

# Charities Act

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## Principal Act

Act. No. 1962-16

*Commencement*

1.12.1964

*Assent*

25.5.1962

Amending enactment	Relevant current Provisions	Date of commencement
Order of 25.11.1969	ss. 9, 11(1)	
Regs. of 28.5.1970	s. 19(3)	
Act. 1983-12	Sch. 1	
1983-48	s. 18(2)	
2007-17	ss. 4(5), 5(2), 5(7), 18(2), Sch.1	14.6.2007
2021-08	ss. 4(3), (3A), 8(1), 42-48, Sch. 3-4	9.2.2021

Rules made under ss.38 and 39 and under other powers appear under the title Supreme Court.

## English source

Charities Act 1960 (8 & 9 Eliz. 2 c. 58).

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**PART I.**  
**PRELIMINARY.**

**Short title.**

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

**Construction of references to a “charity” or to particular classes of charity.**

2.(1) In this Act, unless the context otherwise requires—

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

“exempt charity” means, subject to section 21(9), a charity comprised in Schedule 2;

“local charity” means, in relation to any area, a charity established for purposes, which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of that area or part of it.

(2) Subject to section 21(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) 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.

### **Other definitions.**

3. In this Act, unless the context otherwise requires—

“charitable purposes” means purposes, which are exclusively charitable according to the law of England;

“charitable 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 4;

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

“institution” includes any trust or undertaking;

“permanent endowment” shall, subject to section 21(9), be construed in accordance with section 2(2);

“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.

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

### **Charity Commissioners.**

4.(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) 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.

(3) The Commissioners shall, without prejudice to their specific powers and duties under any other law, have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses.

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

(4) It shall be the general object of the Commissioners so to act in the case of any charity, unless it is a matter of altering its purposes, as best to promote and make effective the work of the charity in meeting the needs designated by its trusts, but the Commissioners shall not themselves have power to act in the administration of a charity.

(5) The Commissioners shall, as soon as possible after the end of every year, make to the Minister responsible for finance a report on their operations during the year, and the Minister responsible for finance shall cause a copy of the report to be laid before the Parliament.

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

5.(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 responsible for finance may from time to time designate shall be the official custodian for charities.

(3) The official custodian for charities shall perform his duties in accordance with such general or special directions as may be given him by the Commissioners, and his expenses, except those reimbursed to him or recovered by him 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 authorized by them to act for him during a vacancy in his 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 willful neglect or default of the custodian or person acting for him, 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 responsible for finance 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 III.**  
**REGISTRATION AND ACCOUNTS.**

**Register of charities.**

6.(1) There shall be a register of charities which shall be established and maintained by the Commissioners and in which there shall be entered such particulars as the Commissioners may from time to time determine of any charity there registered.

(2) There shall be entered in the register every charity not excepted by subsection (4), and a charity so excepted may be entered in the register at the request of the charity, but (whether or not it was excepted at the time of registration) may at any time, and shall at the request of the charity, be removed from the register.

(3) Any institution which no longer appears to the Commissioners to be a charity shall be removed from the register, with effect, where the removal is due to any change in its purposes or trusts, from the date of that change, and there shall also be removed from the register any charity which ceases to exist or does not operate.

(4) The following charities are not required to be registered, that is to say—

(a) exempt charities; and

(b) any charity, which is accepted by order or regulations.

(5) With any application for a charity to be registered there shall be supplied to the Commissioners copies of its trusts, or if they are not set out in any extant document, particulars of them, and such other documents or information as may be prescribed or as the Commissioners may require for the purpose of the application.

(6) It shall be the duty—

- (a) of the charity trustees of any charity which is not registered nor excepted from registration to apply for it to be registered, and to supply the documents and information required by subsection (5); and
- (b) of the charity trustees, or last charity trustees, of any institution which is for the time being registered to notify the Commissioners if it ceases to exist, or if there is any change in its trusts, or in the particulars of it entered in the register, and to supply to the Commissioners particulars of any such change and copies of any new trusts or alterations of the trusts,

and any person who makes default in carrying out any of the duties imposed by this subsection may be required by order of the Commissioners to make good that default.

(7) The register, including the entries cancelled when institutions are removed from the register, shall be open to public inspection at all reasonable times, and copies or particulars of the trusts of any registered charity as supplied to the Commissioners under this section shall, so long as it remains on the register, be kept by them and be open to public inspection at all reasonable times, except in so far as regulations otherwise provide.

(8) Nothing in this section shall require any person to supply the Commissioners with copies of schemes for the administration of a charity made otherwise than by the court, or to notify the Commissioners of any change made with respect to a registered charity by such a scheme, or require a person, if he refers the Commissioners to a document or copy already in the possession of the Commissioners, to supply a further copy of the document, but where by virtue of this subsection a copy of any document need not be supplied to the Commissioners, a copy of it, if it relates to a registered charity, shall be open to inspection under subsection (7) as if supplied to the Commissioners under this section.

#### **Effect of, and claims and objections to, registration.**

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

(2) Any 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, object to its being entered by the Commissioners in the register, or apply to them for it to be removed from the register, and provision may be made by regulations as to the manner in which any such objection or application is to be made, prosecuted or dealt with.

(3) An appeal against any decision of the Commissioners to enter or not to enter an institution in the register of charities, or to remove or not to remove an institution from the register, may be brought in the Supreme Court by the Attorney-General, or by the persons who



are or claim to be the charity trustees of the institution, or by any person whose objection or application under subsection (2) is disallowed by the decision.

(4) If there is an appeal to the Supreme Court against any decision of the Commissioners to enter an institution in the register, or not to remove an institution from the register, then, until the Commissioners are satisfied whether the decision of the Commissioners is or is not to stand, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) an institution shall be deemed not to be on the register during any period when the entry relating to it is in suspense under this subsection.

(5) Any question affecting the registration or removal from the register of an institution may, notwithstanding that it has been determined by a decision on appeal under subsection (3), be considered afresh by the Commissioners and shall not be concluded by that decision, if it appears to the Commissioners that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such an appeal or not.

#### **General powers to institute inquiries.**

8.(1) The Commissioners may, from time to time, institute inquiries with regard to charities or a particular charity or class of charities, either generally, pursuant to their functions under this Act, or for particular purposes:

Provided that no such inquiry shall extend to any exempt charity.

(2) The Commissioners may either conduct such an inquiry themselves or appoint a person to conduct it and make a report to them.

(3) For the purposes of any such inquiry the Commissioners may, by order, and a person appointed by them to conduct the inquiry may by precept, require any person, subject to the provisions of this section—

- (a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;
- (b) to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purposes, of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering

an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) The Commissioners may pay to any person the necessary expenses of his attendance to give evidence or produce documents for the purpose of an inquiry under this section.

(6) No person claiming to hold any property adversely to a charity, or freed or discharged from any charitable trust or charge, shall be required under this section to furnish any information or produce any document relating to that property or any trust or charge alleged to affect it.

(7) Where the Commissioners propose to take any action in consequence of an inquiry under this section, they may publish the report of the person conducting the inquiry, or such other statement of the results of the inquiry as they think fit, in any manner calculated in their opinion to bring it to the attention of persons who may wish to make representations to them about the action to be taken.

(8) A person who willfully alters, suppresses, conceals or destroys any document, which he may be required to produce under this section, is guilty of an offence and is liable, on summary conviction, to imprisonment for six months and to a fine of £100.

#### **Power to call for documents, and search records.**

9.(1) The Commissioners may by order require any person having in his possession or control any books, records, deeds or papers relating to a charity to furnish them with copies of or extracts from any of those documents or, unless the document forms part of the records or other documents of a court or of a public authority, require him to transmit the document itself to them for their inspection.

(2) Any officer of the Commissioners, if so authorized by them, shall be entitled without payment to inspect and take copies of or extracts from the records or other documents of any court, or of any public registry or office of records, for any purpose connected with the discharge of the functions of the Commissioners or of the official custodian for charities.

(3) The Commissioners shall be entitled without payment to keep any copy or extract furnished to them under subsection (1), and where a document transmitted to them under that subsection for their inspection relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of it, the Commissioners may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.

(4) No person claiming to hold any property adversely to a charity, or freed or discharged from any charitable trust or charge, shall be required under subsection (1) to transmit to the Commissioners any document relating to that property or any trust or charge alleged to affect it, or to furnish any copy of or extract from any such document.

(5) No person properly having the custody of documents relating only to an exempt charity shall be required under subsection (1) to transmit to the Commissioners any of those documents, or to furnish any copy of or extract from any of them.

**Receipt and audit of accounts of charities.**

10.(1) Statements of account giving the prescribed information about the affairs of a charity shall be transmitted to the Commissioners by the charity trustees on request, and, in the case of a charity having a permanent endowment, such a statement relating to the permanent endowment shall be transmitted yearly without any request, unless the charity is excepted by order or regulations.

(2) Any statement of account transmitted to the Commissioners in pursuance of subsection (1) shall be kept by them for such period as they think fit; and during that period it shall be open to public inspection at all reasonable times.

(3) The Commissioners may, by order, require that the condition and accounts of a charity for such period as they think fit shall be investigated and audited by an auditor appointed by them, being a member of one of the following bodies—

The Institute of Chartered Accountants in England and Wales;  
The Society of Incorporated Accountants;  
The Institute of Chartered Accountants of Scotland;  
The Association of Certified and Corporate Accountants;  
The Institute of Chartered Accountants in Ireland.

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

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

(5) The expenses of any audit under subsection (3), including the remuneration of the auditor, shall be paid by the Commissioners.

- (6) If any person—
- (a) fails to transmit to the Commissioners any statement of account required by subsection (1); or
  - (b) fails to afford an auditor any facility, to which he is entitled under, subsection (4),

the Commissioners may by order give to that person or to the charity trustees for the time being such directions as the Commissioners think appropriate for securing that the default is made good.

- (7) This section shall not apply to an exempt charity.

#### **Exchange of information, etc.**

11.(1) The Commissioners may furnish the Commissioner appointed under the Income Tax Act<sup>1</sup> 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.**

12. 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-ordinating their activities and those of the other charity;

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- (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 IV.**

CY-PRES AND SUPERVISION BY COURT.

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

13.(1) Subject to subsection (2), 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 spirit of the gift, 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 spirit of the gift.

(2) Subsection (1) shall not affect the conditions, which must 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.

(3) 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.

(4) 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.**

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

- (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 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 consist—

- (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 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 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.**

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

(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; and his 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 from the trusteeship as respects all or any of that property.

(4) Where the official custodian for charities is discharged from his trusteeship of any property, or the trusts on which he 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 his acting in conformity with an order under this section or by his 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.**

16.(1) Subject to the provisions of this Act, where property is vested in the official custodian for charities in trust for a charity, he shall not exercise any powers of management, but he 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<sup>2</sup>, except that he 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 name and on his behalf to execute and do all assurances and things which they could properly require him to execute or do—

- (a) for carrying out any transaction affecting the land or interest which is authorized 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 shall be enforceable by or against the charity trustees as if the land or interest were vested in them.

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(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 authorize 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.**

17.(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, that is to say –

- (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 £50 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, or of any two or more inhabitants of the area of the charity, if it is a local 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 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, 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 from his 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 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, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area.

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

18.(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 17.

(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 17, 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 authorize 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 authorized 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.

**Power to act for protection of charities.**

19.(1) Where the Commissioners are satisfied as the result of an inquiry instituted by them under section 8—

- (a) that there has been in the administration of a charity any misconduct or mismanagement; and
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

then for that purpose the Commissioners may of their own motion do all or any of the following things—

- (i) they may by order remove any trustee, charity trustee, officer, agent or servant of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
- (ii) they may make any such order as is authorised by section 15(1) with respect to the vesting in or transfer to the official custodian for charities of property held by or in trust for the charity;
- (iii) they may order any bank or other person who holds money or securities on behalf of the charity or of any trustee for it not to part with the money or securities without the approval of the Commissioners;

- (iv) they may, notwithstanding anything in the trusts of the charity, by order restrict 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 Commissioners.

(2) The references in subsection (1) to misconduct or mismanagement shall, notwithstanding anything in the trusts of the charity, extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or 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 Commissioners may also remove a charity trustee by order made of their own motion—

- (a) where the trustee is a bankrupt or a corporation in liquidation, or is incapable of acting by reason of mental disorder;
- (b) where the trustee has not acted, and will not declare his willingness or unwillingness to act; or
- (c) where the trustee is outside Gibraltar or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.

(4) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—

- (a) in place of a charity trustee removed by them under this section or otherwise;
- (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
- (c) where there is a single trustee, not being a corporation aggregate, and the Commissioners are of the opinion that it is necessary to increase the number for the proper administration of the charity;
- (d) where the Commissioners are 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 either cannot be found or does not act or is outside Gibraltar.

(5) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the

vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section 17.

(6) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 17.

(7) Subsections (10) and (11) of section 17 shall apply to orders under this section as they apply to orders under that section, save that where the Commissioners have by order removed a trustee, charity trustee, officer, agent, or servant of a charity under the power conferred by subsection (1) of this section, an appeal against such an order may be brought, by any person so removed without a certificate of the Commissioners and without the leave of the Chief Justice.

(8) The power of the Commissioners under subsection (1) to remove a trustee, charity trustee, officer, agent or servant of a charity shall include power to suspend him from the exercise of his office or employment pending the consideration of his removal, but not for a period longer than three months, and to make provision as respects the period of the suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, 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.

(9) Before exercising any jurisdiction under this section, 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; 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.

(10) A person who contravenes an order under paragraph (iii) of subsection (1) is guilty of an offence and is liable, on summary conviction, to imprisonment for six months and to a fine of £100 but no proceedings for an offence punishable under this subsection shall be instituted except by or with the consent of the Commissioners.

(11) This section shall not apply to an exempt charity.

#### **Publicity for proceedings under sections 17 to 19.**

20.(1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity or submit such a scheme to the court or the Attorney-General for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice.

(2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than the official custodian for charities, unless not less than one month previously there has been given the like public notice as is required by subsection (1) for an order establishing a scheme:

Provided that this subsection shall not apply in the case of an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.

(3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or servant of a charity, the Commissioners shall, unless he cannot be found or has no known address in Gibraltar, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

(4) Where notice is given of any proposals as required by subsections (1) to (3), the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may, without further notice, proceed with the proposals either without modifications or with such modifications as appear to them to be desirable.

(5) Where the Commissioners make an order which is subject to appeal under section 17(11) the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.

(6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.

(7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.

(8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in Gibraltar.

#### **Schemes to establish common investment funds.**

21.(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 authorizing a person to receive the remuneration notwithstanding that he is also a charity trustee of 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 authorize him to be appointed trustee to manage the fund or any part of it, and as managing trustee he shall, subject to section 5, 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 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 authorize dealings with charity property, etc.**

22.(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 authorize 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 authorize 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 authorized, 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 authorize 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 authorize 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.

#### **Power to advise charity trustees.**

23.(1) The Commissioners may on the written application of any charity trustee give him their opinion or advice on any matter affecting the performance of his duties as such.

(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 responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—

- (a) he 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.

**Powers for preservation of charity documents.**

24.(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 authorized 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 9 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.**

25.(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 remuneration or of the lapse of time since payment of the bill.

**Powers for recovery or redemption of charity rent charges.**

26.(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 has so requested, a proper and effective transfer of it to a person nominated by him.

(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 redeeming the rent charge in accordance with subsection (3) he 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 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.**

27.(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, or by any two or more inhabitants of the area of the charity, if it is a local 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 authorized by order of the Commissioners.

(3) The Commissioners shall not, without special reasons, authorize 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 authorized 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 leave 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 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.**

28.(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.**

29.(1) Where a charity may be wound up by the Supreme Court under the Companies Act<sup>3</sup>, a petition for it to be wound up under that Act by any court in Gibraltar having jurisdiction may be presented by the Attorney-General, as well as by any person authorized by that Act.

(2) Where a charity is a company or other body corporate, and has power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or of any property representing property so

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acquired, or of any property representing income which has accrued before the alteration is made, or of the income from any such property.

**Protection of expression “common good”.**

30.(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 of £50.

**PART V.**  
**MISCELLANEOUS.**

**General obligation to keep accounts.**

31.(1) Charity trustees shall keep proper books of account with respect to the affairs of the charity, and charity trustees not required by or under the authority of any other Act to prepare periodical statements of account shall prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than fifteen months and a balance sheet relating to the end of that period.

(2) The books of account and statements of account relating to any charity shall be preserved for a period of seven years at least, unless the charity ceases to exist and the Commissioners permit them to be destroyed or otherwise disposed of.

**Manner of giving notice of charity meetings, etc.**

32.(1) All notices which are required or authorized 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 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 has no address in Gibraltar.

**Manner of executing instruments.**

33.(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.**

34.(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.

#### **Miscellaneous provisions as to evidence.**

35.(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 authorized 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.

#### **Miscellaneous provisions as to orders of Commissioners.**

36.(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 Commissioners.**

37. A person guilty of disobedience—

- (a) to an order of the Commissioners under section 8(3) or under section 9, or to a precept under that subsection; or
- (b) to an order of the Commissioners under section 17 or 19 requiring a transfer of property or payment to be called for or made; or
- (c) to an order of the Commissioners requiring a default under this Act to be made good,

may on the application of the Commissioners to the Supreme Court be dealt with as for disobedience to an order of the Supreme Court.

#### **Appeals from Commissioners.**

38.(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.

#### **Regulations.**

39.(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 authorized by this Act to be prescribed, and generally for better carrying out of the provisions and purposes of this Act.

### **Application of English law**

40. 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.**

41.(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 VI. CONFIDENTIALITY AND COOPERATION.**

### **Use of confidential information.**

42.(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 restriction 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.**

43. 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.**

44.(1) Subject to section 42, 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) must 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) must use the information only for the purposes for which it was provided, other than in justified circumstances (of which it must 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 must 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 must 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.**

45. The Commissioners may refuse to exchange information under section 44 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 42.

### **Providing assistance to other commissioners.**

46.(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.**

47.(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 must inform the requesting foreign commissioner and provide him 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 must refuse to act on a request for assistance from a foreign commissioner when the Minister so determines.

**Interpretation: Part VI.**

48. 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);
- (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) or a person falling within paragraph (b);
- (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) or a person falling within paragraph (b); 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.

## SCHEDULE 1

## Section 4

## CONSTITUTION, ETC., OF CHARITY COMMISSIONERS.

- 1.(1) There shall be a Chief Charity Commissioner, and two other Commissioners.
  - (2) The Chief Commissioner shall be legally qualified.
  - (3) The Chief Commissioner and the other Commissioners shall be appointed by the Minister responsible for finance and shall hold office during the Minister responsible for finance's pleasure.
  - (4) There may be paid to each of the Commissioners such allowances as the Minister responsible for finance may determine.
  - (5) If at any time it appears to the Minister responsible for finance that there should be more than three Commissioners, he may appoint not more than two additional Commissioners.
2. The Minister responsible for finance may appoint a secretary to the Commissioners and such officers and servants as he thinks necessary for the proper discharge of the functions of the Commissioners and of the official custodian or 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) *Repealed.*
  - (3) 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.
  - (4) Where the Commissioners act as a board, two 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.
  - (5) 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 2 and 6

**EXEMPT CHARITIES.**

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 4

**THE REDUCTION OF FINANCIAL CRIME**

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**

Sections 42–48

**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.