subsection (1) may also be exercised by a person appointed by the Commission for the purpose.

(3) In a case within subsection (1)(b) the Commission may, if it thinks fit, so appoint the person appointed to conduct the inquiry.

### **Petitions for winding up charities under Insolvency Act 2011.**

113.(1) This section applies where a charity may be wound up by the Supreme Court under the Insolvency Act 2011.

(2) A petition for a charity to be wound up under the Insolvency Act 2011 by any court in Gibraltar having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.

(3) Such a petition may also be presented by the Commission if, at any time after it has instituted an inquiry under section 33 with respect to the charity, it is satisfied either as mentioned in section 79(1)(a) or as mentioned in section 79(1)(b).

(4) The power exercisable by the Commission by virtue of this section is exercisable—

(a) by the Commission of its own motion; but

(b) only with the agreement of the Attorney General on each occasion.

### **Powers for preservation of charity documents.**

114.(1) The Commissioners may provide books in which any deed, will or other document relating to a charity may be enrolled.

(2) The Commissioners may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commissioners deposit them with the Commissioners for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.

(3) Where a document is enrolled by the Commissioners or is for the time being deposited with them under this section, evidence of its contents may be given by means of a copy certified by any officer of the Commissioners generally or specially authorised by them to act for this purpose, and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.

(4) Regulations may make provision for such documents deposited with the Commissioners under this section as may be prescribed to be destroyed or otherwise disposed of after such period or in such circumstances as may be prescribed.

(5) Subsections (3) and (4) shall apply to any document transmitted to the Commissioners under section 39 and kept by them under subsection (3) of that section, as if the document had been deposited with them for safe keeping under this section.

### **Power to order taxation of solicitor's bill.**

115.(1) The Commissioners may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for charity, shall be taxed, together with the costs of the taxation, by the Registrar.

(2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the Registrar shall have the same powers and duties, and the costs of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the Supreme Court.

(3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill, unless the Commissioners are of opinion that it contains exorbitant charges, and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the Supreme Court by reason either of an agreement as to his or her remuneration or of the lapse of time since payment of the bill.

### **Powers for recovery or redemption of charity rent charges.**

116.(1) Where it appears to the Commissioners that a charity is entitled to receive a rent charge issuing out of any land, or out of the rents, profits or other income of any land, they may take legal proceedings on behalf of the charity for recovering the rent charge or compelling payment.

(2) Where a charity is entitled to receive a rent charge issuing out of any land, the Commissioners may give to the estate owner in respect of the fee simple in the land or, if the rent charge is payable in respect of an estate for a term of years, then to the estate owner in respect of that estate, a notice to treat with the charity trustees for the redemption of the rent charge.

(3) Where a notice to treat is given under subsection (2) in respect of any land, and the rent charge is still subsisting at the expiration of ten years from the date on which the notice is given, then, subject to the provisions of this section, the person who is then the estate owner in respect of the relevant estate in the land shall be liable to pay the redemption price to the charity or to the person entitled to receive it as trustee for the charity, and on payment or tender of the redemption price shall be entitled to a proper and effective release of the rent charge, or, if he or she has so requested, a proper and effective transfer of it to a person nominated by him or her.

(4) For the purposes of subsection (3) the redemption price for a rent charge shall be such as may be determined in accordance with regulations.

(5) Proceedings for the recovery of sums due under subsection (3) may be taken by the Commissioners on behalf of the charity.

(6) Where an estate owner of land liable to a rent charge has by law or by contract any right of indemnity or contribution in respect of the rent charge against any person or property, then on his or her redeeming the rent charge in accordance with subsection (3) he or she shall have the like right of indemnity or contribution in respect of the redemption price.

(7) Where an estate owner of land liable to a rent charge pays it through an agent, a notice to treat under this section, if given to the agent on behalf of the estate owner, shall for the purposes of this section be deemed to be given to the estate owner, notwithstanding that the agent's authority from the estate owner does not extend to accepting the notice on his or her behalf.

(8) This section shall apply to any periodical payment other than rent incident to a reversion as it applies to a rent charge.

### **Taking of legal proceedings.**

117.(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity but not by any other person.

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

(3) The Commissioners shall not, without special reasons, authorise the taking of charity proceedings where in their opinion the case can be dealt with by them under the powers of this Act.

(4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.

(5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, the proceedings may nevertheless be entertained or proceeded with if after the order had been applied for and refused permission to take the proceedings was obtained from the Chief Justice.

(6) Nothing in the foregoing subsections shall apply to the taking of proceedings by the Attorney-General, with or without a realtor.

(7) Where it appears to the Commissioners, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity, other than an exempt charity, or its property or affairs, and for the proceedings to be taken by the Attorney-General, the Commissioners shall so inform the Attorney-General, and send him or her such statements and particulars as they think necessary to explain the matter.

(8) In this section “charity proceedings” means proceedings in any court in Gibraltar brought under the court's jurisdiction with respect to charities or brought under the court's jurisdiction with respect to trust in relation to the administration of a trust for charitable purposes.

(9) So much of any Act establishing or regulating a charity as relates to the persons by whom or the manner or form in which any charity proceedings may be brought shall cease to have effect.

### **Restrictions on dealing with charity property.**

118.(1) Subject to the exceptions provided for by this section, no property forming part of the permanent endowment of a charity shall, without an order of the court or of the Commissioners, be mortgaged or charged by way of security for the repayment of money borrowed, nor, in the case of land in Gibraltar, be sold, leased or otherwise disposed of.

(2) Subsection (1) shall apply to any land which is held by or in trust for a charity and is or has at any time been occupied for the purpose of the charity, as it applies to land forming part of the permanent endowment of a charity; but a transaction for which the sanction of an order under subsection (1) is required by virtue only of this subsection shall, notwithstanding that it is entered into without such an order, be valid in favour of a person who, then or afterwards, in good faith acquires an interest in or charge on the land for money or money's worth.



(3) This section shall apply notwithstanding anything in the trusts of a charity, but shall not require the sanction of an order—

- (a) for any transaction for which general or special authority is expressly given, without the authority being made subject to the sanction of an order, by any provision contained in or having effect under any Act or by any scheme legally established; or
- (b) for the granting of a lease for a term ending not more than twenty-two years after it is granted, not being a lease granted wholly or partly in consideration of a fine.

(4) This section shall not apply to an exempt charity, nor to any charity, which is accepted by order or regulations.

### **Charitable companies and foundations.**

119. Where a charity may be wound up by the Supreme Court under the Companies Act 2014 or the Private Foundations Act 2017, a petition for it to be wound up under any of those Acts by any court in Gibraltar having jurisdiction may be presented by the Attorney General, as well as by any person authorised by any of those Acts.

#### *Disclosure of charitable status*

### **Requirement to disclose charitable status.**

120.(1) Where a charitable company's or foundation's name does not include the word "charity" or "charitable", the fact that the company is a charity shall be stated in legible characters—

- (a) in every location, and in every description of document or communication, in which it is required by the Companies Act 2014 or the Private Foundations Act 2017 to state its registered name; and
- (b) in all conveyances purporting to be executed by the company or the foundation.

(2) The statement required by subsection (1) shall be in English.

(3) In subsection (1)(b) "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

### **Civil consequences of failure to make required disclosure.**

121.(1) This section applies to any legal proceedings brought by a charitable company or foundation to which section 120 applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that section.

(2) The proceedings shall be dismissed if it is shown that the defendant to the proceedings—

- (a) has a claim against the company arising out of the contract or conveyance that the defendant has been unable to pursue because of the company's failure to comply with section 120; or

- (b) has suffered some financial loss in connection with the contract or conveyance because of the company's failure to comply with that section,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This section does not affect the right of any person to enforce such rights as that person may have against another in any proceedings brought by the other.

#### **Criminal consequences of failure to make required disclosure.**

122.(1) Where a charitable company or foundation fails, without reasonable excuse, to comply with section 120, an offence is committed by—

- (a) the company or the foundation; and
- (b) every officer of the company or the foundation who is in default.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding 10% of level 3 on the standard scale.

#### *Restriction on alteration of objects*

#### **Alteration of objects by bodies corporate or foundations and charitable status.**

123.(1) Subsection (2) applies where a charity—

- (a) is a company, foundation or other body corporate; and
- (b) has power to alter the instruments establishing or regulating it as a body corporate or foundation.

(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.

#### **Alteration of objects by companies or foundations and Commission's consent.**

124.(1) Any regulated alteration by a charitable company or foundation—

- (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 or the foundation's charter and rules which alters the charitable purposes of the company or the foundation;
- (b) any alteration of any provision of its articles of association, charter or rules directing the application of property of the company or the foundation on its dissolution; and
- (c) any alteration of any provision of its articles of association, charter or rules where the alteration would provide authorisation for any benefit to be obtained by directors, councillors or members of the company or foundation or persons connected with them.

(3) In considering whether to consent to an alteration falling within subsection (2)(a) the Commission shall have regard to-

- (a) the purposes of the company or the foundation when it was established, if and so far as they are reasonably ascertainable;
- (b) the desirability of securing that the purposes of the company or the foundation are, so far as reasonably practicable, similar to the purpose being altered; and
- (c) the need for the company or the foundation to have purposes which are suitable and effective in the light of current social and economic circumstances.

(4) Where a company or foundation that has made a regulated alteration in accordance with subsection (1) is required—

- (a) by section 26 of the Companies Act 2014 to send to the registrar of companies a copy of its articles as amended;
- (b) by section 26 of the Companies Act 2014 to forward to the registrar a copy of the special resolution effecting the alteration;
- (c) by section 26 of the Companies Act 2014 to give notice to the registrar of the amendment; or
- (d) by section 16 of the Private Foundations Act 2017 to give notice to the Registrar of Foundations of the change,

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

(5) 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.

(6) Subsections (3) and (4) of section 26 of the Companies Act 2014 and section 16 of the Private Foundations Act 2017 apply in relation to a failure to comply with subsection (4) as in relation to a failure to comply with those sections, as the case may be.

**Meaning of “benefit” in section 124(2).**

125. For the purposes of section 124(2)(c) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration, within the meaning of section 164 whose receipt may be authorised under that section.

**Meaning of “connected person” in section 124(2).**

126. For the purposes of section 124(2)(c), the following persons are connected with a director or member of a charitable company or founder, guardian or councillor of a foundation —

- (a) a child, parent, grandchild, grandparent, brother or sister of the director, member founder, guardian or councillor;
- (b) the spouse or civil partner of the director, member, founder, guardian or councillor or of any person falling within subsection (a);
- (c) a person carrying on business in partnership with the director, member, founder, guardian or councillor or with any person falling within subsection (a) or (b);
- (d) an institution which is controlled—
  - (i) by the director, member, founder, guardian or councillor or by any person falling within subsection (a), (b) or (c); or
  - (ii) by two or more persons falling within subsection (d)(i), when taken together.
- (e) a body corporate in which—
  - (i) the director, member, founder, guardian or councillor or any connected person falling within any of subsections (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within subsection (e)(i), when taken together, have a substantial interest.

*Restoration of charitable company or foundation to the register*

**Application for restoration of charitable company or foundation to register.**

127.(1) The Commission may make an application under section 414 of the Companies Act 2014 or section 73 of the Private Foundations Act 2017 to restore a charitable company or the foundation to the register of companies or foundations.

- (2) The power exercisable by the Commission by virtue of this section is exercisable—
  - (a) by the Commission of its own motion; but
  - (b) only with the agreement of the Attorney General on each occasion.

*“Common good”*

**Protection of expression “common good”.**

128.(1) It shall not be lawful, without the consent of the Commissioners, to invite gifts in money or in kind to the funds of, or to any fund managed by, an institution which has the words “common good” in its name, other than a body corporate established by Royal charter, or to any fund described in or in connection with the invitation by a name which includes the words “common good” otherwise than as part of the name of such a body corporate.

(2) The words "common good" shall not, without the consent of the Commissioners, be used in the name of any institution established in Gibraltar.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

## **PART 6. MISCELLANEOUS.**

### *Administrative provisions about charities*

#### **Manner of giving notice of charity meetings.**

129.(1) All notices which are required or authorised by the trusts of a charity to be given to a charity trustee, member or subscriber may be sent by post, and, if sent by post, may be addressed to any address given as his or hers in the list of charity trustees, members or subscribers for the time being in use at the office or principal office of the charity.

(2) Where any such notice required to be given is given by post, it shall be deemed to have been given by the time at which the letter containing it would be delivered in the ordinary course of post.

(3) No notice required to be given of any meeting or election need be given to any charity trustee, member or subscriber, if in the list above mentioned he or she has no address in Gibraltar.

#### **Manner of executing instruments.**

130.(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.

(2) An authority under subsection (1)-

- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
- (c) subject to any such restrictions, and until it is revoked, shall notwithstanding any change in the charity trustees, have effect as a continuing authority given by and to the persons who from time to time are of their body.

(3) In any authority under this section to execute a deed or instrument in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority also to execute it for them in the name and on behalf of the official custodian for charities or of any other person, in any case in which the charity trustees could do so.

(4) Where a deed or instrument purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.

(5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

### **Transfer and evidence of title to property vested in trustees.**

131.(1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact, if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting, and is attested by two persons present at the meeting.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1), if executed as a deed, shall have the like operation under section 34 of the Conveyancing and Law of Property Act, 1881, (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees), as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of this Act.

### *Documents and evidence*

### **Miscellaneous provisions as to evidence.**

132.(1) Where, in any proceedings to recover or compel payment of any rent charge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rent charge or other periodical payment has at any time been paid for twelve consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income, and no proof of its origin shall be necessary.

(2) Evidence for any order, certificate or other document issued by the Commissioners may be given by means of a copy retained by them, or taken from a copy so retained, and certified to be a true copy by any officer of the Commissioners generally or specially authorised by them to act for this purpose, and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.

### **Report of inquiry to be evidence in certain proceedings.**

133.(1) A copy of the report of the person conducting an inquiry under section 33, if certified by the Commission to be a true copy, is admissible in any proceedings to which this section applies—

- (a) as evidence of any fact stated in the report; and
- (b) as evidence of the opinion of that person as to any matter referred to in it.

(2) This section applies to—

- (a) any legal proceedings instituted by the Commission; and
- (b) any legal proceedings instituted by the Attorney General or the Supreme Court in respect of a charity.

(3) A document purporting to be a certificate issued for the purposes of subsection (1) is to be received in evidence, and treated as such a certificate, unless the contrary is proved.

### *Enforcement powers by Commission*

### **Directions of the Commission or person conducting inquiry.**

134.(1) Any direction given by the Commission under any provision of this Act may be varied or revoked by a further direction given under that provision and shall be given in writing.

(2) Sections 137 and 136(1), (2) and (4) apply to a direction of the Commission under any provision of this Act.

(3) In subsection (1) the reference to the Commission includes, in relation to a direction under section 34(2) a reference to any person conducting an inquiry under section 33.

(4) Nothing in this section is to be read as applying to any directions contained in an order made by the Commission for securing that default is made good.

### **Service of orders and directions.**

135.(1) This section applies to any order or direction made or given by the Commission under this Act.

(2) Any such order, decision or direction may be served on a person, other than a body corporate or foundation by—

- (a) delivering it to that person;
- (b) leaving it at that person's last known address in Gibraltar; or
- (c) sending it by post to that person at that address.

(3) Any such order or direction may be served on a body corporate or foundation by delivering it or sending it by post—

- (a) to the registered principal office of the body in Gibraltar; or
- (b) if it has no such office in Gibraltar, to any place in Gibraltar where it carries on business or conducts its activities, as the case may be.

(4) Any such order or direction may also be served on a person, including a body corporate by sending it by post to that person at an address notified by that person to the Commission for the purposes of this subsection.

(5) In this section any reference to the Commission includes, in relation to a direction under section 34(2), a reference to any person conducting an inquiry under section 33.

### **Miscellaneous provisions as to orders of Commissioners.**

136.(1) Any order made by the Commissioners under this Act may include such incidental or supplementary provisions as the Commissioners think expedient for carrying into effect the objects of the order, and where the Commissioners exercise any jurisdiction to make such an order on an application or reference to them, they may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion.

(2) Where the Commissioners make an order under this Act, then, without prejudice to the requirement of this Act where the order is subject to appeal, they may themselves give such public notice as they think fit of the making or contents of the order or may require it to be given by any person on whose application the order is made or by any charity affected by the order.

(3) The Commissioners at any time within twelve months after they have made an order under this Act, if they are satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act, may with or without any application or reference to them discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.

(4) Except for the purposes of subsection (3) or of an appeal under this Act, an order made by the Commissioners under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but, subject to any further order, have effect according to its tenor.

### **Enforcement of orders of Commission.**

137.(1) A person guilty of disobedience to an order mentioned in subsection (2) may on the application of the Commission to the Supreme Court be dealt with as for disobedience to an order of the Supreme Court.

(2) The orders are—

(a) an order of the Commission under—

- (i) section 39(1);
- (ii) section 34(2);
- (iii) section 89;



- (iv) section 90;
  - (v) section 91;
  - (vi) section 92;
  - (vii) section 100;
  - (viii) section 104;
  - (ix) section 166;
- (b) an order of the Commission under—
- (i) section 76; or
  - (ii) any of sections 79 and 83 to 86,

requiring a transfer of property or payment to be called for or made, or an order of the Commission requiring a default under this Act to be made good.

### *Offences*

#### **Restriction on institution of proceedings for certain offences.**

138.(1) No proceedings for an offence to which this section applies are to be instituted except by or with the consent of the Attorney General.

(2) This section applies to any offence under—

- (a) section 27;
- (b) section 38;
- (c) section 81(1); or
- (e) section 103.

#### **Offences by bodies corporate and foundations.**

139.(1) If an offence under this Act—

- (a) is committed by a body corporate or foundation; and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or foundation,

the officer as well as the body corporate or foundation is guilty of the offence and liable to be proceeded against accordingly.

(2) In this section, “officer”, in relation to a body corporate or foundation, means—

- (a) any director, manager, secretary, founder, guardian or councillor or other similar officer of the body corporate or foundation; or
- (b) any person who was purporting to act in any such capacity,

and, in relation to a body corporate whose affairs are managed by its members, “director” means a member of the body corporate.

### **Appeals from Commissioners.**

140.(1) The Chief Justice may make rules of court for regulating appeals to the Supreme Court under this Act against orders or decisions of the Commissioners.

(2) On such an appeal the Attorney-General shall be entitled to appear and be heard, and such other persons as the rules allow or as the court may direct.

*Other*

### **Regulations.**

141.(1) Save as otherwise provided by this Act, any power to make regulations, which is conferred by this Act, shall be exercisable by the Chief Justice.

(2) Regulations may be made for prescribing anything, which is required or authorised by this Act to be prescribed, and generally for better carrying out of the provisions and purposes of this Act.

### **Application of English law.**

142. All matters with reference to any charity for which no specific provision is made in this or any other Act shall be determined by the principles of equity for the time being in force in the High Court of Justice in England and Wales.

### **Expenses.**

143. (1) There shall be defrayed out of the Consolidated Fund-

- (a) any remuneration and allowances payable under this Act to the Commission and to their officers and servants; and
- (b) any administrative expenses incurred for the purposes of this Act by the Commissioners.

(2) Any fees received by the Commissioners under this Act shall be paid into the Consolidated Fund.

## **PART 7 CONFIDENTIALITY AND COOPERATION.**

### **Use of confidential information.**

144.(1) The Commissioners may disclose confidential information only to the extent that doing so appears to the Commissioners to be necessary-

- (a) for the purpose of facilitating the carrying out of a function conferred on them by or under this Act or any other enactment;
- (b) for the purpose of facilitating the carrying out of a similar function by a foreign commissioner;
- (c) for the prevention or detection of crime or the prosecution of offenders;
- (d) for the purpose of assisting a domestic authority in carrying out of its functions;
- (e) with the consent of the Minister responsible for finance, for the purpose of assisting a foreign authority in carrying out its functions;
- (f) in connection with the discharge of any international obligation to which Gibraltar is subject.

(2) The restrictions imposed by subsection (1) also applies to the disclosure of any confidential information by-

- (a) any person who is or has been-
  - (i) employed by the Commissioners; or
  - (ii) engaged to provide services to the Commissioners; or
- (b) any auditor or expert who is or has been instructed by the Commissioners.

(3) Subsections (1) and (2) do not prevent confidential information from being disclosed-

- (a) with the consent of the person to whom it relates;
- (b) in summary or aggregate form, from which information relating to any particular person cannot be ascertained;
- (c) for the purpose of any proceedings under this Act;
- (d) by direction of the Supreme Court; or
- (e) if it is a matter of public knowledge and was made available to the public in circumstances or for purposes which are not precluded by this Act.

### **Cooperation agreements.**

145. The Commissioners may conclude cooperation agreements with domestic authorities and foreign commissioners, establishing procedures for the exchange of information in accordance with this Part.

### **Cooperation with other authorities.**

146.(1) Subject to section 144, the Commissioners may assist, exchange information or cooperate with-

- (a) a domestic authority;
- (b) a foreign commissioner; or
- (c) with the consent of the Minister responsible for finance, a foreign authority,

for the purposes of any investigation being undertaken by the Commissioners in execution of their functions under this Act or similar activity being undertaken by the domestic or foreign authority or the foreign commissioner.

(2) The Commissioners, when they provide information to an authority or commissioner under subsection (1), may require it-

- (a) to use the information only for the purposes for which the Commissioners have provided it; and
- (b) not to disclose the information without the Commissioners' express agreement.

(3) The Commissioners -

- (a) shall not disclose information which they have received under subsection (1) to any other person without the express agreement of the authority or commissioner that provided it; and
- (b) shall use the information only for the purposes for which it was provided, other than in justified circumstances (of which it shall immediately inform the disclosing authority or commissioner).

(4) Where the Commissioners reasonably suspect that this Act or any provision made under it has been contravened by a person who is not subject to supervision by the Commissioners, but is subject to supervision by a foreign commissioner, the Commissioners shall inform the foreign commissioner without delay, in as specific a manner as possible.

(5) Where a foreign commissioner informs the Commissioners of a suspected contravention of this Act or any provision made under it, the Commissioners shall take appropriate action and inform the foreign commissioner of the outcome of the action, including (to the extent possible) any significant interim developments.

(6) The Commissioners may cooperate with a domestic authority, foreign commissioner or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of this Act or any provision made under it.

### **Refusing to share information.**

147. The Commissioners may refuse to exchange information under section 146 if they are not satisfied that the person or body requesting the information is subject to confidentiality provisions which are at least equivalent to those in section 144.

### **Providing assistance to other commissioners.**

148.(1) At the request of a foreign commissioner who is responsible for supervising a relevant person or any part of a group to which a relevant person belongs, the Commissioners for the purpose of assisting the foreign commissioner to discharge a relevant function, may-

- (a) exercise their powers under this Part; or
- (b) with the prior written consent of the Minister responsible for finance, arrange for those powers to be exercised by-
  - (i) a person authorised by the Commissioners for that purpose; or
  - (ii) subject to any conditions the Commissioners consider appropriate, a person acting on behalf of the requesting foreign commissioner.

(2) For the purposes of subsection (1), a “relevant function” means a function of the requesting foreign commissioner which is similar to a function of the Commissioners.

### **Refusing to provide assistance.**

149.(1) The Commissioners may refuse to act on a request for assistance from a foreign commissioner -

- (a) where the request is not made in accordance with any cooperation agreement or similar arrangement between the Commissioners and the requesting foreign commissioner;
- (b) where, in Gibraltar, in respect of the same person and the same action proceedings have been initiated or a criminal penalty has been imposed; or
- (c) on grounds of public interest or essential national interest.

(2) Where the Commissioners refuse to provide the assistance requested or are unable to do so, they shall inform the requesting foreign commissioner and provide him or her with the reasons for the decision.

(3) For the purpose of subsection (1)(c) it is for the Minister responsible for finance to determine the public interest or essential national interest, and the Commissioners shall refuse to act on a request for assistance from a foreign commissioner when the Minister so determines.

### **Interpretation: Part 7.**

150. In this Part-

“confidential information” means information in any form which-

- (a) has been obtained by or on behalf of the Commissioners in the course of carrying out their functions under this Act and from which a person can be identified; or
- (b) the Government has provided in confidence to the Commissioners;

“domestic authority” means a person listed in Schedule 4;

“foreign authority” means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside Gibraltar;

“foreign commissioner” means a person performing functions similar to those of the Commissioners, under the law of a country or territory outside Gibraltar.

“relevant person” means-

- (a) a charity registered under this Act or applying to be registered under this Act;
- (b) any trustee, charity trustee, officer, agent or servant of the charity falling within paragraph (a) of this definition;
- (c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a charity falling within paragraph (a) of this definition or a person falling within paragraph (b) of this definition;
- (d) any person who is seeking to obtain, has or at any time had any direct or indirect proprietary, financial or other interest in or connection with a charity falling within paragraph (a) of this definition or a person falling within paragraph (b) of this definition; or
- (e) any person who is, or has been, directly or indirectly involved in a transaction which the Commissioners consider to be relevant to the discharge of their functions under this Act.

## **PART 8**

### **ANNUAL REPORTS AND RETURNS, PUBLIC ACCESS TO ACCOUNTS AND REMUNERATION.**

#### *Annual reports*

#### **Charity trustees to prepare annual reports.**

151.(1) The charity trustees of a charity shall prepare in respect of each financial year of the charity an annual report containing—

- (a) such a report by the trustees on the activities of the charity during that year; and
- (b) such other information relating to the charity or to its charity trustees or officers, as may be prescribed by regulations made by the Minister.

(2) Regulations made under subsection (1) may make provision—

- (a) for any such report as is mentioned in subsection (1)(a) to be prepared in accordance with such principles as are specified or referred to in the regulations;
- (b) enabling the Commission to dispense with any requirement prescribed by virtue of subsection (1)(b)—
  - (i) in the case of a particular charity or a particular class of charities; or
  - (ii) in the case of a particular financial year of a charity or of any class of charities.

**Fund-raising standards information.**

152.(1) If section 55(2) applies to a financial year of a charity, the annual report in respect of that year shall include a statement of each of the following for that year—

- (a) the approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fund-raising, and in particular whether a professional fund-raiser or commercial participator carried on any of those activities;
- (b) whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, in respect of activities on behalf of the charity, and, if so, what scheme or standard;
- (c) any failure to comply with a scheme or standard mentioned under subsection (1)(b);
- (d) whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fund-raising, and, if so, how it did so;
- (e) the number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fund-raising;
- (f) what the charity has done to protect vulnerable people and other members of the public from behaviour within subsection (2) in the course of, or in connection with, such activities.

(2) The behaviour within this subsection is—

- (a) unreasonable intrusion on a person's privacy;
- (b) unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity;
- (c) placing undue pressure on a person to give money or other property.

**Transmission of annual reports to Commission.**

153. A copy of the annual report required to be prepared under sections 151 or 152 in respect of that year shall be transmitted to the Commission by the charity trustees within—

- (a) 10 months from the end of that year; or
- (b) such longer period as the Commission may for any special reason allow in the case of that report.

**Documents to be transmitted with annual report.**

154.(1) Subject to subsection (3), any copy of an annual report transmitted to the Commission under section 153 shall have attached to it—

- (a) a copy of the statement of accounts prepared for the financial year in question under section 43(1); or
- (b) as the case may be, a copy of the account and statement so prepared under section 44, and a copy of the relevant auditor's or examiner's report.

(2) In subsection (1), "the relevant auditor's or examiner's report" means—

- (a) if the accounts of the charity for that year have been audited under section 55, 56 or 57, the report made by the auditor on that statement of accounts or, as the case may be, on that account and statement;
- (b) if the accounts of the charity for that year have been examined under section 56, the report made by the person carrying out the examination.

(3) Subsections (1) and (2) do not apply to a charitable company or foundation, and any copy of an annual report transmitted by the charity trustees of a charitable company or foundation under section 153 shall have attached to it—

- (a) a copy of the company's or foundations annual accounts or income and expenditure account and balance sheet prepared for the financial year in question under the Companies Act 2014 or the Private Foundations Act 2017, as the case may be; and
- (b) a copy of the relevant auditor's or examiner's report.

(4) In subsection (3), "the relevant auditor's or examiner's report" means—

- (a) if the accounts of the company for that year have been audited under Part VII of the Companies Act 2014, the report made by the auditor on those accounts;
- (b) if the accounts of the company for that year have been audited under section 55, 56 or 57, the report made by the auditor on those accounts;
- (c) if the accounts of the company for that year have been examined under section 56, the report made by the person carrying out the examination.

### **Preservation of annual reports.**

155.(1) Any copy of an annual report transmitted to the Commission under section 153, together with the documents attached to it, is to be kept by the Commission for such period as it thinks fit.

(2) The charity trustees of a charity shall preserve for at least 5 years from the end of the financial year to which it relates an annual report prepared by them under section 152(1) if they have not been required to transmit a copy of it to the Commission.

(3) Subsection (4) applies if a charity ceases to exist within the period of 5 years mentioned in subsection (2) as it applies to any annual report.

(4) The obligation to preserve the annual report in accordance with subsection (2) shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the annual report being destroyed or otherwise disposed of.



### **Annual reports and group accounts.**

156.(1) This section applies where group accounts are prepared for a financial year of a parent charity under section 49(2).

(2) The annual report prepared by the charity trustees of the parent charity in respect of that year under section 152 shall include—

- (a) such a report by the trustees on the activities of the charity's subsidiary undertakings during that year; and
- (b) such other information relating to any of those undertakings,

as may be prescribed by regulations made by the Minister.

(3) Regulations made under subsection (2) may make provision—

- (a) for any such report as is mentioned in subsection (2)(a) to be prepared in accordance with such principles as are specified or referred to in the regulations;
- (b) enabling the Commission to dispense with any requirement prescribed by virtue of subsection (2)(b) in the case of—
  - (i) a particular subsidiary undertaking; or
  - (ii) a particular class of subsidiary undertakings.

(4) Section 153 applies in relation to the annual report referred to in subsection (2) as if any reference to the charity's gross income in the financial year in question were a reference to the aggregate gross income of the group in that year.

(5) When transmitted to the Commission in accordance with subsection (4), the copy of the annual report shall have attached to it both a copy of the group accounts prepared for that year under section 49(2) and—

- (a) a copy of the report made by the auditor on those accounts; or
- (b) if those accounts have been examined under section 60, a copy of the report made by the person carrying out the examination.

(6) The requirements in this section are in addition to those in sections 152 to 155.

### **Exempt charities.**

157. Nothing in sections 152 to 156 applies to any exempt charity.

### **Excepted charities.**

158.(1) Nothing in sections 152 to 155 applies to any excepted charity.

(2) Except in accordance with subsection (5), nothing in sections 152 to 155 applies to any charity which—

(a) falls within section 18(2)(b) or (c); and

(b) is not registered.

(3) If requested to do so by the Commission, the charity trustees of any such charity as is mentioned in subsection (2) shall prepare an annual report in respect of such financial year of the charity as is specified in the Commission's request.

(4) Any report prepared under subsection (3) shall contain—

(a) such a report by the charity trustees on the activities of the charity during the year in question; and

(b) such other information relating to the charity or to its trustees or officers.

#### *Annual returns*

#### **Annual returns by registered charities.**

159.(1) Subject to subsection (2), every registered charity shall prepare in respect of each of its financial years an annual return in such form, and containing such information, as may be prescribed by regulations.

(2) Any such return shall be transmitted to the Commission by the date by which the charity trustees are, by virtue of section 153, required to transmit to the Commission the annual report required to be prepared in respect of the financial year in question.

(3) The Commission may dispense with the requirements of subsection (1)—

(a) in the case of a particular charity or a particular class of charities; or

(b) in the case of a particular financial year of a charity or of any class of charities.

#### *Availability of documents to public*

#### **Public inspection of annual reports kept by Commission.**

160. Any document kept by the Commission in pursuance of section 155(1) shall be open to public inspection at all reasonable times—

(a) during the period for which it is so kept; or

(b) if the Commission so determines, during such lesser period as it may specify.

#### *Remuneration of charity trustees and trustees*

#### **Remuneration of charity trustees providing goods or services to charity.**

161.(1) Subject to subsection (3), 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.

(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 and P under which P is to provide the goods or services or goods and 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 or goods and 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 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) of this Condition,

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*

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.

(4) 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 Supreme Court or order, decision or direction of the Commission;

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

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

(6) A duty of care applies to a charity trustee when making such a decision as is mentioned in Condition B.

(7) 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.

(8) Sections 164 and 165 apply for the purposes of this section.

**Disqualification of charity trustee or trustee receiving remuneration under section 161.**

162.(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) Notwithstanding subsection (2), 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 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 it directs is not to be paid to P.

(8) Sections 164 and 165 apply for the purposes of this section.

**Remuneration for work already carried out.**

163.(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 shall be specified in the order;
- (b) authorise, to such extent as shall 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 shall in particular have regard to—

- (a) whether, if the person had not carried out the work, the charity would have paid someone else to carry it out;
- (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
- (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.

**Meaning of “benefit”, “remuneration”, “services”.**

164. In sections 161 and 162—

“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.

**Meaning of “connected person”.**

165. For the purposes of sections 161 and 162, 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 subsection (a);
- (c) a person carrying on business in partnership with the trustee or with any person falling within subsection (a) or (b);
- (d) an institution which is controlled—
  - (i) by the trustee or by any person falling within subsection (a), (b) or (c); or
  - (ii) by two or more persons falling within subsection (d)(i), when taken together.
- (e) a body corporate in which—
  - (i) the trustee or any connected person falling within any of subsections (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within subsection (e)(i), when taken together, have a substantial interest.

*Indemnity insurance for trustees and charity trustees*

**Indemnity insurance for charity trustees and trustees.**

166.(1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—

- (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity; or
- (b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of—
  - (i) the charity, if it is a body corporate or foundation; or
  - (ii) any body corporate or foundation carrying on any activities on behalf of the charity.

(2) The terms of such insurance shall be so framed as to exclude the provision of any indemnity for a person (“P”) in respect of—

- (a) any liability incurred by P to pay—
  - (i) a fine imposed in criminal proceedings; or
  - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature, however arising;
- (b) any liability incurred by P in defending any criminal proceedings in which P is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by P; or
- (c) any liability incurred by P to the charity that arises out of any conduct—
  - (i) which P knew, or shall reasonably be assumed to have known was not in the interests of the charity; or
  - (ii) in the case of which P did not care whether it was in the best interests of the charity or not.

(3) For the purposes of subsection (2)(b)—

- (a) the reference to any such conviction is a reference to one that has become final;
- (b) a conviction becomes final—
  - (i) if not appealed against, at the end of the period for bringing an appeal; or
  - (ii) if appealed against, at the time when the appeal, or any further appeal is disposed of; and
- (c) an appeal is disposed of—
  - (i) if it is determined and the period for bringing any further appeal has ended; or
  - (ii) if it is abandoned or otherwise ceases to have effect.

(4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.

(5) A duty of care applies to a charity trustee when making such a decision.

(6) This section—

- (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity; but
- (b) has effect despite any provision prohibiting the charity trustees or trustees for a charity receiving any personal benefit out of the funds of the charity.

*Powers to relieve trustees and auditors from liability*

**Commission's power to relieve trustees and auditors from liability.**

167.(1) This section applies to a person (“P”) who is or has been—

- (a) a charity trustee or trustee for a charity;
- (b) a person appointed to audit a charity’s accounts, whether appointed under an enactment or otherwise; or
- (c) an independent examiner or other person appointed to examine or report on a charity’s accounts (whether appointed under an enactment or otherwise).

(2) If the Commission considers—

- (a) that P is or may be personally liable for a breach of trust or breach of duty committed in P’s capacity as a person within subsection (1)(a), (b) or (c); but
- (b) that P has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,

the Commission may make an order relieving P wholly or partly from any such liability.

(3) An order under subsection (2) may grant the relief on such terms as the Commission thinks fit.

(4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.

(5) For the purposes of this section and section 168 any reference to a charity’s accounts is to be read as including any group accounts prepared by the charity trustees of a charity.

(6) This section does not affect the operation of—

- (a) section 19A of the Trustee Act;
- (b) section 477 of the Companies Act 2014; or
- (c) section 168.

**Court’s power to grant relief to apply to all auditors and independent examiners of charities which are not companies.**

168.(1) Section 477 of the Companies Act 2014 has effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor or an independent examiner by a company.

(2) This section applies to a person acting in a capacity within section 167(1)(b) or (c) in a case where, apart from this section, section 477 of the Companies Act 2014 would not apply in relation to that person as a person so acting.

*Power to give directions about dormant bank account of charities*

**Power to direct transfer of credits in dormant bank accounts.**



169.(1) The Commission may give a direction under subsection (2) where—

- (a) it is informed by a relevant institution—
  - (i) that it holds one or more accounts in the name of or on behalf of a particular charity (“the relevant charity”); and
  - (ii) that the account or, if it so holds two or more accounts, each of the accounts, is dormant; and
- (b) it is unable, after making reasonable inquiries, to locate that charity or any of its trustees.

(2) A direction under this subsection is a direction which—

- (a) requires the institution concerned to transfer the amount, or the aggregate amount, standing to the credit of the relevant charity in the account or accounts in question to such other charity as is specified in the direction in accordance with subsection (3); or
- (b) requires the institution concerned to transfer to each of two or more other charities so specified in the direction such part of that amount or aggregate amount as is there specified in relation to that charity.

(3) The Commission—

- (a) may specify in a direction under subsection (2) such other charity or charities as it considers appropriate, having regard, in a case where the purposes of the relevant charity are known to the Commission, to those purposes and to the purposes of the other charity or charities; but
- (b) shall not so specify any charity unless it has received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.

(4) Any amount received by a charity by virtue of this section is to be received by the charity on terms that—

- (a) it is to be held and applied by the charity for the purposes of the charity; but
- (b) as property of the charity, it is nevertheless subject to any restrictions on expenditure to which it was subject as property of the relevant charity.

(5) The receipt of any charity trustees or trustee for a charity in respect of any amount received from a relevant institution by virtue of this section is a complete discharge of the institution in respect of that amount.

**Accounts which cease to be dormant before transfer.**

170.(1) This section applies where—

- (a) the Commission has been informed as mentioned in section 169(1)(a) by any relevant institution; and

- (b) before any transfer is made by the institution in pursuance of a direction under section 169(2), the institution has, by reason of any circumstances, cause to believe that the account, or any of the accounts, held by it in the name of or on behalf of the relevant charity is no longer dormant.

(2) The institution shall without delay notify those circumstances in writing to the Commission.

(3) If it appears to the Commission that the account or accounts in question is or are no longer dormant, it shall revoke any direction under section 169(2) which has previously been given by it to the institution with respect to the relevant charity.

**Further provisions in respect of dormant bank accounts.**

171.(1) No obligation as to secrecy or other restriction on disclosure, however imposed precludes a relevant institution from disclosing any information to the Commission for the purpose of enabling the Commission to discharge its functions under sections 169 and 170.

(2) For the purposes of sections 169 and 170 and this section, an account is dormant if no transaction, other than—

- (a) a transaction consisting in a payment into the account; or
- (b) a transaction which the institution holding the account has itself caused to be effected,

has been effected in relation to the account within the period of 5 years immediately preceding the date when the Commission is informed as mentioned in section 169(1)(a).

(3) For the purposes of sections 169 and 170 and this section, a “relevant institution” means—

- (a) the Gibraltar Savings Bank;
- (b) a person who has permission under Part 7 of the Financial Services Act 2019 to accept deposits;
- (c) an EEA firm of the kind mentioned in paragraph 1(1)(a) of Schedule 10 to the Financial Services Act 2019 which has permission under that Act to accept deposits; or
- (d) such other person who may lawfully accept deposits in Gibraltar as may be prescribed by the Government.

(4) Subsection (3)(b) to (d) are to be read with—

- (a) section 5 of the Financial Services Act 2019;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(5) For the purposes of sections 169 and 170, references to the transfer of any amount to a charity are references to its transfer to the charity trustees to any trustee for the charity, as the charity trustees may determine, and any reference to any amount received by a charity is to be read accordingly.

(6) For the purpose of determining the matters in respect of which any of the powers conferred by sections 33 to 40 may be exercised it is to be assumed that the Commission has no functions under section 169 or 170 in relation to accounts to which this subsection applies.

(7) Subsection (6) applies to accounts which—

- (a) are dormant accounts by virtue of subsection (2); but
- (b) would not be dormant accounts if subsection (2)(a) were omitted.

## **PART 9 SOCIAL INVESTMENTS.**

### **Meaning of “social investment”.**

172.(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.

### **General power to make social investments.**

173.(1) An incorporated charity or foundation has, and the charity trustees of an unincorporated charity or foundation 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 172(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.

- (3) The power conferred by this section—
  - (a) may be restricted or excluded by the trusts of the charity;
  - (b) is (subject to subsection (3)(a)) in addition to any other power to make social investments that the charity or charity trustees may have.
- (4) This section and section 174 do not apply in relation to—
  - (a) charities established by, or whose purposes and functions are set out in, legislation;
  - (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
  - (b) subordinate legislation made under such an Act.

### **Charity trustees’ duties in relation to social investments.**

174.(1) This section applies in relation to social investments that are made after section 173 comes into force, whether or not made by the exercise of the power conferred by section 173.

- (2) The charity trustees of a charity shall, before exercising a power to make a social investment—
  - (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 shall from time to time review the charity's social investments.
- (4) When carrying out a review the charity trustees shall—
  - (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.

## **PART 10 CHARITY MERGERS.**

### *Registration*

#### **Register of charity mergers.**

175.(1) There shall 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 shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with section 177 and such procedures as it may determine.

#### **Meaning of “relevant charity merger”.**

176.(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
  - (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 which has both permanent endowment and other property (“unrestricted property”) 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 177 and 178—

- (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 180(2) applies.

**Notification of charity mergers.**

177.(1) A notification under section 175(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 175(2) shall 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 175(2) is to be given by the charity trustees of the transferee and shall—

- (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 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 180(2).

**Details to be entered in register of charity mergers.**

178.(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 175(2).

(2) The entry shall—

- (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 177(4); and
- (c) contain such other particulars of the merger as the Commission thinks fit.

**Right to inspect register of charity mergers.**

179.(1) The register of charity mergers shall 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*

**Pre-merger vesting declarations.**

180.(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.

(3) Subsection (2) does not apply to—

- (a) 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
  - (ii) a forfeiture; or
- (b) 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 land within the meaning of the Gibraltar Land Titles Act 2011, subsection (2) is subject to section 3 of that Act.

**Effect of registering charity merger on gifts to transferor.**

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

- (2) Subsection (3) 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.
- (3) The gift takes effect as a gift to the transferee.
- (4) A gift is an excluded gift if—
- (a) the transferor is a charity within section 176(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.

**“Transferor” and “transferee” in sections 180 and 181.**

182.(1) In sections 180 and 181—

- (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 176; and
  - (b) any reference to all of the transferor's property, where the transferor is a charity within section 176(2), is a reference to all of the transferor's unrestricted property, within the meaning of section 176(2)(a).
- (2) In sections 180 and 181, any reference to the transferee, in relation to a relevant charity merger, is a reference to—
- (a) the transferee, within the meaning of section 176, if it is a company, foundation or other body corporate; and
  - (b) otherwise, the charity trustees of the transferee, within the meaning of section 176.

**Effect of provisions relating to vesting or transfer of property.**

183. 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 11  
TRANSITIONAL PROVISIONS**

**Extent.**

184. The amendment or repeal of an enactment has the same extent as the enactment to which it relates.

**Repeal.**



185. The Charities Act is repealed and the repeal by this Act of the Charities Act does not affect any right or cause of action that has accrued to, or any legal claim commenced by, any person before those provisions were repealed.

### **Continuity of the law.**

186.(1) The substitution of this Act for a repealed enactment does not affect the continuity of the law.

(2) A reference (whether express or implied) in this Act, another enactment, an instrument or document to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of a repealed enactment, in relation to times, circumstances or purposes to which the repealed provision had effect.

(3) A reference (whether express or implied) in any enactment, instrument or document to a provision of a repealed enactment is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act, in relation to times, circumstances or purposes to which that provision has effect.

(4) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision of a repealed enactment, and in operation or effective immediately before the coming into operation of this Act, has effect after that date as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(5) Subsection (4) does not apply to the making of any subsidiary legislation to the extent that it is reproduced in this Act.

(6) Any reference to a provision of a repealed enactment which is contained in a document made, served or issued after the repeal comes into operation is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

(7) This section has effect subject to any express amendment or specific transitional provision or saving made by or under this Act.

### **Consequential Amendments.**

187.(1) In the Equal Opportunities Act 2006, in section 45B(4), in the definition of “charitable purposes” the words “Charities Act” are replaced with “Charities Act 2025.”

(2) In the Financial Services Act 2019, in paragraph 1(f)(i) of Schedule 24 the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(3) In the Freepost and Business Reply Regulations 1961, in regulation 17(2)(a) the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(4) In the Intellectual Property (Copyright and Related Rights) Act 2005, in section 259(4)(a) the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(5) In the John Mackintosh Will (Variation of Trusts) Act 2018, in section 3(3) the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(6) In the Trustees (Incorporation) Act 1935, in section 9 the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(7) In the Freepost and Business Reply Regulations 1961, in regulation 17(2)(a) the reference to the “Charities Act” is replaced with “Charities Act 2025”.

(8) Schedule 14 of the Criminal Procedure and Evidence Act 2011 is amended by adding the following new paragraph immediately following paragraph 11-

“12. An offence under section 9 of the Charities Act 2025 (power to call for documents).”.

## **SCHEDULE 1**

### **Section 9**

#### **CONSTITUTION OF CHARITY COMMISSIONERS.**

**1.(1)** The Commission shall consist of-

- (a) a person appointed by the Minister to chair the Commission; and
- (b) at least 4, but no more than 8, other members appointed by the Minister.

(2) The Minister shall exercise the power in paragraph 1(1) so as to secure that the knowledge and experience of the members of the Commission when taken together includes knowledge and experience in respect of the matters set out in paragraph 1(3).

(3) The matters referred to in paragraph 1(2) are-

- (a) the areas of law relating to charities;
- (b) preparation of charity accounts and the financing of charities; and
- (c) experience in services to charities.

(4) The Chief Commissioner and the other Commissioners shall hold office during the Minister's pleasure.

(5) There may be paid to each of the Commissioners such allowances as the Minister may determine.

**2.** The Minister may appoint a secretary to the Commissioners and such officers and servants as he or she thinks necessary for the proper discharge of the functions of the Commissioners and of the official custodian of charities.

**3.(1)** The Commissioners may use an official seal for the authentication of documents, and their seal shall be officially and judicially noticed.

(2) The Commissioners shall have power to regulate their own procedure and, subject to any regulations and to any directions of the Chief Commissioner, any one Commissioner may act for and in the name of the Commissioners.

(3) Where the Commissioners act as a board, three shall be a quorum; and in the case of an equality of votes the Chief Commissioner or in his absence the Commissioner presiding shall have a second or casting vote.

(4) The Commissioners shall have power to act notwithstanding any vacancy in their number.

**4.** Legal proceedings may be instituted by or against the Commissioners by the name of the Charity Commissioners for Gibraltar and shall not abate or be affected by any change in the persons who are the Commissioners.

## **SCHEDULE 2**

Sections 3 and 15

### **EXEMPT CHARITIES.**

1. The following institutions, so far as they are charities, are exempt charities within the meaning of this Act, that is to say-

- (a) any cathedral or collegiate church or to any building bona fide used exclusively as a place of meeting for religious purposes;
- (b) any friendly or benefit society or savings bank.

## **SCHEDULE 3**

### **Section 9**

#### **THE REDUCTION OF FINANCIAL CRIME**

1. The Commissioners should use their best endeavours to reduce the scope for an activity to be carried on by a charity for a purpose connected with financial crime, in particular by-

- (a) developing policies to promote accountability, integrity, and public confidence in the administration and management of charities;
- (b) encouraging and undertaking outreach and educational programmes to raise and deepen awareness among charities as well as the donor community about the potential vulnerabilities of charities to financial crime, including terrorist financing abuse and terrorist financing risks, and the measures that charities can take to protect themselves against such abuse;
- (c) working with charities to develop and refine best practices to address the potential vulnerabilities of charities to financial crime, including terrorist financing risk and vulnerabilities and thus protect them from abuse; and
- (d) encouraging charities to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different areas of urgent charitable and humanitarian concerns.

## SCHEDULE 4

Section 150

### DOMESTIC AUTHORITIES.

1. Gibraltar Financial Services Commission;
2. Financial Services Resolution and Compensation Committee;
3. Gambling Commissioner;
4. Gibraltar Co-ordinating Centre for Criminal Intelligence & Drugs;
5. Gibraltar Financial Intelligence Unit;
6. Gibraltar Investor Compensation Board;
7. Gibraltar Regulatory Authority;
8. Gibraltar Resolution Authority;
9. HM Customs;
10. Liquidators or administrators of former “regulated persons” as defined in section 2 of the Financial Services Act 2019;
11. Minister with responsibility for finance;
12. Minister with responsibility for financial services;
13. National Coordinator for anti-money laundering and combating terrorist financing;
14. Office of Criminal Prosecutions & Litigation;
15. Royal Gibraltar Police;
16. The Registrar of Friendly Societies;
17. The Office of Fair Trading.

## **SCHEDULE 5**

Sections 94 and 95

### **Case A: Specified Offences**

1. The following offences are specified for the purposes of Case A—
  - (a) an offence to which sections 25-27 of the Counter Terrorism Act 2010 apply;
  - (b) an offence under section 40 of the Terrorism Act 2018;
  - (c) a money laundering offence within the meaning of the Proceeds of Crime Act 2015;
  - (d) an offence under section 566, 567, 571 or 572 of the Crimes Act 2011;
  - (e) an offence under section 81 of this Act;
  - (f) an offence of misconduct in public office, perjury or perverting the course of justice.
2. An offence which has been superseded (directly or indirectly) by an offence specified in paragraph 1 is also specified for the purposes of Case A.
3. In relation to an offence specified in paragraphs 1 or 2, the following offences are also specified for the purposes of Case A—
  - (a) an offence of attempt, conspiracy or incitement to commit the offence;
  - (b) an offence of aiding, abetting, counselling or procuring the commission of the offence;
  - (c) an offence of encouraging or assisting in relation to the offence.

## SCHEDULE 6

Section 98

### CONDITIONS

#### 1. Conditions—

##### (a) Condition A.

That the person has been cautioned for a disqualifying offence against a charity or involving the administration of a charity.

##### (b) Condition B.

That-

- (i) under the law of a country or territory outside Gibraltar the person has been convicted in respect of an offence against a charity or involving the administration of a charity;
- (ii) the act which constituted the offence would have constituted a disqualifying offence if it had been done in Gibraltar.

##### (c) Condition C.

That the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and-

- (i) the person was responsible for the misconduct or mismanagement;
- (ii) the person knew of the misconduct or mismanagement and failed to take any reasonable steps to oppose it; or
- (iii) the person's conduct contributed to or facilitated the misconduct or mismanagement.

##### (d) Condition D.

That the person was an officer or employee of a body corporate at a time when the body was a trustee or charity trustee for a charity and when there was misconduct or mismanagement by it in the administration of the charity, and-

- (i) the person was responsible for the misconduct or mismanagement;
- (ii) the person knew of the misconduct or mismanagement and failed to take any reasonable steps to oppose it; or
- (iii) the person's conduct contributed to or facilitated the misconduct or mismanagement.

##### (e) Condition E.

That any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

2. In this schedule “disqualifying offence” means an offence within Case A in section 94(1).



3. Conditions A and B apply whether the caution or conviction occurred before or after the commencement of this schedule.
4. Condition B does not apply in relation to a conviction which is spent under the law of the country or territory concerned.
5. For the purposes of Condition B—
  - (a) an act punishable under the law of a country or territory outside Gibraltar constitutes an offence under that law, however it is described in that law; and
  - (b) “ charity ” means an institution that is a charity under the law of Gibraltar or that is established under the law of another country or territory principally for charitable, benevolent or philanthropic purposes.”

### 3. Draft Explanatory Memorandum

This Bill replaces the current Charities Act. The Bill provides greater clarity on the definition of a charity and of charitable purposes. The Bill also deals with the regulation of charities as follows:

- The Commission's objectives, functions and constitution are better defined;
- There is greater detail covering the registration of charities, including new arrangements for the registration of larger excepted charities and for the regulation of exempt charities. (Excepted charities are charities not at present obliged to register with the Charity Commission, though they are regulated by it. Exempt charities are charities at present neither registered with nor regulated by the Commission);
- The Bill includes new powers for the Commission:
  - to suspend or remove trustees, employees etc. from membership of their charity;
  - to direct charity trustees to take certain actions in administering their charity;
  - to direct charity trustees to apply the charity's property in a certain way;
  - to give advice and guidance to charity trustees;
  - to determine who are the members of a charity; and
  - in the course of statutory investigations, to enter premises and take possession of information and documents.
- The Bill extensively covers the audit and examination of the accounts of charities, and the duties of auditors and examiners of charities, and makes provision for the preparation and audit of group accounts;
- The Bill covers restricting amendments to charities' constitutions, and the audit and examination of their accounts;
- The Bill implements rules on the disqualification of persons from acting as trustees, the remuneration of charity trustees, the relief of trustees from personal liability for breach of trust or duty, and the purchase by trustees of trustee indemnity insurance.